

(1981) 10 KL CK 0007
In the High Court Of Kerala
Case No : C.R.P. No. 1979 of 1981-F

Rayirakurup

APPELLANT

Vs

Taluk Land Board and Others

RESPONDENT

Date of Decision : 16-10-1981

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 100A(2A), 100A(3)
Kerala Land Reforms Rules, 1970 — Rule 103A(2)

Citation : AIR 1982 Ker 123

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

Bench : Single Bench

Advocate : M.N. Sukumaran, N.A. Muraleedharan, B. Raman Pillai, K.K. Dinesan and Sunny Varghese, for the Appellant; Govt. Pleader, Shaji Oommen and P.M. Oommen, for the Respondent

Final Decision : Allowed

Judgement

P.C. Balakrishna Menon, J.—This revision is against the order of the Taluk Land Board, Thiruvalla dated 26-3-1981 directing the petitioner to surrender 69.95.358 acres as excess land in the possession of his family. The order on the face of it is defective and cannot be sustained in law.

2. After the Chairman has signed the order, there is an endorsement also signed by the Chairman as follows:

"The Taluk Land Board members present; they have not written any dissenting order even though they requested for time for the purpose on 26-3-1981 till 6-4-1981 and on 6-4-1981 till 20-4-81 Hence the above order will stand."

3. Section 100A of the Kerala Land Reforms Act makes provision for the Government to constitute a Taluk Land Board for each Taluk in the State, for performing the functions of the Taluk I and Board under the Act. Sub-sec. (2) of Section 100A provides that a Taluk Land Board shall consist of a Chairman who shall be an Officer not below the rank of the Deputy Collector appointed by the

Government and not more than six members nominated by the Government. Sub-secs. (2A) and (2B) are extracted below:

"(2A) Notwithstanding anything contained in sub-sec, (2), but subject to such rules as may be made by the Government in this behalf, the functions of the Taluk Land Board may be performed by the Chairman alone or by the Chairman and any one or more of the other members of the Board.

(2B) The member or members present at any meeting of the Taluk Land Board may deal with any evidence or memorandum taken down or made in any case during any previous meeting or meetings of the Board as if such evidence or memorandum had been taken down or made by him or them and may proceed with that case from the stage at which it was left at the last previous meeting in which that case was dealt with by the Board." Sub-section (3) indicates that the procedure to be followed by the Taluk Land Board in performance of its functions under the Act shall be such as may be prescribed. Section 2 (46) defines the expression "prescribed" to mean prescribed by rules made under the Act. Rules have been made relating to the procedure to be followed by the Taluk Land Board, Rule 103A is extracted below:

"103A. Orders of Taluk Land Board --(1) Except in cases in which the Chairman is debarred from taking part in any proceeding under Rule 131, every final order of the Taluk Land Board shall be written by the Chairman of the Taluk Land Board and circulated to the other members who may either agree to the order or write separate order agreeing or disagreeing to the order written by the Chairman,

(2) Where the members of the Taluk Land Board differ in opinion on any point, the point shall be decided in accordance with the opinion of the majority.

Provided that where the opinion at the members is equally divided on any point, the opinion of the Chairman on that point shall prevail."

Rule 101 enjoins the Taluk Land Board to maintain a Diary Register in Form No. 45 and Rule 102 requires a true extract of the Diary Register to be forwarded to the appellate and the revisional authorities along with the records of the case, when records are called for by those authorities. Rule 103 enjoins the Chairman of the Board to maintain an order-sheet having entries made on each day of the posting of the case noting the date, the purpose of the posting, the work transacted on the day and the date and purpose of the succeeding posting etc. The Taluk Land Board being a statutory authority constituted under the Kerala Land Reforms Act, has to transact its business in accordance with the Act and the Rules and its powers and jurisdiction are circumscribed by what is provided for under the Act and the Rules made thereunder.

4. The facts of the case disclose gross violation of the Rules in passing the impugned order by the Chairman of the Taluk Land Board. A draft statement dated 11-9-1974 was issued to the petitioner which shows that the total extent of land held by his family, is 149.37.858 acres, out of which an extent of 84.55

acres is in possession of strangers. That extent of land in the possession of strangers is also taken into the account of the petitioner's family, and after allowing permissible deductions by way of exemption u/s 81 of the Act, the proposal in the draft statement is for surrender of 127,48.850 acres of land as excess over the ceiling area applicable to the family of the petitioner. The petitioner is directed to file objections if any to the proposal contained in the draft statement. He filed objections contending inter alia that many of the items shown in the draft statement are not in the possession of his family, the family has no title over several of the items shown as in the possession of strangers, certain items are wrongly included in the draft statement and that the family is entitled to exemption of various items in the draft statement. An order was passed by the Taluk Land Board on 15-12-1974 directing the petitioner to surrender 124.48.858 acres as excess land in the possession of his family. This order of the Taluk Land Board was set aside by this Court in C. R. P. No. 182 of 1975 directing the Board to issue notices to all interested parties and decide the case afresh affording the parties a reasonable opportunity to file objections and substantiate the same. Notices were issued to the interested parties mentioned in the draft statement. A few others also appeared before the Taluk Land Board and altogether 93 persons filed claim statements relating to their title and possession of the various items of properties included in the draft statement as owned and possessed by the family of the petitioner. The order-sheet sent along with the records of the case shows an entry dated 7-8-1980 as follows:

"Final order passed by the Chairman Of the T. L. B. pronounced." The next entry is also dated 7-8-1980 which reads as follows:

"Advocate for the 31st claimant (V. C. Varghese) above appeared and produced evidence. The extent of 53 cents (Sy. No. 540/5-3) is excluded in terms of purchase certificate issued in S. M. 952/ 77 and assignment of otti (deed No. 1251/ 1977)."

The next entry in the order-sheet is dated 26-3-1981. As to whether there was any posting of the case after 7-8-1980 and before 26-3-1981 is not clear from the order-sheet sent up to this Court along with the records of the case. Item 16 in the list of records sent to this Court along with a covering letter dated 16-7-1981, signed on behalf of the Chairman of the Taluk Land Board, Thiruvalla is the "order dated 11-8-1980 of the Member of Taluk Land Board, Thiruvalla". A perusal of this order shows that it was a separate order by four Members of the Taluk Land Board in respect of the several points dealt with therein. The order of the majority allows exemption of certain items u/s 81 of the Act. After considering the interest of the declarant in certain other items it found that the declarant's family has only a fractional interest in several items shown in the draft statement and such fraction alone can be taken into account. The order of the majority of members allows exemption for rubber plantation, and contains also a decision classifying certain lands as "other dry", instead of coconut garden, as shown in the draft statement. Certain items are found to belong to a

local temple and not to the declarant's family. The 93 persons who had submitted claims before the Taluk Land Board are found to be in possession of the respective items of properties since long time past and those items are not liable to be included in the account of the petitioner's family. It is also found that the petitioner's family is entitled to retain 15 acres of land and the order requires the extent of land if any for surrender to be worked out in the light of the findings entered therein. The Taluk Land Board in this case consists of the Chairman and four Members. The order of the majority is signed by all the four members. As per the Rules quoted above, the Chairman is bound to issue a consequential order accepting the opinion expressed by the majority of Members. That has not been done in this case. Instead the order sheet shows that the Chairman had pronounced his own order on 7-8-1980. The dissenting order dated 7-8-1980 of the Chairman, is further seen re-issued under date 26-3-1981 and that order contains a statement quoted above that the Members of the Taluk Land Board took time for writing a separate order on 26-3-1981 till 6-4-1981 and on 6-4-1981 till 20-4-81 and since no such order was forthcoming, the Chairman has pronounced his own order dated 7-8-1980 under date 26-3-1981 as the order of the Board. It would appear that the constitution of the Board had changed on 6-2-1981 and the Members of the Board who wrote the order dated 11-8-1980 of the majority and had entered findings in opposition to the order of the Chairman dated 7-8-1980 were replaced by new members. The new members also, it would appear from the impugned order itself, wanted to write a separate order apparently differing from the view expressed by the Chairman. The Chairman seems to have treated the other members as parties to the proceedings instead of as Judges in their cause, and for their delay in writing a separate order and producing the same within the time allowed by the Chairman he has chosen to issue his own order as the order of the Board. The order of the Chairman itself shows as pointed out by learned Counsel Sri-M. N. Sukumaran Nayar appearing for the petitioner and Sri P. M. Oommen appearing for the additional 4th respondent that the claims of some among the 93 persons who had put forward objections to the draft statement, alone had been considered, and those of others are not even considered. I need hardly state that the procedure adopted by the Chairman of the Taluk Land Board is thoroughly irregular and is not in accordance with the procedure prescribed by the Act and the Rules. When the majority of the Members of the Taluk Land Board had passed an order dated 11-8-1980 expressing their opinion different from the findings of the Chairman, he was bound to issue an order in accordance with the majority opinion expressed in the order dated 11-8-1980. Instead, he has kept the matter pending until the constitution of the Board had been changed and even without allowing the new members an opportunity to write a separate order, has pronounced his own order as the order of the Taluk Land Board. The Supreme Court in the decision in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, stated at para 18 that:

"It is well settled that where a power is required to be exercised by a certain

authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden."

In the circumstances, I have no alternative except to set aside the order of the Taluk Land Board dated 26-3-1981 and direct the Board to issue a fresh order in accordance with the majority view expressed in the order of the majority dated 11-8-1980, in compliance to Sub-rule (2) of Rule 103A of the Kerala Land Reforms Tenancy Rules. Either party affected by the order may bring up the matter in revision before this Court on such grounds as are permissible u/s 103 of the Act.

5. The C. R. P. is allowed as indicated above. There will be no order as to costs.