
(2013) 01 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (C) No. 2246 of 2008

Kunnumbran Sreedharan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Citation : (2013) 2 KHC 159

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : K.V. Pavithran and Jayanandan Madayi Puthiyaveetil, for the Appellant; K.C. Vincent, Government Pleader, for the Respondent

Judgement

S. Siri Jagan, J.—Petitioner is the owner of certain lands. He purchased the properties from a declarant under the ceiling provisions of the Kerala Land Reforms Act. He filed an application u/s 85(8) of the Kerala Land Reforms Act seeking benefits of Section 7(E) of the Kerala Land Reforms Act, introduced by an amendment to the said Act in 2005, for excluding the said land from surrender as excess land. That application was dismissed. The petitioner approached this Court by filing CRP No. 1584/1999. By Ext. P1 order, a learned Single Judge of this Court set aside the order and remanded the matter for fresh consideration in the light of the findings in Ext. P1 Judgment. Fresh orders have not yet been passed. In the meanwhile, apparently based on a direction from the Government, the Secretary of the Land Board issued Ext. P4 communication to the Chairpersons of the Taluk Land Boards directing them not to take any steps u/s 7(E) of the Kerala Land Reforms Act, since the Government has not yet approved rules for implementation of the same. It is under the above circumstances the petitioner has filed this writ petition seeking the following reliefs:

(i) issue a writ of certiorari or such other writ quashing Ext. P4 direction as illegal as the same issued without authority and jurisdiction.

(ii) direct the 3rd respondent to consider the application filed u/s 85(8) of Kerala Land Reforms Act on merit on the basis of Ext. P1 judgment and without considering Ext. P4 order.

(iii) direct the 4th respondent to consider Ext. P3 application on merit ignoring Ext. P4 direction.

(iv) granting such other order or direction as this Honourable Court deem fit to grant in the circumstances of the case.

The learned counsel for the petitioner submits that, this Court has in *Pasupathi Nampoothiri v. State of Kerala* 2008 KHC 4882 : 2008 (4) KLT 163 held that the State Land Board cannot direct the Taluk Land Board to ignore the provisions of Section 7(E) and not to consider applications filed u/s 7(E). It is also submitted that Ext. P4 communication has already been quashed by this Court in that decision. In the above circumstances, the learned counsel for the petitioner submits that the Taluk Land Board is duty bound to consider the application of the petitioner u/s 85(8) in the light of Section 7(E).

2. I have heard the learned Government Pleader also. The contention of the learned Government Pleader is that Section 7(E) of the Kerala Land Reforms Act cannot now be implemented since the Government has not yet framed the rules for implementation of the same.

3. I have considered the rival contentions in detail. Section 7(E) of the amended Kerala Land Reforms Act reads thus:

[7E. Certain persons 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.]

I do not think that for granting benefits of Section 7(E) of the Kerala Land Reforms Act, any separate rules are necessary, since Section 7(E) itself confers a benefit to certain persons, who are in possession of land which is excess land at the hands of the declarant. Ext. P4 has already been quashed by this Court in *Pasupathi Nampoothiri's* case (*supra*). Another learned Judge of this Court has, in *Institute of Brothers of St. Gabriel Vs. State of Kerala and Others* held that the Government, District Collector or State Land Board cannot direct Taluk Land Boards not to enforce Section 7(E) of the Kerala Land Reforms Act. In that

decision a communication issued by the Principal Secretary to the Revenue Department of the Government of Kerala to all District Collectors and all Chairmen of Taluk Land Boards requiring them to keep in abeyance the operation of Section 7(E) of the Kerala Land Reforms Act, brought in by the Amendment Act of 2005, was quashed. Therefore, the Taluk Land Board is duty bound to consider the application of the petitioner u/s 85(8) of the Kerala Land Reforms Act, in accordance with Ext. P1 remand order of this Court, without reference to Ext. P4. This the third respondent shall do as expeditiously as possible at any rate within six months from the date of receipt of a copy of this Judgment.

Before parting with this case, I feel that it is apposite to give vent to certain impressions, I get regarding the effect of Section 7(E) of the Kerala Land Reforms Act on the people of Kerala. Several writ petitions have come up before this Court seeking benefits of Section 7(E). Some of them have come up before me also. Whenever those writ petitions were taken up, Government Pleaders appearing in those writ petitions used to seek time on the ground that the State is contemplating, bringing an amendment to Kerala Land Reforms Act to delete Section 7(E) from the Statute. This proposal of the Government has been noted by me in Pasupathi Nampoothiri's case (supra). This has been going on for years now. When political parties do not do what they have to do to give justice to the people by initiating amendments to legislations, which are against the interest of the people of State when they were in a position to do the same and start agitations against Government demanding justice to the landless, when they are out of power that amounts to hypocrisy and double talk. The same amounts to mocking the intelligence of the people of the State also. Likewise if a Government in power does not take action to repeal a law, which promotes violation of law, that also would amount to mockery of the law abiding citizens of this State. Going by Section 7(E), those persons who violated law by holding on to excess land despite the ceiling provisions of the Kerala Land Reforms Act, steals a march over those poor law abiding citizens, who surrendered their excess land, in obedience orders under the ceiling provisions of the Kerala Land Reforms Act. Therefore, if a poor citizen thinks that the State promotes violation of law and rewards violators of law, indirectly mocking those who abided by the law, he cannot be faulted, even though the State has no such intention. Such legislation would promote law abiding citizens also to violate the law, with the hope that in future, they would also get an amendment of the law, like Section 7(E) for legalising their illegal action. Section 7(E) dilutes the advantage obtained by the State by virtue of the ceiling provisions of the Kerala Land Reforms Act to a great extent. As a result substantial extent of land which should vest with the State for distribution to landless people of the State would vest with people, who retain excess lands in violation of law. I hope that the State will at least now consider these matters and take an appropriate decision regarding, the continuance of Section 7(E) in the Statute instead of embarking on such gimmicks by issuing such direction to Taluk Land Boards, to pull the wool over the eyes of the people. I fervently hope that the Government will take a decision

which will not promote a belief in law abiding citizens of the State that if they violate the law, they also stand a chance of getting the same legalised in future by an amendment of the law, thus promoting violation of law. It is the duty of the State to send a message to violators of law that violation of law does not pay. I further hope that my above lamentations will not get the same treatment as my recommendation regarding implementation of Section 4A of the Payment of Gratuity Act, expressed in Retnavalli Vs. Ambalapadu Service Co-operative Bank Ltd., which was affirmed in W.A. No. 1250/2004, which recommendation was to the tremendous advantage of the working class in this State, whose cause every political party in the State professes to espouse.