
(1982) 10 KL CK 0029

In the High Court Of Kerala

Case No : S.A. No. 848 of 1977-F and O.P. No. 1253 of 1978-N

N. Ravindra Nathan Nair

APPELLANT

Vs

Saraswati Amma Ambujakshi Amma

RESPONDENT

Date of Decision : 30-10-1982

Acts Referred:

Kerala Land Reforms (Amendment) Act, 1969 — Section 1(12), 1(2), 1(3), 2(57)
Kerala Land Reforms Act, 1963 — Section 13, 13(3), 14, 15, 16

Citation : (1982) 10 KL CK 0029

Hon'ble Judges : R.Bhaskaran, J;P.C. Balakrishna Menon, J

Bench : Division Bench

Advocate : M. Rajasekharan Nair and B. Reghunathan, for the Appellant; P. Sukumaran Nair and K. Chinnan, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran, J.—Sub-section 1 of Section 18 of the Kerala Land Reforms Act, Act 1 of 1964 as amended by Act 35 of 1969, in short "the Act", which lays down the conditions and restrictions to which resumption of land under Sections 14 to 17 of the Act would be subject, states:

(1) in respect of tenancies subsisting at the commencement of this Act, no application for resumption shall be made after a period of one year from such commencement.

(emphasis supplied).

2. When the second appeal was being heard by the Single Bench, our learned brother Justice Khalid doubted whether there was not a divergence of opinion between Janaki Amma, J. in Raghavan Nair v. Narayana Panicker 1976 KLT 369 on the one hand, and one of us (Bhaskaran, J.) in Devaki Antharjanam and Ors. v. Narayanan Nair and Anr. 1977 K.L.N. 111 case No 94 on the other; in regard to the point of time from which the period of one year stipulated under Sub-section 1 of Section 18 of the Act was to be reckoned; hence, the matter was

referred to the Division Bench. Subsequently the writ petition also was adjourned to be heard by a Division Bench by Chandrasekhara Menon, J. on the ground that the question of law involved in the Second Appeal referred to the Division Bench, was seen raised therein also. That is how the second appeal and the writ petition are now before us.

3. The Appellant in the second appeal is the legal representative of the 1st Defendant in O.S. No. 1102 of 1968 on the file of the III Addl. Munsiff, Trivandrum. That suit was one for redemption of Ext. A-1 mortgage dated 14th Magaram 1062 M.E., the Plaintiff alleging that she had acquired equity of redemption under Ext. A-8 sale deed dated 17th September 1968 executed by the 7th Defendant in the suit in her favour. The 1st Defendant, who came to be in possession of the property under Ext. A-1 mortgage, contended inter alia that the suit was barred by limitation and that he was a deemed tenant entitled to fixity of tenure by virtue of the provisions contained in Section 4(A) of the Act. Thereafter the Plaintiff filed I.A. No. 8882 of 1970 u/s 17 read with Section 132(3)(c) of the Act for resumption of half the extent in item No. 1 held by the 1st Defendant under Ext. A-1 mortgage deed. That application, however, was dismissed by the trial court by order dated 8th January 1973 observing that the question of resumption also could be considered in the suit itself. On 9th January 1973 the suit was dismissed holding that the 1st Defendant was a deemed tenant entitled to fixity of tenure u/s 13 read with Section 4(A) of the Act, That decree was set aside in appeal, and the matter was remanded to the trial court with a direction to consider the claim of resumption afresh. After the remand, the suit was decreed on 19th October 1974 allowing the Plaintiff to resume one-half of item No. 1 in the plaint schedule from the 1st Defendant, and disallowing the Plaintiff's prayer for redemption. The 1st Defendant not having been successful in the appeal filed by him against the decree and judgment of the trial court, has preferred this second appeal.

4. From the order of reference, it would appear that before the Single Bench two questions of law were raised by the counsel for the Appellant;

1. Whether the application for resumption u/s 17 was barred by time; and

2. Whether the application for resumption was maintainable?

5. We would now consider the question whether the application filed by the Plaintiff u/s 17 read with Section 132(3)(C) of the Act on 5th March 1970 for resumption of land was out of time in view of the limitation placed by Section 18(1) of the Act. It is in that context it might be necessary for us to notice the conflict, if any, between the two decisions mentioned in the order of reference, in regard to the starting point of time for the purpose of reckoning the period of one year from the date of the commencement of the Act within which the application was required to be made under Sub-section 1 of Section 18 of the Act.

6. The main question that arose for decision in Devaki Antharjanam's Case 1977 K.L.N. 111 case No 94 was whether the expression 1 "such commencement" (of

the Act) as used in Sub-section 1 of Section 18 of the Act had to be understood as connoting the commencement of the Principal Act, the relevant provisions of which came into force on the 1st day of April 1964 by notification No. 4408/N/64/REV, dated 25th March 1964 published in the Kerala Gazette extraordinary No. 59 dated 25th March 1964 or as connoting the commencement of the Amending Act (Act 35 of 1969), the relevant provisions of which came into force on 1st January 1970 by notification No. 2/0/LRD in Kerala Gazette extraordinary No. 2 dated 1st January 1970. To construe the provisions of Section 18(1) of the Act which came into force on 1st April 1964, it is necessary to refer to the proviso to sub Section (2) of Section 1 of Act 35 of 1969 which reads as follows:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any provision of the Kerala Land Reforms Act, (Act 1 of 1964)(hereinafter referred to as the Principal Act), as amended by this Act, to the commencement of this Act, shall be construed as a reference to the coming into force of the provisions of this Act which has amended, substituted or inserted such provision of the Principal Act.

The true position, therefore, is that the reference to the "commencement of this Act" in the Principal Act is to the commencement of the provisions of Act 1 of 1964; and any reference in the provisions of the Act to the commencement of the Amending Act (Act 35 of 1969) is to the Commencement of the provisions of the Amending Act. This is also clear from the provisions contained in Sub-section (3) of Section 1 of the Principal Act which reads as follows:

The provisions of this Act, except this Section which shall come into force at once, shall come into force on such date as the Government may by notification in the Gazette, appoint;

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act, shall be construed as a reference to the coming into force of that provision.

7. What is, therefore, evident is that the reference to the commencement of "this Act" in the Act is to the commencement of the Principal Act itself, the provisions of which had come into force on 1st April 1964, not to the provisions of the Amending Act, Act 35 of 1969, which came into force on 1st January 1970. This is the legal position that was highlighted in the decision in Devaki Antarjanam's case 1977 K.L.N. 111 case No. 94.

8. The question that arose for decision in Raghavan Nair's case 1976 KLT 369 was whether the condition that an application for resumption of land u/s 17 of the Act should be made within a period of one year from the date of the commencement of the Act would apply where fixity of tenure was claimed by a person in possession of land on the basis of the deemed tenancy recognised in his favour u/s 7B of the Act. Section 7B of the Act came into force only on 1st January 1970 with no retrospective effect, pursuant to the Gazette notification in accordance with Sub-section (12) of Section 1 of Act 35 of 1969. By the

operation of the provisions of Section 7B of the Act, there emerged a class of tenants called the "deemed tenants", who were not persons answering the description of the term "tenant" as defined in Section 2(57) of the Act before its amendment by Act 35 of 1969. Deemed tenancy was in the nature of a tenancy superimposed by the relevant provisions incorporated into the Principal Act by the Amending Act on persons who were not till then tenants; all the same in regard to the right to claim fixity of tenure, the Act made no distinction between the "tenants" on the one hand, and "deemed tenants" on the other. In Raghavan Nair's case 1976 KLT 369 the point that fell for decision was whether in a case where the person in possession of the land was found to be a deemed tenant by virtue of the tenancy created by Section 7B of the Act, the land owner was not entitled to succeed in his application for resumption u/s 17 of the Act unless that application was made within one year from the date of the commencement of the Principal Act. In that decision it was held that the limitations and restrictions found in Sub-section (1) of Section 18 of the Act were applicable, on the language of the Sub-section itself, only to the cases of tenancies subsisting at the commencement of the Principal Act. It was also pointed out that legislature would not have meant that the application for the purpose of resumption should be filed within one year from 1st April 1964 on which date the Principal Act came into force with respect to the cases of tenancies which were to come into being only on 1st January 1970 on which date the relevant provisions conferring the superimposed statutory tenancy came into force.

9. From the foregoing discussion, it is abundantly clear that in the two decisions mentioned in the order of reference, there was really no divergence of opinion in regard to the point of time from which the period of one year for the making of applications under Sections 14 to 17 of the Act was to be reckoned, as stipulated under Sub-section (1) of Section 18 of the Act. While the decision in Devaki Antharjanam's case 1977 K.L.N. 111, Case No. 94 rule that the reference to "this Act" and "such commencement" in Sub-section (1) of Section 18 of the Act was to the Principal Act and the commencement thereof, not to the Amending Act and the commencement thereof, what was laid down in Raghavan Nair's case 1976 KLT 369 was that the conditions and restrictions imposed by Sub-section (1) of Section 18 of the Act, on the language of the Sub-section itself, were not applied to the tenancies which were not subsisting at the commencement of the Principal Act, but which came into existence on 1st January 1970, by the operation of the provisions like Section 7B of the Act.

10. Thus the two decisions under reference are, if we may say so, complementary to, not conflicting with, each other. We would only add that, as, all right, title and interest of the land owners and intermediaries in respect of holding held by cultivating tenants entitled to fixity of tenure u/s 13 of the Act got vested in the Government by virtue of the provisions contained in Sub-section (1) of Section 72 of the Act on 1st January 1970 on which date that Section came into force, and the extended period under Sub-section (4) of Section 72 of the Act for such vesting of the right, title and interest in respect of

holdings of which the landowner or the intermediary was a small holder did not go beyond the 30th of June 1970, the observation in paragraph 4 in Raghavan Nair's case 1976 KLT 369 "this interpretation, no doubt, leads to the position that in the case of tenancies declared as such under Act 35 of 1969, there is no time limit fixed for filing application for resumption" does not appear to be quite warranted.

11. The counsel for the Appellant--1st Defendant canvassed the correctness of the ruling in Raghavan Nair's case 1976 KLT 369, on the assumption that he could derive support from the proviso to that Sub-section which reads as follows:

* * *

Provided that where the landlord is--

(i) a minor; or

(ii) a person of unsound mind; or

(iii) a member of the Armed Forces or a seaman and the tenant is entitled to fixity of tenure; or

(iv) a legal representative of such member or seaman, was the landlord of the land in respect of which resumption is claimed, the application for resumption may be made within six months from the commencement of the Kerala Land Reforms (Amendment Act, 1969).

According to him, it could never have been the intention of the legislature to allow one year from the commencement of the Act for making an application for resumption by small holders who were under no disability, while allowing to the class of handicapped personnel enumerated in the proviso, only six months from such commencement for that purpose. The fallacy in this submission is obvious. The argument rests on the assumption that reference to "such commencement" of the Act in the body of the Sub-section, and reference to the commencement of the Kerala Land Reforms (Amendment) Act, 1969 in the proviso is to one and the same date. The true position is not so; the reference to the commencement of this Act is to the 1st day of April 1964, and to the commencement of the Kerala Land Reforms (Amendment) Act, 1969 is to 1st January 1970. This is clear from the wordings of the Sub-section and the proviso thereto; more over it has been so construed in Devaki Antharjanam's case 1977 K.L.N. 111-Case No. 94. The emphasis is to the fact neither the Sub-section in its main part, nor the proviso thereto, deals with a tenancy which was not subsisting at the time of the commencement of the Principal Act.

12. The combined effect of the rulings in Raghavan Nair's case 1976 KLT 369 and Devaki Antharjanam's case 1977 K.L.N. 111-Case No. 94 is that the reference to "the commencement of this Act" in Sub-section (1) of Section 18 of the Act has to be interpreted as referring to the commencement of the Principal Act (Act 1 of 1964, before its amendment by Act 35 of 1969); and the conditions

and restrictions subject to which alone application for resumption could be made, mentioned in that Sub-section, are applicable to the cases of tenancies subsisting at the time of the commencement of the Principal Act, not to tenancies declared or created by the provisions of Act 35 of 1969.

13. It being not the case of tenancy subsisting at the commencement of the Principal Act, but which came into existence by virtue of Section 4A engrafted into it by the Amendment Act, and the application having been filed on 5th March 1970, long before the expiry of the period fixed for the vesting in Government of the right, title and interest of the small holders in the land, under Sub-section (4) of Section 72 of the Act, the Plaintiff's right, in the present case, for claiming resumption u/s 17 of the Act is not lost by the time-bar stated in Section 18(1) of the Act, as rightly held by the courts below.

14. The only other question of law raised before the learned Single Judge, repeated before us, is the one relating to the maintainability of the application. In regard to that point what the learned Single Judge stated in paragraph 2 of the order of reference reads as follows:

2. The objection about the maintainability of the resumption application is based on the fact that the assignors of the Plaintiff had excess area. This disentitles the Plaintiff also from resorting to Section 17 for resumption. For this contention, there is absence of sufficient pleading.

The counsel for the Appellant--1st Defendant was not able to draw our attention to any specific pleading in that behalf. All that he could point out was that a contention was raised in the written statement that the Plaintiff's assignors had not chosen to file an application for resumption. This is far from the point in issue. We also notice that the Plaintiff had disclosed particulars relating to the extent of land held by him during the material time. If it was the case of the Appellant--1st Defendant that despite the Plaintiff fully answering to the description of a small holder as defined in Section 2(52) of the Act, he was not entitled to claim the benefits of a small holder in view of the explanation to Section 2(52) which, in our opinion, is in the nature of exception, it was for him to plead and prove that he (Respondent-Plaintiff) was not entitled to do so. The Appellant having failed to do so he is not entitled to succeed in the appeal on that score also.

For the foregoing reasons, we find no scope for interference with the concurrent decision of the courts below. The Second Appeal fails, and is dismissed; however, in the peculiar circumstances of the case, we would direct the parties to bear their respective costs. We dismiss the writ petition applying our reasoning in the Second Appeal to the facts of the case and upholding the validity of Ext. P-2 order challenged therein; there will, however, be no order as to costs.