

(2014) 08 KL CK 0093

In the High Court Of Kerala

Case No : Civil Revision Petition No. 202 of 2010 (C)

Ramaswamy Gounder

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 72, 74, 84, 84(4), 85(8)

Citation : (2014) 08 KL CK 0093

Hon'ble Judges : K. Harilal, J

Bench : Single Bench

Advocate : P.R. Venketesh, Advocate for the Appellant; Susheela R. Bhat, Special Government Pleader and Jibu P. Thomas, Government Pleader, Advocate for the Respondent

Judgement

K. Harilal, J.—The first petitioner had obtained an extent of 3 Acres of land comprised in Sy. No. 490/1, 1.26 Acres in Sy. No. 439/1 and 5 Acres in Sy. No. 490/1 in Chittur Taluk, Kozhipathy Village. The said land was taken on lease by one Rajamma, the daughter of Krishnankutty Mannadiyar in the year 1961. While so, the petitioner and his brother Chenniappa Gounder purchased those properties as per registered assignment deed Nos. 1333/1970 and 667/1972 of the S.R.O., Chittur. Thereafter, they obtained a janmam right over the said property as per the Purchase Certificate Nos. 745/1972 and 794/1972 issued by the Land Tribunal. Later, the first petitioner obtained rights of his brother Chenniappa Gounder as per registered deed No. 343/78 of S.R.O., Chittur. Thus, it is the case of the first petitioner that he has been in possession of the above mentioned property having a total extent of 9.70 Acres from 1970 and 1972 respectively.

2. The case of the second petitioner is that he had purchased an extent of 5 Acres of land comprised in Sy. Nos. 490/1 and 439/1 in Chittur Taluk, Kozhipathy Village as per registered janmam right and assignment deed No. 1051/78 executed at Chittur. The said land was a part of the land in respect of which his

predecessor in interest Anguswamy Gounder had obtained the certificate of purchase as per proceedings in O.A. No. 106/77 dated 1-6-1977 issued by the Land Tribunal, Chittur. Anguswamy Gounder was a tenant under Appuswamy Gounder and his wife Janaki Ammal. Thus, the second petitioner has been in possession and enjoyment of 5 Acres of land from 1978 onwards.

3. Both properties were included in the extent of land directed to be surrendered by the declarant Appuswamy Gounder. So both petitioners had earlier filed a petition under Section 85(8) of the Land Reforms Act claiming right over the said properties under the sale deeds. Even though the matter went up to this Court, they could not succeed in establishing their right over the property and they were constrained to surrender the said properties as assignees of the land which formed a part of the lands directed to be surrendered by the declarant assessee.

4. Subsequently, an amendment introducing Section 7E was brought into the statute as per Amendment Act 21 of 2006. According to the said provision, a person, who is in possession of any land not exceeding 4 hectares acquired by him or his predecessor in interest by way of purchase for valuable consideration from any person holding land in excess of the ceiling area is liable to be treated as deemed tenant and therefore such portion of land will be liable to be excluded. Therefore, the petitioners filed an application before the Taluk Land Board, Chittur, claiming protection under Section 7E of the KLR Act, which came into force with effect from 18-10-2006.

5. Thereafter the revision petitioners filed O.P. 12820/99 seeking a direction to the Taluk Land Board to consider their applications claiming right under Section 7E of the Act 21 of 2006. This Court passed an order in the above O.P. directing the Land Board to consider the petitioners' application on merits and also to keep auction proceedings in abeyance. Pursuant to the order passed by this Court, the Land Board again considered the claim of the petitioners under Section 7E of the Land Reforms Act and dismissed the applications on a finding that their applications do not deserve any consideration as the sale deeds were obtained directly from the declarant Appuswamy Gounder. The legality and propriety of this order are under in this Revision Petition.

6. The learned counsel for the revision petitioners submits that the Land Tribunal has miserably failed to appreciate the statutory mandate under Sec. 7E incorporated by Act 21 of 2006 with effect from 18/10/2006. For the mere fact that the land was transferred directly from the declarant, it will not affect an application under Sec. 7E. Sec. 7E only stipulates that the acquisition by way of purchase or other wise on payment of consideration ought to have been taken place during the period between 1964 and 2006 and it should be a part of the excess land to be surrendered by the declarant and must be below 4 Hectares. Similarly, the application shall not be hit by the proviso to Sec. 84(4) of the KLR Act. The petitioners' transaction satisfactorily proves the statutory requirements under Sec. 7E as well as the proviso to Sec. 84(4) of the KLR Act. But the Land Board, without application of mind over the facts and law in its correct

perspective, dismissed the petition on an unreasonable ground that the applications do not deserve consideration.

7. Per contra, the learned Special Government Pleader advanced arguments to justify the findings in the impugned order. According to the learned Special Government Pleader, the Land Board has considered the facts and law in its correct perspective and found that the facts proved do not satisfy the statutory requirements under Sec. 7E as well as the proviso to Sec. 84(4) of the KLR Act.

8. In view of the rival contentions, the short question that arises for consideration is, whether the dismissal of the petitioners' claim under Sec. 7E on the ground that the purchases were effected directly from the declarant, can be justified in view of Sec. 7E. Sec. 7E reads as follows:

"7E. Certain persons who acquired lands to be deemed tenants:

Notwithstanding anything to the contrary contained in S. 74 or S. 84 or in any other provisions of this Act, or in any other law for the time being in force or in any contract, custom or usage, or in any judgment, decree or order of any Court, Tribunal or other authority, a person who at the commencement of the Kerala Land Reforms (Amendment) Act, 2005, is in possession of any land, not exceeding four hectares in extent, acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area, during the period between the date of the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964) and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be deemed to be a tenant."

The statutory requirements under Sec. 7E to get protection under the said provision can be analysed as follows: (i) The person must be in possession of the land not exceeding four hectares in extent. (ii) That land must have been acquired by him or his predecessor in interest by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area. (iii) Such acquisition must be during the period between the date of commencement of the Kerala Land Reforms Act, 1963 and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005.

9. If the above requirements are satisfied, that person shall be deemed to be tenant, provided that his claim will not be hit by the provisos under Sec. 84(4) of the KLR Act. Coming to the instant case, the 1st petitioner purchased the property from one Rajammal, who got the property on lease from the declarant Appuchamy Gounder and his wife Janaki Ammal. The 1st petitioner acquired a total extent of 9.70 Acres of land by virtue of sale deed Nos. 1333/1970 and 467/1972 of SRO, Chittur. Since the purchase was from lessee who got fixity of tenure under Sec. 72, the 1st petitioner applied for purchase certificate before the Land Tribunal and the Land Tribunal has issued purchase certificate No. 748/1972 in O.A. No. 150/71. Thereafter, the 1st petitioner's brother released his right in favour of the 1st petitioner by virtue of Ozhimuri No. 343/78 of SRO,

Chittur. Going by the sale deeds, it could be seen that the above transfer of property was effected in the year 1972 from the lessee of the declarant for valid consideration. Admittedly, the declarant was holding land in excess of the ceiling area at that time. Hence I find that the transaction is perfectly justified under Clauses (i) to (iii) referred above. In short, the 1st petitioner has acquired the said land on consideration from the person holding land in excess of ceiling area. Thereafter, the title was perfected by the purchase certificate issued in favour of him under the provisions of the KLR Act. But the Land Board miserably failed to appreciate the said facts in its correct perspective. Needless to say, the Land Board has not made any attempt to discuss the validity of the sale deeds under Clause (ii) referred above. The Land Board has no finding to the effect that the 1st petitioner has not satisfied the requirements under Clauses (i) and (iii) referred above. Similarly, the Land Board has not made any finding to the effect that the claim of the 1st petitioner is hit by any of the provisos under Sec. 84(4) of the KLR Act. In the light of this discussion, I find that the 1st petitioner is entitled to get protection under Sec. 7E of the KLR Act and he shall be deemed to be a tenant under the above section.

10. Coming to the 2nd petitioner, he purchased 5 Acres of land in the year 1978 by virtue of sale deed No. 1051/1978 of SRO, Chittur, from one Anguswamy Gounder, who was a tenant under the declarant Appuswamy Gounder who was holding the land in excess of ceiling area. Thus, the land is transferred to the 2nd petitioner from the declarant and the acquisition was on valid consideration. If that be so, the said transfer of property also satisfies the statutory requirements under Clause (ii) referred above. In the case of the 2nd petitioner also, the Land Board has no finding to the effect that the transfer does not satisfy the requirements under Clauses (i) and (iii) referred above. Similarly, there is no finding to the effect that the 2nd petitioner's claim is hit by any of the provisos under Sec. 84(4) of the KLR Act. In short, I find that the 2nd petitioner also shall be deemed to be a tenant under Sec. 7E of the KLR Act.

11. Consequently, I find that both petitioners shall be deemed to be tenants under Sec. 7E of the KLR Act. The property involved in this revision petition is not liable to be surrendered under the ceiling case-C.C. No. 1088/73 on the files of the Taluk Land Board, Chittur, which was initiated against Appuswamy Gounder.

In the result, this revision petition will stand allowed.