
(1989) 03 KL CK 0017
In the High Court Of Kerala
Case No : C.R.P. No. 1046 of 1988

Muhammed Kassim

APPELLANT

Vs

M.R. Vellodi and Others.

RESPONDENT

Date of Decision : 03-03-1989

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 106, 106(1A), 125, 31, 66

Citation : (1989) 1 KLJ 556

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : P.G.K. Wariyar and K.B. Menon, for the Appellant; V.R. Venkitakrishnan and Government Pleader, for the Respondent

Judgement

K.G. Balakrishnan, J.—The respondent in an application filed u/s 106 (1A) of the K.L.R. Act is the revision petitioner. The predecessor - in - interest of respondent 1 and 2 purchased 6 cents of land comprised in R.S.No. 101/7 of Ariyur Thekkummuri Desom of Ottapalam -I Village. This property originally belonged in jenm to Vengeri mana who had demised the same on kanom. The predecessor-in-interest of the respondents 1 and 2 took assignment of the kanom right from one Narayana Menon under document No. 1450/64. He also took assignment of jenmi right from Vengeri mana by document No. 324/67. Originally the property comprised of 3 items and the 1921 lease in favour of Narayanan Nair was for a monthly vent of Rs. 7/- and after deducting 0.50 ps towards "muppattam" the rent payable was Rs 6.50/-, As regards" item No. 3, the rent payable was Rs. 4/- Thus, the total rent payable by the lessee was Rs 10.50/-. The right of lessee devolved on the father of the present revision petitioner and on his death the petitioner herein became the lessee. Admittedly, the lessee is entitled to special protection u/s 106 of the K.L.R. Act and the rent payable was only Rs. 10.50. The lessor wanted enhancement of the rent. An application was filed u/s 106 (1A) of the Act before Land Tribunal No. 1, Ottapalam. The Tribunal revised the rent and held that the lessee was liable to pay rent at the rate of Rs 750/- per month. This order was challenged before the Appellate "Authority. The Appellate

Authority confirmed the order of the Land Tribunal and hence this revision. Learned counsel for the revision petitioner Shri K. B. Menon mainly raised two contentions. It was urged that the Land Tribunal No. 1, Ottapalam had no jurisdiction to deal with the petition u/s 106 (1A) of the K.L.R. Act. and that the enhancement of rent now allowed by the Land Tribunal is highly excessive and not in consonance with the relevant tenancy rules prescribed for the same. The respondents' counsel, on the other hand, supported the impugned order.

2. u/s 106 (1A) of the Act the lessor or the lessee may apply to such authority as may be prescribed for varying the rent and on such application, such authority after taking into consideration such matters as may be prescribed and after giving the lessor and lessee an opportunity of being heard shall pass order on the application. According to the learned counsel for the revision petitioner, the Land Tribunal No. 1, Ottapalam was not a prescribed authority to deal with petition u/s 106 (1A). Section 99 of the Act deals with the constitution of the Land Tribunal. It says that the Government may by notification in the Gazette, constitute one or more Land Tribunal or Land Tribunals for any area or for any class of cases specified in the notification, for the purpose of performing the functions of a Land Tribunal under this Act. Clause (2) of Sec. 99 says that the Land Tribunal shall consist of a sole member who shall be a judicial officer of the rank of a Munsiff or an officer not below the rank of a Tahsildar, appointed by the Government. Learned counsel for the revision petitioner has produced copy of the notification issued by the Revenue Department in the Kerala Gazette No. 34 dated 2nd September, 1975. This notification says that in supersession of Notification No. 16924/NI/70/LRD dated the 10th December, 1979, published as S.R.O. No. 430/70 in the Kerala Gazette Extraordinary, dated the 10th December, 1970 as subsequently amended, the Government of Kerala constituted the Land Tribunal for each of the areas specified in column (2) therein and for the entire District of Palghat and Perintalmanna Taluk in Malappuram District, Munsiff. Palghat has been invested with the powers to perform the functions of the Land Tribunal under the K.L.R. Act other than sections 31, 66, 72 to 72D (both inclusive), 80A to 80G(both inclusive), Section 90 and subsections (3) and (4) of section 125 of the said Act and subsection (i) of section 108 of the Kerala Land Reforms (Amendment) Act, 1969(35 of 1969).

3. Based on the above notification it is contended that an application u/s 106 (1A) can be dealt with only by the Munsiff specified in the application. The present application was filed in the year 1983. Formerly several Munsiffs were appointed as Land Tribunals. But later these Munsiff Land Tribunals were abolished and the Munsiffs returned to their parent department. Learned counsel for the revision petitioner could not specifically say at what point of time of the Munsiff Tribunals were abolished. Or, in other words, the relevant notification abolishing the Munsiff Land Tribunals is not produced in this case. It is also important to note that the present revision petitioner did not raise a contention before the Land Tribunal that petition u/s 106 (1A) was not maintainable for want of jurisdiction. It is true that if the authority had no jurisdiction to deal with the

matter a waiver or acquiescence by the parties will not confer jurisdiction on such authority. But this is a case where there was doubtful jurisdiction and the party participated in the proceedings without any demur and even now the revision petitioner is not able to say as to whether the Land Tribunal has got jurisdiction or not. The question of want of jurisdiction was raised by the revision petitioner only at the appellate stage. The appellate court did not entertain the same and in view of the doubtful situation it cannot be said that the Land Tribunal No. 1, Ottapalam has no jurisdiction to deal with it. Therefore, the first "contention of the petitioner fails

4. The next contention is regarding the quantum of rent fixed by the Land Tribunal. The extent of the property is about 6 cents of land. Revision petitioner does not admit that the extent is 6 cents. The property is situated by the side of railway station road at Ottapalam. There are public offices and other important commercial establishments near the petition schedule property. The building that situates in the property was constructed by the predecessor-in-interest of the revision petitioner. The building is let out to various tenants. According to the revision petitioner there are only two tenants. Whereas respondents 1 and 2 contend that there is one more tenant. The Land Tribunal assessed that the revision petitioner has been receiving Rs. 850/- per mensem. Some portions of the building are lying vacant. The Land Tribunal assessed the total plinth area of the building and took into consideration the monthly rent for the land together with the building let out to others for similar commercial purposes and fixed the rent payable by the revision petitioner as Rs. 750/-. The criterion adopted by the Land Tribunal is illegal. Rate 142 of Tenancy Rules is the relevant rule for refixation of rent in respect of leases for commercial or industrial purposes. Rule 142 reads as follows:

"142. (1): At any time after the expiry of twelve years from the date of the contract of tenancy or the date of refixation of rent under this rule, the lessor or lessee may apply to the Land Tribunal for refixation of the rent.

(2) On receipt of such application, the Land Tribunal shall give notice to the opposite party and after making due enquiry pass orders on the application.

(3) In passing orders under sub - rule (2), the Land Tribunal shall have regard to the rates of rent prevailing in the locality in respect of lands used for similar purposes."

The expression "lands for similar purposes" was judicially interpreted as lands used for "like purpose" or "purpose of the same kind". (See Gopalakrishna Kurup v. Narayana Ayyar 1980 KLT 852)

5. The ground rent of the property cannot be fixed on the basis of the building that situate in the property. Sometimes the lessees may invest huge amount and construct a big building and the lessor who has got only right over the land cannot claim a proportionate increase in the ground rent considering the nature and extent of the building owned and occupied by the lessee. Nevertheless, the

lessor is, of course, entitled to enhanced rate of rent if the property is situated in a commercially important place and has got potential value. Various factors are to be considered in assessing the ground rent payable by the lessee. As per Rules 142 and 143 of the Tenancy Rules, Land Tribunal shall have to take in to consideration the rates of rent prevalent in the locality in respect of lands used for similar purposes. It is the prevailing rate of rent for the land that is to be taken into consideration and not the rate of rent payable by the tenant occupying similar building and conducting like business. One mode of ascertaining the reasonable ground rent payable by the lessee is to compute the value of the land and assess the total investment of the lessor and the rent be refixed accordingly, having regard to the fact that the lessor shall get reasonable return from the land owned by him. It is also to be borne in mind that the lessee occupying such land has got a permanent right to continue there by virtue of Section 106 of the Act. This Section mandates that the lessee shall not be evicted from such land and he gets permanent fixity. The lessor - landlord cannot make use of the land for any other purpose except receiving the rent payable by the lessee. Taking the above aspects into consideration I think it is just and reasonable to fix the ground rent on the basis of the investment made by the lessor. According to the valuation made by the Revenue Inspector the value of the land per cent would come to Rs. 5,000/- in 1983. Therefore, the total price of the land would come to Rs. 30,000/-. The present rate of interest at which loans are advanced by Nationalised Banks for commercial transactions varies from 14% to 18%. It is quite reasonable that 16% can be taken as reasonable interest. Taking into consideration that the lessee is not liable to be evicted by the lessor. I think the rate of rent can be assessed as 16% of the total value of the land. The total rent per annum would come to Rs. 4,800/- and on that basis the rent payable by the lessee is fixed at Rs. 400/- per mensem and the order of the Land Tribunal, which is confirmed by the Appellate Authority, will stand modified. It is held that the lessee shall pay rent at the rate of Rs. 400/- per mensem with effect from 6-7-1983.

The C.R.P. is disposed of as above. Parties to bear their respective costs.