

(1972) 11 KL CK 0022
In the High Court Of Kerala
Case No : C.R. P. No. 679 of 1972

Penakkot Ayisha

APPELLANT

Vs

Kodachery Thazam Pottayil Kunhathuithy

RESPONDENT

Date of Decision : 20-11-1972

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 105A(2), 75(3), 80B

Citation : (1973) KLJ 327

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : P. Ramakrishnan Nair, for the Appellant; Joseph Franklin, for the Respondent

Judgement

G. Viswanatha Iyer, J.—The respondent in an application before the Land Tribunal for purchase of kudikidappu is the revision petitioner. According to the applicant, she is a kudikidappukari entitled to apply for purchase the kudikidappu under S. 80B of the Land Reforms Act. On that basis, an application was put in before the Land Tribunal. The revision petitioner who was respondent, took objection to this application mainly on two grounds. The first objection was that the applicant is not a kudikidappukari. The building that she is in occupation, was constructed about 10 years back at a cost of Rs. 2,500 and secondly that the respondent is having only less than 1 acre and therefore, the application for purchase of kudikidappu is not maintainable before the expiry of two years provided for the respondent to make an application before the Government for acquisition of other land to which the kudikidappu may be shifted. The Land Tribunal after this objection was received, directed an inquiry to be made by the Revenue Inspector as regards the value of the building. The Revenue Inspector submitted the report dated 28-1-1971 in which the value of the building was stated to be Rs. 300/-. This assessment was objected to by the revision petitioner, and the revision petitioner, by a separate application, moved the Land Tribunal for issuing a commission to any advocate to make a local inspection and submit a report as regards the value of the building. That was allowed. The Advocate-Commissioner

made a local inspection and submitted a report and an account on 3-3-1971. As per his account, the building is about 6 years old and worth Rs. 809.50. When this report was received, the Land Tribunal even without any motion from the applicant passed an order on 4-3-1971 which reads thus:-

Petitioner present. Respondent through Advocate. Commission report received (valued more than Rs. 750) - Land Tribunal to inspect the site and house.

and the case was adjourned to 22-3-1971. On 22-3-1971 in the order sheet (maintained as per R. 103 of the Tenancy R. 1970) the Land Tribunal made the following order:

Respondent through Advocate. Land Tribunal to inspect on 7-4-1971. Adjourned to 12-4-1971.

On 12-4-1971 this is what is entered in the order sheet:

Petitioner present. Respondent through Advocate. Land Tribunal inspected. The value of the house at the time of construction is less than Rs. 750. Petition for shifting not filed in time. Petitioner is a kudikidappukaran. Special Revenue Inspector will inspect and value 10 cents of land in the present kudikidappu with all details. Adjourned to 29-4-1971.

Again, this is what is written on 29-4-1971 in the order sheet:

Petitioner present. Respondent through Advocate. Special Revenue Inspector's report received. There is objection. Adjourned to 31-5-1971.

On 31-5-1971 the respondent filed objection to the Revenue Inspector's second report. On the same day the Land Tribunal passed the order allowing the petition for purchase of kudikidappu, and directed the deposit of the instalments as provided for under the Act. Against this order an appeal was filed before the Appellate Authority. The Appellate Authority confirmed the order of the Land Tribunal and dismissed the appeal. It is against this that the present revision petition has been filed.

From what has been stated above it can be seen that the Land Tribunal has come to the conclusion that the petitioner is a kudikidappukari on the basis of the local inspection made by the Land Tribunal. In this connection I may also state that as per the Land Tribunal's local inspection report the building is worth Rs. 570/- and deducting certain amount for depreciation the value will be only round about Rs. 300/-. It is this inspection report that has been made use of by the Land Tribunal to come to the conclusion that the building was valued less than Rs. 750/- at the time of construction and that the petitioner therefore is a kudikidappukari. The Land Tribunal before making the local inspection did not pass any order as to why the Advocate Commissioner's report cannot be accepted and even in the order passed on 31-5-1971 he did not state any reason why the Advocate Commissioner's report cannot be accepted. He only observed that there is a discrepancy as regards the age given in the report. If there is a

report as regards the value of the building before it is considered or acted upon it is open to both the parties to take such objections as they deem proper and if necessary, examine the commissioner and try to show that their objections are well founded. When the Land Tribunal himself makes the local inspection and makes a report it will be rather very embarrassing for any of the parties to take objection to that report and let in evidence regarding their objection. If they went to substantiate their objection, they may have to examine the Land Tribunal and question the basis of his conclusion as regards the value which he has fixed. It is needless to say that he himself is the person who has to decide this question. In such a situation the Land Tribunal should not have based a conclusion on his local inspection. The rules framed under the Act do not warrant such a step by the Land Tribunal.

2. The relevant provisions of the Act and the Rules framed under that may be noticed in this connection. S. 80A to 80G only direct that an enquiry as may be prescribed by rules should be made and orders passed on the application. S. 105A(2) allows the Land Tribunal to depute officers appointed under sub-section (1) of that Section to make a local enquiry, investigation or inspection and collect data. Their report and records "submitted by them will be evidence. Sub-section (3) to that Section allows the examination of these officers by the Land Tribunal. R. 82 and 83 of the Rules permit an enquiry to be made through a member of the staff of the Land Tribunal to ascertain the details referred to in those rules. R. 92 enables the Land Tribunal to issue a commission. The reports of the member of the staff and of the commissioner can be objected to. These persons can be examined and cross-examined and the Land Tribunal can either accept or reject their report in passing orders under S. 80B. The only provision which enables a local inspection to be made by the Tribunal is R. 137. That rule reads as follows:

137 Power to inspect. The Land Tribunal or the Land Board or any other authority or officer may, at any stage of the proceedings, inspect any property or thing concerning which any question may arise.

This corresponds to Or. 18 R. 18 CPC. which is as follows:

18. Power of Court to inspect. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

3. In interpreting 4 of Or. 50 of the Rules of the Supreme Court (similar to Or. 18 R. 18 CPC. and R. 137 of the Tenancy Rules) Lord Alverston C.J. in *London General Omnibus Co. Ltd. v. Lavell* ((1901) 1 Ch.D. 135 at 138), observed as follows:

It is quite true that by R. 4 of O. 50, it is provided that the judge may inspect "any property or thing concerning which any question may arise," in the action; but I have never heard it said, and speaking for myself, I should be very sorry to endorse the idea, that the judge is entitled to put a view in the place of evidence. A view, as I have always understood, is for the purpose of enabling the tribunal to understand the questions that are being raised, to follow the evidence, and to

apply the evidence.

4. The Privy Council in ILR. 31 Bom, 381 reversed the decision of the Bombay High Court in appeal solely on the basis of the local inspection made by the Judges. All the High Courts in this country have followed this principle. The Supreme Court recently had occasion to refer to this point in Ugamsingh and Mishrimal Vs. Kesrimal and Others, and their Lordships proceeded to decide the case before them accepting this principle as correct. At page 838 their Lordships observed thus:

The judgment in our view is, not based solely on the result of personal inspection made by the Trial Judge, which Inspection was for the purposes of, understanding the evidence in the case and has been so used by the Trial Judge. We must therefore, reject the contention of the learned Advocate for the appellants that the finding in respect of the idol is vitiated. In this view it is not necessary to deal with any of the decisions referred to before us.

The same interpretation must be given to R. 137 as it conforms to reason and fairplay in the determination of rights of parties by any Tribunal whether it is a court or not. R. 137 does not enable the Land Tribunal to make use of his inspection report to base his conclusion. The object of this provision is only to enable the Tribunal to understand questions that are being raised and to follow and apply the evidence. The purpose of local inspection is not to bring fresh evidence on record or to substitute it for evidence but is only to assist in the appreciation of the evidence. Unfortunately this is not what has been done in this case. The Tribunal's conclusion is entirely based on its inspection report. Thus the procedure adopted by the Land Tribunal in basing his conclusion on his inspection report is clearly unjustified and illegal. It cannot be supported in law.

5. If the Land Tribunal's inspection report as regards the value of the building cannot be taken into account, then the only other evidence in this case as regards the value is the Advocate Commissioner's report which states that the value of the building is more than Rs. 750/-. in the nature of this case since this report has not been considered and a finding recorded by the Land Tribunal, I am not entering any finding as regards the "correctness of the value fixed by the Advocate-Commissioner. In the circumstances of this case, the conclusion arrived at by the Land Tribunal based on his own local inspection is clearly unwarranted and that order has to be set aside. The fact that there was an appeal against that order and the Appellate Authority dismissed that appeal is no ground to say that what has been done by the Land Tribunal is correct. Even in appeal there has not been a proper consideration of the evidence in the case. If the Advocate-Commissioner's report after consideration is not acceptable for any reason, it will be open to the Land Tribunal to direct a fresh report to be prepared as regards the value of the building.

6. The other contention which was raised by the respondent-revision petitioner is that she has got only less than one acre of land and therefore, this application

for purchase of the. kudikidappu, should not have been entertained before the expiry of two years within which she could apply before the Government for acquisition of another site to which the kudikidappu can be shifted. The Land Tribunal has, in the order sheet dated 12-1-1971, clearly observed that the respondent and her husband together have more than one acre of land. That has not been shown to be incorrect. They constitute a family and in calculating the total extent held by a person who is a member of a family the extent of the land held by any member of his family shall be taken into consideration (See S. 75 (3) Explanation (b) and Sec. 804 (12)(b)). Therefore, the revision petitioner is not entitled to reopen this question over again. Therefore, set aside the orders of the Land Tribunal and that of the Appellate Authority, and remand the matter to the Land Tribunal for a de novo consideration as regards the question whether the applicant for purchase of the kudikidappu is a kudikidappukari or not. There will be no order as to costs.