

(1973) 08 KL CK 0029
In the High Court Of Kerala
Case No : C.R. P. No. 1130 of 1972

Ramavarma Raja

APPELLANT

Vs

The Land Board of Kerala

RESPONDENT

Date of Decision : 03-08-1973

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 1, 1(3), 2(44), 81, 81(1)

Citation : (1973) KLJ 867

Hon'ble Judges : George Vadakkal, J

Bench : Single Bench

Advocate : V. Vyasani Poti, M.R. Parameswaran and C.S. Vijayalekshmi, for the Appellant;

Judgement

George Vadakkal, J.—These two Civil Revision Petitions arise out of orders passed by the Land Board under S. 85 of the Land Reforms Act, 1964 (for short the Act) as it stood before its amendment by Act 17 of 1972. CRP. No. 1130 of 1972 is by the three partners (husband, wife and their daughter) of a firm, and is in respect of 4600 and odd acres of land. In CRP. No. 1146 of 1972 the petitioners are the husband and wife who are the 1st and 2nd petitioners in the other Civil Revision Petition. Therein the land involved is 300 and odd acres. Common questions of law are raised in both the Civil Revision Petitions regarding the scope and ambit of the provisions in the Act relating to restriction on ownership and possession of land in excess of ceiling area and disposal of excess lands which are provided for in Chapter III of the Act. The 1st petitioner in both the Civil Revision Petitions filed statements before the Land Board as required by S. 85(1) read with S. 85 (2A) (c) and (d). He therein claimed that large tracts of land are exempted lands, being plantations. The Board took the view that land converted into plantation after 1-4-1964 are not eligible for exemption. It is this decision that is challenged before me.

2. S. 82 (4) reads:

(4) Where, after the commencement of this Act, any class of land specified in

Schedule II has been converted into any other class of land specified in that Schedule or into a plantation, the extent of land liable to be surrendered by a person owning or holding such land shall be determined without taking into consideration such conversion.

According to the learned counsel for the revision petitioners the sub-section as it stands now came into force only on 1-1-1970, being a provision substituted by S. 12 of the Kerala Land Reforms (Amendment) Act, 1971, 25 of 1971. Under S. 1 (2) of that Amending Act the substituted provision shall be deemed to have come into force on 1-1-1970. The learned counsel further submitted that S. 82 (4) as it stood prior to the substitution did not contain the words "or into a plantation" which occurs in the present sub-section. The submission, therefore, is that S. 82 (4) is not attracted to cases where the conversion of land "into a plantation" was prior to 1-1-1970.

3. S. 82 (4) as it stood prior to its amendment by Act 25 of 1971 was as follows:

(4) Where, after the commencement of this Act, any class of land specified in Schedule II has been converted into any other class of land specified therein, the extent of land that may be owned or held by a family or adult unmarried person owning or holding such land at the time of the conversion shall be determined without taking into account such conversion.

Plantation is defined in S. 2 (44) of the Act as

any land used by a person principally for the cultivation of tea, coffee, cocoa rubber, cardamom or cinnamon and includes....

In part I of Schedule II as it stood prior to its amendment by the Kerala Land Reforms (Amendment) Act, 1969, 35 of 1969, lands other than nilams were classified into ten kinds. Classes 5 to 10 (both inclusive) in all the districts were rubber, tea, coffee, cardamom, cinnamon, and cocoa plantations. S. 82(4) and the schedule were amended by Act 35 of 1969. As amended by Act 35 of 1969, S. 82 (4) stood as follows:

(4) Where, after the commencement of this Act, any class of land specified in Schedule II has been converted into any other class of land specified therein, the extent of land that may be owned or held by a person owning or holding such land at the time of the conversion shall be determined without taking into account such conversion.

It will be noticed that under S. 82(4) as it stood prior to and after its amendment by Act 35 of 1969, "where any class of land specified in Schedule II has been converted into any other class of land specified therein", such conversion would not be taken into account or consideration in determining the extent (at the time of conversion) of the land of a person who owned or held such land. So long as all kinds of plantations were specified in Schedule II, S. 82(4) would be attracted to conversion of lands into plantations. But by Act 35 of 1969 which came into force on 1-1-1970 the original Schedule II was substituted by the present

Schedule II in which plantations are not specified. It was to remedy this that the present sub-s.(4) of S. 82 was substituted by Act 25 of 1971 with effect from 1-1-1970. The result is that both; prior to 1-1-1970 as well as after that date "conversion of any class of land specified in Schedule II" into a plantation cannot be taken into account or consideration in determining the extent of the land liable to be surrendered. The argument of the learned counsel for the petitioners that S. 82(4) is not attracted to cases where the conversion of land into a plantation was before 1-1-1970 is therefore without any force.

4. It was next argued by the learned counsel for the petitioners that since S. 83 and 85 of the Act came into force only on 1-1-1970 conversion of land into plantation prior to that date is outside the ambit of S. 82(4). The argument is that it is by these provisions (Ss. 83 and 85) that it was made obligatory on the part of a person not to own, hold or possess land in excess of the ceiling area, and to surrender excess land. According to the learned counsel the extent of excess land is to be determined with reference to 1 11970 whereafter alone a person is prohibited to own, hold or possess more land than ceiling area, and is directed to surrender land in excess of ceiling area. The learned counsel further submitted that therefore the words "after the commencement of this Act" in S. 82(4) is to be construed as meaning "after all the provisions in the Act have come into force" or in any event "after S. 83 and 85 came into force". The learned Government Pleader, on the other hand, submitted that there is no warrant for such an interpretation, that the words are clear and unambiguous, that the word "Act" in S. 82(4) means "Act" and nothing else, and so understood the Act came into force on 14-1-1964 when S. 1 came into force as per S. 1(3) of the Act.

5. The Act has been brought into operation piecemeal. There is an "appointed day" clause in the Act, viz., S. 1 (3) which is as follows:

(3) The provisions of this Act, except this section which shall come into force at once, shall come into force on such date as the Government may, by notification in the Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act. and any reference in any such provision to the commencement of this Act, shall be construed as a reference to the coming into force of that provision.

Under S. 1 (3) read with S. 3 of the Interpretation and General Clauses Act. 1125 and S. 5 of the Madras General Clauses Act, 1891, S. 1 of the Act came into force on 14-1-1964 when the Act was published in the Gazette. By virtue of the power conferred by the "appointed day" clause the Government as per notification SRO. 75 of 1964 dated 25-3-1964 appointed 1-4-1964 as the date on which S. 2 to 71 (both inclusive), 73 to 82 (both inclusive), 84, 99 to 108 (both inclusive) and 110 to 132 (both inclusive) shall come into force; and by notification SRO. 2/70 dated 1-1-1970 Government appointed 1-1-1970 as the date on which the remaining provisions of the Act shall come into force. By

another notification SRO. 5/70 dated 1-1-1970 Government fixed 1-1-1970 as the date with effect from which no person shall be entitled to own, hold or possess under a mortgage lands in excess of the ceiling area. The latter part of the proviso to S. 1 (3) is an interpretation clause. Under that part of the proviso "any reference in any such provision", (provisions which are to be brought into force by notification) "to the commencement of this Act" is to be construed as a reference to the "coming into force of that provision". But for this provision there would have been some force in the submission made by the learned counsel for the petitioners. In view of the aforesaid provision, the arguments advanced by the counsel on both sides need not be examined any further, for the words "after the commencement of this Act" in S. 82 (4) means construed in the light of the proviso "after the commencement of this section", viz., S. 82 (4). S. 82 (4), as already pointed out came into force on 1-4-1964. Though S. 83 and 85 came into force only later, by force of S. 82 (4) conversion of any class of land specified in Schedule II into plantation after 1-4-1964 cannot be taken into account or consideration in determining the extent of land liable to be surrendered

6. The learned counsel for the revision petitioners brought to my notice a decision of Krishnamoorthy Iyer J. in C.R. P. Nos. 1200 etc. of 1972. In those cases the question now before me did not arise at all. There the question was whether conversion of lands which were private forests (and therefore exempt under S. 81 (d) of the Act) into plantations subsequent to the coming into force of Act 1 of 1964 but prior to 1-1-1970 on which date S. 83 came into force, is hit by S. 82 (4). The petitioners therein claimed that those plantations are exempted lands under S. 81 (1). The learned judge held:

To attract S. 82 (4), It must be a class of land specified in Schedule II and the conversion of the same should have been to some other class of land specified in that schedule or into a plantation. I do not think that the respondent can derive any assistance in this Law from S. 82(4) of Act 1 of 1964. That Section is concerned only with the question of calculating the extent of land for the purpose of ascertaining the ceiling area under S. 83. In order to attract S. 82 (4), there must be a land which is not exempted from the operation of Chapter III of Act I of 1964. Private forest is an item exempted from the provisions of Chapter III by virtue of S. 81 of Act I of 1964. When private forests are converted into any other type of land, it is not a conversion of any land included in Schedule II of the Act. If so, there is no scope for applying S. 82 (4).

The learned Government Pleader rightly pointed out that that is not the case here. According to him all such lands which come within the purview of S. 81 of the Land Reforms Act have been exempted by the Land Board and those lands have not been taken into account in determining the ceiling area and the excess land to be surrendered. Mr. Vyasan Poti on behalf of the revision petitioners disputes this statement. The learned Government Pleader has pointed out to me Part B attached to the order which gives the details of the land exempted under

S. 81 (I) and (3). That area in C.R. P. No. 1130 of 1972 is 1530 acres; and in C.R. P. No. 1146 of 1972 the area of exempted lands is 63 and odd acres. Mr. Poti Submits there are some more lands which are exempted lands under S. 81.

7. The learned counsel for the revision petitioners invited my attention to another passage in the decision of Krishnamoorthy Iyer J. That passage is as follows:

The words "after the commencement of the Act" in S. 82 (3) will have to be interpreted in the light of the proviso to sub-section (4) of S. 1 of Act I of 1964. If so done the words "after the commencement of the Act" will only mean after 1-1-1970 when that provision came into force.

I do not think that the above passage in any way supports the revision petitioners in that it is with reference to S. 82 (3) and in view of the fact that earlier in the judgment the learned judge has specifically adverted to S. 82(4) and held that in order to attract that sub-section there must be land which is not exempted from the operation of Chapter III of Act 1 of 1964.

8. Another submission made by the learned counsel for the revision petitioners is that the Land Board has not by the orders under revision identified the lands to be surrendered. As an instance Mr. Poti pointed out to me Part D attached to the order of the Board in C.R. P. no. 1130 of 1972. He particularly drew my attention to the fact that the land to be surrendered in Sy. No. 53/1A is 132.50 acres. He then referred me to the opening portion of the order itself wherein the Board has stated that Sy. No. 53/1A has a total area of 700 and odd acres. The submission is, without anything more 132.50 acres of land which the civil revision petitioners are to surrender from out of R.S. No. 53/1A is not identifiable. It appears to me that this submission is correct. There is no identification as to wherefrom or from which portion of the survey number the area fixed as excess land is to be carved out. The learned counsel's submission is that such is the position with reference to other survey numbers also and that appears to me to be prima facie correct. Rules have been framed for working out the provisions of Chapter III, namely, Kerala Land Reforms (Ceiling) Rules, 1970. Under R. 13 an enquiry has to be held and thereafter the Land Board has to determine the extent and identity of the land to be surrendered. R. 17 provides that notice in Form 9 shall be issued after the determination of the extent and identity of land that is to be surrendered. By the notice in Form 9 the person to whom that notice is issued is directed to surrender "the lands mentioned in the subjoined Schedule". The third column in the Schedule to the notice is "Extent with description sufficient to identify the land". This presupposes that before the issue of notice and in pursuance of the enquiry under R. 13 the land to be surrendered has to be determined definitely and exactly. R. 19 and 22 to 24 referred to by the learned Government Pleader relate to a stage after the determination of the extent and identity of the land to be surrendered under R. 13. It is also not clear whether the petitioners have in the statements filed under S. 85 indicated the lands proposed to be surrendered as provided in S. 85(2), or S. 85(3A) read with S. 85(2). Under S. 85(6) the Board has to determine the identity of land to be

surrendered accepting the choice indicated under sub-sections (2) and (3A) of S. 85. If the petitioners have not already indicated the lands proposed to be surrendered, the Board will give them an opportunity to so indicate, and determine the identity of the land which is to be surrendered.

9. In these circumstances it is necessary to send back the cases to the Land Board for the limited purposes of identifying the lands that are to be surrendered and also to look into the claims of the revision petitioners that some more land will come within the purview of S. 81 and I hereby do so. The Board will look into and decide these matters in accordance with the provisions of the Act and the Rules, and in the light of what is stated in this judgment, and amend or modify the orders under revision accordingly. The revision petitions are disposed of as above. There will be no order as to costs.