

(1981) 07 KL CK 0007
In the High Court Of Kerala
Case No : C.R.P. No. 1470 of 1979-A

Mathen Eapen

APPELLANT

Vs

The Taluk Land Board, Kanjirappallay and Others

RESPONDENT

Date of Decision : 14-07-1981

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(15), 82, 84, 84(1)

Citation : AIR 1981 Ker 257

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

Bench : Single Bench

Advocate : M. Ramanatha Pillai, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.C. Balakrishna Menon, J.—As per the order of the Taluk Land Board, Kanjirappally dated 29-6-1976 the petitioner was directed to surrender 18.10 acres as excess land in the possession of his family. Against this he filed C. R. P. No. 3729 of 1976 and this Court by order dated 13-3-1978 allowed the revision and remanded the case for fresh disposal in respect of three matters specifically referred to in the judgment. After remand a revised order is passed by the Taluk Land Board on 30-3-1979 as per which the petitioner is ordered to surrender 1035 acres as excess land in the possession of his family. It is against this that he has come up in revision. The first question directed to be considered by this Court in the earlier C. R. P. was relating to the petitioner's claim for exclusion of a total extent of 10 acres of land covered by two sale deeds of the years 1955 and 1961, In regard to sale deed No. 1214 of 1955 relating to 7.50 acres of land, the Taluk Land Board has accepted the petitioner's case for exclusion of the same and that extent is deleted from the total extent in the possession of the petitioner. The Board has not however accepted the petitioner's case for exclusion of 2.50 acres covered by the sale deed of the year 1961. The petitioner has produced document No. 1030 of 1124 which is a settlement deed executed

by his father Mathan. It is as per this document that the petitioner gets title to the 2.50 acres covered by the sale deed of the year 1961. The settlement deed itself refers to the property being in possession of a tenant Ayyappan. The sale deed also is in favour of the tenant Ayyappan, The document refers to the prior possession of the assignee. It is therefore a sale in favour of the person who is already in possession of the property as a tenant of the same. Such sales are perfectly valid u/s 84(1)(iii) of the Kerala Land Reforms Act, The 2.50 acres of land assigned to the tenant as early as in 1961 should be excluded from computation of the total extent of land held by the petitioner, The. next item required to be reconsidered as per the order of this Court in the earlier C. R. P. 3729 of 1978 is relating to the petitioners case for exclusion of 6.30 acres of land allotted to the petitioner's sister Aleyamma as per the settlement deed No. 1030 of 1124 executed by the petitioner's father Mathan. The Taluk Land Board has rejected the petitioner's claim for exclusion of this property On the ground that as per the settlement deed the sister Aleyamma is entitled only to a life interest and the reversion vests in the petitioner. The learned counsel for the petitioner Sri Ramanatha Pillai submits that this 6.30 acres of land was included in the ceiling case 253/73 against the petitioner's sister Aleyamma and taking that extent also into account, she was directed to surrender 4.99 acres of land as excess land in her possession This Court in C. R. P. 935 of 1976 found that out of the total extent of land held by the sister an extent of 6 acres is a rubber plantation liable to i.e. exempted u/s 81 of the Act and for that reason the sister was not liable to surrender any extent of land as excess land in her possession. On the basis of the proceedings against the sister including also the 6.30 acres as in her possession the learned counsel submits that the same extent of property cannot be included in the account also of the petitioner. In other words the same property cannot be directed to be accounted for twice and adding that extent also as land held by the petitioner he cannot be held as holding land in excess of the ceiling area. The learned counsel also referred to the settlement deed itself which is produced before the Taluk Land Board. The document is executed by the petitioner's father Mathan as early as on 1-4-1124, The settlement is of properties belonging to the father among himself the petitioner's mother, sister and two brothers. Properties in Schedule 1 (a) of the settlement deed are set apart to the father and mother. Schedule 1 (b) taking in the 6.30 acres of land is allotted for maintenance of the sister Aleyamma who is said to be dumb. As per the deed of settlement the property is to be in possession of the father and mother during their lifetime for the maintenance of Aleyamma and after the death of both parents the property is to be kept in possession of one or the other of the three brothers with whom Aleyamma would choose to reside. The specific direction is that with the income from the property the expenses and maintenance of Aleyamma are to be met. The document further provides that in the event of Aleyamma renouncing the world and joining a convent or nursery the patrimony due to her is to be paid by her father if he is alive and in case he is dead the patrimony is to be paid in equal shares by his three sons. There is also a provision that on such renunciation by Aleyamma or on her death the

property is to devolve equally on the three brothers including the petitioner. There is no dispute that Aleyamma is even now alive and she has not renounced the world. She is therefore entitled to the 3.30 acres of land for her maintenance as per the deed of settlement executed by the father. It was for this reason that this extent of land was included in Ceiling Case No. 253 of 1973 against Aleyamma. Even in the event of her renunciation or on her death the petitioner is not entitled to the entire 6.30 acres. As per the terms of the deed of settlement the property is to devolve on all the three brothers equally. The Taluk Land Board was therefore wrong in taking into account the 6.30 acres as belonging to the petitioner, This extent of land is liable to be excluded from the petitioner's account. It on a later occasion he inherits any extent of land allotted to Aleyamma it will be open to the Taluk Land Board at that stage to initiate proceedings u/s 87 of the Act if it is found that the petitioner at that time is holding land in excess of the ceiling area applicable to him.

2. The next question required to be considered afresh by the Taluk Land Board as per the order of this Court in C. R. P. No. 3729 of 1976 is relatins to 10 acres of land set apart to the mother under the deed of settlement executed by father Mathan, This Court had rejected the petitioner's claim for a total exclusion of this extent of land as land given to the mother for her life apparently for the reason that the mother was dead and the reversion had opened. This Court has held in the previous C. R. P. that the petitioner is liable to account for the aforesaid 10 acres of land, But the questions as to whether any part of this 10 acres is to be exempted as coffee plantation, house site and road etc. were required to be considered afresh by the. Taluk Land Board on remand of the case by this Court in the earlier C. R. P, As per the revised order passed by the Taluk Land Board from out of this 10 acres of land the Taluk Land Board has allowed an exemption of only 1 acre as house site and the remaining extent which is found to be 9.02 acres is computed in the petitioner's account as a coconut garden. Learned counsel Sri Ramanatha Pillai refers to the verification report dt. 20-2-79 submitted by the Authorised Officer after the remand of the case by this Court. The verification is done under Rule 13 Of the Kerala Land Reforms (Ceiling) Rules, The report shows that the petitioner is residing with his family in this property. The extent of 1 acre is covered by buildings and other structures liable to be exempted u/s 81 of the Act. An extent of 75 cents is a coffee plantation having 720 coffee plants aged more than 30 to 35 years on the date of his inspection. This extent of 75 cents of coffee plantation is also liable to be exempted u/s 81 of the Act over and above the 1 acre of land exempted as sites of buildings and other structures. The verification report of the Authorised Officer further shows that in this 10.02 acres of land there are altogether 97 coconut trees, 160 arecanut trees and 125 pepper vines scattered over the whole area and a portion of the property is planted with rubber trees after 1-1-1970. After granting an exemption of I acre as house site the Taluk Land Board in the impugned order has treated the remaining 9.02 acres as a coconut garden. This is strongly objected to by the learned counsel. Section 2(15) of the Kerala Land

Reforms Act defines "garden" to mean "land used principally for growing coconut trees, arecanut trees or pepper vines or any two or more of the same." The verification report of the Authorised Officer indicates that the 10.02 acres of land is not a garden within the meaning of the Act as it cannot be said that it is "land used principally for growing coconut trees, arecanut trees or pepper vines or any two or more of the same". Even assuming it is an inter-plantation taking in coconut trees, arecanut trees and pepper vines it cannot be said that it is a coconut garden. Such a vast area of 10 acres of land with only 97 coconut trees, 160 arecanut trees and 125 pepper vines cannot be held to be a coconut garden as held by the Taluk Land Board. Section 82 of the Act fixes the ceiling limit applicable to an adult unmarried person, a family consisting of two or more, but not more than 5 members, a family consisting of more than five members and any other person other than a joint family. The ceiling limit applicable to each of these classes of persons is fixed in standard acres. Standard acre is defined in Section 2(55) of the Act as follows :

"2 (55). "standard acre" means in relation to any class of land specified in Schedule II situate in the district or taluk mentioned therein, the extent of land specified against it in that Schedule."

Schedule II of the Act provides for the computation of the various types of lands in standard acre with reference to the different districts in the State. The properties involved in this case are situated in the Kottayam district. The schedule shows that one standard acre of land is equal to one acre of land principally used for growing coconut trees, or 0.50 acre of land used principally for growing arecanut trees or 1.50 acres of land used principally for growing pepper vines. These are the three categories of garden land mentioned in the Schedule. Even if the land is a "garden" within the meaning of the Act, and is interplanted with coconut trees, arecanut trees and pepper vines, it is necessary to consider and decide whether the land is used principally for growing coconut trees, arecanut trees or pepper vines for the purpose of conversion into standard acres. According to the Schedule 2 acres of dry land principally cultivated with cashew is equal to one standard acre. So also 2 acres of other dry land make up for one standard acre in the Kottayam District. The question for consideration by the Taluk Land Board was as to whether the petitioner's family consisting of six members on the date on which the ceiling provisions of the Act came into force, was owning or holding land in excess of the ceiling area fixed u/s 82 of the Act, Section 83 inhibits any person as defined under the Act from owning, holding or possessing under a mortgage lands, in the aggregate in excess of the ceiling area. A person, as defined in the Act, includes a family and a family consisting of six members as in the present case is entitled to hold 11 standard acres of land. For computing garden land in standard acres the category in which it falls under Schedule II should first be decided i.e. whether the land is used principally for growing coconut trees, arecanut trees or pepper vines. If it does not fall in any of the categories of garden land mentioned in the schedule, it cannot be reckoned as a garden land at all for the purpose of converting the extent into standard

acres. In the present case the 10.02 acres of land does not fall under any of the three categories of garden land mentioned in the Schedule. As adverted to earlier it is not possible to hold that the 10.02 acres of land having 97 coconut trees, 160 arecanut trees and 125 pepper vines standing scattered all over the area is land used principally for growing coconut trees as found by the Taluk Land Board, Nor can it be said that it is land used principally for growing arecanut trees or pepper vines, It does not therefore fall under any of the categories of garden land mentioned in the Schedule, for the purpose of computation of the extent of land in standard acres. It is not the case of either party that this 10 odd acres of land is dry land principally cultivated with cashew or is a palliyal land. It can therefore be treated only as other dry land, 2 acres of which will make up for one standard acre. u/s 82 of the Act a family consisting of more than five members is entitled to hold 10 standard acres increased by one standard acre for each member in excess of five, so however that the ceiling area shall not be less than 12 and more than 20 acres in extent.

3. As per the finding of the Taluk Land Board, in the impugned order the total extent of land held by the family is 69,03.980 acres. It is also found that an extent of 46,68.980 acres of land falls under the exempted category mentioned in Section 81 of the Act, The Land Board has allowed 12 acres of land as the ceiling area applicable to the family and the family is directed to surrender 10.35 acres of land. Excluding the area exempted by the Taluk Land Board the total extent of land held by the family is only 22.35 acres. I have already found that the 2.50 acres of land assigned to the tenant in 1961 is liable to be excluded. So also the 6.30 acres of land allotted to the petitioner's sister under the settlement deed of 1124 should be excluded from computation as land held by the family, On the basis of the report of the Authorised Officer dated 20-2-79 an extent of 15 cents is liable to be exempted as a coffee plantation. Therefore out of the 22.35 acres the family is entitled to a further exclusion of 9.55 acres as aforesaid. The total area of land held by the family of the petitioner, excluding the items liable to be exempted is only 12.80 ordinary acres. I have already found that the 10.02 acres of land, where there are only 97 coconut trees, 160 arecanut trees and 125 pepper vines, cannot be termed as a coconut garden as held by the Taluk Land Board. On the facts of the case this extent of land can only be reckoned as "other dry" land mentioned in Schedule II of the Act, As earlier stated the family is entitled to hold 11 standard acres which shall not be less than 12 and more than 20 ordinary acres in extent. It is already found that the total extent of land held by the family is only 12.80 ordinary acres which on computation as aforesaid can only be less than 11 standard acres. The family is not therefore liable to surrender any extent of land as it does not own or hold land in excess of the ceiling area. The result is I set aside the order of the Taluk Land Board and allow the C. R. P. There will be no order as to costs.