

(2026) 01 KL CK 1677

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29003 Of 2025

P.G.Thomas Tharakan

APPELLANT

Vs

State Land Board Represented By Its Chairman

RESPONDENT

Date of Decision : 14-01-2026

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Kerala Land Reforms Act, 1963 — Section 85, 85A, 86(1), 85(2), 85(5), 85(7), 85(8), 86

Citation : (2026) 01 KL CK 1677

Hon'ble Judges : C. Jayachandran, J

Bench : Single Bench

Advocate : M.Krishnakumar, Deepa Narayanan, Harikumar G Nair

Final Decision : Disposed Of

Judgement

C. Jayachandran, J

1. The petitioner seeks a direction from this Court to the concerned among the respondents for issuance of necessary orders divesting the petitioner's property, which has vested with the Government in terms of Section 85(5), read with Section 86, of the Kerala Land Reforms Act (for short, the K.L.R.Act), in view of the fact that petitioner's proposal, offering an alternate land, has been accepted and acted upon by the Government.

2. When the learned Senior Government Pleader points out a doubt as to whether vesting has taken place or not in terms of the Kerala Land Reforms Act, in which case only, the question of divesting arise; and also, in the context of the availability of statutory power, if any, for divesting a land, which has already been vested with the Government, this Court appointed Sri.Harikumar.G.Nair as Amicus Curiae.

3. Heard the learned Counsel for the petitioner; the learned Government Pleader and the learned Amicus.

4. The attendant facts:-

The petitioner's father was a declarant under Section 85A of the Kerala Land Reforms Act, 1963 before the 2nd respondent/Taluk Land Board in a ceiling proceeding. Pursuant to his death, the petitioner and his brother got impleaded and proceeded with the case. Orders were passed on 22/10/1977, determining the extent and identity of the land to be surrendered. The said order was revised on 22/12/1981 by the Taluk Land Board under Section 85(8) of the Kerala Land Reforms Act. Accordingly, the petitioner and his brother were held liable to surrender lands situated in survey nos. 616/2, 619/1 and 618 of Mampad Village (Nilambur Taluk), of which, the 5th respondent is the Village Officer. On 17/4/2012, the petitioner's brother, on behalf of the petitioner too, preferred a re-option statement to surrender another land, instead of the land ordered by virtue of the revised order dated 22/12/1981. Accordingly, 5.81575 acres of land situated in resurvey no.1 of Pullipadom Village of the same Taluk was offered. The revised option statement is produced at Ext.P1. The offer vide Ext.P1 was not acted upon, which persuaded the petitioner to file a Writ Petition before this Court as W.P(C)No.10905/2022, which culminated in Ext.P2 judgment. Pursuant to Ext.P2, the offer vide Ext.P1 was accepted, and the 4th respondent/Village Officer took possession of that land surrendered as per Ext.P1 re-option. Ext.P3 communication evidence the same. Inasmuch as, an alternate land was surrendered vide Ext.P1, which was accepted and acted upon by the Government, it is the petitioner's claim that the land which technically vests with the Government by virtue of the revised order dated 22/12/1981, to the extent substituted by Ext.P1, has to be divested, so as to bring back the ownership and possession to the petitioner and his brother. It is in the above factual backdrop that the necessity to examine the question of the property vesting with the Government, and the possibility of an Order directing de-vesting etc arose.

5. Learned Amicus would primarily submit that, for a correct understanding of the scope of Section 86 of the Kerala Land Reforms Act, reference to Chapter III, which deals with 'restriction on ownership and possession of land in excess of ceiling area and disposal of excess lands', is required.

6. Learned Amicus first invited this Court's attention to Section 82, which speaks about the ceiling area, depending upon the status of the declarant. Thereafter, Section 85 was referred to, and this Court has been taken in detail to the various provisions of Section 85. Section 85, it was pointed out, provides that, if a person owns or holds land in excess of the ceiling area as on the notified date, such excess land shall be surrendered, in the manner provided under the statute. Section 85(2) mandates the person owning or holding such excess land to file a statement within the prescribed period before the Land Board intimating the location, extent and such other particulars as may be prescribed of all the lands, including lands exempted under Section 81 owned or held by such person, and indicating the lands proposed to be surrendered. The course upon receipt of such statement under Section 85(2) is prescribed in Section 85(5), whereby, the Land

Board has to transfer such statement to the Taluk Land Board in order to verify the particulars mentioned in the statement, to ascertain whether the person to whom the statement relates owns or holds any other land, and finally to determine the extent and the identity of the land to be surrendered, by an order to be passed to that effect. If the person who holds such excess land fails to file a statement as required by Section 85(2), the remedy is provided under Section 85(7), where the Land Board again has to intimate that fact to the Taluk Land Board, and the Taluk Land Board, after necessary enquiry determine, by order, the extent and other particulars of the land, which is to be surrendered. So it was pinpointed by the learned Amicus that an Order comes in two stages; the first at Section 85(5), and then at Section 85(7), both by the Taluk Land Board. It is in the backdrop of the above two proceedings that Section 86 has to be interpreted, which speaks about vesting of excess land in the Government. Such vesting takes place on the determination of the extent and other particulars of lands to be surrendered under Section 85. Upon such determination, the ownership or possession, or both, as the case may be, of the land shall vest in the Government, free from all encumbrances, and Taluk Land Board shall issue an order accordingly, the third occasion, where issuance of an order is made mention of by the statute. The actual surrender takes place after the issuance of such Order under Section 86(1), as mandated by Section 86(2).

7. Coming to the facts, the learned Amicus would submit that the Order, which is made mention of in paragraph 3 of the Writ Petition, referred to as a revised Order dated 22/12/1981, has to be treated as an Order passed under Section 86 of the Kerala Land Reforms Act, and it may have to be presumed that an Order under Section 85(5), after giving an option under Section 85(2), would have preceded the revised Order dated 22/12/1981. The difficulty arises because, neither the Order dated 22/10/1977, nor the one dated 22/12/1981, has been produced before this Court. A final call in this regard can be taken only after seeing the orders, is the submission made by the learned Amicus. Relying on the law laid down in *George Joseph v. Taluk Land Board, Meenachil* [1976 KLT 917], learned Amicus would submit that Ext.P1, which accepted an option after 30 years from the date of revised Order, cannot be sustained in law. The learned Amicus would, however, submit that, inasmuch as Ext.P1 Order is neither challenged by the petitioner nor by the Government, the settled factual position can be left undisturbed. On the question of vesting, learned Amicus would submit that the vesting took place when the Order under Section 86 has been issued. If this Court is inclined to accept the revised Order dated 22/12/1981 as one passed under Section 86, then the vesting has already taken place and there is no provision under the scheme of the statute enabling divesting of the land. In this context, the learned Amicus would submit that the same has to be done by invoking this Court's constitutional powers under Article 226, especially taking into account the rights of the petitioner under Section 300A of the Constitution, as otherwise, it amounts to unjust enrichment for the Government and gross injustice to the petitioner.

8. This Court, on finding that the orders dated 22/10/1977 and 22/12/1981 are required to be perused -but have not been produced along with the Writ Petition - directed the learned Senior Government Pleader to produce the same. Accordingly, copies of the said orders have been made available before this Court, when the matter is taken up in the afternoon session. For the purpose of this Writ Petition, the revised Order dated 22/12/1981 alone is required and the same is, for the sake of convenience, marked as Court Ext.C1. The petitioner has produced a typed copy of this Order, and the same will stand marked as Court Ext.C1(a).

9. The following excerpts from Ext.C1 Order at page no.8 are relevant and extracted herebelow:-

"The ownership and possession of the land described in part D of this Order shall subject to the provisions of the KLR Act vest in govt. free from all encumbrances from the date of this Order.

Notice will issue accordingly to Sri.P.K.Tharakan to surrender possession of the above lands to the Tahsildar Shertallai, Vaikom and Ernad, failing which the Tahsildars shall take possession of the land or assume ownership thereof on behalf of the Government".

10. Part D of Ext.C1 is also extracted herebelow:-

"PART D

Particulars of the extent (in acres and cents) and identity of the lands to be surrendered after excluding lands taken possession u/s 86(5).

TALUK

VILLAGE

SURVEY NO.

EXTENT

WHETHER OWNED OR HELD

NAME AND ADDRESS OF THE PERSON BOUND TO SURRENDER

Shertallai

Thuravoor South

4/1A-23

0-67-000

P.K.George Tharakan, Ayyanattu Naduvile Veetil Parayil

Ernad

Mampad

616/2

619/1

618/-

8-04-575

Shertallai

Vayalar West

5/1-8

0-35-000

TOTAL

9-06-575

11. In this regard, it is relevant to note that, out of the three items of properties referred to in Part D of Ext.C1, the question of substitution in terms of Ext.P1 pertains to item no.2 alone, having an extent of 8.04575 acres. Out of the said extent of 8.04575 acres, land having an extent of 2.53 acres in Survey No.618 of Mampad Village, Ernad Taluk (presently Nilambur taluk) was surrendered. It is in respect of the remaining 5.81575 acres that the petitioner sought for substitution vide Ext.P1 and land having an equal extent in Pullipadom Village was surrendered. Thus, 5.81575 acres first above referred comprised in survey no.616/2, 618 and 619/1 of Mampad Village has to be divested in favour of the petitioner.

12. A perusal of the first above extracted portion of Ext.C1 would leave no room for any doubt as regards the vesting of the property covered by Ext.C1 order with the Government. This Court is in agreement with the above exposition of law made by the learned Amicus.

13. It remains a fact that the alternate proposal made vide Ext.P1 has been accepted by the Government, as could be seen from Ext.P3. Learned Senior Government Pleader would submit that the said land has been given to the landless persons under the Government scheme. It could be seen that the proposal vide Ext.P1 has been accepted, and acted upon by the Government. In such circumstances, if the property covered by Ext.C1, to the extent substituted by Ext.P1, has to remain with the Government, the petitioner will be deprived of both the lands, impinging his valuable rights under Article 300A of the Constitution, putting him on serious jeopardy. That apart, it amounts to unjust enrichment of the Government as well.

14. It is true that there is no provision under the K.L.R Act for issuance of an Order divesting a land, which has already been vested with the Government in terms of Section 85(5) of the K.L.R. Act. However, in an extraordinary situation like the instant one faced by the petitioner, this Court may have to extend

extraordinary relief, the failure of which would result in a travesty of justice. In the circumstances, this Court is inclined to invoke its powers under Article 226 of the Constitution, in directing the 6th respondent to pass necessary Orders divesting the above referred 5.81575 acres of land to the petitioner.

15. Learned Senior Government Pleader would submit that the Principal Secretary (Revenue) is the authority competent to issue an Order divesting the land, which has vested with the Government. According to the learned Government Pleader, the 6th respondent/State, represented by the Chief Secretary, may not be the appropriate person who could be directed to do the same. In the circumstances, the Principal Secretary, Department of Revenue, Government Secretariat, Palayam, Thiruvananthapuram- 695 001, is suo motu impleaded as the additional 7th respondent. Accordingly, the 7th respondent will stand directed to issue necessary orders divesting the Government's ownership and possession over 5.81575 acres in survey no.616/2, 618 and 619/1 of Mampad Village to the petitioner. The above direction shall be complied within a period of two months from the date of receipt of a copy of this judgment. The petitioner will produce a copy of the judgment before the additional 7th respondent, for compliance.

16. It was pointed by learned Senior Government Pleader that certain persons have trespassed into the said land. This Court need not make any observation in this regard, and the parties will be at liberty to initiate appropriate proceedings as per law, insofar as eviction of the trespassers, if any, is concerned.

17. This Court places on record its sincere appreciation for the substantive effort taken by the learned Amicus, Sri.Harikumar.G.Nair in submitting before this Court with clarity, the nuances and requirements of Chapter III of the Kerala Land Reforms Act, especially in the context of vesting under Section 86 of the Act.

This Writ Petition is disposed of as above.