

(2014) 09 KL CK 0022
In the High Court Of Kerala
Case No : CRP (LR). No. 171 of 2012 (B)

K.T. Rajeev

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Kerala Land Reforms Act, 1963 — Section 74, 84, 84(4), 85, 85(8)
Registration Act, 1908 — Section 17(1A)
Transfer of Property Act, 1882 — Section 53A

Citation : (2015) 1 ILR 587 : (2014) 4 KHC 102 : (2014) 4 KLJ 233 : (2014) 4 KLT 209

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : T. Sethumadhavan, Pushparajan Kodoth, K. Jayesh Mohankumar and Vandana Menon, Advocate for the Appellant; Suseela. R. Bhat, Spl. Govt. Pleader, Advocate for the Respondent

Judgement

1. Whether a person who acquired uninterrupted possession of a land under an agreement for sale on payment of consideration from the declarant entitled to the benefit of "deemed tenancy" ? This question arises in the context of the interpretation of Section 7E of the Kerala Land Reforms Act, 1963 (hereinafter referred to as "the Act" only).

2. The fourth respondent declarant was directed to surrender an extent of 6.37 acres of land as in excess of his ceiling area by the order of the Taluk Land Board which has become final. It is reported that excess lands have already been taken possession of in satisfaction of the liability though not distributed to the landless hitherto. The petitioner who was not a party to the order of the Land Tribunal filed an application under Section 85(8) of the Act raising a claim. The petitioner contended that he was put in possession of 4.81 acres of land in Survey No. 2522 under an agreement for sale dated 22.1.1997 with the declarant. The petitioner added that he had parted with a consideration of ` 2 lakhs in favour of

the declarant even though the agreement for sale was not followed by a sale deed. The Taluk Land Board did not accept the plea of the petitioner for the reasons that the original of the agreement for sale was not produced and that possession pursuant thereto was not established.

3. The petitioner points out that sufficient opportunity was not afforded to him to summon the original of the agreement for sale from the civil court where it is produced. The petitioner contends that there is no warrant to confine the benefit of Section 7E of the Act to persons in possession under registered deeds only. The State on the other hand asserts that the benefit of "deemed tenancy" cannot be extended to a person in possession of land under an alleged agreement for sale. The State refutes the claim of possession made by the petitioner and refers to the statement dated 5.1.2009 filed by the declarant with the District Collector earlier.

4. I heard Mr. K. Jayesh Mohankumar, Advocate on behalf of the petitioner and Mrs. Suseela R. Bhat, Special Government Pleader on behalf of the State.

5. The claim of "deemed tenancy" put forth by the petitioner is rested on Section 7E of the Act (inserted by Act 21 of 2006) and the same is extracted hereunder:-

"7E. Certain person who acquired lands to be deemed tenants:-Notwithstanding anything to the contrary contained in Section 74 or Section 84 or in any other provisions of this Act, or in any other law for the time being in force or in any contract, custom or usage, or in any judgment, decree or order of any Court, Tribunal or other authority, a person who at the commencement of the Kerala Land Reforms (Amendment) Act, 2005, is in possession of any land, not exceeding four hectares in extent, acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area, during the period between the date of the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964), and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be deemed to be a tenant."

(emphasis supplied)

The extent 4 hectares has been reduced to 1 hectare 61 Ares and 87 Sq. meters (4 acres) by the Kerala Land Reforms (Amendment) Bill, 2013 and the Amendment Act is awaiting presidential assent.

6. The following pre-requisites have to be satisfied before claiming the benefit of "deemed tenancy" under Section 7E of the Act:

i) The claimant should be in possession of the land not exceeding the permissible extent.

ii) The possession should have been acquired by the claimant or his predecessor-in-interest.

iii) The acquisition should be by way of purchase or otherwise on payment of

consideration.

iv) The acquisition by the claimant should be from any person holding land in excess of his ceiling area, and v) The acquisition should be during the period between the date of commencement of the Kerala Land Reforms Act, 1963 and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005.

7. The words "possession" of any land "acquired" by way of purchase or "otherwise" occurring in Section 7E of the Act shows that emphasis is on acquisition of possession. A plain reading of Section 7E of the Act nowhere indicates that the legislature contemplated an acquisition of title for a claim of "deemed tenancy". An agreement for sale falls within the category of "purchase or otherwise" provided there is a payment of consideration. There is no warrant to confine the benefit of Section 7E of the Act only to those who acquired possession of any land under a registered document of title.

8. It is true that title to a land is normally acquired by (i) sale (ii) mortgage (iii) lease (iv) exchange and (v) gift (where there is no payment of consideration). But payment of consideration is essential for one to claim the benefit of Section 7E of the Act which can as well be pursuant to an agreement for sale. I am conscious of Section 17(1A) of the Registration Act, 1908 brought in by the Registration and Other Related Laws (Amendment) Act, 2001. An agreement for sale requires registration thereafter in order to claim the benefit of part performance under Section 53A of the Transfer of Property Act, 1882. But the agreement for sale relied on by the petitioner in the instant case is dated 22.1.1997 much before the commencement of the Registration and Other Related Laws (Amendment) Act, 2001.

9. Certainly high degree of proof is required to show that the claimant has been in uninterrupted possession of the land acquired from the declarant. It should be cogently established that possession of the land was acquired pursuant to an agreement for sale on payment of consideration. The execution of the agreement for sale as well as the payment of consideration should be independently established notwithstanding the bare recitals in the document. Otherwise it will give room to unscrupulous litigants putting forth false claims on the basis of fabricated agreements for sale of anterior date. The condition that the acquisition should be of permissible extent and that too under a document executed during the relevant period must be borne in mind. Of course the Taluk Land Board should be satisfied that the transfer of land made by the declarant is not calculated to defeat the ceiling provisions as per the second proviso to Section 84(4) of the Act.

10. I am not impressed by the argument of the State that a claim under Section 7E of the Act would lie only after a certificate of title is issued under Section 106B of the Act. Section 106B of the Act is as follows:-

"106B. Special provision for issue of certificate of title:-(1) Notwithstanding anything to the contrary contained in any other provisions of this Act or in any

other law for the time being in force, a person claiming to be a deemed tenant under Section 7E may apply, within such time and in such manner as may be prescribed, to the Land Tribunal having jurisdiction over the area, for a certificate of title in respect of the land held by him.

(2) On receipt of an application under sub-section (1) the Land Tribunal shall within a period of six months from the date of application, pass orders thereon after verifying the records as it may deem fit and where the application is allowed, issue a certificate of title in such manner as may be prescribed."

It is conceded by all that no rules have hitherto been framed prescribing the manner in which a land Tribunal could issue a certificate of title to a claimant under Section 7E of the Act. Moreover Section 106B of the Act is only a provision which enables such claimant to obtain a certificate of title in respect of the land held by him. The grant of a certificate of title under Section 106B of the Act by the Land Tribunal is not a sine qua non to claim "deemed tenancy". Equally fallacious is the argument of the State that the application of Section 7E of the Act can be raised only by a claimant and not the declarant. The extent of land (in respect of which the claim under Section 7E of the Act is upheld) would be deleted from the account of the declarant. This would bring down the surrenderable liability and therefore the declarant is as much concerned as the claimant when a claim under Section 7E of the Act is made.

11. The petitioner has evidently invoked Section 85(8) of the Act to set aside the order of the Taluk Land Board in so far as it relates to the land claimed by him. The petitioner claimed right under Section 7E of the Act only after it was inserted by Act 21 of 2006 with effect from 18.10.2006. The petitioner could not have laid a claim even before and the powers of the Taluk Land Board under Section 85(8) of the Act can as well be called in aid now. The powers are akin to Order IX Rule 13 of the Code of Civil Procedure, 1908 given to a Civil Court to set aside the decree passed ex-parte. All that the petitioner wanted was an opportunity to put forth his case and to set aside the order of Taluk Land Board to that extent in the event of his claim being upheld. The decisions in *Malathy Amma Vs. The Taluk Land Board and Others*, and *Kunjalan Haji v. State of Kerala* [1994(2) KLT 311 (DB)] did not deal with the claim under Section 7E of the Act. The dictum therein is clearly distinguishable and does not fetter the right of the petitioner to invoke Section 85(8) of the Act. The petitioner became a "person interested " as termed in Section 85(8) of the Act only by virtue of Section 7E of the Act and can maintain an application of this nature.

12. The petitioner relies on Rule 14 of the Kerala Land Reforms (Ceiling) Rules, 1970 (hereinafter referred to as "the Rules" for short) as regards the procedure to be followed. Rule 14 of the Rules is as follows:-

"14. Form of and procedure on application under Section 85(8):- (1) The application under sub-section (8) of Section 85 shall be in Form No. 6.

(2) The Taluk Land Board may, in order to decide whether the applicant is

interested in the land to be surrendered or was prevented by sufficient cause from appearing before the Taluk Land Board make or cause to be made such enquiries, investigations and verifications as it deems necessary.

(3) The Taluk Land Board shall not reject an application without giving the applicant a reasonable opportunity of being heard."

The petitioner laments that sufficient opportunity was not extended to him to summon the original agreement of sale from the court of the Munsiff of Kalpetta where it is produced. The petitioner has also a case that he is not a party to the proceedings of the District Collector wherein the declarant had filed his statement. The statement filed as late as on 5.1.2009 would indicate that the declarant was still in possession of the land and had not parted with the same. All these are matters to be thrashed out after affording sufficient opportunity to the petitioner as mandated under Rule 14(3) of the Rules. I am inclined to afford one more opportunity to the petitioner to place his contentions before the Taluk Land Board for which I remand the case.

13. The impugned order dated 15.2.2012 is set aside and the parties are directed to appear before the Taluk Land Board, Sulthan Bathery on 10.11.2014. The Taluk Land Board shall issue notice to the petitioner, the fourth respondent and other interested parties if any and take the proceedings to a logical end. Every endeavour shall be made to pass final orders within a further period of four months and the excess lands shall not be distributed in the meanwhile.

The Civil Revision Petition is allowed.

No costs.