
(1969) 10 KL CK 0009
In the High Court Of Kerala
Case No : W.A. No. 843 of 1969

Puthukudy Velayudhan

APPELLANT

Vs

Madathil Thazhath Kandan and others

RESPONDENT

Date of Decision : 16-10-1969

Acts Referred:

Kerala Scheduled Castes and Schedules Tribes Ordinance, 1966 — Section 5

Citation : (1970) KLJ 133

Hon'ble Judges : V.P. Gopalan Nambiyar, J; T.S. Krishnamoorthy Iyer, J

Bench : Division Bench

Advocate : V. Bhaskaran Nambiar, C.R. Natarajan, M.K. Ananthakrishnan and H. Sivaraman, for the Appellant; P.N. Rajan for Respondent 1 and Government Pleader for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

V.P. Gopalan Nambiyar, J.—This appeal is against the judgment of a learned Judge of this Court in O.P. No. 1456 of 1967. The petitioner in the writ petition is the appellant before us. He had leased a small plot of land with a hut thereon on monthly rent of Rs. 6/- to the 1st Respondent, a member of the scheduled castes on 5-2-1955. It is common ground that the hut was destroyed by fire. The exact date of such destruction does not appear from the records but was certainly before 6-1-1965. The 1st Respondent attempted to re-construct the hut; whereupon, O.S. No. 80 of 1964 Munsiff's Court, Quilandy was filed by the appellant to restrain him by an injunction from such re-construction. Ex. P-1 dated 6-1-1965 is the judgment in that suit. It was held therein that the hut belonged to the appellant, and had been leased to the 1st Respondent on a monthly rent of Rs. 6/- and that it had been destroyed by fire. The injunction as prayed for was granted. In disobedience of the injunction the 1st Respondent attempted to re-construct the hut for which he was directed to be arrested and detained in Civil Prison by order dated 14-9-1966. By order of Court dated 16-11-1966 certain structures constructed by the 1st Respondent were directed

to be demolished and removed. These will be seen from Exs. P-5 and P-6 produced by the appellant in this appeal, along with C.M.P. No. 11362 of 1969, which we have allowed. Ex. P-6 further contains an endorsement dated 16-11-1966: "property delivered after demolishing chamayam. Hence this petition is closed." After all these, the 1st Respondent filed an application before the 2nd Respondent u/s 5 of Ordinance (2) of 1966, replaced by Act 12 of 1966, (The Scheduled Castes and Tribes Prevention of Eviction Ordinance and Act). The said petition was allowed by the 2nd Respondent by Ex. P-2 order and the same was confirmed on appeal by the 3rd Respondent by Ex. P4 order. The writ petition out of which this appeal arises was to quash these orders. The learned single Judge observed:

I am unable to accept the petitioner's contention that the 1st Respondent must be taken to have been lawfully evicted from the property pursuant to the decree of the civil court, because the decree does not authorise eviction of the 1st Respondent but was merely one for granting a permanent injunction restraining the 1st Respondent from only putting a new structure on the property. It is therefore not possible to hold that the 1st Respondent must be taken to have been evicted from the property pursuant to a decree of the civil court. Even assuming for the sake of argument that he had been so evicted, such eviction would have been clearly contrary to the provisions contained in section 3 of the Kerala Scheduled Castes and Scheduled Tribes Ordinance 1966 (Ordinance 2/1966), which was subsequently enacted as Act 12 of 1966.

In this view, the learned Judge dismissed the petition.

2. We may at once state that if there was no eviction of the 1st Respondent then an application for restoration filed by him u/s 5 of Ordinance 2/1966 (and of Act 12/1966) would not be maintainable and would be liable to be dismissed on that one ground. We are however satisfied from the records referred to earlier, and in particular from Ex. P-6 that there was actual eviction of the 1st Respondent. This is also noticed in paragraph 2 of the counter-affidavit filed by the 3rd Respondent wherein it is stated that the 2nd Respondent received a representation from the 1st Respondent on 24-10-1966 alleging that he had been evicted from his kudikidappu and requesting for restoration of possession. It is therefore clear that there was an eviction of the 1st Respondent from his kudikidappu and an application for restoration was maintainable.

3. The question then is whether the 1st Respondent was entitled to restoration of possession and whether the impugned orders directing such restoration were lawfully passed. It is useful to extract the material portion of section 5 of Act 12 of 1966 (Section 5 of the Ordinance being in pari materia).

5. Cultivating tenants etc, entitled to restoration of possession--(i) any cultivating tenant or holder of a kudiyrippu or kudikidappukaran who is a member of any Scheduled Caste or Scheduled Tribe and who has been evicted from his holding, kudiyrippu or kudikidappu on or after the 1st April 1964, shall

be entitled to restoration of possession of his holding, kudiyruppu or kudikidappu, as the case may be.

(2) Any person who is entitled to be restored to possession of his holding, kudiyruppu or kudikidappu under sub-section (i) or any other person on his behalf, may make an application, either orally or in writing, within a period of one year from the commencement of this Act, or as the case may be, from the date of eviction, whichever is later, to the Revenue Divisional Officer having jurisdiction over the area in which the holding, kudiyruppu or kudikidappu, as the case may be, of the applicant or the person on whose behalf the application has been made is situate, for--

(a) the restoration of possession in cases where the eviction was made after the 1st April, 1964, but before the 5th July 1966; and

(b) the restoration of possession and prosecution of the offender in cases where the eviction was on or after the 5th July 1966.

(3) The Revenue Divisional Officer shall, on receipt of an application under sub-section (2) make or cause to be made necessary inquiries in respect of such application and if he is satisfied that the applicant or the person on whose behalf the application has been made is entitled to restoration of possession under sub-section (i), he shall by order direct the person in possession of the holding, kudiyruppu or kudikidappu, as the case may be, to deliver possession of the same to the applicant or to the person on whose behalf the application has been made within a period of thirty days from the date of service of the order:

Provided that if the application is made under clause (b) of sub section (2), the Revenue Divisional Officer shall also file a complaint before the First Class Magistrate having jurisdiction to try the offence u/s 4:

Provided further that no order under this sub-section shall be made unless the person who is in possession of the property has been given an opportunity of being heard in the matter.

* * *

5. Any person aggrieved by an order of the Revenue Divisional Officer under subsection (3) may, within a period of thirty days from the date of service of the order prefer an appeal to the Collector of the District and the decision of the Collector on such appeal shall be final.

* * *

Section 3 of the said Act in so far as it is material reads:

Prevention of eviction--Notwithstanding anything to the contrary contained in any other law or in any contract, custom or usage, or in any judgment, decree or order of court no person shall evict or attempt to evict a cultivating tenant or holder of a kudiyruppu or kudikidappukaran, from his holdings kudiyruppu or

kudikidappu if such tenant or holder a member of any Scheduled Caste or Scheduled Tribe:

* * *

We may observe that the non-obstante clause with which section 3 opens is absent in section 5; and we are unable to see how the said clause in section 3 can be given anything other than a prospective operation. The sections extracted above show that their protection can be claimed only by showing that there was eviction of a kudikidappukaran on or after a certain date, and not by merely establishing that a person was a member of the Scheduled Castes or Tribes. And yet the 1st Respondent seems to have been content to rest his case on this latter requirement and no more. Turning now to the definition of a kudikidappukaran in Act 1/1964, the same reads; (We are re-producing only what is material for the present purpose)

"Kudikidappukaran" means a person who has neither a homestead nor any land, either as owner or as tenant in possession, on which he could erect a homestead and--

(i) who has been permitted with or without an obligation to pay rent by a person in lawful possession of any land to have the use and occupation of a portion of such land for the purpose of erecting a homestead; or

(ii) who has been permitted by a person in lawful possession of any land to occupy, with or without an obligation to pay rent, a hut belonging to such person and situate in the said land,

But otherwise has no interest in the land; and "kudikidappu" means the land and the homestead or the hut so permitted to be erected or occupied together with the easements attached thereto:

Provided that a person shall not be deemed to be a kudikidappukaran if the aforesaid permission was granted after the 11th day of April 1957, by a mortgagee in possession or by a tenant from whom the land in which the kudikidappu is situate is liable to be resumed:

Provided further that a person shall not be deemed to be a kudikidappukaran if the aforesaid permission was granted in respect of any hut not belonging to him and situate--

(a) in a plantation; or

(b) in any area of land which is appurtenant to a mill, factory or workshop,

and in connection with the employment of such person in the plantation, mill, factory or workshop, unless he was, immediately before the commencement of this Act, entitled to the rights of a kudikidappukaran or the holder of a protected ulkudi or kudikidappu under any law then in force.

Explanation 1. For the purposes of this clause, "hut" means any dwelling house

which was constructed at a cost not exceeding four hundred rupees, or could have, at the time of construction, yielded a monthly rent not exceeding four rupees.

* * *

Explanation I is clear that if the hut was constructed at a cost exceeding Rs. 400/- or could at the relevant time have yielded a monthly rent exceeding Rs. 4/- it would not satisfy the definition of a "kudikidappu". Explanation I has been amended by the provisions of the Kerala Act IX/1967 and of Act V/1969 by substituting the figures "Rs. 500/-" and "Rs. 5/-" in the place of "Rupees four hundred" and "Rupees four" respectively at the relevant places which limit the value of the hut or its monthly rent. It is unnecessary to consider whether the provisions of these amending Acts have retrospective operation so as to affect proceedings commenced before their enactment; because, in the instant case the records disclose (vide Ex. P-1) that the monthly rent of the hut in question was Rs. 6/-, and the 1st Respondent has not established that the cost of construction of the hut was below Rs. 400/- or Rs. 500/- whichever be the relevant limit. This is sufficient to hold that the 1st Respondent is not a "kudikidappukaran" and therefore not entitled to the benefits of restoration conferred by section 5 of Act 12/1966.

4. This conclusion stands re-inforced by the conduct of the 1st Respondent in O.S. No. 80 of 1964. Ex. P1 judgment in the said suit, granting an injunction restraining the 1st Respondent from re-constructing the hut which had been destroyed, was on 6-1-1965. By that time Act 1/1964 had come into force, and Section 79 of the Act had conferred a right on a kudikidappukaran to repair and re-construct his "Kudikidappu" with the same or different material without increasing the plinth area. The provisions of the Act were to have overriding effect. It is surprising to us how in the face of this statutory provision, the 1st Respondent suffered an exparte decree for injunction to be passed against him in O.S. No. 180 of 1964. (--a surprise not relieved by his subsequent attempts to flout the injunction). This, - to put it no higher - only confirms our impression that he was not a kudikidappukaran. What is more, even after the proceedings evidenced by Ex. P1 and P5 and P6, we find from the files made available to us by the Government Pleader that the 1st Respondent himself was quite lukewarm, if not passive, about such rights as he had, while others were busily engaged, seeking and offering advice and fighting the battle on this behalf. Even after eventually filing - or being made to file - an application u/s 5 of Ordinance 2/1966 the 1st Respondent did not offer even a tittle of evidence to establish that he was in fact a "kudikidappukaran" and that the eviction had taken place on or after the relevant date. On the other hand, the necessary enquiries and the fishing out of material on his behalf appear to have been pursued as the files show by the 2nd Respondent who passed Ex. P3 order. We cannot help observing that the way in which this was done was a serious lapse from the standards which quasi judicial authorities like the 2nd Respondent are expected to observe.

In the circumstances, we have no hesitation to allow this appeal, set aside the order of the learned single Judge, and to quash Exs. P2 and P4 orders, O.P. No. 1456/1967 will stand allowed as above. We would have ordered costs against the Respondents; but in view of the very frank and fair attitude taken by the Government Pleader in stating that he cannot support the impugned orders (Exs. P2 and P4) we refrain from doing so, and direct the parties to bear their respective costs throughout.