

(1986) 11 KL CK 0036
In the High Court Of Kerala
Case No : C. R. P. No. 487 of 1982

K.T. Gopalan Nambiar

APPELLANT

Vs

The Taluk Land Board and Others

RESPONDENT

Date of Decision : 14-11-1986

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 6C, 72K, 72K(2), 84, 85

Citation : (1987) KLJ 154

Hon'ble Judges : P.K. Shamsuddin, J

Bench : Single Bench

Advocate : M.A. Manhu and V.V. Narayanan, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Shamsuddin J.

1. This revision is against the order of the Taluk Land Board, Taliparamba in T. L. B. No. 155/73/TBA, on its file. The Taluk Land Board passed an order dated 29-9-1979 determining the extent of land to be surrendered by the declarant in that case as 39 acres and 23 cents. The petitioner contended that he is a tenant in respect of 3 acres in Sy. No 235 of Panniyur Amsom. The tenancy claimed was rejected by the Taluk Land Board. The petitioner filed C. R. P. No. 285 of 1980-F against the order of the Land Board. The declarant also filed a revision C. R. P. No. 3102 of 1979-F challenging the same order. Both the revisions were heard together. At the time of hearing, it was submitted on behalf of the petitioner that he had obtained a purchase certificate from the concerned Land Tribunal in O. A. No. 2607 of 1977. It was also submitted that the declarant had executed a gift deed in favour of his three children and in would attract the operation of Section 84 of the Kerala Land Reforms Act. This Court held that the Taluk Land Board had no opportunity to consider the purchase certificate and therefore it was only just and proper that the matter was remanded to the Taluk Land Board for looking into the purchase certificate and to pass appropriate orders. This Court also held that the finding regarding the invalidity of the gift in regard to the party has to

be re-examined in the light of section 84 of the Act. In this view, both the revisions were allowed, and the matter was remanded to the Taluk Land Board.

2. In support of his contention, the petitioner produced certified copy of the order in O. A. No. 2607 of 1977 and also the certified copy of certificate of purchase No. 406 of 1978. He also produced document No. 3802 of 1969 on the file of the Taliparamba Sub Registry, under which the declarant assigned three acres of land in favour of the petitioner and others which was marked as Ext. A1 by the Land Board. The Taluk Land Board found that there was no mention of prior possession as tenant in Ext. A1 document, and it only purports to be an assignment. With regard to the proceedings before the Taluk Land Board, evidenced by Ext. A2 and also the purchase certificate Ext. A3, the Taluk Land Board found that the declarant was not a party to the proceedings before the Land Tribunal and the basis on which it was allowed has not been disclosed in the order and Ext. A3 was issued on the basis of Ext. A2.

3. Counsel for the petitioner strongly relied on the decision of the Supreme Court in *Mathew & Others v. Taluk Land Board* (1979 K. L. T. 601) and contended that the issue of purchase certificate is conclusive proof of the fact that the right, title and interest of the landowner and intermediaries in respect of the holding concerned were assigned to the tenant. In the above decision their Lordships of the Supreme Court observed as follows:-

24. Now the certificate of purchase which the Land Tribunal issues (in the prescribed form) evidences the "assignment" of the assigned land to the purchaser. Sub Section (2) of section 72-K of the Act mentioned above merely declares that the certificate shall be conclusive proof of that "assignment" of the right, title and interest of the land-owner and the intermediaries (if any) to the tenant in respect of the holding concerned (or portion thereof). There is nothing in the Sub-Section which could be said to declare that the finding recorded by the Tribunal in those proceedings would be conclusive proof of any other matter which it may determine so as to bind the Taluk Land Board or any other authority. Sub-section (2) of Section 72-K. therefore does not, in terms or in substance, impinge on the authority of the Taluk Land Board to discharge its own functions u/s 85 of the Act.

25. The Board is thus quote free to cause the particulars mentioned in the statement filed under Sub-section (2) of Section 85 to be verified and to ascertain whether the person filing the statement owns or holds any other land, and to determine the "extent" as well as the "identity" of the excess land which he is required to surrender. If a certificate of purchase is issued by the Land Tribunal to any such person and he tenders it in proceedings before the Taluk Land Board, the Board is required by law to treat it as conclusive proof of the fact that the right, title and interest of the landowner (and intermediary) over the land mentioned in it has been assigned to him. It is however not the requirement of the law that the certificate of purchase shall be conclusive proof of the surplus or other land held by its holder so as to foreclose the decision of the Taluk Land

Board under Sub-section (5) of Section 85.

The Supreme Court further observed that even though certificate of purchase issued under Sub Section (1) of Section 72-K is conclusive proof of the assignment of the right, title and interest of the landowner in favour of the holder in respect of the holding concerned under Sub section (2), that only means that no contrary evidence shall be effective to displace it, unless the so-called conclusive proof is inaccurate on its face, or fraud can be shown. It also held that it will be for the Board to examine, where necessary, whether the certificate is inaccurate on its face or has been obtained by fraud or collusion.

4. It is clear from the above observations that Sub Section (2) of Section 72-K does not take away the jurisdiction of the Taluk Land Board to make an order u/s 85, after taking into consideration the evidentiary value of the certificate of purchase. If the Board finds the certificate is inaccurate on the face of it or it is obtained by fraud or collusion it is open to the Board not to act upon it in determining the excess land required to be surrendered.

5. This Court had occasion to consider the scope of Sub Section (2) of Section 72-K in the decision in *Sree Karikad Devaswam v. Wandoor Jupiter Chits (P) Ltd* (1980 KLT 760) M.P. Menon J. in that case held that a purchase certificate issued in proceedings where individual notice is not issued to the landowner cannot operate against him in spite of Section 72-K(2) and purchase certificate would not conclude matters if the same is "inaccurate on its face, or has been obtained by fraud or collusion." The learned Judge further observed in that case that when a Land Tribunal issues a purchase certificate on the strength of a tenancy admittedly created in 1969, and at a time when Section 6C of the Kerala Land Reforms Act was not even on the legislative anvil, it has to be inferred that its proceedings consisted of an empty formality and a make-believe, with inaccuracy writ large on the face of the certificate issued by it.

6. A Division Bench of this Court considered the scope and effect of Section 72-K in the decision in *Kochu Lakshmi v. Velayudhan & Others* (1980 KLN 642) and held that Section 72-K provides only for the extinguishment of the rights of the landlords and intermediaries in respect of the holding and the vesting of the same in the cultivating tenant and further observed that Section 72-K does not contemplate the determination of a question of contest between rival claimants to tenancy for assignment of the land lord's rights and that disputes inter se among cultivating tenants is not a matter for determination of the Land Tribunal in an enquiry regarding the vesting of rights of the landlord and intermediaries in the cultivating tenant by the issue of a purchase certificate to him.

7. In *Karicherry Charadan Nair and Another Vs. Edayillam Kunhambu Nair and Others*, Bhat J. held that a purchase certificate. is not conclusive as against a person to whom individual nonce has not been issued before passing such an order directing issuance of a purchase certificate.

8. In the instant case admittedly no notice was issued to the declarant before

Ext. A2 order was passed and Ext. A3 certificate of purchase was issued. Ext. A2 order was passed in suo motu proceedings taken by the Land Tribunal. It was an ex parte order. The order does not indicate that the petitioner had any interest in the land prior to 1964. It is in these circumstances that the Taluk Land Board refused to act upon Exts. A2 and A3.

9. Bearing in mind the broad principles enunciated in the above decisions, it has to be held that the Taluk Board is justified in refusing to act upon A2 and A3. As indicated above the declarant was not a party to the proceedings. Neither Ext. A2, nor Ext. A3 discloses the basis on which the land Tribunal acted. Therefore inaccuracy is writ large on the face of these documents. The petitioner has not adduced any other evidence before the Land Board to show that he was holding the property as a tenant. Ext-A1 is a sale deed executed by one Gopalan Nambiar (document No. 3802/1969 of the Taliparamba Sub Registry) transferring his right in the property in favour of the petitioner and others for a consideration of Rs 2,000/- Ext. A1 recites that the property was transferred and possession was made over thereunder. Though there was a passing reference to previous possession, the nature of possession was not described in the document. It is clear that the recital of prior possession was introduced in order to defeat the provisions of Act. No other document was produced to show that the petitioner was in possession of the property at any time before Ext. A1 came into existence. Therefore the finding of Taluk Land Board that the petitioner has not proved the tenancy set up by him in respect of 3 acres of land in Sy. No. 23 of Panniyur amsom is correct and does not call for any interference.

There is no merit in the C.R.P. and it is accordingly dismissed. However there will be no order as to costs.