

(2007) 01 KL CK 0083
In the High Court Of Kerala
Case No : CRP No. 703 of 2001 (A)

Melethil Iyyathiya Umma

APPELLANT

Vs

The Taluk Land Board

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 6
Kerala Land Reforms Act, 1963 — Section 74, 7E, 84, 85(2)

Citation : (2007) 2 ILR (Ker) 279 : (2007) 2 KLJ 227 : (2007) 2 KLT 657

Hon'ble Judges : M. Sasidharan Nambiar, J

Bench : Single Bench

Advocate : N. Subramaniam, for the Appellant; Government Pleader, for the Respondent

Judgement

M. Sasidharan Nambiar, J.—The revision petitions were filed challenging the order of Taluk Land Board, Perinthalmanna dated 20.2.01 in SR No. 612/73. Panchili Alavi had filed a statement u/s 85(2) of Kerala Land Reforms Act relating to the lands held by him and his family. As per order dated 7.5.77 Taluk Land Board found that the declarant was in possession of 79.19 acres of land in excess of the ceiling area as on 1-1-1970. The declarant challenged that order before this Court in C.R.P. 1713/77. C.R.P. 2157/77 was filed by Receiver of the estate of late V.S. Narayana Iyer contending that the declarant had no tenancy right over portions of the property held to be that of the declarant. As per common order dated 2.8.78, order of the Taluk Land Board was set aside and the case was remanded to the Taluk Land Board by this Court to decide the question of tenancy on the basis of evidence to be adduced. After remand revised order was passed by the Taluk Land Board on 17.9.80 finding that the declarant had been in possession of 79.19 acres of surplus land as on 1-1-1970 and is still in possession of the land. Taluk Land Board again directed the declarant to surrender the surplus land of 79.19 acres. That order was challenged before this Court in C.R.P. 2565/80 by the declarant and C.R.P. 2851/80 by the Receiver of the estate of Narayana Iyer and in C.R.P. 3124/80 by Yusuf and others claimed to be interested persons. As

per common order dated 29.10.81 this Court again set aside the order of Taluk Land Boardin C.R.P. 2565/80, but dismissed C.R.P. 3124/80 filed by Yusuf and others. After that remand, Taluk Land Board passed a revised order on 21.11.1985 directing declarant to surrender 77.14 acres of surplus land. Asdeclarant died by that time, his legal heirs filed C.R.P. 1890/86 and persons claimed to be tenants in CRP 1891/86 before this Court. It was contendedthat Taluk Land Board did not grant opportunity to the parties to prove their case. Both the revisions were disposed by common order dated 18.6.1996. The order of Taluk Land Board was once again set aside and matter was remanded to the Taluk Land Board.This Court found that it is necessary for the Taluk Land Board to consider the contentions ofrevision petitioners, after affording opportunity of hearing. This Court thereforeset aside the order and remanded the case back to the Taluk Land Board.Taluk Land Board thereafter passed the order dated 20-2-2001 challenged in these revisions. The legal heirs of declarant filed C.R.P. 703/01.C.R.P.932/01 was filed by 19 persons who claimed tenancy right over portions of the propertiesand sought to exclude those portions from the properties of the declarant.C.R.P. 1351/01 was filed by 11 other persons who also claimed to be tenants raising identical contentions.First petitioner therein died. Allhislegal heirs are already in the CRP 703/01,932/01, 1351/01 4 party array.

2. Learned Counsel appearing for the respective petitioners and learned Government pleader were heard.

3. The argument of learned Counsel appearing for petitioners was that Taluk Land Board did not appreciate the proper ambit and scope of the order ofremand dated 20-2-2001and on the impression thatremand was onlyfor hearing argumentsand it does not include recording ofevidence,did not permit either legal heirs of declarant or other interested persons claimed to be tenants, to adduce evidence. Insteadon the basis of the reports submitted by authorised officer on 5-9-2000 and 2-1-2001 and without granting opportunity to challenge those reports accepted the reports and passed the order. It was argued that as opportunity was not granted to adduce evidence or to challenge the report of the authorised officer, the order passed by the Taluk Land Board is to be set aside and the case is to be remanded.

4. Learned Counsel appearing for petitioners in C.R.P. 703/01 relying on the decision of this Court in Kanaran Nambiar Vs. Ramunni Nambiar and Others, and the decision of High Court of Jammu and Kashmir in Sham Lal Vs. Rajinder Kumar Modi and Others, argued that hearing includes all stages of trial including adducing evidenceand as that opportunity was denied, the order passed by the Taluk Land Board is to be set aside on that sole ground and the case is to be remanded once again. Learned Counsel also argued that in view of the enactment of Land Reforms Amendment Act 2005 (Act 21 of 2006),which came into force on 18-10-06, any tranfer of the property by way of purchase or otherwise on payment of consideration before commencement of the Act, cannot

be treated void or invalid if the transferee is in possession of that property and is not having land not exceeding 4 hectares in extent as he is deemed to be a tenant as provided under Section 7E of the Act and this question is also to be considered by the Taluk Land Board and therefore the order is to be set aside and the case is to be remanded back to the Land Tribunal. Revision Petitioners in C.R.P. 932/01 filed I.A.192/07 seeking an order of remand to consider the entitlement of petitioners thereinto the amended provisions of Act 21 of 2006.

5. Learned Counsel appearing for petitioners in C.R.P.1351/01 and C.R.P.932/01 submitted that opportunity was not granted to adduce evidence in spite of request and therefore the order is to be set aside and case is to be remanded with a direction to afford opportunity to adduce evidence and decide the question afresh.

6. Learned Government pleader submitted that the case was being remanded from 1978 onwards and there is no necessity to remand the case further and Taluk Land Board has considered all the questions in detail and therefore revisions are only to be dismissed.

7. Even though case was being remanded by this Court time and again, each time the Taluk Land Board passed revised orders without complying with the directions of this Court and without affording opportunity to the parties to prove their case. If the impugned order was passed without affording opportunity granted by this Court and without proper and effective consideration of the materials or facts, on the ground that the case was remanded earlier another remand cannot be avoided, if remand is warranted. When revised order dated 21.11.85 was challenged before this Court, it was found in C.R.P.1890/86 that Taluk Land Board did not consider the contentions raised by declarant as well the alleged tenants and opportunity was not granted before passing the order. This Court therefore held:

It is necessary that the Taluk Land Board considers the contentions of revision petitioners after giving an opportunity of hearing to them. Thus it has become necessary to remand the matter again to the Taluk Land Board." Revised order was passed by the Taluk Land Board on 20.2.01. It reveals that after the remand the authorised officer was directed to verify the tenancies claimed by parties and authorised officer filed a report on 5-9-2000 and objections were filed by the parties to the report. It also reveals that authorised officer was again directed to verify the claims with the help of Taluk Surveyor and thereafter a further report was submitted on 2-1-01. Taluk Land Board accepted the report and passed the impugned order. It is the specific case of revision petitioners that opportunity was not granted to adduce evidence even though this Court granted the opportunity as per order in C.R.P.1890/86. The impugned order shows that Taluk Land Board proceeded on the basis that opportunity was granted only for hearing. It was assumed that hearing does not include adducing evidence, but only addressing arguments.

8. A learned single Judge of this Court in Kanaran Nambiar's case (supra) considered the meaning of the word "hearing" in the context of Rule 6 of Order XXII of Code of Civil Procedure. The learned Judge held.

It refers to all the stages of the trial of a suit, namely, the settling of issues, taking of evidence and hearing of arguments or "other proceedings tending to a final adjudication of the suit". It may not refer to matters connected with the disposal of interlocutory proceedings in the course of the suit; but it includes all proceedings which lead to the disposal or decision of the suit as such." The meaning of the word "hearing" cannot be restricted to mere hearing of arguments. It takes in recording of evidence also. The directions of this Court to dispose the case afresh after affording opportunity to the parties of a hearing can only mean a disposal after affording opportunity to produce documents, adduce oral evidence and address arguments. It is the common case of all the petitioners that in spite of request opportunity was not granted to adduce evidence. The order does not show that the claimants did not seek opportunity to adduce evidence or represented to the Taluk Land Board that they have no evidence to be adduced. In such circumstance, the contention of petitioners that opportunity was not granted by the Taluk Land Board to adduce evidence is to be taken as correct. If that be so, the order passed by the Taluk Land Board has to be set aside and the case has to be remanded back to the Land Board for fresh disposal after affording opportunity to the parties to adduce evidence both oral and documentary.

9. As has been rightly pointed out by learned Counsel appearing for petitioners by the enactment of Land Reforms (Amendment) Act, 2005, Act 21 of 2006 a drastic change has been made to Kerala Land Reforms Act. It is not necessary in this proceedings to consider whether the provisions inserted by the Act is in effect destroying the very character and purpose of the ceiling provisions of Kerala Land Reforms Act. u/s 7E, inserted under the Amendment Act of 2005 notwithstanding the provisions of Section 74 or Section 84 of the Principal Act, a person, who at the commencement of the Amended Act on 18-10-06, is in possession of land not exceeding four hectares, acquired by him or his predecessor in interest, by purchase or otherwise on consideration from any person holding land in excess of ceiling area during the period from the date of commencement of Kerala Land Reforms Act (from 1.4.64) till the date of commencement of Land Reforms (Amendment) Act 21 of 2006 (18-10-2006) is deemed to be a tenant entitled to claim the benefit of the Act. Section 7E reads:

Certain persons who acquired land to be deemed tenants- Notwithstanding anything to the contrary contained in S.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.

As a result of the enactment even if the assignment was after 1.1.1970 the claim cannot be rejected by the Taluk Land Board, if the person would come within the ambit of Section 7E. In such circumstance, the Taluk Land Board is to consider the entitlement of the petitioners to the benefit provided under the Land Reforms (Amendment) Act, 2005, (Act 21 of 2006). The Taluk Land Board has to consider this claim also and pass appropriate order in accordance with law.

Revision petitions are allowed. The order of Taluk Land Board dated 20.2.01 is set aside. Taluk Land Board is directed to consider the question afresh, after affording opportunity to the parties to adduce evidence. The Taluk Land Board has also to consider the benefit if any available to the claimants under Land Reforms (Amendment) Act, 2005 (Act 21 of 2006), if it is claimed before Taluk Land Board.