

(1981) 07 KL CK 0019

In the High Court Of Kerala

Case No : C.R.P. No's. 2834 of 1979 and 2533 of 1979-E

Nachimuthu and Others

APPELLANT

Vs

The Taluk Land Board, Chittur and Others

RESPONDENT

Date of Decision : 09-07-1981

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 85(6)

Citation : AIR 1981 Ker 200

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : M.A.T. Pai and M.C. Gopi, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—In a ceiling case against the common 4th respondent, he set up tenancies in favour of four different persons, who now figure as revision petitioners in these two revision petitions. On notice being issued to them, they appeared before the Taluk Land Board and set up tenancies in themselves. The Taluk Land Board went into the question of the tenancies so set up and rejected them. Thereupon the declarant as well - as the alleged tenants filed C.R.P. No. 1987 of 1977 before this Court challenging the conclusion arrived at by the Land Board. This Court declined to interfere with the fielding of the Land Board rejecting the tenancies, but directed a remand of the case on a few other points in which only the declarant was interested. This Court also gave an opportunity to the declarant to re-exercise his right of option in regard to the identity of the lands required to be surrendered. After remand, the Taluk Land Board issued notice only to the declarant but not to the present revision petitioners and after deciding the surviving controversies acted on the option already given by the declarant which he reaffirmed and directed surrender of excess land. Among the lands so directed to be surrendered are included portions of the lands over which the revision petitioners originally claimed tenancy. The revision petitioners are

aggrieved by this order.

2. The learned counsel for the revision petitioners submitted that the Land Board proceeded illegally in not issuing fresh notices to the revision petitioner after remand of the case by this Court, that if notices had been issued to them they would have appeared before the Land Board and raised their contention that they have received certificates of purchase from the Land Tribunal and that, therefore, their interests are entitled to be protected. They also would have raised a contention regarding the option exercised by the declarant.

3. Even originally the declarant as well as the revision petitioners set up tenancies. The Taluk Land Board had rejected their claim and this Court in revision declined to interfere with that finding of the Land Board. All the certificates of purchase said to have been issued by the Land Tribunal have not been produced. Even the dates of the certificates are not given. There is, therefore, no material before me to verify whether the certificates have been actually issued, and if so, whether they were so issued before or after the date of the remand order passed by this Court in an earlier revision. A certificate of purchase would evidence the existence of tenancy in favour of the person to whom the certificate has been so issued. The tenancies set up by the declarant as well as the present revision petitioners have once been negated by the Taluk Land Board and that order has been confirmed by this Court in revision. In so far as the parties are concerned, the earlier finding of the Taluk Land Board which has been confirmed by this Court, has become concluded. It is no longer open to them to contend that the earlier finding is erroneous or that it requires reconsideration. That could have been done only if they had approached the Supreme Court against the order of this Court in C. R. P. No. 1987 of 1977. Even the remand order of this Court noticed that in some cases purchase certificates were relied on, yet this Court refused to interfere with the finding of the Land Board. Obviously the inspiration for the present claim is the decision of the Supreme Court reported in Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, , which has explained the scope of the Land Board's power and approach in considering certificates issued by the Land Tribunals. That decision cannot be made use of to upset settled decisions already arrived at by competent Land Board and this Court. That decision might have been helpful to the revision petitioners, if on the date of the Supreme Court decision, the question of tenancy was open before the competent authority. The decision of this Court in C. R. P. No 1987 of 1977 having become final, it is no longer open to the revision petitioners to re-agitate their claims once again. Therefore, the question of issuing notice to them to enable them to re-agitate questions of tenancy does not arise.

4. Portions of properties claimed by the revision petitioners as tenants are included in the list of the properties directed to be surrendered by the Taluk Land Board. This part of the order is evidently based on the option exercised by the declarant even originally. It is argued by the learned counsel for the revision

petitioners that even though their tenancies are negated, they are in possession of these properties and as such they are "persons interested" within the meaning of the second proviso to Section 85 (6) of the Kerala Act 1 of 1964 and therefore they ought to have been heard in the matter,

5. Section 85 (5) of the Act deals with what the Land Board has to do on the receipt of a statement from the State Land Board. The Taluk Land Board has to cause the details of the statement to be verified, ascertain whether the declarant holds or owns any other land and by order determine the extent and identity of the land to be surrendered. Sub-section (6) of S. 85 lays down in what manner the identity of the lands to be surrendered is to be determined. It says that in so determining the identity of the land the Board shall accept the choice indicated under Sub-section (2) or Sub-section (3A) by the declarant. But this rule is subject to the proviso that if the Taluk Land Board has reason to believe that the person whose land is indicated to be surrendered has no good title to that land, or the land indicated to be surrendered is not accessible or the Taluk Land Board considers for any other reason to be recorded in writing that it is not practicable to accept the choice or to take possession of the land, the Land Board shall not be bound to accept such choice. There is a further proviso to the effect 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.

6. I may, in this connection, note the broad scheme provided u/s 85 (8) of the Act. After a final order has been passed under Sub-section (5) or under Sub-section (V) of Section 85 of the Act, it enables "any person interested" to move the Taluk Land Board to set, aside the order subject to its satisfaction of the condition mentioned in Section 85 (8). On the Land Board being satisfied, it has to set aside the final order and proceed once again either under Sub-section (5) or under Sub-section (7) of Section 85. The expression "person interested" in Section 85 (8) is an expression of wide amplitude. A person, who has a claim over any part of the land involved in the ceiling case is a "person interested". If he can present material to make out a prima facie case and satisfy the Land Board regarding the other conditions mentioned thereto, he is entitled to have the order in the ceiling case set aside and to have his claim investigated and adjudicated under Sub-section (5) or (7) of Section 85 of the Act.

7. It is always open to a person claiming right in the land involved in a ceiling case to appear before the Land Board in response to an individual notice or public notice under rule 12 of the Kerala Land Reforms (Ceiling Rules) 1970. Even in the absence of such notice, if he otherwise comes to know that the land in which he is interested is involved in a ceiling case, he can appear before the Land Board. He can put forward his claim or contention. For example, if he is a tenant of the land under the person involved in the ceiling case he can put

forward his claim and contend that right of the person involved in the ceiling case has vested in the Government on the notified day, that is 1-1-70. If the claim of tenancy is upheld, Land Board will delete the land from the account of the person involved in the ceiling case and the latter will not be liable to account for the same or surrender the same. In such a case, the claimant is no longer a person "interested" in land involved in the ceiling case and naturally he has no locus standi to be heard by the Land Board in deciding whether the option or choice exercised regarding surrender is to be accepted or not. If, on the other hand, claim of tenancy is rejected, he loses his status as a person "interested"; that is because the "interest" he set up is rejected. He cannot any longer have a right to be heard in deciding the acceptability of the option.

8. If the claimant contends that he is a co-owner of the land along with the person involved in the ceiling case, it is open to him to contend that only the fractional share of the person involved in the ceiling case and not the entire extent of the land can be put in the latter's account. If this claim is accepted only the fractional share will be taken into account and the remaining share or the claimant's share will be omitted from the account. But thereby, the claimant will not cease to be a person "interested" for the purpose of second proviso to Clause (6) of Section 85. Since there has been no division by metes and bounds between the co-owners, he is "interested" in the entire co-ownership land. If the person involved in the ceiling case opts to surrender the whole or any part of the co-ownership land, the successful claimant may have to safeguard his interest in the land and will naturally have a right to be heard on the question of accepting the option. If the claim of co-ownership fails, he will lose his status as a "person interested" and "consequently lose his right to be heard in the matter of the option."

9. In the generality of cases, claimants appearing before Land Board are likely to have their say in regard to acceptability of option also, since the consideration of contentions of the persons involved in the ceiling case, claims of claimants and acceptability of option will take place in the presence of all of them and decision on all these controversies will find place in the final order; but where claims of claimants are to be rejected, their objections to the acceptability of option deserve no consideration. In a given case, the revising Court may "confirm other findings of Land Board and direct only reconsideration of option or give a fresh opportunity to give an option. In such a case, the unsuccessful claimant to rights such as tenancy right cannot be treated as a "person interested" in the land so as to be entitled to be heard in the matter of option as contemplated in the second proviso to Sub-section (6) of Section 85. His claim has already been rejected. What is in effect rejected is his claim to an "interest" in the land and as such he is no more a person "interested" in land. Such a person has no right to be heard in the matter of option. Hence it is not necessary to give him notice of hearing in the matter of option after remand, for, if he is to be heard, he can only urge contentions on the basis of his "interest" which has already been negated. Such a course is not contemplated u/s 85 (6) of the Act.

10. Learned counsel for the revision petitioners urged that if this view is accepted, the rule requiring persons "interested" to be heard in the second proviso to Sub-section (6) of Section 85 will be otiose. According to the learned counsel, there will not be any person "interested" left to be heard in the matter of option. This argument does not stand scrutiny. While all unsuccessful claimants will lose their status as "persons interested", the same cannot be said of all successful claimants. A successful claimant to title or tenancy will cease to be a person "interested" in the land involved in a ceiling case, since the land to which claim relates will be deleted from the account of the person against whom ceiling case is initiated. However a successful claimant to a right such as co-ownership will continue to be a person interested in the land involved in the case since a share in the land will be taken into account in the case, his interest may still be affected if the land in which he has co-ownership right is directed to be surrendered. At least: he is interested in the decision as to location of the portion of the land to be surrendered. There may be other cases also where a successful claimant continues to be interested in the land.

There is no error of law in the failure of the Land Board to issue notice to the revision petitioners of further enquiry regarding option. These revision petitions are dismissed but without costs.