(1989) 09 KL CK 0003

In the High Court Of Kerala

Case No : C.R.P. No. 878 of 1931-I

Madhava Pharmaceutical Laboratories APPELLANT

Vs

The Taluk Land Board and Others RESPONDENT

Date of Decision : 07-09-1989

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(43), 81, 81(1), 82(1), 82(2)

Citation : (1989) 09 KL CK 0003

Hon'ble Judges : Ramakrishnan, J;P.C. Balakrishna Menon, J

Bench : Division Bench

Advocate : K.P.G. Menon, for the Appellant; A. Shahul Hameed, Government Pleader, for the Respondent

Judgement

Balakrishna Menon, J.—This Civil Revision Petition is by a partnership firm called ''Madhava Pharmaceutical Laboratories'' against the order of the Taluk Land Board, Ottappalam directing the firm to surrender 190.76 acres as excess land in its possession.

2. The Taluk Land Board initiated proceedings against the firm for surrender of excess land as per a draft statement dated 25th July 1979 served on the Managing Partner of the firm. The draft statement shows the total extent of land held by the firm as 198.30 acres, out of which an extent of 33.38 acres was exempted u/s 81 of the Kerala Land Reforms Act, and an extent of 7.50 acres was shown as the ceiling area applicable to the firm u/s 82(5) of the Act. The firm was directed to surrender 157.42 acres as excess land in its possession.

3. The firm filed objections to the draft statement and the main contentions raised are the following:

The Madhava Pharmaceutical Laboratoryes is a firm originally constituted on 1st April 1960 and had been reconstituted twice afterwards on 20th December 1968 and on 1st January 1970. The firm had acquired a total extent of 220.14 acres of land for the purpose of developing a herbarium for its industrial and commercial purpose of manufacture and sale of Ayurvedic Medicines. The firm itself is an industrial and commercial undertaking engaged in the manufacture and sale of Ayurvedic Medicines on a large scale. The Officers of the Forest Department attempted to take possession of the aforesaid extent of 220.14 acres of land as land vested in the Government under the Kerala Private Forest (Vesting and Assignment) Act, 26/1971. The firm had thereupon filed O.A. 34/1975 before the Forest Tribunal, Palghat for a declaration that no part of the area had vested in the Government under Act 26/1971. The Tribunal had by its order, dated 20th June 1978 found that an extent of 115 acres is a private forest vested in the Government and the remaining extent of 105.14 acres is a herbarium not vested in the Government under the said Act. The Government has taken possession of the aforesaid extent of 115 acres as a vested forest and the firm is in possession of only the remaining extent of 105.14 acres. It has thus disputed the total extent of 198.30 acres shown in the draft statement. It has also raised a contention that the entire extent of 105.14 acres is exempted from the ceiling provisions as per the exemption provided for u/s 81(1)(k) of the K.L.R. Act. A further contention raised is that the ceiling limit applicable to the firm shown in the draft statement is also not correct.

4. The Taluk Land Board by its order, dated 10th March 1981 in S.M. 59/1978 has withdrawn the exemption proposed in the draft statement and allowing a ceiling area of 7.50 acres has directed the firm to surrender 190.76 acres. Exemption was allowed only to the extent of 4 cents as the space occupied by an office building. The points raised relating to the total extent of exemption u/s 81(1)(k) of the Act and the ceiling area applicable to the firm are not considered by the Taluk Land Board.

5. Ext. P-2, dated 1st January 1970 is the document reconstituting the firm the Madhava Pharmaceutical Laboratories. The document shows that executant Nos. 1 to 3 had been carrying on a partnership business in the name of Madhava Pharmaceutical Laboratories as per a partnership deed, dated 20th December 1968. The firm is reconstituted by taking in executant numbers 4, 5 and 6 also as partners of the firm. The object of the reconstituted firm is said to be the "manufacture and distribution of Ayurvedic Medicines as hitherto fore, to dispense medicines to the visiting patients in the dispensary on prescriptions issued by party No. 1 who is a Registered Medical Practitioner and to develop the Herbarium in the manner described in the preamble to this deed and other ancillary activities, relating to Ayurvedic system of medicines". The preamble refers to a herbarium where medicinal plants are cultivated for use in the manufacturing process of the firm. Ext. P-1, dated 20th June 1978 is the order of the Forest Tribunal, Palghat in O.A. No. 34 of 1975. Ext. P-1 order shows that an extent of 105.14 acres described in schedule ''C'' was exempted from vesting in the Government under Act 26/1971 as a herbarium where medicinal plants are cultivated. The Taluk Land Board in the impugned order adverts to the order of the Forest Tribunal only to state that the 115 acres of land shown as vested forest had not been taken into account in these proceedings. It has not

considered the claim for exemption of 105.4 acres of land held for use for the industrial and commercial purpose of the undertaking. In the light of Ext. P-1 proceedings of the Forest Tribunal to which the Government is a party, we are inclined to accept the contention that the extent of 105.14 acres described in schedule ''C'' of Ext. P-1 order is land set up for use as herbarium for the industrial and commercial purpose of the firm. We also hold that the firm is an industrial and commercial undertaking and the aforesaid extent of 105.14 acres is liable to be exempted u/s 81(1)(k) of the K.L.R. Act. The proviso to the said clause empowers the Collector to take proceedings against the firm for cancellation of the exemption if the land set apart for use for the industrial and commercial purpose of the undertaking is not actually used for those purposes. Viswanatha Iyer, J. in Ali v. State of Kerala 1976 KLT SN 45 construing the provisions of Section 81(1)(k) of the Act stated thus :

It is not necessary that the entire extent held by the company should have been actually used for the industrial and commercial purpose. The clause only requires that to claim exemption the land must be set apart by the industrial and commercial undertaking for use for the industrial or commercial purpose of the undertaking. The proviso makes the meaning of the clause very clear. The proviso provides for cancellation of the exemption if such land is not actually used for the purpose of which it is set apart within such time as the District Collector may, by notice specify in that behalf. The District Collector should require the company to use the land for the purpose within a specified time. Until such intimation is given to the company it is not necessary that the company should actually use the land for the purpose. It need have only set apart the land for such purpose.

We respectfully agree with the above view expressed by the learned Judge in regard to the interpretation of Section 81(1)(k) of the Act. The Taluk Land Board had in its draft statement proposed an exemption of 33.38 acres as falling u/s 81(1)(k) of the Act. Even that exemption is not acceeded to in passing the order. The withdrawal of the exemption proposed without notice to the declarant is in clear violation of the principles of natural justice. Since, however, we have found that the firm is entitled to exemption of 105.14 acres of land u/s 81(1)(k) of the Act, it has become unnecessary to remand the case to the Taluk Land Board to afford the firm an opportunity to make out a case for withdrawal of exemption proposed under the draft statement.

6. The Taluk Land Board is also wrong in treating the firm as a private trust or a private institution falling u/s 82(5) of the Act for the purpose of determining the ceiling limit applicable to it. The firm is neither a private trust nor a private institution within the meaning of Section 82(5). It will fall under the category of any other person coming u/s 82(1)(d) of the Act. A person is defined in Section 2(43) of the Act as follows:

A person shall include an association or body of individuals.

We have no doubt that the firm would come under the definition of person referred to above as a body of individuals capable of holding property. Balagangadharan Nair, J. in A.C. Bopanna v. State of Kerala and Ors. 1975 KLT 126 stated thus :

8. Clause (a), (b) and (c) of Section 82(1) of the Land Reforms Act do not apply to the partnership. Nor do Sub-sections (2) and (3) of the same section. Clause (d) of Section 82(1) is a residuary provision that applies to ''the case of any other person, other than a joint family''. As stated earlier the firm is a ''person'' within the Act and the partners do not constitute a family. It follows that it is Clause (d) that governs the case and that has been rightly applied by the Land Board.

7. For the aforesaid reasons, we hold that the firm is entitled to exemption of 105.14 acres of land u/s 81(1)(k) of the K.L.R. Act and the ceiling limit applicable to it is 15 acres u/s 82(1)(d) of the Act. According to the firm it holds only 105.14 acres mentioned in Schedule ''C'' of Ext. P-1 order of the Forest Tribunal. It has no objection for the Government taking over any land in excess if found in its possession. We have already held that the aforesaid area of 105.14 acres falls under the exemption provided for in Section 81(1)(k) of the Act and the firm is also entitled to hold an additional extent of 15 acres as falling within its ceiling limit. The State is entitled to enforce surrender of land if any found in the possession of the Petitioner in excess of 120.14 acres.

Subject to the above direction, we set aside the order of the Taluk Land Board and allow the Civil Revision petition. The parties will suffer their respective costs.

