

(1990) 10 KL CK 0014
In the High Court Of Kerala
Case No : C.R.P. No. 173 of 1984

Muthumukkath Kurian

APPELLANT

Vs

Taluk Land Board, Quilandi and others

RESPONDENT

Date of Decision : 16-10-1990

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2, 81, 81, 82, 82

Citation : (1991) 2 KLJ 127

Hon'ble Judges : U.L. Bhat, J;T.V. Ramkrishnan, J

Bench : Division Bench

Advocate : Jose Joseph, for the Appellant; K. Thonkoppan, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Bhat, J.—This revision is directed against the order passed by the Taluk Land Board, Quilandy on 24-11-1983. Learned single Judge before whom the case came up for hearing referred the case to a Division Bench. This case involves interpretation of the provisions relating to ceiling coastlands in Chapter III of the Kerala Land Reforms Act, 1963 (for short the Act). u/s 83 of the Act with effect from such date as may be notified by the Government, no person shall be entitled to own or hold or to possess under a mortgage lands, in the aggregate in excess of the ceiling area. Government notified the date as 1-1-1970. As on that date petitioner"s family consisted of himself, his wife and six minor children. u/s 82 (1) (a) of the Act, calling area for this family (which we may call statutory family) is thirteen standard acres subject to the limit of twenty ordinary acres. In prior proceedings Taluk Land Board as per order dated 24-2-1983 held that this family had 15.43 acres of land equivalent to 11.49 standard acres as on 1-1-1970 and the family did not own or possess land in excess of the ceiling area and the proceedings were dropped. The order took into consideration the fact that 1.53 acres of single crop land equivalent to 51 standard cents had been acquired by Kurien by registered document No. 1149/74, hut that has to be

excluded in determining the land held by the statutory family as on 1-1-1970. This order was followed by fresh proceedings initiated u/s 87 of the Act which requires subsequent acquisitions of parties to be taken into consideration and excess land to be determined. It has to be noticed that just before the acquisition En 1974, two of the minor children attained majority and one of the minor children died. The Taluk Land Board by the impugned order determined extent of land held or possessed by the statutory family to be 16.46 acres. The Board took the stand that as on the date of acquisition statutory family consisted only of five members and therefore they are entitled to hold only ten standard acres subject to a minimum of 12 and maximum of 15 ordinary acres of land u/s 82(1) (b) of the Act and held that the statutory family had excess land of 1.84 standard acres equivalent to 2.89} ordinary acres and directed petitioner to surrender the excess land. This order is challenged in the revision.

2. Learned counsel for the revision petitioner contended that though the scheme of the provisions in Chapter III of the Act is to ensure that an individual or a family does not own or possess land in excess of the ceiling area on 1-1-1970 or at any time thereafter, ceiling area for an individual or a family fixed as on 1-1-1970 cannot fluctuate on account of decrease or increase in the number of numbers of the family, that even while dealing with subsequent acquisition u/s 87 of the Act ceiling area of the statutory family must be taken to be the ceiling area as on 1-1-1970 and not as on the date of acquisition. Learned counsel further contended that while there is no objection to the Board examining by virtue of Section 87 of the Act the question whether by the subsequent acquisition in 1974 statutory family has come to own or hold land in excess of the ceiling area, ceiling area must be taken (o be the one as on 1-1-1970 and any later fluctuation in the composition or strength of the family must be ignored as the Act does not contemplate recessive computation of the ceiling area on account of natural changes in the composition of the statutory family. Learned Government Pleader attempted to rebut these submissions and argued that according to the scheme of Section 87, when on account of subsequent acquisition land owned or held by a family exceeds the ceiling area, the family is bound to surrender the excess land and for the purpose of determining whether including the subsequent acquisition the family has come to own or hold land in excess of the ceiling area, ceiling area must be determined with reference to the strength of the family as it existed on the date of acquisition and not as on 1-1-1970.

3. The Act was intended to be a comprehensive legislation relating to land reforms in the State of Kerala. Clause (1) of Section 2 defines "adult unmarried person" as an unmarried person who has attained eighteen years of age. Clause (3) defines "ceiling area*" as the extent of land specified in Section 82 as the ceiling area. Clause (14) defines "family" as meaning husband, wife and their unmarried minor children or such of them as exist. Clause (36A) defines "minor" as a person who has not attained the age of eighteen years. Clause (43) defines "person" as including a company, family, joint family, association or other body of

individuals, whether incorporated or not, and any institution capable of holding property. Clause (55) defines "standard acre" as meaning in relation to any class of land specified in Schedule II situate in the district or taluk mentioned therein, the extent of land specified against it in that schedule. Schedule II lay down the relationship between standard acres and ordinary acres in different areas and for different types of land.

4. Chapter III contains Sections 81 to 98A. Section 81 is the exemption provision, Section 82 lays down ceiling area of land in the case of an adult unmarried person or a family consisting of a sole surviving member as five standard acres (between six and 7.50 acres), in the case of family consisting of two to five members as ten standard acres (between twelve to fifteen acres), in the case of family consisting of more than five members as ten standard acres increased by one standard acre for each member in excess of five (between twelve to twenty acres) and in the case of any other person other than a joint family as ten standard acres (between twelve to fifteen acres). Lands owned or held by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family. The Section prescribes the manner in which shares of the members of the family or the adult unmarried person in the family property is to be computed. It also prescribes that standard acre is to be reckoned with reference to nature of land as it existed on the date of commencement of the Act, namely 1-1-1964. Section 83 declares that with effect from the notified date no person shall be entitled to own or hold or to possess under a mortgage lands, in the aggregate in, excess of the ceiling area. Section 84 declares certain voluntary transfers to be null and void.

5. Section 85 deals with surrender, of land in excess of the ceiling, area on the notified date namely 1-1-1970. A person owning or holding, land in excess of the ceiling area is required within a period of three months from the notified date to file a statement before the Land Board furnishing the prescribed particulars and ultimately surrender the excess land. The Land Board shall transfer this statement to the Taluk Land Board concerned "for being dealt with in the prescribed manner, Where such a person fails to file the statement the Land Board shall intimate that fact to the Taluk Land Board and the latter shall after necessary enquiries determine the extent and other particulars of the land etc. Section 85A casts an obligation on a wider category of persons to file statements. Section 86 provides that on the decision of the Taluk Land Board, person concerned is to surrender the land determined by the Taluk Land as excess land.

6. Section 87 deals with contingencies where persons acquire land after the notified date, namely 1-1-1970 by gift, purchase, mortgage with possession, lease or in heritance or otherwise. It provides that where in consequence of such acquisition after 1-1-1970 the total extent of land owned, or held by such persons exceeds the ceiling area, such excess shall be surrendered to such authority as may be prescribed. The explanation would make it clear that where

land of exempted u/s 81 it Shan, with effect from the date on which it ceases to be exempted, be deemed to be land acquired after the notified date and where after the notified date any class of land specified in Schedule 11 has been converted into any other class of land specified in that Schedule or any land exempt u/s 81 is converted into any class of land not so exempt and in consequence thereof the total extent of land owned or held by a person exceeds, the ceiling area, so much extent of land as is in excess of the ceiling area shall be deemed to be land acquired. after the said date. Person referred to in Section 87 are required to file statements containing the particulars specified in Section 85 A (1) within three months of the date of the acquisition. The provisions of Sections 85 and 86 shall apply to the vesting in the Government of the ownership or possession or both of the lands required to be surrendered u/s 87. Sections 88 to 97 deal with fixation of compensation, assignment of excess land etc. Section 98A clarifies the term "person" as not including a co-operative society or an institution of certain kind.

7. The broad scheme of the above provisions indicate the legislative intent to ensure that as on the notified date no person in the State shall own or hold land in excess of the ceiling area. It is also clear that legislature intended that no person even after the notified date shall come to own or hold land in excess of the ceiling area by subsequent acquisition or in other ways contemplated in Section 87. Section 87 lays down the rule that even where on account of subsequent acquisitions of the specified nature, a person comes to own or hold land in excess of the ceiling area, the principle of Section 83, namely that no person shall own or hold land in excess of ceiling area shall come into operation" and the excess land should be determined and surrendered. The legislative fiction incorporated in explanations 1 and 2 of Section 87 widen the scope of Section 87 and thereby even when there is no subsequent acquisition by gift, purchase, mortgage, lease, surrender, transfer, bequest or inheritance or otherwise, but on account of land lawfully exempted ceasing to be exempted, or on account of subsequent change in nature of land, the holding exceeds the ceiling area, it shall be deemed to be on par with subsequent acquisitions to be dealt with in the same manner. The above provision discloses a two-pronged approach towards ceiling area. One is that as on the notified date namely 1-1-1970 no person shall own or hold land, in excess of the ceiling area and the excess land, if any, shall be taken over by the State. The other is that even after the notified date where persons acquire land as contemplated in Section 87 or where land originally exempted ceases to be exempted or where classification or nature of land has been altered subsequently and in consequence thereof the extent of the holding exceeds the ceiling area, that also shall be treated as excess and surrender obtained. It is significant to note that there is no provision in Chapter III indicating legislative intention to the effect that merely on account of change in the composition or strength of a family and without any acquisition or cessation of exemption or change in classification of land, ceiling area can be determined afresh with reference to the date on which the change in composition

or strength of the family took place. Therefore it is clear that ceiling area prescribed in Section 82 in respect of a family cannot increase or decrease subsequently merely on account of increase or decrease in the number of members of the family either by birth or by death or by minor members attaining majority. Ceiling area so far as a family is concerned is to be determined as on the notified date namely 1-1-1970 and it cannot undergo any fluctuation merely on account of change in the number of members of the family. To hold otherwise would detract from the plain tenor of the provisions and amount to making an addition to the provisions of the Act.

8. We are fortified in the above view by the decision in *Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others*, where the Supreme Court had occasion to consider parallel provisions in Maharashtra Agricultural Land (Ceiling on Holdings Act) 1961. Section 4 of the Act lays down that no person shall hold any access over the ceiling area and land in excess of the ceiling area shall be deemed to be surplus land. Section 6 prescribes the extent of the ceiling area admissible to families depending on the strength of the family. Section 9 prohibits any person at any time, on or after the appointed day, from acquiring by transfer or partition any land if he already has land in excess of the ceiling area or land which together with any other land already held by him will exceed in the total of the ceiling area. Section 10 prescribes that certain types of documents should be ignored for the purpose of working out the provisions of the Act. Section 12 provides, inter alia, that if any person on or after the appointed day acquires, holds or comes into possession any land in excess of the ceiling area, or whose land is converted into any other class of land as a result of the expiry of the period or the date set out in some, other provision or whose land is converted into any other class of land in the circumstances described in Section II, he shall furnish to the Collector a report containing the particulars. The Collector has to hold an enquiry and make a declaration in terms of Section 21 regarding excess land. The Supreme Court observed:

The scheme of the Act seems to be to determine the ceiling area of each person (including a family) with reference to the appointed day. The policy of the Act appears to be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day. Therefore, if there is a family consisting of persons exceeding five in number on January 26, 1962, the ceiling area for that family would be the basic ceiling area plus 1/6th thereof per member in excess of the number five. The ceiling area so fixed would not be liable to fluctuations with the subsequent increase or decrease in the number of its members, for, there is, apart from the explicit language of Sections 3 and 4, no provision in the Act providing for the redetermination of the ceiling area of a family on variations in the number of its members. The argument that every addition or reduction in the number of the members of a family requires redetermination of the ceiling area of such a family would mean an almost perpetual fixation and reflection in the ceiling area by the

Revenue authorities, a state of affairs hardly to "have been contemplated by the legislature. The argument would also mean that where a surplus area is already determined and allotted to the landless persons such area would have to be taken back and given to a family, the number of whose members subsequently has augmented by fresh births.

(emphasis by me)

Dealing with the argument that Section 12 lays down an obligation on a person to furnish to the Collector a report containing particulars regarding subsequent acquisitions, change in the nature and classification of land etc. the Supreme Court observed:

But these are the only cases contemplated where there would have to be a re-appraisal of the ceiling area, otherwise the Act, as aforesaid, visualises the ceiling area of every person with reference to the conditions prevailing on and the land held by him as on the appointed day. Except for those cases, the scheme of the statute is that a ceiling area is to be ascertained with reference to the state of affairs existing on the appointed day. In this view, the Revenue Tribunal was right in not taking into consideration the three children born in the family after the appointed day while determining the ceiling area to which the appellants family was entitled to.

9. Our attention is invited to three decisions of this court. The earliest is the single block decision in C.R.P. No 1186/75 short-noted in 1976 KIT 59. The revision petitioner in that case was an adult unmarried person as on 1-1-1970. He was in possession of eight acres of land, three acres of which were planted with rubber and fell in the exempted category. The balance five acres was less than the ceiling area. On 25-11-1970 he obtained another acre of land. He married on 30-9-1972 and subsequently purchased 5.42 acres of land area assigned 85 cents. If he was to be treated as an adult unmarried person he would be holding land in excess of the ceiling area as contemplated in Section 87. The court noticed that when an adult unmarried person gets married, he is no longer an adult unmarried person, but is member of a family. But that has no relevance to the application to surrender the excess land as on 1-1-1970. The court indicated that any minor becoming a major or an adult unmarried person marrying and becoming a member of a family are all relevant matters in applying the provisions of Section 87 and- the number of members of the family on the earlier date or even 1-1-1970 is irrelevant. It was observed that in implementing Section 87 of the Act, the ceiling area is to be determined for such purpose taking into account the status of the person on the date the holding exceeds the ceiling limit. His liability to surrender arises on the extent of land owned, held or possessed under a mortgage by him exceeding the limit prescribed on that date. If the person is an adult unmarried person the extent he is liable to surrender will depend upon the extent an adult unmarried person is permitted to hold. Similar would be the case if the person concerned is a family or any other person. We notice that the decision of the Supreme Court in Raghunath Laxman

Wani and Others Vs. The State of Maharashtra and Others, was not brought to the notice of the learned judge. Further the case did not relate to fluctuation in the number of members of a family subsequent to 1-1-1970 but related to change of status of an adult unmarried person as a member of the family. If the decision is to be understood as one laying down the proposition that fluctuation in the number of members of the family as it existed on the date of acquisition has to be taken into consideration for re-determining the ceiling area for the purpose of Section 87, with great respect, we are unable to agree with such a view as it is not in consonance with the provisions of the Act and contrary to the dictum laid down by the Supreme Court.

10. The next decision is the single bench decision in C. R. P. 1718/75 short-noted in 1977 K. L. T. 57. Revision petitioner in that case was an adult unmarried person. He did not hold land in excess of the ceiling Area on that date. He married and his wife died subsequently and the petitioner had the status of a sole surviving member of the family. For such a person ceiling limit is five standard acres less than that "of a family consisting of two members. The Taluk Land Board held that on account of the death of the wife he became the sole surviving member of the family and ceiling area should be recomputed and excess surrendered. The court held: -

It is on 1-1-1970 that the prohibition to hold excess land began to operate. It is on that day that the obligation to surrender arose. Even if a person did not own or hold excess land on that day if he subsequently acquired such excess land or obtained right to excess land by succession, inheritance, gift or by similar events and by reason thereof the total land exceeded the ceiling limit there is provision in the Act for surrender of the excess land. That is Section 87 of the Act. This Section is not applicable to this case In this case it is the land of Sri Vasu that is considered as belonging to the family consisting of himself and his wife. Nevertheless the lands continue to be that of Vasu.

It is the operation of Section 85 that results in an order for surrender. The petitioner here need not surrender by reason of Section 85 (1). That is because he did not have excess land as on 1-1-1970. The only other provision in the Act which obliges surrender of excess land is that in Section 87 which obliges surrender by reason of subsequent events. I have already stated that Section 87 " will not apply to the petitioner for the reason that he had not come to hold or own additional land by reason of subsequent acquisition or by reason of any right devolving on him. Therefore where, as in this case, there was a family on 1-1-1970 but ultimately there was only the sole surviving member there is no provision to redetermine the ceiling limit. I do not think this is a defect in the Act or some accidental omission on the part of the legislature. That is because, if it had been otherwise, there would have been an unsatisfactory situation. Supposing in a family there are five or six minor members when the ceiling limit be determined. For the reason that on each of them becoming majors in succession the membership of the family is reduced if land ceiling is to be

redetermined from time to time it would mean that what has been permitted to be held as within the ceiling area will have to be surrendered from time to time with the result that what will ultimately remain is what could be held by a sole surviving member.

The approach in this case appears to be consistent with the approach made by the Supreme Court in *Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others*, .

11. *The State of Kerala v. Moses Bhaskaran* (1987 (2) K. L. T. 338) a single bench had to consider the method to be adopted to determine the excess land u/s 87. The learned judge indicated that u/s 87 any number of proceedings to determine the excess land held by a person can be initiated depending upon the number of acquisitions and each acquisition has to be considered as a unit for the purpose of determining the excess land. The Taluk Land Board had not considered the issue in the right perspective and therefore the case was remanded. In doing so the learned judge observed:

It is made clear that while determining the excess land the Taluk Land Board shall treat each acquisition as a unit for the purpose of determining the excess land. In other words the date of acquisition and the position regarding the ceiling area as on that day has to be taken into account while determining the question pertaining to excess land.

We find that the decision does not contain any discussion on the basis of which the principle in the words underlined came to be accepted. The decision has not taken into consideration the observations of the Supreme Court in *Raghunath Laxman Wani and Others Vs. The State of Maharashtra and Others*, and the decision in *C. R. P. No. 1718 of 1975*. With great respect, we are unable to agree with the view projected in the underlined words.

12. We make it clear that this decision is restricted to cases where statutory families existing as on 1-1-1970 undergo change in composition on account of subsequent birth, death or minor members attaining majority. It is unnecessary for us to consider in this case the position where an adult unmarried person becomes family by marriage.

13. Learned Government Pleader invited our attention to Rule 16 of the Ceiling Rules. It prescribes that a person subject to Section 7 is required to file a statement with the modification that "1-1-1970" has to be substituted with the words "date of acquisition". In other words/state meat giver is required to give particulars of the property and the ceiling areas as on the date of acquisition. We are not prepared to say that under no contingency such particulars have relevance. But so far as the facts of the case are concerned and" so far as the change in composition members of the statutory family which existed as on 1-1-1970" ate consumed, Rule 16 cannot over-ride the intendment of the legislature as disclosed in the scheme of the provisions of Chapter HI of the Act. By the subsequent acquisition the statutory family of the revision petitioner came

to hold in all 16.46 acres of land. Ceiling area for this statutory family must be deemed to be the ceiling area as on 1-1-1970 namely, thirteen standard acres equivalent to twenty ordinary acres. By subsequent acquisition the family did not come to own or hold land in excess of the ceiling area. We therefore set aside the impugned order of the Taluk Land Board and allow the revision petition, but in the circumstances without costs.