

(2022) 06 KL CK 0114

In the High Court Of Kerala

Case No : Writ Appeal Nos. 196, 500 Of 2016

M/s Glen Leven Estate (P) Ltd

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 10-06-2022

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 17(4)
Kerala Land Reforms Act, 1963 — Section 2(8), 2(19), 2(29), 2(57), 13, 13(1), 14, 15, 16, 17, 18, 19, 20, 21, 22, 72, 72(1), 72A, 72A(2), 72A(3), 72A(4), 72B, 72BB(1), 72B(3), 72C, 72D, 72D(1), 72E(1), 72F, 72K(1)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 64

Citation : (2022) 06 KL CK 0114

Hon'ble Judges : S. Manikumar, CJ;Shaji P. Chaly, J

Bench : Division Bench

Advocate : P.A.Mohammed Shah, B.G.Bhaskar, K.Arjun Venugopal, Aswin Kumar M J, Shahir Showkath Ali, N.M.Madhu, T.U.Sujith Kumar

Final Decision : Disposed Of

Judgement

Shaji P. Chaly, J.

1. The appeals are materially connected in respect of land acquisition proceedings initiated against an extent of 5.6680 hectares of land (75 acres) situated in Survey No. 5/2 of Periya Village, Mananthavady Taluk, Wayanad District as per a notification dated 03.06.2013 issued under Section 4(1), after invoking the urgency clause under Section 17 (4) of the Land Acquisition Act, 1894 ('Act, 1894' for short), on the direction of the State Government for the establishment of the campus of Sree Chithira Thirunal Institute of Medical Sciences; retraction from the same by the State Government stating that the Government is entitled to resume the land from the cultivating tenant by virtue Section 72 of the Kerala Land Reforms Act 1963 ('Act, 1963' for short); and the rival claims raised by the cultivating tenant and landlord for compensation on

acquisition.

2. Therefore, we heard them together and proposed to pass this common judgment. Appellant in W.A.No. 196 of 2016 is the lessee, a company incorporated under the Companies Act, 1956 and claims protection and benefits of the Act 1963, and the appellants in W.A.No. 500 of 2016 are the landlords. They are filed challenging the common judgment of the learned single Judge dated 28.10. 2015, dismissing W.P.(C) Nos. 28694 and 28831 of 2015 respectively, but leaving open the liberty of the parties to approach the competent civil court. Exhibits relied upon for disposal of the appeal are as marked in W.P.(C) 28694 of 2014, filed by the appellant/tenant. For convenience, the parties in appeals are referred as lessee and landlords respectively.

3. Shorn of unnecessary details, basic facts required for disposal of the appeals are as follows:-

It seems, sanction was accorded by the State Government to the District Collector, Wayanad as per a Government Order dated 02.11.2012 to invoke the urgency clause under Section 17(4) of Act, 1894, and acquire the land in question; and accordingly preliminary notification under Section 4(1) of the Act, 1894 was issued; however, quite contrary to the same, as per Ext. P7 letter dated 19.08.2014, the Principal Secretary to Government, Revenue (B) Department, Government of Kerala, directed the District Collector, Wayanad to resume the land and take advance possession without paying any compensation for the land, but after paying the value of improvements to the lessee, the appellant in W.A.No. 196 of 2016, which has purchased the leasehold right of 99 years over the property from one V.J. Joseph, the original tenant under the landlords, since the Jenmom right is vested with the Government. Thereafter, Ext.P8 letter dated 30.08.2014 was issued by the Secretary directing the District Collector to send a proposal for allotment of fund, to the Health and Family Welfare Department after calculating the value of improvements alone, since the land is to be resumed under Section 72 of the Act, 1963.

4. At the outset, it is clarified that the writ petitions leading to the appeals were dismissed by a learned single Judge as per the common judgment dated 28th October, 2015 in W.P.(C) Nos. 28694 and 28831 of 2014 holding that the issues raised in the writ petitions by and between the landlords and the lessee are disputed questions of fact, which are unable to be decided in a proceedings under Article 226 of the Constitution of India, however permitting the parties to approach the competent civil court seeking appropriate relief in respect of their claims with the Government as well as inter se and further directing the State Government to deposit the entire amount relating to the value of the improvements before a Nationalized Bank in a Fixed Deposit and to produce the Fixed Deposit receipt before the court, in the suits to be filed by the appellants as permitted. The judgment of the learned single Judge was affirmed by a Division Bench of this Court as per a judgment dated 4th April, 2018, which was challenged before the Apex Court by the lessee.

5. The Civil Appeal No. 8548 of 2018 arising from the Special Leave to Appeal (C) No. 13227 of 2018 was allowed by the Apex Court, as per an order dated 24th August, 2018, and held that the Division Bench while disposing of the appeal by the impugned order did not assign any reason, much less sufficient one nor dealt with the issues arising in the case on facts and law, and accordingly remanded the matter for deciding the appeal afresh on merits in accordance with law and keeping in view the observations made in the order dated 20th July, 2018. It is, thus, the writ appeals filed by the lessee as well as the landlords have come up before us for consideration of the same on merits.

6. W. A. No. 196 of 2016 is filed by a Private Limited Company who has purchased the properties sought to be acquired along with other larger extent as per Ext. P3 registered document No. 1777/1950 dated 21.08.1950 of SRO, Thalassery, from one Joseph who was a lessee of Varayal Idom—landlord of the property in 1941, on the basis of a Kuzhikanom lease (a lease for planting improvements) as is evident from Ext. P4.

7. The State Government proposed to acquire 75 acres of a tea estate (made up of 14 acres in re-Survey No. 5/2, 43.86 acres in re-survey No. 174/1A and 17.14 acres in re-survey No. 174/1B1 of Periya Village in Wayanad District) for the purpose of establishing a campus of Sree Chithira Tirunal Institute of Medical Sciences in Wayanad District. Accordingly, Ext. P1 notification dated 03.06.2013 was issued under Section 4(1) of the Land Acquisition Act, 1894. However, on the basis of negotiations by and between the appellant company and the State Government, as is evident from Ext. P2 minutes, the State Government agreed to pay to the appellant company the land value at the rate of Rs.17,716 per cent for 41.61 acres; Rs.15,501/- per cent for 24.39 acres; and Rs.13,287/- per cent for 9 Acres, and the value of improvements to be assessed later.

8. The property sought to be acquired is part of the second schedule to Ext. P3 sale deed dated 21.08.1950. According to the appellant/lessee, at the time of lease to Sri Joseph, the major part of the property was grassland and it was the lessee Joseph who planted tea and converted the land into a plantation before 01.04.1964. It is further submitted that the Taluk Land Board, Mananthavady, by order dated 30.11.1981 in TLB 538/1973 NW, as confirmed by Ext. P5 order in TLB 2 of 1984 dated 02.01.2012, has exempted the area proposed to be acquired, from the accountable area for the purposes of the land ceiling limit, as a plantation.

9. Therefore, according to the appellant/lessee, by virtue of Section 72 of the Act, 1963, the rights of the Varayal Edam, the landlord, vested in the Government on 01.01.1970; however, vesting did not make the Government the owner, as is apparent from the explanation to Section 3 of the Act, 1963. According to the lessee, in terms of the provisions of the Act, 1963, the appellant is entitled to get the land value and the value of improvements in the said land on acquisition of 75 acres of land. However, the paramount contention advanced in the appeal is that the Revenue Department objected to the proposed payment

of the land value on the mistaken impression that the Government is entitled to resume the land under Section 72 of Act 1963; whereas, there is no such power vested with the Government under the Act, 1963 to resume a land from a cultivating tenant.

10. Anyhow, the contention of the appellant/lessee is that the Government sought the advice of the then Advocate General, who advised the Government, as per Ext. P6 communication dated 21st February, 2014 (copy was received by the appellant under the provisions of the Right to Information Act, 2005) stating that the appellant is entitled to get the land value and the value of improvements and the only deduction that can be made is the amount payable under Section 72D of the Act, 1963.

11. But, fact remains, the State Government has issued Ext. P7 order dated 19.08.2014 directing the District Collector, Wayanad to take advance possession of the land from the lessee subject only to the payment of the value of improvements. Anyhow, pursuant to Ext. P7 Order, the Principal Secretary to Government, Revenue (D) Department, the second respondent, as per Ext. P8 order dated 30.08.2014 directed the District Collector, Wayanad to forward a proposal for allotment of funds for payment of value of improvements, since the Government is entitled to resume the land under Section 72 of the Act, 1963.

12. Thereafter, Ext. P9 notice was issued to the appellant by the District Collector, Wayanad on 18.10.2014 informing that the improvements made by the appellant is valued and fixed at Rs.1,90,20,245/- and if the appellant has any objection against reclaiming of possession of the land by paying the amount, it may submit its objections within 7 days from the date of receipt of the notice. Apparently, the appellant has submitted Ext. P10 reply dated 27.10.2014 stating that Section 72 of the Act, 1963 does not confer any power of resumption of any land on the Government and that the vesting of rights under that Section is only for the limited purpose of assigning the rights of the former jenmies to the cultivating tenants. It is further stated that the land of the company can only be acquired by the Government under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Act, 2013' for short), since no award has been passed under the Act, 1894 in the proposal initiated pursuant to the notice issued under Section 4(1) of the Act, 1894.

13. Apart from the same, the value of the improvements offered was objected to stating that it is baseless and unscientific in law. It is, thus, challenging the legality and correctness of Exts. P7 and P8 Government Orders that the W.P.(C) No. 28694 of 2014 was filed. When the writ petition was admitted to the files of this Court on 31.10.2014, an interim order of status quo was passed. Anyhow, the District Collector, Wayanad has filed a counter affidavit in the said writ petition stating that the land originally belonged to the Varayal Edam tharawad in Periya Village, Mananthavady Taluk, and the said jenmi has leased out the property in question in the year 1941 along with other large extent of land for

the purpose of planting the improvements to one Joseph.

14. However, it is an admitted fact that since the land in question was required for the establishment of Sree Chithira Tirunal Institute of Medical Sciences, a negotiation meeting was conducted by the District Level Purchase Committee with the lessee; the value of the land was fixed and the same was submitted to the State Level Empowered Committee for sanction. It is also admitted that the land in question was leased out to one Joseph in the year 1941 by the landlords, which right was later purchased by the lessee, and that the original lease was a Kuzhikanam lease.

15. Be that as it may, Exts.P7 and P8 impugned orders of the Government are justified in the counter affidavit by submitting that by virtue of the provisions of the Act, 1963, the jenmom right with respect to the property has vested with the Government from 01.01.1970 and it was accordingly that Ext. P7 Government Order dated 19.08.2014 was issued to resume 75 acres of land for the establishment of Sree Chithira Tirunal Institute of Medical Sciences on payment of the value of improvements.

16. The further case of the respondents is that as per Section 20(1) of the Act, 1963, a tenant from whom the land is resumed under the provisions of the Act shall be entitled to get compensation for the improvements belonging to him, which should be determined in accordance with the provisions of the Kerala Compensation for Tenants Improvements Act, 1958. Therefore, according to the third respondent, Exts.P7 and P8 impugned orders were passed by the State Government in accordance with law.

17. The Principal Secretary to Government, Revenue (B) Department, the second respondent, had also filed a counter affidavit basically reiterating the stand adopted by the District Collector and praying for the dismissal of the writ petition.

18. However, as pointed out above, without going into the merits of the matter, the writ court dismissed the writ petition, leaving open the liberty of the lessee as well as the landlords, to approach the civil court seeking relief against the Government, and also to resolve the inter se dispute by and between the tenant and the landlords.

19. The reliefs sought for by the landlords in the writ petition is for a writ of mandamus commanding the State and the District Collector, Wayanad—respondent Nos. 1 and 2 therein, to implead the members of the tharavad of the landlords in the proceedings for acquiring the lands in question and to decide their entitlement to the share and compensation awarded for the same, and if necessary, to refer the question to a competent civil court for adjudication; and for a further writ of mandamus directing respondents 1 to 3 therein i.e., the State, District Collector and the Director, Sree Chithira Tirunal Institute of Medical Sciences, Thiruvananthapuram not to proceed with the disbursement of the compensation awarded for acquisition of the land in question.

20. The basic contentions advanced by the appellants/landlords are that the property comes under the exempted category contemplated under Section 3(1) (viii) of the Act, 1963; that the provisions of Chapter II of the Act, 1963 will not be applicable to Ext. P1 lease; that the lessee under such a lease will not be having a fixity of tenure and there will not be vesting of rights of the land owner in the Government; and that in such circumstances, the apportionment of the compensation between the lessor and the lessee is a matter to be decided in the acquisition proceedings and if there is any dispute, the same has to be referred to the competent court for adjudication.

21. In W.A.No. 500 of 2016 filed by the landlords, the appellant in W.A. No. 196 of 2016 is the 4th respondent. In the counter affidavit filed by the District Collector in the writ petition filed by the landlords, typical contentions raised in the counter affidavit filed in the connected writ petition are taken. The 4th respondent i.e., the tenant, has also filed a counter affidavit disputing the claims and demands raised by the landlords.

22. Be that as it may, on 29.05.2017, the State Government took possession of the property from the appellant company/lessee as permitted by a learned single Judge as per an order dated 01.09.2015 and the value of the improvements in the property was deposited in the Canara Bank and gave notice of deposit to the appellant as directed in the said order. These are the basic materials available on record to consider the legal issues raised by the appellant as well as the respondents.

23. We have heard Shri. B. G. Bhaskar and Sri. N.M. Madhu for the appellants and the learned Special Government Pleader Shri. M.L. Sajeewan for the State and its officials and perused the entire materials on record.

24. Learned counsel on either side advanced arguments relying upon the provisions of the Act, 1963, Act, 1894 and the Act, 2013.

25. As deliberated above, it is an undisputed fact that a notice was issued under Section 4(1) of the Act, 1894 to acquire the property in possession of the appellant company M/s. Glen Leven Estate (P) Ltd. It is further admitted by the parties that the company has purchased the leasehold rights of the property from the original lessee Joseph, who was put in possession as per a lease deed executed by and between the landlords and the said Joseph in the year 1941, as per a registered sale deed No. 1777/1950 of SRO, Thalassery dated 21.08.1950. While the company was in possession of the property, the Act, 1963 had come into force, consequent to which the rights enjoyed by the company has become a subject matter of consideration under the provisions of the Act, 1963 by virtue of the rights conferred on a tenant under the said Act.

26. Anyhow, the State Government has retracted from the Land Acquisition proceedings commenced by issuing Section 4(1) notification under the Act, 1894 and directions were issued as per Exts. P7 and P8 orders to the District Collector to resume the property in question sought to be acquired from the appellant

company on the premise that consequent to the coming into force of the Act, 1963, the land became vested with the Government and as per Section 72, the Government is vested with the powers to resume the land and the appellant company is only entitled for value of improvements as on the date of Ext. P8 order dated 30.08.2014. For convenience, Exts.P7 and P8 orders are extracted hereunder:

"GOVERNMENT OF KERALA

Abstract

Revenue Department-Resumption of land for setting up of the campus
of Sree Chithra Thirunal Institute of Medical Sciences in Wayanad
District-sanction accorded- orders issued.

Revenue (B) Department

G.O.(Rt) No.3898/14/RD

Thiruvananthapuram, Dated, 19/08/2014

Ref:1. G.O. (Rt.) No.6194/12/RD dated, 02.11.2012

2. Ltr No.B2-2012/28453/12 dt. 09.12.2013 &19.07.2014 from the District Collector. Wayanad

3. Ltr. No.LR(C4-36981/13 dt 13.12.2013 and 24.12.2013 from the Commissioner for Land Revenue, Thiruvananthapuram.

ORDER

Government as per G.O. read above accorded sanction to the District Collector, Wayanad to acquire 75 acres of land from M/s Glen Leven Estate, Mananthavadi for the establishment of the campus of Sree Chithira Thirunal Institute of Medical Sciences in Wayanad District invoking urgency clause u/? 17(4) of LA Act. Accordingly the District Collector had issued 4(1) notification.

Subsequently, it came to the notice of the Government that the property under acquisition was originally leased out for 99 years in the year 1941 to one Sri.V.V.Joseph and others, and later he purchased the lease hold right of others. At the time of lease there were no improvements/structures in the said land. It is reported that the dependents of Shri V.V.Joseph had sold the leasehold right subsequently to M/s Glen Leven Estate in Mananthavadi.

Government after examining the matter in detail have come to the conclusion that the lessee is entitled only for the value of improvements and not for the value of land since the jenmum right is vested with the Government. The District Collector Wayanad is accordingly directed to take advance possession of the land after paying the value of the improvements to the lessee for which the District Collector may send a proposal to the Government in due course.

By Order of the Governor,

E.K.Majhi

Principal Secretary to Government”

“GOVERNMENT OF KERALA

No.47316/B2/14/RD

Revenue (B) Department,

Thiruvananthapuram,

Dated, 30/08/2014.

From

The Principal Secretary to Government,

To

The District Collector,

Wayanad.

Sir,

Sub:- Resumption of land for setting up of the campus of Sree Chithira Thirunal Institute of Medical Sciences in Wayanad District Clarification - reg.

Ref:1.G.O.(Rt.) No. 3898/14/RD dated, 19/08/2014.

2. Ltr. No.B2-2012/28453/12 dated 25.08.2014 from the District Collector, Wayanad

Inviting attention to the reference cited, I am to inform you that Government as per G.O. cited have accorded sanction to the District Collector, Wayanad to resume 75 acres of land from M/s, Glen Leven Estate, Mananthavadi for establishment of the campus of Sree Chithira Thirunal Institute of Medical Sciences in Wayanad District under the provisions of Kerala Land Reforms Act, since the jenmum right is vested with Government. You were also directed to take advance possession of the land after paying the value of the improvements to the lessee for which the District Collector to send a proposal to the Government. It is clarified that since the land is being resumed under Section 72 of Kerala Land Reforms Act, only value of improvements as on date shall be fixed

accordingly.

You are directed to send proposal for allotment of funds to the Health & Family Welfare Department after calculating the value of improvements as directed above.

Yours faithfully,

P.S. Suresh,

Joint Secretary,

For Principal Secretary to Government."

27. The primary question that emerges for consideration is whether the Government is vested with any powers to resume a property from a tenant invoking Section 72 of the Act, 1963.

28. Before proceeding to consider the said provision and other provisions relating to the resumption of the land as contained under the Act, 1963, we deem it appropriate to refer to the counter affidavit dated 19.12.2020 filed by the Principal Secretary to Government, Revenue (B) Department, because the secretary has totally retracted from the contents of Exts. P7 and P8 and has stated that there is no power vested under Section 72 of Act, 1963 to resume a land. We propose to extract the relevant portion of the affidavit for record and for proper appreciation of the facts and law involved in the appeals, and it reads thus:

"2. On 15.12.20 this Hon'ble court directed me to file a specific affidavit as to whether the Government is inclined to proceed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. In the facts and circumstances of the matter it is humbly submitted that the Government is not inclined to proceed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. In fact the subject property has become Government property by the following events:

(1) On 01.01.70 all the right, title and interest of the landlord (enmi) in the subject property was vested in the Government under Sec.72 of the Kerala Land Reforms Act (in short KLR Act) and Certificate of Purchase have not been issued under Sec.59 (2) of the KLR Act to the appellant.

(2) On 29.05.17 the state took possession of the property from the appellant as permitted by the learned Single Judge on 01.09.15 and the value of improvements in the property was deposited in the Canara Bank and gave notice of deposit to the appellant as directed.

Hence no further proceedings under Act 30 of 2013 is necessary now.

5. In this regard it is pertinent to note that on 27.10.14 the appellant issued an objection to the District Collector. True photocopy of that objection is produced herewith marked as Annexure R2(a). In that objection the appellant has stated as follows:

"If you proceed to take any illegal actions to dispossess the Company, I will be forced to challenge the same and claim compensation from the Government"

6. The taking over of the land can not be construed as resumption as specified in the KLR Act. As evident, it was done in pursuance of the permission granted by the Hon'ble Court, after duly complying with the directions. Though there was mentioning of the word 'resumption' in correspondence, neither any statutory authorities which could order resumption was approached nor any order for resumption was obtained or could be obtained in the matter.

7. A copy of the affidavit, filed as per the directions of this Hon'ble Court dt.26.11.20, in W.A.No.500 of 2016 is produced herewith and marked as Annexure R2(b) for records and I pray that the contents of the same may kindly be read and treated as part of this affidavit also. Annexure R2(b) may kindly be accepted as an affidavit in WA.No.196 of 2016 in compliance with the direction of this Hon'ble Court dt.26.11.20.

8. Admittedly, as the appellant had only leasehold right in the property appellant is entitled only for value of improvements when such properties are taken over by the State. Further, in Exhibit P4, the lease deed dt. 20.06.1941 (in its 3rd page) itself it is stated that if the lessee is evicted the lessee will be entitled to the value of improvements. Thus as per the contractual terms also the appellant was entitled only for value of improvements. Hence the principle of estoppel applies and the appellant is precluded from raising other claims for compensation.

9. As the State had deposited the value of improvements the appellants or other eligible persons if any can withdraw that with permission of appropriate Court with or without protest.

10. In the circumstances, without prejudice to the respondents contention that no illegal act was committed by the State or their officers in the matter in taking over the land, if the appellants in W.A.Nos.196 and 500 of 2016 have any grievance they have to agitate them before the appropriate Civil court and the writ petitions are not maintainable. With due respect it is submitted that the adjudication of the claims inter se and against the State requires evidence. Hence appropriate forum for their adjudication would be a Civil Court."

29. On an analysis of paragraph 6 of the affidavit, we find that it is specifically stated by the Principal Secretary that in view of the facts and circumstances of the case recited in the affidavit, taking over of the land cannot be construed as a resumption as specified in the Act, 1963; that it was done in pursuance of the permission granted by the learned single Judge of this Court as per order dated 01.09.2015; and further that though there was mentioning of the word

'resumption' in the correspondence, neither any statutory authorities which could order resumption were approached nor any order for resumption was obtained or could be obtained in the matter. Therefore, it can be seen that at a later point of time, the Government itself realized that the attempt of the Government to resume the land invoking Section 72 of the Act, 1963 is not a correct approach and that is why the earlier stand of the Government adopted in Exts.P7 and P8 was retracted from.

30. Anyhow, we are inclined to consider the issues raised by the parties by placing reliance on the provisions of the Act, 1963, in view of the questions of law raised by the appellant/ lessee. Section 72 of the Act, 1963 deals with 'vesting of landlord's right in Government' and sub-Section (1) thereto reads thus:

[72. Vesting of landlord's rights in Government. - (1) On a date to be notified by the Government in this behalf in the Gazette, all right, title and interest of the landowners and intermediaries in respect of holdings held by cultivating tenants (including holders of kudiyrrippus and holders karaimas) entitled to fixity of tenure under Section 13, and in respect of which certificates of purchase under Sub-section (2) of Section 59 have not been issued, shall, subject to the provisions of this Section, vest in the Government free from all encumbrances created by the landowners and intermediaries and subsisting thereon the said date:

31. On an analysis of the provisions of Section 72(1) of the Act, 1963, it is clear that when the Government notified the said provision with effect from 01.01.1970, all right, title and interest of the landowners and intermediaries in respect of holdings held by cultivating tenants (including holders of kudiyrrippus and holders karaimas) entitled to fixity of tenure under Section 13, and in respect of which certificates of purchase under sub-Section (2) of Section 59 have not been issued, vested in the Government.

32. Therefore, it is clear from Section 72 that what is vested with the Government is the right, title and interest of the land owners and intermediaries in respect of the holdings held by the cultivating tenants. It is nothing but a legal fiction by which the interest held by a cultivating tenant in a property of a landlord or intermediary is protected from 01.01.1970 .

33. Section 72A deals with 'compensation to landlords for vesting of their rights in Government' and sub-Section (1) thereto specifies that every landowner and intermediary whose right, title and interest in respect of any holding have vested in the Government under Section 72 shall be entitled to compensation as provided in sub-Sections (2), (3) and (4) of Section 72A. However, sub-Section (3) of Section 72A specifies that notwithstanding anything contained in sub-Section (2), where the total compensation due to a landlord in respect of holdings held by cultivating tenants, after deducting the value of encumbrances and claims for maintenance or alimony, is more than twenty thousand rupees,

the compensation payable to such landlord shall be limited to the amount specified in the table contained thereunder.

34. On a conjoint reading of Sections 72 and 72A, it can be seen that vesting of rights in the Government contained under Section 72 is the rights held by the landlord and the intermediary in respect of holdings held by the cultivating tenants. However, the same will not, in any manner, interfere with the rights enjoyed by a cultivating tenant in contemplation of the provisions of the Act, 1963. The finding rendered by us will be justified by making reference to Section 72B of the Act, 1963 dealing with 'the cultivating tenant's right to assignment', and it reads thus:

[72B. Cultivating tenant's right to assignment. - (1) The cultivating tenant of any holding or part of a holding, the right, title and interest in respect of which have vested in the Government under Section 72, shall be entitled to assignment of such right, title and interest:

Provided that -

(a) no cultivating tenant shall be entitled to assignment of the right, title and interest in respect of any holding or part of a holding under this Section if he, or if he is a member of a family, such family, owns an extent of land not less than the ceiling area.

(b) where the cultivating tenant or, if he is a member of a family, such family, does not own any land or owns an extent of land which is less than the ceiling area, he shall be entitled to the assignment of the right, title and interest in respect of only such extent of land as will, together with the land, if any, owned by him or his family, as the case may be, be equal to the ceiling area.

Explanation. - In calculating the extent of land owned by the cultivating tenant or, where he is a member of a family, by such family, for the purposes of clauses (a) and (b) of the foregoing proviso, the portion of the land owned by such cultivating tenant or by the family, which is liable to be assigned to the cultivating tenants holding under him or such family, shall not be taken into account.

(2) The provisions of Section 82 shall, so far as may be, apply to the calculation of the ceiling area for the purposes of the proviso to Sub-section (1);

Provided that if no date has been notified under Section 83, the date notified under Section 72 shall be deemed to be the date notified under Section 83.

(3) Any cultivating tenant entitled to assignment of the right, title and interest in respect of a holding or part of a holding under Sub-section (1) may apply to the Land Tribunal within whose jurisdiction such holding or part is situate within two years from the date of vesting of such right, title and interest in the Government under Section 72, or such further time as may be allowed by the Government in this behalf, for such assignment to him.

(4) An application under Sub-section (3) shall contain the following particulars, namely:-

(a) the village, survey number and extent of the holding or part to which the assignment relates.

(b) the name and address of the landowner and intermediaries and also of every other person interested in the land and the nature of their interest so far as they are known to him;

(c) the particulars regarding the other lands owned or held by him or if he is a member of a family; by such family; and

(d) such other particulars as may be prescribed.

(5) Where a cultivating tenant is entitled to the assignment of the right, title and interest in respect of only a portion of the holding held by him, he may indicate in the application under Sub-section

(3) his choice of the portion to which the assignment shall relate.]

35. Therefore, on a consideration of the provisions of Section 72B, it is vivid and clear that a cultivating tenant in possession of a property on the basis of a leasehold right from a landlord is entitled to assignment of the right, title and interest in respect of any holding or part of a holding on the basis of the rights and interests vested in the Government under Section 72 from the landlord and the intermediary, but of course subject to the provisions of Section 72B.

36. So also, sub-Section (1) of Section 72BB dealing with 'the right of landlord to apply for assignment and compensation' specifies that any landowner or intermediary, whose right, title and interest in respect of any holding have vested in the Government, may apply to the Land Tribunal for the assignment of such right, title and interest to the cultivating tenant and for the payment of the compensation due to him under Section 72A.

37. Section 72C dealing with 'the assignment where application is not made by cultivating tenant' stipulates that notwithstanding anything contained in sub-Section (3) of Section 72B or Section 72BB, the Land tribunal may, subject to such Rules as may be made by the Government in that behalf, at any time after the vesting of the right, title and interest of the landowners and intermediaries in the Government under Section 72, assign such right, title and interest to the cultivating tenants entitled thereto, and the cultivating tenants shall be bound to accept such assignment. Therefore it is clear from Section 72C of the Act, 1963 that, if a property is in possession of a cultivating tenant and if no application is made by the cultivating tenant for the assignment of land, the Land Tribunal is duty bound to take steps to assign such right, title and interest to the cultivating tenants entitled thereto, and the cultivating tenant has no other option than to accept such assignment.

38. However, Section 72D(1) makes it clear that the cultivating tenant shall be

liable to pay purchase price to the Government on the assignment to him of the right, title and interest of the landowner and the intermediaries, if any. Therefore, the liability of the cultivating tenant in contemplation of law is for the payment of purchase price to the Government on the assignment to him of the right, title and interest either on his application as contemplated under Section 72B or on assignment by the Tribunal under Section 72C of the Act, 1963. However, explanation to Section 72D specifies that the benefit conferred to a cultivating tenant under sub-Section (1) shall not affect the eligibility of the landowner or intermediary, if any, to receive compensation to which he is entitled under the Act.

39. Section 72E(1) makes it clear that as soon as may be after the right, title and interest of the landowner and the intermediaries, if any, in respect of a holding or part of a holding have vested in the Government under Section 72, or, where an application under Section 72B or Section 72BB has been received by the Land Tribunal, as soon as may be after the receipt of such application, the Land Tribunal shall publish or cause to be published a public notice in the prescribed form in such manner in the prescribed format calling upon (a) the landowner, the intermediaries, if any, and the cultivating tenant; and (b) all other persons interested in the land, the right, title and interest in respect of which have vested in the Government, to prefer claims and objections, if any, within such time as may be specified in the notice and to appear before it on the date specified in the notice with all relevant records to prove their respective claims or in support of their objections. Other procedures are also contemplated thereunder to tackle the claims of the respective parties in contemplation of Section 72F.

40. Section 72K(1) of the Act, 1963 makes it clear that as soon as may be after the determination of the purchase price under Section 72F or the passing of an order under Sub-section (3) of Section 72MM], the Land Tribunal shall issue a certificate of purchase to the cultivating tenant, and thereupon the right, title and interest of the landowner and the intermediaries, if any, in respect of the holding or part thereof to which the certificate relates, shall vest in the cultivating tenant free from all encumbrances created by the landowner or the intermediaries, if any.

41. On an indepth analysis of the aforesaid provision, we find that when Section 72 came into force on 01.01.1970, the cultivating tenant is entitled for the assignment of the land for possession, subject to the liabilities fixed under Section 72 of the Act, 1963 to pay the purchase price. As per Section 72C, if no application is filed by the cultivating tenant, the Land Tribunal shall subject to the Rules made by the Government ensure that the assignment is granted to the cultivating tenant, assigning such title and interest to the cultivating tenant entitled thereto, which rights, title and interest are vested with the Government by virtue of the legal fiction created under Section 72 of the Act, 1963.

42. Therefore, we have no doubt in our mind to hold that Section 72 of Act, 1963

would only deal with the right, title and interest of the land owners and intermediaries in respect of the holdings held by the cultivating tenants free from encumbrances created by the land owners and intermediaries. However, the legal provisions discussed above would make it clear that insofar as the cultivating tenant is concerned, an absolute right is vested with him to seek assignment subject to the payment of purchase price in contemplation of Section 72D of the Act, 1963.

43. For the sake of clarity, we wish to consider the scope of the definition of the terms 'landlord' and 'intermediary' dealt with under Section 72 of Act, 1963. The term 'landlord' is defined under Section 2(29) of Act, 1963 to mean a person under whom a tenant holds and includes a landowner. The term 'Intermediaries' is defined under Section 2(19) of Act, 1963 to mean any person who, not being a landowner, has an interest in the land and is entitled, by reason of such interest, to possession thereof, but has transferred such possession to any other person. It is also pertinent to extract the definition of 'cultivating tenant' and 'tenant' as defined under Sections 2(8) and 2(57) respectively, and they reads thus:

(8) "cultivating tenant" means a tenant who is in actual possession of, and is entitled to cultivate, the land comprised in his holding;

[(57) "tenant" means any person who has paid or has agreed to pay rent or other consideration for his being allowed to possess and to enjoy any land by a person entitled to lease that land, and includes-]

[(a) the heir, assignee or legal representative of, or any person deriving rights through, any such person who has paid or has agreed to pay rent or other consideration,]

[(aa) an intermediary,]

(b) a kanamdar,

(c) a kanam-kuzhikanamdar,

(d) a kuzhikanamdar,

[(dd) an ottikuzhikanamdar,]

(e) a mulgenidar,

(f) a verumpattamdar of any description (including a customary verumpattamdar),

(g) the holder of a chalgeni lease,

(h) the holder of a kudiyruppu,

[(hh) a person holding lands under a kuzhichuvaipum kudiyruppu,

(hhh) the holder of a karaima,]

(i) the holder of a vaidageni lease, and

[(j) a person who is deemed to be a tenant under Section 4, Section 4A, Section 5, Section 6, Section 6A, Section 6B, Section 7, Section 7A, Section 7B, Section 7C, Section 7D, [Section 7E] Section 8, Section 9 or Section 10, or presumed to be a tenant under Section 11.]”

44. That apart, Section 13(1) of Act, 1963 makes it clear that notwithstanding anything to the contrary contained in any law, custom, usage or contract or in any decree or order of court, every tenant, shall have fixity of tenure in respect of his holding, and no land from the holding shall be resumed except as provided in Sections 14 to 22. This also makes it clear that subject to the conditions contained under Section 13, the tenants are entitled to fixity of tenure in terms of the provisions of the Act, 1963.

45. Therefore, it can be seen that the vesting of the right, title and interest under Section 72 of the Act, 1963 in the Government is only from the land owners and intermediaries alone, and not any right, title and interest held by a cultivating tenant or a tenant recognised by the Act, 1963. To put it otherwise, Section 72 does not deal with the right, title and interest held by a cultivating tenant in possession of the land on the commencement of the said provision on and with effect from 01.01.1970.

46. Even though in the light of the affidavit filed by the Principal Secretary, Revenue (B) Department, as extracted above, that no resumption is possible from a tenant, no further elucidation is required, in view of the findings and observations made by the Apex Court in Civil Appeal referred to above, we proceed to consider the power available for resumption of any property contained under the Act, 1963.

47. Section 14 deals with the right of a trustee or owner of a public religious worship to resume from a tenant the whole or any portion of his holding, when the same is needed for the purpose of extending the place of public religious worship and the Collector of the district certifies that the same is so needed.

48. Section 15 of the Act, 1963 deals with the right of a landlord who is not in possession of any land other than nilam, or is in possession of less than two acres in extent of such land and who needs the holding for the purpose of constructing a building bona fide for his own residence or for that of any member of his family may resume from his tenant an extent of land specified clauses (i) and (ii) and the explanation thereto.

49. Section 16 confers a right on the landlord for resumption for personal cultivation from tenant holding more than a ceiling area. Sections 16A and 17 are dealing with the resumption by small holder from tenants holding more than the ceiling area and resumption by small holder respectively.

50. Section 18 deals with the general conditions and restrictions applicable to resumption under Sections 14 to 17. Section 19 deals with the right of a landlord for resumption of agricultural lands interspersed within plantations. Section 20

deals with the compensation to be paid to the tenants on the resumption of the land for improvements and solatium. Section 21 deals with the priority for presumption by and between the landlords and Section 22 deals with the procedure to be followed by the landlord for the resumption of the land.

51. Section 23 deals with the tenant's right to sue for restoration of possession of land in case the land was resumed in contemplation of Sections 14, 15, 16 or 19, if, within three years of such resumption, the person who resumed the land fails without reasonable excuse to use the land for the purpose for which it was resumed.

52. The provisions deliberated above would also show that there is no power vested with the Government to resume a land from a cultivating tenant for itself, much less invoking the provisions of Section 72 of the Act, 1963 as is stated in Exts.P7 and P8 orders issued by the State Government. This was, in fact, realised by the State Government during the pendency of the appeals and it was accordingly that the affidavit extracted above was filed retracting from the power assumed by the Government to issue Exts.P7 and P8 orders to resume the land.

53. Anyhow, after the hearing of the writ appeals on 25.05.2022, a statement is filed by the learned Special Government Pleader for and on behalf of the District Collector, the second respondent in W.A. No. 196 of 2016, wherein it is stated that even though possession of the property was taken, it was not under the Act 30 of 2013. But, it was taken possession of as per the orders of the learned single Judge referred to above on 29.02.2016. It is further stated that at present, the property is in the custody and control of the Health Department and the Government have issued Annexure R2(p), G.O.(Ms.) No. 55/2022/H&FWD dated 14.03.2022 directing the District Collector, Wayanad/Director of Health Department to hand over the property to the Medical Education Department. Merely because possession of the land was taken over as per interim orders of the learned Single Judge, that would not in any manner interfere with the rightful claims of the appellants under law to claim compensation, or absolve the Government from taking steps to acquire the property. According to us, it is fallacious on the part of the State to contend that since the property was not taken possession under the Act, 2013, it is not liable to proceed for acquisition of the property in accordance with law.

54. On a perusal of Ext. R2(p), it is clear that even though a reference is made to the Government Order dated 12.02.2021, communication of the District Collector dated 21.01.2021 and the letter of the Director of the Medical Education dated 17.11.2021, no reference is made to the order of the learned single Judge permitting the Government to take possession of the property in question, subject to the adjudication of the issues raised in the writ petitions. Anyhow, the discussion made above would make it clear that Exts.P7 and P8 impugned orders issued by the State Government cannot be sustained under law, being arbitrary and illegal and therefore they are liable to be interfered with by this Court.

55. However, the landlords, who are the appellants in W.A. No. 500 of 2016, in their appeal have raised a claim against the cultivating tenant basically contending that the tenancy is exempted in view of Section 3(i)(viii) of Chapter II of the Act, 1963 and therefore, the lessee is not entitled to fixity of tenure. Other contentions are also raised. But, in our considered opinion, the dispute with regard to the apportionment of the claim for compensation by rival claimants is a matter for consideration by the competent authority, and also in contemplation of the provisions of Section 64 of the Act, 2013, and therefore, the said dispute, which are absolutely factual in nature depending on evidence, has to be decided by the statutory authority in accordance with law.

56. Upshot of the discussion is that, W.A. No. 196 of 2016 is allowed and accordingly we quash Exts.P7 and P8 orders dated 19.08.2014 and 30.08.2014 respectively passed by the State Government, and direct the State and its officials to take proceedings for the acquisition of the land as is specified above, within two months from the date of receipt of a copy of this judgment.

57. We also hold that the cultivating tenant i.e., the appellant in W.A. No. 196 of 2016, is entitled to get compensation for the land as well as the improvements in accordance with law, however subject to the claim of the landlords in contemplation of law.

58. W.A.No. 500 of 2016 is disposed of, leaving open the liberty of the appellants/landlords to raise their claims before the appropriate statutory authorities in accordance with the provisions of Act, 2013.

We further make it clear that the acquisitioning authority shall issue notice not only to the cultivating tenant but also to the landlords, the appellants in W.A .No. 500 of 2016 and others, if any, while initiating proceedings as directed, and in accordance with the Act, 2013.