
(2014) 09 KL CK 0028
In the High Court Of Kerala
Case No : CRP. No. 109 of 2011 (B)

Mankuthel Thomas

APPELLANT

Vs

Taluk Land Board Ernad

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

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

Citation : (2014) 09 KL CK 0028

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : Molly Jacob and P.M. Poullose, Advocate for the Appellant; Susheela R. Bhat, Spl. Government Pleader, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—The petitioners, whose claim under Section 85(8) of the Kerala Land Reforms Act(hereinafter referred to as "the Act") in CR 606/77 was dismissed by the Taluk Land Board, Ernad vide order dated 03.09.2010, have come up in revision.

2. The 2nd petitioner is the wife of the first petitioner. According to them, they have acquired two Acres of property in total. The first petitioner is the title holder in respect of one Acre of property in R.S. 6/1 of the Uramgattiri Village (presently, Vettalapara Village) and 65 cents in R.S. 6/2 of the said Village through document No. 1986/88 of the Areekkode Sub Registry. The 2nd petitioner has acquired 35 cents of property in R.S. 6/2 of the said Village through document No. 1985/98 of the said Sub Registry. They have purchased the said properties from Olattupurath Chackochan.

3. According to the petitioners, originally the total extent of 7.50 Acres of land in Sy. No. 6/1 belonged to one Kalluvettukuzhi Alikutty. Palakil Joseph took the said land on lease in R.S. 6/1 from the said Alikutty. Thereafter, Palakil Joseph obtained purchase certificate No. 1393/77 in respect of the property from the Land Tribunal, Areekkode. Thereafter, the said Palakil Joseph assigned 1.50 cents of land in Ry. S. No. 6/1 to one Jincy Joseph as per document No. 2781/88,

another extent of 1.50 cents in the said survey in favour of Mary Joseph through document No. 2688/89 and another 1.50 cents in the said survey number in favour of Reji Joseph through document No. 2780/88 of the said Sub Registry, thereby he has transferred a total extent of 4.50 Acres out of the said property. The said three assignees, sold the said 4.50 Acres in Ry. S.6/1 to Chengal Nalakath Sahida through document No. 872/95 of the said Sub Registry.

4. There is a total extent of 6 Acres and 3.66 cents in Ry. S.6/2 of the said Village and the same belonged to Dr. Usman and others, from whom one Mundambra Usmankutty purchased the same through document numbers 938/55 and 416/56. The said Usmankutty, thereafter, sold one Acre of property from Ry. S. No. 6/2 to the aforesaid Palakil Joseph. The said Palakil Joseph and his son Jose sold the said one Acre to Maliyekkal Safoora as per document No. 879/95.

5. Thereafter, Safoora and Sahida jointly sold the two Acres from Ry. S.6/1 and Ry. S.6/2 to Olattupurath Chackochan. The petitioners purchased the said two Acres as aforesaid from the said Olattupurath Chackochan.

6. According to the petitioners, they were told by the Village Officer, Vettalapara that the said properties of them were also ordered to be surrendered in the ceiling case and thereby, they had approached the Taluk Land Board with the claim. The claim stands dismissed by the Taluk Land Board through the impugned order.

7. Heard the learned counsel for the petitioners Sri. P.M. Poullose and the learned Special Government Pleader Smt. Susheela R. Bhat.

8. The learned counsel for the petitioners has pointed out that there are no documents to show that one Acre of property devolved on the first petitioner in Ry. Sy. 6/1 as aforesaid is directed to be surrendered.

9. The learned Special Government Pleader has fairly conceded that the order of surrender does not show the surrender with regard to any land in Ry. S.6/1. The learned counsel for the petitioners has pointed out that it was on the mistaken impression obtained from the Village Officer, that the petitioners were provoked to rush to the Taluk Land Board with the claim. When there is no order of surrender as far as the land covered by Ry. S.6/1 is concerned, the first petitioner can continue to possess and enjoy the one Acre of property in R.S. 6/1. It is clarified that the said one Acre in R.S. No. 6/1 has not been ordered to be surrendered. Therefore, the claim with regard to the same is infructuous.

10. Regarding the one Acre in R.S. 6/2, i.e., 65 cents devolved on the first petitioner and 35 cents devolved on the 2nd petitioner, the learned counsel for the petitioners submits that to the knowledge of the petitioners, the said property has not been included in the land ordered to be surrendered from the said resurvey number. The learned Special Government Pleader has pointed out that an extent of 3.18 Acres of property only in R.S. 6/2 has been ordered to be

surrendered. When the petitioners have got a specific case that there is a total extent of 6 Acres and 36 cents in Ry. S.6/2, out of which an extent of 3.18 Acres only was ordered to be surrendered, and the said 3.18 Acres does not take in the one Acre of property devolved on the petitioners in R.S. No. 6/2, the same has to be verified by the Taluk Land Board. The Taluk Land Board has to be verify whether the one Acre of property belonging to the petitioners has been included in the 3.18 Acres of property in R.S. 6/2, which has been ordered to be surrendered. In case, the said land ordered to be surrendered does not take in the property belonging to the petitioners, their claim need not be adjudicated by making it clear that the said property belonging to the petitioners has not been ordered to be surrendered.

11. From the above, it seems that the findings entered by the Taluk Land Board in respect of 65 cents of property in Ry. S.6/2 devolved on the first petitioner and the 35 cents of property in R.S. 6/2 devolved on the 2nd petitioner through document Nos. 1986/98 and 1985/98 respectively, requires reconsideration, for which the matter has to be remitted to the Taluk Land Board, by setting aside the orders in respect of the dismissal of the claim of the petitioners. If it is ultimately found that the said 3.18 Acres ordered to be surrendered takes in the properties devolved on the petitioners in the said survey, the merits of the claim of the petitioners over the same have to be considered through an adjudication.

12. In the result, this CRP is allowed and the impugned order so far as it relates to the claim of the petitioners, is set aside. It is made clear that the order of surrender does not take in one Acre of property belonging to the first petitioner in R.S. 6/1 of the Vettalapara Village. The Taluk Land Board shall verify whether the one Acre of property in R.S. 6/2 belonging to the petitioners will come within the three Acres and 18 cents of property ordered to be surrendered in R.S. 6/2. If the property of the petitioners will not come within the land ordered to be surrendered, the same shall be made clear by the Taluk Land Board. In case it is found that the petitioners land in R.S. 6/2 also comes within the land ordered to be surrendered, the claim of the petitioners has to be independently adjudicated. The parties shall appear before the Taluk Land Board on 4.11.2014.

All the interlocutory applications in this CRP are closed.