
(2014) 10 KL CK 0119
In the High Court Of Kerala
Case No : CRP(LR). No. 36 of 2013

M. Yamuna

APPELLANT

Vs

A.V. Hansly

RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 103, 105A, 2(23A), 2(57), 2(8)

Citation : (2014) 4 ILR 956 : (2014) 4 KHC 184 : (2014) 4 KLJ 441 : (2014) 4 KLT 291

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : K. Saneesh Kumar, Advocate for the Appellant; Vinod Singh Cheriyan, R. Sudhish, M. Manju, K.R. Ranjith, Advocates and K.K. Saidalavi, Government Pleader, Advocate for the Respondent

Judgement

V. Chitambaresh, J.—Does the Kerala Land Reforms Act, 1963 (the "Act" for short) envisage a certificate of purchase to the holder of a Karaima? The issue arises in this Civil Revision Petition filed by the land owner under Section 103 of the Act against the concurrent orders of the authorities.

2. Section 2(23A) of the Act as it stood prior to substitution by Act 21 of 1999 defines "Karaima" as under:—"(23A) "Karaima" means a transfer of lands situate in the Kozhikode district or in the Ponnani taluk of the Malappuram district, in consideration of ground rent, principally for the purpose of erecting a homestead, and described as karaima in the documents, if any, evidencing the transfer; Explanation.— For the purpose of this clause, so much of the land appurtenant to the land under the Karaima belonging to the landlord or any person claiming through him and in the possession and beneficial enjoyment of the Karaima holder or his legal representative or any other person claiming through him as on the 24th day of January, 1989 shall, subject to a maximum of three cents in Corporation area, five cents in Municipal area and ten cents in Panchayat area, inclusive of the land under the Karaima, be deemed to be Karaima: Provided that

where the extent of the land appurtenant in the possession and beneficial enjoyment is in excess of the extent specified above as on the 24th day of January, 1989, such land shall also be deemed to be Karaima".

(emphasis supplied)

3. Section 2(57) of the Act defines a "tenant" and includes the holder of a Karaima as under:-

"(57) "tenant" means any person who has paid or has agreed to pay rent or other consideration for his being allowed to possess and to enjoy any land by a person entitled to lease that land, and includes-

xxx

(hhh) the holder of a karaima"

Section 2(8) of the Act defines a "cultivating tenant" as under:-

"(8) "cultivating tenant" means a tenant who is in actual possession of, and is entitled to cultivate, the land comprised in his holding;"

(emphasis supplied)

4. A cultivating tenant is in relation to a land entitled to be possessed and cultivated whereas the holder of a Karaima is in relation to a land used principally for the purpose of erecting a homestead. A cultivating tenant is entitled to a certificate of purchase under Section 72K of the Act even though a holder of Karaima may only be entitled to purchase under Section 53 of the Act. The purchase is of the right, title and interest of the landowner and the intermediaries, if any, in respect of the land comprised in the holding covered by the "Karaima". The Kerala Land Reforms (Amendment) Act, 1999 (Act 21 of 1999) under which the holder of a Karaima is entitled to a certificate of purchase has already been declared to be unconstitutional [See: Ratna Bai Vs. State of Kerala, . The Land Tribunal and the Appellate Authority therefore erred in directing the issue of a certificate of purchase to the first respondent as a holder of Karaima.

5. The further question is as regards the extent of the land entitled to be purchased by the first respondent as a holder of Karaima whose status is however not disputed by the first respondent. The predecessor-in-interest of the revision petition had executed the Karaima (Document No. 264/1962) in favour of the wife of the first respondent in respect of 2.75 cents of land. The wife died and the other legal heirs executed a release deed (Document No. 1078/1981) in favour of the first respondent over 8.70 cents of land including the adjacent lands allegedly in his possession. The lands are in T.S. No. 5.15.651 of Kalathinkunnu Desom, Kasaba Village, Kozhikode District situate within the limits of the Municipal Corporation of Kozhikode.

6. The Land Tribunal before whom the application for purchase was filed by the

first respondent had called for a report from the Special Revenue Inspector who is the officer authorised under Section 105A of the Act. The authorised officer reported that the house wherein the first respondent resides occupied an extent of 2 cents and that the Karaima document takes in an extent of 2.75 cents. Only the extent of land necessary for the beneficial enjoyment of the holding can be permitted to be purchased by the holder of Karaima as per the Explanation to Section 2(23A) of the Act. The house occupied 2 cents of land and one cent of land in addition lying contiguous can be reasonably said to be sufficient for the beneficial enjoyment of the Karaima holding. The authorities below were not justified in granting permission to purchase 8.70 cents of land situate within the Corporation of Kozhikode as sought by the first respondent as a holder of Karaima.

7. I set aside the impugned orders to the above limited extent and confine the entitlement to purchase by the first respondent as a holder of Karaima to 3 cents out of 8.70 cents of land applied for. The impugned orders are modified as follows:-

- i) It is declared that the first respondent is entitled to purchase 3 cents of land in T.S. No. 5.15.651 of Kalathinkunnu Desom, Kasaba Village, Kozhikode District as a holder of Karaima.
- ii) The 1 cent of land for beneficial enjoyment will be just abutting and encircling the 2 cents of land occupied by the house of the first respondent as reported by the authorised officer.
- iii) The direction of the Land Tribunal as affirmed by the Appellate Authority to issue a certificate of purchase to the first respondent as a holder of Karaima is however set aside.

The Civil Revision Petition is disposed of. No costs.