

(1991) 01 KL CK 0028
In the High Court Of Kerala
Case No : S.A. No. 358 of 1982-A

Nanu Vasudevan APPELLANT
Vs
Kalikarthiayaniamma and Another RESPONDENT

Date of Decision : 16-01-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Kerala Land Reforms Act, 1963 — Section 31, 32

Citation : AIR 1991 Ker 253

Hon'ble Judges : L. Manoharan, J;K. Sukumaran, J

Bench : Division Bench

Advocate : B. Krishnamani, for the Appellant; A. Sivaramakrishna Iyer, P.N.P. Kaimal, P.B. Sahasranaman and K. Gopalan, for the Respondent

Judgement

Sukumaran, J.—Section 32 of the Kerala Land Reforms Act has been interpreted differently by judges of this Court. The conflict of views and the resulting confusion, understandably dim the vision of those having the duty to decide. Justice Kader noted the discomfiting discord in the judicial opinion and made an order of reference on 21-3-1984. We have to, and therefore proceed to, answer it.

2. The section which generated discord in judicial voice appears simple, at any rate at the first blush. Let us extract it :

"During the pendency of an application for determination of fair rent before a Land Tribunal, no Court shall entertain any suit for eviction of the applicant from the holding to which the application relates, or pass any order of injunction prohibiting him from entering the holding or pass any order staying the proceedings before the Land Tribunal."

3. The first interpretation came from Krishna Iyer, J. when he was sitting in this Court : Kadir Mohammed v. Augusthy Varghese 1969 KLT 739. In the very next year, Sadasivan, J. made a different approach in applying the section. Holding

that the section was attracted to the facts, the learned Judge adjourned the suit sine die. Five years later, a Division Bench indicated its inclination to agree with the main decision in *Mani Chacko v. Subromonian Moothathu* 1970 KLT 1022. That Bench, however, took the view that when an entertainment or institution of a suit is prohibited, it could not be received and adjourned, whether sine die or otherwise. The correctness of the latter observation was contested before Kader, J. The contest had a significant support of the observations of the Supreme Court, interpreting the word "entertain" (though occurring in a Sales-tax Act), in all its ramifications.

4. The law relating to land reforms is a dynamic one intended to give relief to the weaker sections of the society about whom particular care was directed to be taken by the Directive Principles of State Policy occurring in the Constitution of India. The hungry and angry tenant would not ordinarily tolerate the oratrical abstractions. A sagacious philosopher of recent times quoted the words of an ancient philosopher, to bring out the vital difference between theory and life. The sentence reads :

"Mephistopheles tells the young student that theory is grey but the tree of life is green, (See *In Praise of Idleness* by Bertrand Russell, Unwin Paperbacks 1984 Edn., Page 34)

5. We have to deal with a problem of the greenery of life.

6. The ingredients to attract the bar of Section 32 are : (1) There must be, before a Land Tribunal, the pendency of an application for determination of fair rent. (2) The application must be before a Land Tribunal. (3) There must be suit before the civil court a suit for eviction. (4) The eviction must be of the same person as figures as the applicant before the Land Tribunal. (5) The suit must be in respect of the very land which is the subject matter of the fair rent application.

7. In the present case, there is no dispute that there was an application for the determination of fair rent before a Land Tribunal. The relief sought for in the plaint is for evicting the very person who is the applicant before the Land Tribunal, and from the very same land. The bar would get attracted to the facts is the first impression. Is it the best impression? The court has to halt and proceed in view of a differing sign board.

8. Krishna Iyer, J. held that the section is integrally linked with Section 31, which enables only a cultivating tenant or landlord to apply for determination of fair rent. An established status of cultivating tenant, according to the learned Judge, was therefore necessary and indispensable to attract the bar of Section 32. The concept of the word holding also buttressed the conclusion that the applicant before the Tribunal seeking fixation of fair rent, and the person sought to be evicted through the process of civil court alike should be a person whose status as tenant is established. We may note that subsequent to the above decision, the section itself underwent substantial alteration by Act 35 of 1969. The word "holding" occurring in the section was substituted by the word "Land". It has,

obviously, far reaching effect as it alters the contours and contents of the section.

9. We are of the view that the plain words of Section 32 do not justify a mix up with Section 31. The section has to be interpreted on its own terms. If at all, the difference in the phraseology between Section 31 and Section 32 should induce an emphasis on a less stringent requirement of Section 32. The section was intended to give relief to a harassed tenant. It was not the intention to permit parallel proceedings, one for fixation of fair rent before the Tribunal and the other for a suit for eviction before the court. The unmistakable intention of the Legislature was to lean in favour of the Tribunal and to exclude, to the extent possible, the civil court for solving the problems of land reforms. The bar u/ Section 32 is for a short while. That was only during the pendency of an application for fixation of fair rent. By any standards, the application should not consume a long time for a final adjudication. The status of the applicant can be disputed by the landlord. That, however, is an incidental question which will arise in the application for fair rent. Such situations are not special or peculiar to the Land Reform Legislation. In a variety of legislations, similar problems have arisen, such as for example under the Industrial Disputes Act. It was a workman that was entitled to reliefs under many situations. Merely because the status of the applicant as workman is disputed, has the application to be thrown out? The extreme contention has been rejected conclusively and consistently. No doubt, the Tribunal will have to enter a finding whether a person is a workman or not, before it proceeds to grant reliefs to one who claims them before it. That does not mean that the workman will have first of all to establish his status as a workman and then come before the Tribunal. The undisputed and indisputable jurisdiction of an Industrial Tribunal to try and pronounce upon the incidental question of the status of the applicant is too settled to need support with judicial decisions.

10. In relation to Section 31, a person who claims to be a cultivating tenant can sustain an application thereunder. As noted earlier, in case the status is disputed, the onus of establishing the status of cultivating tenant will be on the applicant. That stage is reached only much later than the filing of the application. Once an application is filed, it must be deemed to be pending till final orders are passed. The matter can be disposed of in the light of the objection from the affected party. A possible delay in filing the objection, or taking up of the matter for consideration, will not detract the pendency of the application. Even u/s 31, therefore, an established status of a cultivating tenant is not required as a condition precedent for one to walk into the Tribunal and file his application. Krishna Iyer, J. felt that wayfarers could not be permitted to block the progress of an eviction suit. Equally so, one who is wedded to the soil but who does not have with him a certification of his cultivating tenancy status is not barred his entry to the Tribunal from which he is legitimately entitled to have the reliefs reeled out by law. To make his entry into the Tribunal itself dependent upon a pass of tenancy decree is to mock at a benevolent social legislation. No court shall permit it. We have no doubt in our mind that a person could make an

application u/s 31 even when he is unequipped with an acceptable declaration of a legal authority on his cultivating tenancy status.

11. If, as we have declared, any person could make an application for the determination of the fair rent, when he is asserting a cultivating tenancy right, much more is not necessary than the filing of a petition before the Land Tribunal for fixation of a fair rent, to make out a situation of pendency of an application for fixation of a fair rent, referred to in Section 32.

12. Once a pendency is posited, the only further question is to find out whether it is a suit for eviction from the land. The bar u/s 32 is to give only a temporary relief from the harassment of legal proceedings. If the status is denied by a Land Tribunal the bar u/s 32 is lifted. If his claim of cultivating tenancy is upheld, even otherwise a suit for eviction will be not maintainable. We are of the view that insisting on an establishment of the status of tenancy for invoking Section 32 is totally opposed to the Scheme of the Act which intends relief for the tenancy class. The learned Judge observed;

".....the whole object of Section 32 is to insulate actual tenants against threats of eviction so that they may freely apply for fixation of fair rent of their holdings."

With great respect, we hold that this is a very short range of view of the intendment of Section 32. It has become unnecessary for us to labour this point any further, in view of the later pronouncement of the Full Bench of this Court in V.N. Narayanan Nair and Others Vs. State of Kerala and Others, Para 65 succinctly summarises the rival view points and the clear conclusion:

"Section 32 says that during the pendency of an application for determination of fair rent before a Land Tribunal no court shall entertain any suit for eviction of the applicant from the land to which the application relates or pass any order of injunction prohibiting him from entering the land or pass any order staying the proceedings before the Land Tribunal. This section is obviously designed to prevent the institution of suits by landowners as a counterblast to applications by tenants for the determination of fair rent. We take it that the word, "eviction" here has not the meaning attached to it by Section 2(12) of the Act, namely, recovery of possession of land from a tenant, and that the section applies also to suits for recovery of possession on the allegation of trespass. Such a suit implies that the applicant for determination of fair rent is in possession of the land, and that being so, we can see no objection to a suit for eviction being stayed pending disposal of the fair rent application. While there might be false claims of tenancy there might equally be false denials of tenancy. u/s 101(3) of the Act, the Land Tribunal is competent to decide on claims of tenancy for the purpose of disposing of applications for the determination of fair rent. That being so, it is desirable that there should not be parallel proceedings in a civil court, although ultimately the dispute might be one for a civil court to decide. If suits are allowed pending the disposal of the fair rent application, such suits might be filed by way of harassment and will, in any case, delay the proceedings before the Tribunal."

13. The above decision was noted by Sadasivan, J. while interpreting Section 32 in 1970 Ker LT 1022 supra. The learned judge observed :

"The Full Bench decision of this Court in V.N. Narayanan Nair and Others Vs. State of Kerala and Others, para 65 is a direct answer to this contention."

It is somewhat surprising that the decision in Kadir Mohammed v. Augusthy Varghese, 1969 Ker LT 739 apparently had not been brought to "the notice of the learned single Judge, for, there is no reference to it in the decision of Sadasivan, J.

14. Five years later, a Division Bench considered the identical question in Kesavaru Padmavathi Antharjanam Vs. Muhammed Kunju Shamsuddin Kunju, A suit for declaration and recovery of possession of property filed during the pendency of an application for fixation of fair rent was held to be barred u/s 32 by the trial court. The Division Bench dismissed the appeal. The two decisions on which heavy reliance was placed by Krishna Iyer, J. in 1969 KLT 739 supra were specifically referred to by the Division Bench. The Division Bench noted that there was a significant amendment in the wording of Section 32, when the word "land" was substituted in place of "holding"; and proceeded to observe:

".....after the amendment, the appellant is no longer justified in contending that the suit can be proceeded with. The bar created by the Section is against the very entertainment of the suit itself, and after the amendment there seems to be little justification to draw a distinction between suits for eviction of tenants and of those claiming to be entitled for protection as tenants."

15. In the light of the above discussion, we have no hesitation to declare that the decision in 1969 KLT 739 does not lay down the correct law. Nearly three decades after the amendment of that section, the question may not recur as frequently as in early days. It is unlikely that many applications for fixation of fair rent would be pending even now. The problems may not be posed constantly and frequently. Yet it is better to clear the cupboard.

16. The only further question is about the scope of the term "entertain". The legal position is now clearly established by the pronouncement of the Supreme Court in Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, . The word "entertain" means not "receive" or "accept" but "proceed to consider on merits". What is therefore prohibited u/s 32 is admitting the suit for consideration.

17. Sadasivan, J. was correct, in taking a pragmatic view in the case which arose for the consideration of the learned Judge. As noted earlier, a suit had been already filed in that case. Section 32 prohibited its entertainment. It has been filed but had not been admitted to consideration. Adjournment of the case sine die was therefore in accord with the spirit and substance of Section 32 as understood in the light of the principles laid down by the Supreme Court. The decision of the Supreme Court in Lakshmi Rattan Engineering Works Ltd. Vs.

Asstt. Commr. Sales Tax, Kanpur and Another, supra had not been brought to the notice of the Division Bench which decided Kesavaru Padmavathi Antharjanam Vs. Muhammed Kunju Shamsuddin Kunju, With great respect, the Division Bench in Kesavaru Padmavathi Antharjanam Vs. Muhammed Kunju Shamsuddin Kunju, supra erred in its adverse comment against the decision of Sadasivan, J. in 1970 KLT 1022 supra. We shall now apply the emerging principles to the actual facts of the case

18. We are constrained to feel that this long pendency of the case could have been happily avoided, if only the court had been effectively assisted with binding decisions of this Court or of the Supreme Court, whenever a live matter of general import and implication, arises for the considered decision of this Court. We have already indicated how a decision on the identical section rendered only the previous year, had been missed by Sadasivan, J. in 1970 K.L. T. 1022 supra, Similarly the decision of the Supreme Court, and the decision of Krishna Iyer, J. had not been brought to the notice of the Division Bench which decided : Kesavaru Padmavathi Antharjanam Vs. Muhammed Kunju Shamsuddin Kunju, . An expansive and expanding world of precedents, doubtless casts an onerous burden on the legal profession. The emergence of law reports reliable and adequate, could be traced back to the 16th century. The Judge also has a great responsibility. It has been opined that the judge is "required by convention and a conception of justice to make decisions in line with previous cases which justify his conclusions objectively....."(See "An Introduction to Law" by Phil Harris, Page 189). A short fall in the performance of the duties of the Bar and of the Bench, can create avoidable and embarrassing problems as the one unfolded in this case.

19. The suit herein was one for declaration of possession initially. There were proceedings between the defendants herein and the plaintiff u/s 145 of the Criminal Procedure Code. They ended in favour of the defendants. This necessitated the civil suit. In the light of the finding of the criminal court, recovery of possession had necessarily to be sought. The suit was filed on 16-7-1968. The application for fixation of fair rent had been made by the 3rd defendant on 12-6-1968. Clearh, an application for fixation of fair rent was pending at the time of the institution of the suit. In the view we have taken, that suit could not be taken into consideration by the civil in view of the bar u/s 32. That was, however, overlooked by the trial court. It took the evidence in the matter; and on the basis of the findings decreed the suit. That decree was reversed in appeal. Parties were before this Court in S.A. 490 of 1976. This Court allowed the second appeal and directed the appellate court to consider the maintainability of the suit u/s 32. Even thereafter, the court below has taken the view that the suit is maintainable.

20. The bar u/s 32 is that the court shall not entertain the suit. The word "entertain" as interpreted means shall not admit to consideration". The disability of the court is not in relation to mere receipt of the plaint or about the filing of the suit as such, but about an effective consideration of the question. In

proceeding to trial and to pronounce on the question, the court acted without jurisdiction. That was not permissible. When consideration itself was tabooed, it was impermissible to stray far beyond, and to make a declaration. Trying the case and passing a decree were prohibited acts. Those exercises lack legal efficacy. We declare so. The next follow up step would be to declare that the decrees of the court below are of no legal validity, and to set them aside on that ground. We do so.

21. Parties were unable to place before us any material as to the final fate of application for fixation of fair rent. So long as there is nothing to indicate that the application had been finally disposed of, the admitted pendency of the application has to be assumed as subsisting. In such a situation, the consideration of the issue by the trial court, the decree passed therein, and affirmation thereof by the Appellant Court, all will be exercise without an endowment of legal authority. Those will, therefore, stand set aside. It will be open to the trial court to proceed afresh in the matter, if the fair rent application has been dismissed, and consequently there is a cessation of the pendency of the application before the Land Tribunal. The award of further reliefs will be dependant upon various other circumstances and developments, difficult to be delineated definitely in the absence of materials. The court can modulate its proceedings in the light of the factual situation which emerges and on the application of the relevant provisions of the Kerala Land Reforms Act or other laws. The parties shall appear in the trial court on 4-2-1991.

22. The Second Appeal is disposed of as above. There will be no order as to costs.