

(1987) 05 KL CK 0017
In the High Court Of Kerala
Case No : C.R.P. No. 3529 of 1981

Poulose Chacko and another

APPELLANT

Vs

Taluk Land Board and another

RESPONDENT

Date of Decision : 28-05-1987

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(5), 81, 81(1)(q)

Citation : (1987) KLJ 697

Hon'ble Judges : P. K. Smamsuddin, J;P. C. Balakrishna Menon, J

Bench : Division Bench

Advocate : C Joseph and J. Therattil, for the Appellant;

Final Decision : Allowed

Judgement

Balakrishna Menon, J.—As per the impugned order of the Taluk Land Board, Kodungallur dated 31-10-1981 the petitioners were directed to surrender 8.61 acres as excess land in the possession of their family. Their contention that 17.07 acres comprised in Sy. Nos. 262/6 and 263 fall under the exempted category as a commercial site was not accepted by the Taluk Land Board. If the aforesaid area is liable to exemption, the petitioners are not liable to surrender any extent of land. The principal question therefore is whether the aforesaid extent of 17.07 acres is a commercial site liable to exemption under sec. 81 (1) (q) of the Kerala Land Reforms Act. An authorised officer was deputed by the Taluk Land Board to make a local inspection and report about the nature of the land. In his report dated 19-10-1981 it is stated:

The land in Survey No. 262/6 and 263 held by the declarant is a water-logged area. The whole area of 17.07 covered by the above Survey No. is principally used for prawn fishing. According to the certificate of the Fisheries Department produced by the declarant, it is seen that the Fisheries Department has issued licence for the prawn fishing for the entire area for the period from 1962-63 to 1980-81 The area covered by Survey Nos. 262/6 and 263 held by the declarant therefore fall under the exempted category being commercial area. The

admissibility of the claim may be decided by the Taluk Land Board.

Board without anything more has rejected the claim for exemption on the ground that the declarant has failed to show that the land is not used for any agricultural purpose. The Board takes note of the fact that water-logged areas are generally used both for agriculture and for prawn-fishing.

2. There is no specific finding that the disputed land is used for any agricultural purpose. M.P. Menon, J. in C.R.P. No. 2316/1977 has held that prawn-fishing is a commercial activity and if on the evidence adduced it is seen that the main activity and the main income relate to prawn-fishing, the land will be eligible for exemption. The same view is expressed by Chandrasekhara Menon J. in C.R.P. No. 2331/1977. Subramonan Poti J. as he then was, had in C.R.P. No. 1245/1975 taken the view that a rocky land used for quarrying purposes is not a commercial site eligible for exemption under sec. 81 (1)(q) of the Act. Since we are not in this case concerned with land used as a stone quarry, the decision in C.R.P. No.1245/1975 will not have any application in deciding the question whether water-logged areas principally used for prawn-culture and fishing would fall under the definition of a commercial site in sec.2(5) of the Act. We see no reason to differ with the view expressed by the two learned Judges of this Court in C.R.P. Nos. 2316/1977 and 2331/1977 that a water-logged land principally used for prawn culture and fishing is a commercial site liable to exemption under sec. 81(1) (q) of the Act.

3. It is no doubt true that in certain parts of the State there are lands used both for agriculture and for prawn-fishing. Such lands cannot be classified as commercial sites and will not qualify for exemption under sec.81 (1)(q) of the Act. The report of the authorised officer referred to above does not show whether the land is used for the purpose of agriculture. There is no finding by the Taluk Land Board that the land is used for any purpose other than prawn-fishing. The Taluk Land Board has its own machinery to collect data and to make verification regarding the nature of the land, as provided under the Act and the Rules. The Board has not verified whether the land aforesaid is used for agricultural purposes or whether it is principally a commercial site. The question requires reconsideration. We therefore set aside the impugned order of the Taluk land Board and remand the case for fresh disposal according to law and in the light of the observations and directions contained in this order. The petitioners are at liberty to adduce fresh evidence to substantiate their contention that the land is a commercial site.

The C.R.P. is allowed as indicated above. No costs.