
(1988) 07 KL CK 0061
In the High Court Of Kerala
Case No : O.P. No. 325 of 1985

N. Noorjahan

APPELLANT

Vs

State of Kerala and another

RESPONDENT

Date of Decision : 28-07-1988

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 83, 86, 88, 89, 90
Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 2(f)

Citation : (1988) 2 KLJ 766

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : P.C. Parameswara Panicker, for the Appellant; K.K. Raveendranath and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.L. Viswanatha Iyer J.

1. Accordingly the Tahsildar, Pathanapuram took possession of the land on October 23, 1975. There was an attempt to reopen the case on the ground that the petitioner was not the "lawful" owner of the land surrendered, but it was not successful. The order Ext. P1 has thus become final. The petitioner is, u/s 86 of the Act, entitled to compensation for the surrendered land which has vested in government. The amount of compensation is to be fixed by the Land Tribunal u/s 90 of the Act, in accordance with the scale prescribed in sub section (3A) of section 88. Accordingly the Land Tribunal, Pathanapuram fixed the compensation payable at Rs. 88312/- by the proceedings Ext. P2 dated April 8, 1976. The compensation has not however been paid despite repeated requests. The petitioner has therefore filed this original petition praying for direction to the respondents to pay the compensation as fixed in the proceedings Ext. P2 of the Land Tribunal.

2. There is a counter affidavit filed on behalf of the first respondent State. It is stated therein that after the land was taken possession of by the Tahsildar,

pursuant to the order Ext. P1. 200 acres were assigned to 200 persons as per sanction accorded by the Land Board, u/s 96. Subsequently it was noticed that the land in question was "private forest" as defined in section 2 (f) of the Kerala Private Forests (Vesting and Assignment) Act, 1971, (the Vesting Act, for reference). Government had clarified on November 28, 1983 that the provisions of the Vesting Act override the provisions of the Land Reforms Act. Therefore, government is not liable to pay the compensation fixed under Ext. P2, under the Land Reforms Act. The order Ext. P1 of the Taluk Land Board, "has become infructuous" and not liable to be implemented, as the land stood vested in government free from all encumbrances on May 10, 1971 when the Vesting Act came into force" Consequently, the District Collector, Quilon has cancelled (sic) assignment of 200 acres of land to the 200 allottees. In the circumstances the petitioner is not entitled to any relief.

3. The question is whether the vesting of the land in government under the Vesting Act absolves the respondents of their liability to pay the compensation fixed as per Ext. P2.

4. The land in question was taken possession of on October 23, 1975 on the strength of the order Ext. P1 passed by the Taluk Land Board, Pathanapuram. The vesting of private forests was on May 10, 1971. The determination of the excess land u/s 83 of the Act relates to January 1, 1970. Assuming that the land had vested in government under the Vesting Act on May 10, 1971, government has not chosen to take advantage of the provisions of that Act. to deprive the petitioner of her rights in the land. On the other hand, at the time the order Ext. P1 was passed and even thereafter, the petitioner continued to be in possession of the land till October 23, 1975, when she surrendered possession (as demanded in Ext. P1) to the Tahsildar, authorised under Rule 18 of the Kerala Land Reforms (Ceiling) Rules, 1970 (the Ceiling Rules for brevity). Government had, till the year 1983. proceeded only on the postulate that the land was excess land in the hands of the petitioner, and that it was liable to be proceeded against under the provisions of Chapter III of the Land Reforms Act.

5. Section 88 provides that when the ownership, or possession, or both, of any land is vested in government u/s 86, such person shall be entitled to compensation. The compensation payable is fixed with reference to the scale prescribed in sub section (3A). Section 89 provides for payment of advance compensation. Section 90 requires the Taluk Land Board to direct the Land Tribunal to prepare and submit a compensation roll containing the particulars specified. On receipt of this direction, the Land Tribunal affords an opportunity to all persons interested to be heard and makes such enquiry as it considers necessary. It then prepares the draft compensation roll, and invites objections. The final compensation roll, is prepared after considering the objections received and is forwarded to the Land Board. Section 91 requires the Land Board to pay the compensation to the persons entitled thereto, "on receipt of the compensation roll u/s 90".

6. A conspectus of these provisions shows that it is the right of the landowner, whose land has vested in government u/s 86, to be paid the compensation, determined after following the procedure prescribed in section 90. The right inheres in the landowner as soon as the land vests in government, or is surrendered to the authorised person, pursuant to the demand under Rule 17 of the Ceiling Rules. It is obligatory thereafter for the Land Board to pay the compensation fixed by the Land Tribunal u/s 90. There is no escape from such payment as the payment is mandated by section 91 and the Land Board is bound to comply with this provision.

7. The petitioner's land was surrendered pursuant to the direction contained in the order Ext. P1 of the Taluk Land Board. The land thereupon vested in government u/s 86. It was so understood by all concerned, including the government, at all relevant points of time. In fact, an extent of 200 acres of this land had even been assigned u/s 96 of the Act. It was long thereafter that the discovery was made that the land was a "private forest" vesting in government under the Vesting Act. The belated wisdom of government about the nature of the land cannot detract from the finality of the proceedings already taken, or the obligations incurred by virtue of those proceedings. It cannot fake away the effect of the accepted vesting u/s 86 on October 23, 1975.

8. When the land is got surrendered, pursuant to proceedings under the Act, the consequential obligations must follow. It is not open for the respondents thereafter to turn round with the plea that they are not bound to honour the statutory commitments for other reasons. The Act has not provided for any other mode of discharge of these obligations. When they have taken recourse to the provisions of the Act, the respondents are not entitled to stop midway after depriving the landowner of his rights, when it comes to a question of their fulfilling their own obligation.

9. Though not parallel, the decision of the Supreme Court in *Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another*, , affords some guidance in this matter. The land acquired in that case belonged to government, who had made a grant with a condition that in the event of government requiring the land for any reason whatsoever, the grantee shall surrender the land to government without claiming any compensation. Government required the land for their own purposes. But they did not invoke this condition in the grant: On the other hand, they initiated proceedings under the Mysore Land Acquisition Act and acquired the land. The Land Acquisition Officer did not award any compensation for the land as it belonged to government. On reference, the District Court agreed with the Land Acquisition Officer that no compensation was payable for the land. But on appeal, the High Court of Mysore set aside the award with direction to determine the compensation payable to the grantees for the land as well. The High Court held that since government had failed to exercise their rights under the grant and had resorted to proceedings under the Land Acquisition Act, compensation

determined under that Act had to be paid. This decision was affirmed by the Supreme Court with the observation that when government chose to adopt the procedure prescribed by the Land Acquisition Act, government had to pay the compensation for acquisition of the land under the provisions of the Act. In other words government could not escape from their obligations under the Land Acquisition Act by relying on the terms of the grant.

10. This decision was followed by the Supreme Court in the later case of Special Land Acquisition Officer, Hosanagar Vs. K.S. Ramachandra Rao and Others, .

11. The position here is analogous. When government chose to divest the petitioner of her land pursuant to the proceedings under the Land Reforms Act, they became bound to comply with all the provisions of that Act and pay the compensation due thereunder. That is what precisely the petitioner seeks by this original petition.

12. Apart from an assertion that the land is private forest, there is nothing to indicate that any steps have been taken by the concerned authorities under the Vesting Act, to demarcate the area as private forest or otherwise Government had not chosen even to inform the petitioner at any time that compensation fixed as per Ext. P2 was not payable on account of the land being a private forest. It is only for the first time in the counter affidavit filed in this court on January 6, 1988, that such a plea is raised. The petitioner may have her own contentions regarding the nature of the land. The proceedings Ext P1 of the Taluk Land Board did not exclude or exempt this land as private forest. In fact, the order Ext P1. treating this land as a non exempted or non excluded class; and therefore liable to be reckoned in the computation of the ceiling area of the petitioner has become final and is binding on government. The land had been classified as other dry land and the surrenderable area computed accordingly. The belated plea on the part of government has deprived the petitioner of her right to agitate her claims in relation to the 220.78 acres of land in question. Respondents have a statutory duty to pay the compensation fixed as per Ext P2. There has been unreasonable delay in complying with this duty. A direction is therefore, liable to be issued calling upon the respondents to make payment of the amount of Rs. 88,312/- forthwith. The Original Petition is therefore, allowed. The respondents shall make payment of the amount of Rs. 88,312/- to the petitioner within a period of three months from the date of receipt of a copy of this judgment.