
(1985) 02 MAD CK 0049
In the Madras High Court

Methala Balarama Veetil Vannathan Veetil Pathooty Umma	APPELLANT
Vs	
The Administrator, Appellate Authority, Under Mahe Land Reforms Act and Others	RESPONDENT

Date of Decision : 07-02-1985

Acts Referred:

Citation : (1985) 2 MLJ 195

Hon'ble Judges : V. Ratnam, J

Bench : Division Bench

Judgement

V. Ratnam, J.—The writ petition and the civil revision petition are dealt with together as the petitioner and the main contesting respondents are the same and closely interconnected questions arise for decision. The circumstances giving rise to these proceedings may be briefly stated as under: The petitioner (for short in the writ petition as well as the civil revision petition) is the owner of Survey No. 354/2 and Survey No. 392/2 (corresponding to R.S.No. 84/4) within the desam of Palloor Mahe. The third respondent in the writ petition (hereinafter referred to as the Kudikidappukari) (who is the same as the first respondent in the civil revision petition) was living in a portion of Survey No. 392/2. She claimed rights as Kudikidappu to Survey No. 354/2 and also offered to pay the expenses therefor. Though it appears that the Kudikidappukari orally agreed to do so, nevertheless, she filed an application for recognising her as Kudikidappukari and on 30.11.1973, an order was passed in Rc/A2/3284/71 under the provisions of Mahe Land Reforms Act, as they stood then, with reference to an extent of 3 cents of land in Survey No. 392/2 inclusive of the structure put up by kudikidappukari. However, the right of purchase was not available to kudikidappukari as per the provisions of the Mahe Land Reforms Act, as they stood then. Subsequently, Mahe Land Reforms Act, 1968, was amended by The Mahe Land Reforms (Amendment) Act, 1980 (Act No. 1 of 1981) (hereinafter referred to as the Act) under the terms of which Kudikidappukari was also given the right to purchase the Kudikidappu. Thereupon, the Kudikidappukari filed Original Application No. 7 of 1981-K u/s 88-A of the Act for the purchase of the

kudikidappu of an extent of five cents in accordance with the provisions of the Act. Though certain objections were raised by the petitioner, the Land Tribunal, Mahe, by its order dated 13.8.1982, on a purported consideration of the evidence, proceeded to over-rule the objections so raised by the petitioner and allowed the application filed by Kudikidappukari for the purpose of five cents of land in R.S.No. 84/4 on deposit of Rs. 328-25 which was arrived at as the share of price payable to the landowner. Against that order, the petitioner preferred an appeal, before the Appellate Authority (Land Reforms), Mahe, in A.A.No. 2 of 1983. Pending disposal of the appeal, in I.A.No. 2 of 1982 in A.A.O.No. 2 of 1982, the petitioner applied for and obtained stay of the order appealed against and the appellate authority granted stay on 12.10.1982 which was continued upto 5.9.1983. During the pendency of A.A.No. 2 of 1982 before the Appellate Authority (Land Reforms, Mahe), the petitioner served notice on kudikidappukari on 22.2.1983 demanding her to shift her kudikidappu from Re-survey No. 84/4 in order to enable the petitioner to put up a residential house for her son with a view to establish a family for him. Though the notice so sent by the petitioner was received by Kudikidappukari on 25.2.1983, she did not shift her kudikidappu. Thereupon, the petitioner filed on 4.4.1983 an application before the Land Tribunal, Mahe, u/s 85(1) read with Section 83(2)(a) of the Act. In that application, the petitioner, after referring to the passing of orders in O.A.No. 7 of 1981 and the pendency of the appeal in A.A.No. 2 of 1982 and the issue of a notice on 22.2.1983 and the refusal of the kudikidappukari to shift the kudikidappu, prayed that an order may be passed directing the Kudikidappukari to shift the kudikidappu to the B schedule property of an extent of five cents forming part of old Survey No. 354. On that application, the Land Tribunal, Mahe, passed an order on 5.4.1983 to the following effect:

The advocate for the petitioner has been informed that at this stage this petition cannot be entertained by this Court. Hence no action.

Against this order, the petitioner made representations before the Administrator, Mahe, who held that the act of entertaining or rejecting an application is purely an administrative function. The representations made by the petitioner were summarily rejected. Claiming that it is the statutory duty of the Tribunal functioning under the Act to entertain and consider the application for shifting and complaining that it had erroneously declined to perform its duty on the ground that it was an administrative order, the petitioner filed the writ petition to quash the order dated 5.4.1983 passed by the Land Tribunal and to direct it to entertain and dispose of the petition filed by the petitioner u/s 85 of the Act. The appeal filed by the petitioner in A.A.No. 2 of 1983 was heard by the Appellate Authority (Land Reforms), Mahe, and on 7.4.1983, the Appellate Authority concluded that the advocate for the petitioner has failed to prove that the shifting of the kudikidappu has to be made for bona fide purpose of constructing a residential house for her son and that the petitioner was only attempting to defeat the rights of the kudikidappukari. Though several other objections were raised in the memorandum of appeal, none of them were either gone into or

discussed, but finally, the appeal was dismissed. It is the correctness of this order that is challenged in the civil revision petition preferred u/s 113 of the Act.

2. From the facts set out above, it is seen that the question that arises for consideration in the writ petition is, whether the Land Tribunal, Mahe, was in order in having declined to entertain the petition filed by the petitioner u/s 85(1) of the Act. There is no dispute that the petition filed by the petitioner was under the provisions of the Act. Section 83(2) provides for the eviction of the kudikidappukaran, if the person in possession of the land for constructing a building for his own residence or for the residence of any member of his family including major sons and daughters. Section 83(4) provides for the shifting of the Kudikidappukaran to another part of the land fit for locating the kudikidappu if the location of the kudikidappu is such as to cause inconvenience to a person in possession of land in which there is a kudikidappu. u/s 85(1), if the kudikidappukaran does not comply with the requisition made under Sub-section (2) or Sub-section (4) of Section 83 by the person in possession of the land to shift to a new site, then, such person may apply to the Land Tribunal having jurisdiction to entertain an application u/s 88-B in respect of the kudikidappu to be shifted, to enforce compliance with such requisition. The second proviso to Section 85(1) is important and it runs as follows:

Provided further that the Land Tribunal shall not entertain any application under this sub-section in respect of a kudikidappu, if an order under Sub-section (3) of Section 88-B allowing an application for the purchase of that kudikidappu has been passed and such order IS IN FORCE.

(Underlining mine).

Under Section 88-B, a kudikidappukaran entitled u/s 88-A to purchase the kudikidappu occupied by him and lands adjoining thereto may apply to the Land Tribunal and the Land Tribunal is empowered to dispose of the application after giving notice to the kudikidappukars and other persons interested and after such enquiry as may be prescribed.... The proviso to Section 88-B(3) is to the effect that where an application under Sub-section (1) of Section 85 in respect of the kudikidappu is pending, the Land Tribunal shall not pass any order under this sub-section before the disposal of that application. In the light of the aforesaid provisions, it has to be considered whether the authorities below were right in having acted in the manner they did. A reading of Section 85(1) of the Act indicates that the failure on the part of the kudikidappukaran to comply with the requisition made u/s 83(2) or Section 83(4) confers the right to the person in possession of the land to make an application u/s 85(1) to the Tribunal having jurisdiction to entertain an application u/s 88-B. This right is not in any manner connected or inter-twined with the right of the kudikidappukaran to purchase the kudikidappu. No doubt, the second proviso to Section 85(1) is to the effect that if an order u/s 88-B(3) of the Act allowing the application for the purchase of the kudikidappu had been passed and such an order is in force, then, the Tribunal is precluded from entertaining the application and a corresponding restriction upon

the exercise of the powers to enable the purchase of the kudikidappu by the kudikidappukaran is found in the proviso to Section 88-B(3) of the Act. In other words, a combined reading of Section 85(1) and the second proviso of Section 85(1) and the proviso to Section 88-B(3) shows that the request for shifting and the request for the purchase have to be dealt with taking into account the passing of an order u/s 88-B(3) or the pendency of an application u/s 85(1) of the Act, as the case may be. To put differently, the application for shifting u/s 85(1) cannot be entertained, if an order under Sub-section (3) of Section 88-B of the Act allowing the application for the purchase of the kudikidappu had been passed and that order is in force. Likewise, under the proviso to Section 88-B(3), if an application for shifting is pending u/s 85(1) of the Act, then, the Tribunal cannot pass an order for purchase of the kudikidappu until after the disposal of the application for shifting. It is in the context of the provisions referred to above and on the facts of this case, that the correctness of the orders passed has to be decided.

3. Earlier, it has been seen how in this case the order for purchase of the kudikidappu was passed on 13.8.1982 and how that order was stayed between 12.10.82 and 5.9.1983. The application for shifting was filed by the petitioner on 10.3.1983 when they stay order was in force. In other words, the present case would be one to which the second proviso to Section 85(1) of the Act is not attracted, for, though the order for purchase was passed on 13.8.1982, on an application by the kudikidappukari in O.A.No. 7 of 1981, the operation of that order was suspended between 12.10.1982 and 5.9.1983 during which period, the application for shifting was made by the petitioner u/s 85(1) of the Act on 10.3.1983. In this case, therefore, though an order for purchase of the kudikidappu had been passed on 13.8.1982, yet, such an order was not in force at the time when the application for shifting u/s 85(1) of the Act was made by the petitioner. Therefore, the second proviso cannot be invoked to reject the application for shifting filed by the petitioner. Though it is pointed out by the Supreme Court in *The State of Uttar Pradesh Vs. Mohammad Nooh*, that whatever may be the theory under other systems of law, under the Indian Law and procedure, an original decree is not suspended by the presentation of an appeal nor is its operation interrupted where a decree on appeal is merely one of dismissal and that the filing of an appeal or revision may at best put the decree or order in jeopardy but till it is reversed or modified, it remains effective, on the facts of this case, it is found that by reason of orders of stay, which admittedly subsisted between 12.10.1982 and 5.9.1983, the orders passed by the Tribunal u/s 88-B(3) of the Act was not in force at the time when the application u/s 85(1) for shifting the kudikidappu was made by the petitioner. Under those circumstances, the Land Tribunal was in error in having declined to entertain the application for shifting filed by the petitioner u/s 85(1) of the Act. That order of the Land Tribunal dated 5.4.1983 and the confirmation thereof by the appellate authority cannot, therefore, be sustained and deserve to be quashed.

4. That leaves for consideration the civil revision petition arising on the merits of

the order passed by the Land Tribunal as well as the appellate authority. It is seen from the record that the petitioner had raised several objections with reference to the market value of the property and the non-impleading of other persons interested in the property as well as the encumbrancer in whose favour a security over the property had been created. There is no reference at all in the order of the appellate authority to any one of these aspects. All that is stated in the order is that the advocate of the petitioner has failed to prove that the shifting of the kudikidappukari has to be made for bona fide purpose of constructing a residential house for the son of the appellant. The appellate authority has not adverted to those aspects touching upon the market value, the effect of the non-impleading of the persons interested, especially minors and the encumbrancer. The only ground for rejecting the appeal of the petitioner is that the counsel for the petitioner had failed to prove that the request for shifting of the kudikidappu is bona fide. It is difficult to understand as to how the counsel can prove the bona fides, unless it be that it can be established by the materials on record. There is absolutely no indication that the appellate authority had taken into account any of the materials available on record before concluding that the requirement for construction of a residential house for the son of the petitioner is not bona fide. There has been a total failure on the part of the Land Tribunal as well as the appellate authority to advert to the relevant matters as well as the evidence with reference to the application for the purchase of kudikidappu made by the kudikidappukari in the light of the objections raised by the petitioner. In other words, neither the Land Tribunal nor the Appellate Authority has riveted its attention on the vitals of the matter in deciding the application filed by the kudikidappukari for the purchase of the kudikidappu. Under those circumstances, those orders cannot be sustained. The orders of the Land Tribunal as well as the Appellate Authority are not based on a consideration of the materials available and cannot, therefore, be stated to be reasoned orders. Those orders cannot therefore be maintained. While exercising revisional powers u/s 113 of the Act, it is open to this Court to pass such orders as this Court deems fit and on a careful consideration of the entire matter, this Court is of the view that the Land Tribunal as well as the appellate authority have totally and completely failed to discharge their duties in considering the statutory application filed by the kudikidappukari for the purchase of the kudikidappu and also the application for shifting filed by the petitioner. The order of the authorities cannot, therefore, be sustained.

5. In the result, the order of the Land Tribunal, Mahe, dated 5.4.1983 holding that the application for shifting filed by the petitioner u/s 85(1) of the Act cannot be entertained as well as the order of the Appellate Authority that the order of the Land Tribunal was purely in the exercise of administrative functions are quashed and the Land Tribunal, Mahe, is directed to entertain the application for shifting filed by the petitioner and dispose of the same on its merits. In view of the very unsatisfactory disposal of the application for the purchase made by the authorities below, the orders passed by the Land Tribunal dated 13.8.1982 as

well that of the Appellate Authority passed on 7.4.1983 are set aside and O.A.No. 7 of 1981-K is remitted to the Land Tribunal, Mahe, to be reconsidered and dealt with in the light of the evidence and materials and also the objections raised by the petitioner. The petitioner and the kudikidappukari are at liberty to place such oral as well as documentary evidence as they deem fit before the Land Tribunal in the course of the remanded enquiry. The Land Tribunal is further directed to first deal with the application for shifting filed by the petitioner u/s 85(1) of the Act and thereafter proceed to deal with and dispose of the application for the purchase of the kudikidappu as provided under the proviso to Section 88-B(3) of the Act. In the result, the rule nisi is made absolute and the writ petition is allowed. The civil revision petition is also allowed. There will be no order as to costs.