

(1985) 04 KL CK 0025

In the High Court Of Kerala

Case No : C.R.P. No's. 567, 806 and 2906 of 1979

N. Ramanatha Reddiar and Others

APPELLANT

Vs

Taluk Land Board and Others

RESPONDENT

Date of Decision : 12-04-1985

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(14), 2(43), 82, 82(1), 83

Citation : (1985) KLJ 421

Hon'ble Judges : K. Bhaskaran, C.J;V. Sivaraman Nair, J;P.C. Balakrishna Menon, J

Bench : Full Bench

Advocate : V. Vyasani Poti, C.P. Sudhakara Prasad, S. Sankara Subban, P.C. Chacko, K. Sudhakaran and T.S. Venkiteswara Iyer, for the Appellant; P.N.K. Achan, N. Nandakumara Menon and M.A.T. Pai, Government Pleader, for the Respondent

Judgement

Bhaskaran, C.J.—A Division Bench of this Court has referred these Civil Revision Petitions to the Full Bench doubting whether the decision of this Court in *Fr. Avirah v. State of Kerala* (1981 KLT 474) went against an earlier decision of a Full Bench of this Court reported in *Kesavan Namboodiri v. State of Kerala & Others* (1976 KLT 427 (FB)). Sub-section (1) of Section 84 of the Kerala Land Reforms Act. (Act 1 of 1964) as amended by Act 35 of 1969 (hereinafter referred to as the Act) reads as follows:

Notwithstanding anything contained in any law for the time being in force, all voluntary transfers effected after the date of publication of the Kerala Land Reforms Bill, 1983 in the Gazette, otherwise than-

(i) by way of partition;

(ii) xx xx xx

(iii) in favour of a person who was a tenant of the holding before the 27th July, 1960 and continued to be so till the date of transfer:

XXX XX XX

(iv) XXX XX XX

by a family or any member thereof or by an adult unmarried person owing or holding land in excess of the ceiling area (or otherwise than by way of gift in favour of his son or daughter or the son or daughter of his predeceased son or daughter) by any person owning or holding land in excess of the ceiling area shall be deemed to be transfers calculated to defeat the provisions of this Act and shall be invalid.

(Emphasis supplied-proviso omitted).

The object of the legislation having been to bring about comprehensive land reforms in the State of Kerala and the Legislature in its wisdom having found it necessary to take over possession of the land held by persons in excess of certain limits (ceiling area) for distributing among the landless, the agricultural workers and the labourers, by the provisions of sub-section (1) of Section 84 of the Act, has laid down that any transfer of land, subject to certain specified exceptions, by persons holding land excess of the ceiling area after the date of publication of the Kerala Land Reforms Bill, 1963 (15-9-1963) would be deemed to be transfers calculated to defeat the provisions of the Act, and would be invalid. The expressions used in the deeming provisions are "shall be deemed" and "shall be invalid". The manifest intention of the Legislature was that transfers in respect of lands, after the specified date (15-9-1963) by a person holding land in excess of the ceiling area shall not be taken into account for the purpose of deciding the ceiling area, and to the extent it was in respect of lands held by him in excess of the ceiling area, it would be invalid for the purpose of the relevant provisions. The question as to how the land transferred after 15-9-1963 by a person who held land in excess of the ceiling area was to be treated has been answered as follows in para. 11 of the decision in *Kesavan Namboodiri v. State of Kerala & Others* (1976 KLT 427(FB)) at page 432-33:

11. S. 83 of the Kerala Land Reforms Act prohibits owning, holding or possessing under a mortgage lands in the aggregate in excess of the ceiling area by any person after the specified date. The excess over the ceiling area is to be surrendered to the Government before the specified date and such land is to vest in the Government. S. 86 of the Act provides for vesting of excess lands. The Kerala Land Reforms Bill 1963 was published in the gazette in 1963 and became law on 1-4-64 But the provision limiting the area of land to be owned or held by or possessed under a mortgage by a person, S. 83 of the Act came into force only on 1-1-1970. Provision had to be made to treat voluntary transfers made in the meanwhile or thereafter with a view to defeat the provisions relating to ceiling as inoperative in order that the object of the Act that the excess land over the ceiling area must be surrendered and such land should vest with the Government. Apparently that object is sought to be achieved by S. 84, That section itself, as we indicated earlier, shows that certain transfers which are

considered to be objectionable are to be deemed to be transfers calculated to defeat the provisions of the Act. Those transfers are declared invalid by S. 84 so that the provisions and the object of the Act may not be defeated. The circumstances amply justify the construction of the term "shall be invalid" in a restricted sense, viz., that the transfers would be invalid to the extent they would operate to defeat the provisions of the Act.

Section 83 of Act 1 of 1964 (substitute by Section 67 of Act 35 of 1969) reads as follows:

53. No person to hold land in excess of the ceiling area, - With effect from such date as may be notified by the Government in the Gazette, 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.

As per S.R.O. No. 5/70 dated 1st January, 1970, 1-1-1970 has been notified as the date. However, it has to be noticed that the prohibition with respect to transfer of land by persons who held land in excess of the ceiling area could not be related to the extent of the land held by them as on 1-1-1970. The real position is that, as is clear from the very wording in section 84 (1) (a) of the Act, all voluntary transfers effected after the date of publication of the Kerala Land Reforms Bill, 1963 in the Gazette (15-9-1963), subject of course to exceptions mentioned in the sub-section itself, by persons owning, holding or possessing land in excess of the ceiling area were to be deemed to be transfers calculated to defeat the provisions of the Act, and as such invalid. Though, Section 83 of the Act came into force only on 1-1-1970 as per notification S.R.O. 5/70, invalidity is attached to every transfer effected after 15-9-1963 in respect of land held by the person in excess of the ceiling area, for the purpose of the relevant provisions of the Act. To put it in a simple way, the land Board would not take note of the transfers effected after 15-9-1963, while deciding the question of the extent of the land, if any, to be surrendered by a person who held land in excess of, the ceiling area, which he was not entitled to own, hold or possess after 1-1-1970 by the operation of section 83 of the Act. This position is made clear by the dictum laid down by the Supreme Court in the decision reported in *C. Veetil Ammad v. Taluk Land Board* (1979 S.C. 1573 (AIR)). In paragraph 38 at page 1582 of the report it is observed:

In fact as has been stated in the *Craies on Statute Law*, seventh edition, at page 395, to explain a former statute, the subsequent statute has relation back to the time when the earlier Act was passed. In such a case, as the Act is "declaratory" the presumption against construing it retrospectively so as to respect vested rights, is not applicable. As sub-section (3) of section 84 in terms clarifies the meaning of the expression "ceiling area" with reference to which certain voluntary transfers are to be invalidated, it is clearly retrospective as it is meant to invalidate the transfers made after September 15, 1963 when the Bill of 1963 was published.

This being the correct position, with due respect, we are constrained to hold that the contrary view expressed in *Fr. Avirah v. State of Kerala* (1981 KLT 474) and in *State of Kerala v. Varghese and another* (1983 K.L.J. 43) does not represent the correct law on the point.

2. The revision petitioners in C.R.P. No. 2906 of 1979 put forward another contention that inasmuch as the land was held by adjoint family, the extent of land which such, family was entitled to hold not to be equated to that of a statutory family consisting of husband, wife and their unmarried minor children or as such of them that existed as defined in Section 2 (14) of the Act. According to Section 82 of the Act. the ceiling area of land shall be:

(a) in the case of an adult unmarried person or a family consisting of a sole surviving member, five standard acres, so however that the ceiling area shall not be less than six and more than seven and a half acres in extent:

(b) in the case of a family consisting of two or more, but not more than five members, ten standard acres, so however that the ceiling area shall not be less than twelve and more than fifteen acres in extent.

(c) In the case of a family consisting of more than five members, ten standard acres increased by one standard acre for each member in excess of five, so however that the ceiling area shall not be less than twelve and more than twenty acres in extent; and

(d) in the case of any other person, other than a joint family, ten standard acres, so however that the ceiling area shall not be less than twelve and more than fifteen acres in extent.

"Person" as defined in section 2 (43) of the Act shall include "a company family, joint family, association or other body of individuals, whether incorporated or not, and any institution capable of holding property". While fixing the ceiling area in respect of any other person in cl. (d) of section 82, care is taken to ensure to exclude the joint family from the operation of that provision. It means that the ceiling area fixed in respect of any other person is not applicable, though joint family also is included in the term person as defined in section 2 (43) of the Act. It would, therefore, be reasonable to hold that the ceiling area with respect to the joint family referred to in clause (d) of section 82 (1) is the aggregate of the area for the statutory family (or families), adult unmarried person (or persons) or such of them as existed in the joint family. In this case, we are told that the joint family of the revision petitioners consisted of the husband, the wife and an adult unmarried person. In that case the total extent of land, which the joint family is entitled to hold would be what an adult unmarried person is entitled to hold under clause (a) and what the family consisting of two (husband and wife) is entitled to hold in terms of clause (b) of the sub-section, viz., 5 standard acres and 15 standard acres. In other words, the joint family would be entitled to hold 20 standard acres.

3. One other contention raised by the petitioners in C.R.P. 806 of 1979 relates to the right of option regarding the identity of the land to be surrendered, pursuant to the direction by the Taluk Land Board in ceiling proceedings. It might be noted that the declarant and one of the claimants had earlier filed C.R.P. Nos. 451 and 674 of 1976 respectively against the order passed by the Land Board requiring them to surrender certain specified extent of land in Kalluvathukkal village. It is true that the declarant had filed the return on the basis that he had no land in excess of the ceiling area and that did not indicate his option regarding the identity of the land to be surrendered by him. Strictly speaking, the declarant, who did not specifically mention about the option in regard to the identity of the land he wanted to surrender, could not be heard to say later on, that as a matter of right he was entitled to make a choice after the ceiling limit has been fixed, though as a matter of equity the Land Board or the Taluk Land Board, as the case may be, might accede to such a request, In this case, the declarant, who held land in excess of the ceiling limit, has transferred not only land held by him in excess of the ceiling area but every inch of land held, owned or possessed by him. Therefore, in any event, he is not entitled to exercise further option in regard to identity of the land required to be surrendered, As far as the petitioners in C.R.P. No. 206 of 1979, who claim to be bona fide alienees from the declarant, they also do not appear to have any genuine grievance to be redressed. They purchased the land after 1-1-1970 and without taking sufficient care to ascertain whether the vendor was having land in excess of the ceiling limit on the crucial date. That apart, they do not have a case that the provisions of section 85 (6) of the Act have not been complied with. Section 85 (6) of the Act reads as follows:-

In determining the identity of the land the Taluk Land Board shall accept the choice indicated under sub-section (2) or sub-section (3A)"

Second proviso to Section 85 (6) reads-

Provided further that where in such determination the interests of other persons are also likely to be affected, the Taluk Land Board shall, except in cases where all the persons interested have agreed to the choice indicated, afford an opportunity to such other persons to be heard and pass suitable orders regarding the land to be surrendered.

Earlier this Court by judgment dated 14th July, 1978, in C.R.P.

Nos. 451 and 674 of 1976 directed that notice and an opportunity of being heard be given to the alienees of the declarant, who were more than a dozen in number. The revision petitioners in C.R.P. No. 806 of 1979 not having a case that opportunity was denied to them, they have no right to plead that the order of the Taluk Land Board was incorrect, and they would be entitled to ask Court for giving the declarant another option in regard, to the identity of the land to be surrendered in a bid to get the land purchased by them, ordered to be surrendered, excluded. Moreover, in enquiry also, they being the last of the

alienees in respect of the land held by the declarant, the direction given by the Taluk Land Board was just and fair.

The result, therefore, is that we dismiss C.R.P. Nos. 567 of 1979-A, and 806 of 1979-J. We dispose of C.R.P. No. 2906 of 1979-C setting aside the order of the Taluk Land Board challenged in the revision and remanding the matter to the Taluk Land Board, for fresh disposal, after fixing the total extent of the land the joint family of the petitioners was entitled to own, within the ceiling area, in terms of the relevant provisions of the Act and in the light of the observations contained in this order. There will be no order as to costs.