
(1994) 07 KL CK 0009
In the High Court Of Kerala
Case No : C.R.P. No. 49 of 1989

Kunhalan Haji and others

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 13-07-1994

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 84, 85, 85(8)

Citation : (1994) 2 KLJ 366

Hon'ble Judges : K.P. Balanarayana Marar, J;K.K. Usha, J

Bench : Division Bench

Advocate : A.A. Abul Hassan and V.M. Kurian Jr, for the Appellant; A.V.M. Salahudeen Govt. Pleader For State, for the Respondent

Judgement

Balanarayana Marar, J.—Revision arises from the order of Taluk Land Board, Tirur in C.R. No. 251/73/C 6 dated 31-5-1988. Petitioners, three in number are applicants in the petition submitted u/s 85 (8) of the Land Reforms Act. Ceiling proceedings had been initiated against the 4th respondent, the declarant who was directed to surrender 4.33 acres of land. First petitioner claimed to be in possession of 67 cents of land in R. S. 136/1 of Kattiparuthy Village as per assignment dated 10-5-1971 executed by the 4th respondent. Second petitioner claimed to be in possession of an area of 1.40 acres in the same survey number. His father is alleged to have been in possession as a tenant whose rights devolved on second petitioner and others who had obtained purchase certificate from the Land Tribunal. Third petitioner also claims to be in possession of a property wherein a Lower Primary School stands. That property is alleged to have been taken assignment of by one Mohamed Musaliar from 4th respondent in 1961 from whom the third petitioner is alleged to have obtained an assignment. Purchase certificate is stated to have been issued to Mohamed Musaliar from Land Tribunal, Kuttippuram. The Taluk Land Board rejected the application for the reason that the property claimed by the first petitioner was not taken possession of by the authorities and that the claims of the other two petitioners are inordinately delayed. Aggrieved by that order the applicants have

come up in revision.

2. When the matter came up before a learned single Judge it was felt that there is a conflict between the decision rendered in C.R.P. Nos. 834 and 1743/79 reported in 1981 KLT Short Notes 85 - Sunny v. Taluk Land Board and two other decisions reported in 1988 (1) KLT 350 Malathi Amma v. Taluk Land Board and 1989 (2) KLT 806-Sundaran v. State of Kerala. The case was therefore adjourned for being heard by a Bench of two Judges. That is how the matter has come before us.

3. Heard counsel for revision petitioners and Government Pleader.

4. The plea of revision petitioners is that they are interested in the land directed to be surrendered and they have a right to be heard on the extend and identity of the land to be surrendered. This plea, according to the Government Pleader is unsustainable since first petitioner have come into possession after the commencement of the Land Reforms Act as amended by Act 35 of 1969 and petitioners 2 and 3 have not produced any material to show that they had been in possession prior to 1-1-1970. Section 85 (8) of the Land Reforms Act enables a person interested in the land to move the Taluk Land Board to get the order set aside if the determination of the land to be surrendered by any person was made without hearing him. The person so interested has to apply to the Taluk Land Board within a period of 60 days from the date of such determination. If he satisfies the Board that he was prevented by any sufficient cause from appearing before the Board it shall set aside the order and then proceed under sub-section (5) or sub-section (7) as the case may be in determining the extend and other particulars of the land, the ownership, or possession or both of which is or are to be surrendered. Only a person interested in the land is competent to move the Land Board under Sub-section (8) of Section 85 of the Act. The question to be considered is whether petitioners are persons interested in the land or not.

5. Admittedly first petitioner has come into possession in 1971 after the commencement of the Land Reforms Act as amended by Act 35 of 1989 by which time the ceiling provisions contained in the Act had come into force and the person in possession of lands in excess of ceiling area were liable to file a declaration of the properties held by them. The question whether such person is a person interested came up for consideration before this Court in Malathi Amma v. Taluk Land Board (1988(1) KLT 350). This Court held that only such persons who claimed rights over the land prior to 1-1-1970 and belonging to the declarant can be treated as interested persons within the meaning of sub-section (8) which has been further made clear by the provisions contained in the Explanation to sub-section (1) of Section 85 and the proviso to clause (c) of sub-section (6). The Explanation enumerates certain transactions which will be recognised as valid for the purpose of determining the excess land. Those persons are interested persons and an order for surrender of excess land cannot be made without hearing them and determining their rights. But such rights must exist prior to 1-1-1970. Moreover clause (c) of sub-section (6) makes it

clear that if the interest of other persons are likely to be affected the Board shall afford an opportunity to such persons to be heard before the order directing surrender of the excess land is passed and determining the choice of land by the declarant for surrender. This Court further held that going by the scheme of Section 85 it is clear that the "person interested" as defined in sub-section (8) can only be a person who claims rights in the land and which right came into being prior to 1-1-1970.

6. The matter was again considered in *Sundaran v. State of Kerala* (1989(2) K.L.T. 806). Therein also it was held that the right of the interested person mentioned in sub-section (8) of Section 85 is a very limited right. He can establish that the land in his possession is not liable to be included in the account of the declarant because he had become the owner in possession of the land prior to the specified date u/s 84. The question arose whether a defeated claimant has any right to exercise option within the meaning of sub-section (6) of Section 85. This Court held that he had no such right and that the right of option can be exercised only by a declarant. No such right is vested in a claimant.

7. We are in respectful agreement with the views expressed in the decisions aforementioned. In order to avail of the right conferred under sub-section (8) of Section 85 the person must be a "person interested" in the land. In other words, he must have a right which he can enforce. A person who had not obtained any right prior to 1-1-1970 cannot therefore be said to be a person interested so as to invoke the aid of sub-section (8) of Section 85.

8. The matter was referred to a Bench of two Judges in view of the apparent conflict between the decision in *C, R. P. 834 and 1743 of 1979* reported at page 85 of 1981 KLT *Sunny v. Taluk Land Board* and the aforementioned two decisions. Learned counsel for revision petitioners relies on the decision in *Sunny's* case in support of his contention that petitioners also are persons entitled to claim that the excess land for surrender should be taken from the lands allowed to be retained by the declarant. Sub-section (8) of Section 85 does not confer any such right over a person who obtained rights after 1-1-1970. Moreover, the right to exercise option is given only to the declarant and not to a claimant. At the utmost he can request the Land Board that the land claimed by him may be excluded from the land to be surrendered. In other words, he can make a request that the land should be in the land allowed to be retained by the declarant so as to enable him to claim the same. Claimant in such a case has no right but in equity it may be possible for the Land Board to include that portion of the land in the land allowed to be retained by the declarant. The decision in *Sunny's* case has to be understood in that manner. If so understood, there is no conflict between the decision in *Sunny's* case and the principles laid down in the other two decisions aforementioned. We answer the question referred to this Bench by holding that a person who obtained rights after 1-1-1970 is not a person interested in the land and such a person cannot invoke the aid of sub-section (8) of Section 85. On facts the Land Board was right in rejecting the

claims of petitioners. First petitioner had admittedly come into possession after 1-1-1970. Moreover it is specifically mentioned in the impugned order that the property claimed by the first petitioner was not taken possession of by the authorities. First petitioner cannot have therefore any grievance. Regarding the other two petitioners, no material was produced before the Land Board to show that they have any right over the properties claimed by them. Not only that the petitions were inordinately, delayed. In pursuance to the order of the Taluk Land Board possession of the excess land was taken early as 9-6-1980. The claim u/s 85 (8) has been made only in 1988. The Land Board was right in rejecting the claims of petitioners and in not condoning the delay in filing the application. Even if it be that petitioners can make a request to the Land Board for getting the land claimed by them included in the land allowed to be retained by the declarant, such request has to be made when the Land Board determines the area to be surrendered and not thereafter. Admittedly such a request has not come from the petitioners and the Land Board did not therefore get an opportunity to consider that request at the proper time. No interference is therefore called for.

For the reasons slated above the revision is dismissed. No costs.