(2006) 01 KL CK 0065

In the High Court Of Kerala

Case No : C.R.P. No. 1738 of 2000

M.S. Krishna Moorthy — APPELLANT

Vs

Taluk Land Board and Others — RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:
Kerala Land Reforms Act, 1963 — Section 81, 81(1)

Citation : (2006) 1 KLJ 338

Hon'ble Judges : K. Thankappan, J

Bench : Single Bench

Advocate : P.N.K. Achan and K. Mohana Kannan, for the Appellant; N. Lalitha, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Thankappan, J.—Revision Petitioner is the declarant. By the impugned order the Taluk Land Board, Alathur directed the Petitioner to surrender an extent of 2.10 Acres of land in Melorkode Village. The Petitioner contends that an extent of 28 cents of land comprised in Sy. No. 27-1/9 of Melorkode Village wherein a store house of the Petitioner was situated is liable to be exempted u/s 81 of the Kerala Land Reforms Act, 1963. Learned Senior Counsel Sri P.N.K. Achan appearing for the Petitioner contends that the land wherein the store house is situated is liable to be exempted u/s 81 of the Land Reforms Act. To substantiate the above contention, learned Counsel brought to the notice of this Court a report of the authorized officer with regard to the nature of the building and the land required for convenient enjoyment of the building. In the report the Special Tahsildar, the authorized officer, had reported that "a tank is situated among ''paddy fields'' and not within the house compound. As the ''tank'' is not situated within the house compound, it does not fall under exempted category, covered by Section 81 of the K.L.R. Act". As per the objection filed by the Petitioner, it is stated that the above 28 cents of land was a ''kattakalam'' and there was a farm house and also a tank situated on the property.

2. Learned Government Pleader submits that the Petitioner has not adduced any evidence to show that the land in question is mainly used for the purpose of farm house. Hence, the order under challenge may not be interfered with.

3. The question to be decided in this revision is with regard to the exemption claimed by the Petitioner u/s 81 of the Act. Section 81 deals with exemptions. Section 81(1)(m) reads as follows:

(m) house sites, that is to say, sites occupied by dwelling houses and lands, wells, tanks and other structures necessary for the convenient enjoyment of the dwelling houses.

In this context a Full Bench decision of this Court reported in Govinda Pillai v. Taluk Land Board 1991 (2) KLT 880 is very relevant. In the above decision it is held that "the claim should have been allowed in toto having regard to the appurtenant area required for convenient enjoyment of the residential building in a village part". In another decision reported in Madhava Pharmaceutical Laboratories v. Taluk Land Board 1989 (2) KLT 802, a Division Bench of this Court held that the firm was an industrial and commercial undertaking and the aforesaid extent was liable to be exempted u/s 81(1)(k)of the Kerala Land Reforms Act, 1963, hereinafter referred to as ''the Act''.

4. Objection filed by the Petitioner is that the land in question is used as a ''kattakalam''. It is an admitted fact that there is a farm house situated in the land in Sy. No. 27-1/9. Section 81 of the Act deals with exemptions. As per Clause (m) house sites, that is to say, sites occupied by dwelling houses and lands, wells, tanks and other structures necessary for the convenient enjoyment of the dwelling houses can be exempted from the restriction on ownership and possession of land in excess of ceiling area and disposal of excess lands. Sites of buildings including warehouses can also be exempted as per Clause (p) of Section 81 of the Act. So, the land appurtenant to the building site for convenient enjoyment of the building, for the purpose for which it is constructed, is liable to be exempted u/s 81(p) of the Act. But, there is no evidence adduced by the Petitioner to show that the entire extent of 28 cents comprised in Sy. No. 2781/9 is being used for the farm house. The authorized officer has not given any evidence to show that the entire 28 cents was not used for the farm house.

5. In a decision reported in Krishnan Namboodiri v. State of Kerala 1976 KLT S.N. 3 this Court held that the Taluk Land Board was given the power to determine the extent necessary for the convenient enjoyment of the dwelling house.

6. In the above circumstances, the order impugned is set aside and the matter is remanded to the Taluk Land Board for fresh consideration of the question whether 28 cents of land in Sy. No. 27-I/9 of Melorkode Village is liable to be exempted u/s 81 of the Kerala Land Reforms Act, 1963 as claimed by the Petitioner. The Taluk Land Board is directed to afford the Petitioner an opportunity to adduce further evidence, if any, with regard to the contention raised regarding the convenient enjoyment of the farm house. As the matter is of

the year 1973, the Taluk Land Board is directed to dispose of the case as early as possible, at any rate, within six months from the date of receipt of copy of this order.

7. The revision petition is allowed as above. No costs.

