

**(2015) 02 KL CK 0051**

**In the High Court Of Kerala**

**Case No :** Writ Petition(C). Nos. 31477/2011 (H), 34777/2011, 1037/2012, 30730/2013 and 4803, 24119 and 29343/2014

R.V. Devassia and Others

APPELLANT

Vs

The Sub Registrar, Peerumedu P.O. and Others

RESPONDENT

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**Date of Decision :** 13-02-2015

**Acts Referred:**

Kerala Land Reforms Act, 1963 — Section 120A, 81, 81(1)(a), 82, 83

**Citation :** (2015) 1 KHC 805 : (2015) 2 KLJ 17 : (2015) 1 KLT 825

**Hon'ble Judges :** A. Muhamed Mustaque, J.;S. Siri Jagan, J.

**Bench :** Division Bench

**Advocate :** Mathew John (K) and Domson J. Vattakuzhy, for the Appellant; Sanjeetha, Government Pleader, Advocates for the Respondent

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## **Judgement**

A. Muhamed Mustaque, J.—In these batch of writ petitions, a common question of law arises for consideration which is in respect of land exempted under the Kerala Land Reforms Act, 1963 (for short, the "KLR Act") and therefore, they are being disposed of together by a common judgment.

2. Section 81 of Chapter III of the KLR Act exempts certain categories of land from restriction on ownership and possession in excess of ceiling area. Some of the exempted categories are plantations, cashew estate, land owned by the Government, land comprised with factories, workshops etc.

3. These writ petitions are filed either by the owner of the exempted land or by the purchaser of the land from exempted land owners under the KLR Act. The Revenue Officials refused to effect mutation in respect of the land alleging violation of the KLR Act. In some cases, the Registering Authority insisted for no-objection certificate for the purpose of registration of document involving exempted land.

4. Section 82 of the KLR Act prescribes ceiling area of a land. Section 83 of the KLR Act declares that no person shall be entitled to own or hold or to possess

any land in excess of the ceiling area.

5. The learned Special Government Pleader Smt. Susheela R. Bhatt, with reference to S. 87 and 120A of the KLR Act, submitted in the course of the arguments that the authorities have sufficient power to take appropriate action to prevent fragmentation and conversion of the land to defeat the very objectives of the KLR Act.

6. The KLR Act is a comprehensive legislation relating to the land reforms in the State of Kerala. The exemption granted under Section 81 of the KLR Act is based on public interest. The exemption to plantations, cashew estate etc. is with a view to protect such agricultural activities which, by very nature require large extent of land to sustain its operation and benefits. Thus, the land, on qualifying for exemption is not taken into account to determine the ceiling area. There is no provision in the KLR Act for restricting alienation of exempted land in whole or part. The question is what is the legal impact if alienation has taken place in respect of exempted land.

7. Section 87(1) of the KLR Act stipulates that any acquisition of land after the date notified would be reckoned for calculating ceiling area and excess land will have to be surrendered after the date notified as per Section 83 of the KLR Act. Section 83 of the KLR Act refers that no person to hold land in excess of the ceiling area as on the date notified by the Government. The date of notification is 1/1/1970. It is appropriate to refer the explanation (I) to Section 87 of the KLR Act which reads as follows:

"Where any land is exempted by or under Section 81 and such exemption is in force on the date notified under Section 83, such land shall, with effect from the date on which it ceases to be exempted, be deemed to be land acquired after the date notified under Section 83." Explanation as above clearly indicates that once land which is exempted loses its character which qualifies for exemption, shall be deemed as a land acquired after the date notified under Section 83 of the KLR Act. Therefore, any land as a whole or in part is converted into any other class of land which is not specified for exemption, be deemed to be land acquired after the date notified under Section 83 of the KLR Act. This provision abundantly makes it clear that exempted land once it is converted would be reckoned for calculating total ceiling area of the person who held the land as on 01/01/1970.

8. The KLR Act envisages social control over the right to property. The right to property, after the 44th amendment of the Constitution of India is only a constitution/legal right, therefore, the State can control use of the land to sub serve social or economic interest of the State.

9. On promulgation of the KLR Act in the State, the entire landed property in the State is subjected to State control as envisaged under the provisions of the KLR Act. No piece of the land escapes the clutches of the KLR Act including exempted land for ceiling purposes. The ceiling proceedings is a continuing proceedings and can be reopened in any of the circumstances, if so warranted, as contemplated

under Section 87 of the KLR Act. Exemption granted from ceiling is the qualification to use the land in a particular manner, which means a burden is imposed on the land. The moment the qualification for exemption is vanished by conversion of the land, the protection from ceiling will also be extinguished to bring the land within the fold of the ceiling area. The exemption is in the nature of a burden on the land to use the land for the purpose for which exemption is granted. The eminent domain power of the State can be exercised for acquiring land without consent and also to regulate the use of land in public interest. The eminent domain is power inherent in any Sovereign State. This burden would bind the holder of the land as on 01/01/1970 and the successor-in-interest. The Division Bench of this Court in the State Human Rights Protection Centre and Joy Kaitharath Vs. State of Kerala and Others, held that exemption granted under S. 81(1)(a) is for the land and would continue to operate irrespective of change of ownership of the exempted land and the transferee would have to use the land for the purpose for which exemption is granted.

10. The provisions of the KLR Act also do not curtail fragmentation of the land which is exempted from the purview of ceiling. However, exempted category of land to have the continuity of the qualification of exemption, the alienee or the transferee shall use the land for any of the purposes for which exemption is granted. This Court in the State Human Rights Protection Centre's case (supra) held that since under the KLR Act there is no restriction on alienation of the exempted category of lands, the transferee is subjected to the acid test of eligibility and entitlement for exemption in terms of use of the land.

11. As has been referred above, the exemption is a qualification burdened with the land and would continue to run with the land. As rightly pointed out by the learned Special Government Pleader Smt. Susheela R. Bhatt, on conversion the exempted land shall be deemed to be land acquired after the date notified under Section 83 of the KLR Act. Therefore, the Taluk Land Board can by such conversion, recalculate the total extent of the land owned or held by a person who was exempted, as if no exemption has been granted to the extent of the property which is subjected to conversion. In State of Kerala Vs. Puliyangattu Krishnan Master, , this Court observed that power is vested with the Taluk Land Board to reopen the case, if the case was already decided or to initiate proceedings under Section 87 of the KLR Act for taking the land as excess land in excess of the ceiling limit.

12. The provisions of the KLR Act do not place any embargo on transfer. The transfer of registry is for fiscal purposes. The power of the competent authority to reopen the ceiling proceedings to include the land exempted for the purpose of ceiling is not lost on account of effecting mutation. Therefore, the Revenue Officials cannot refuse to effect mutation of the property purchased by the transferee.

13. The learned Special Government Pleader submits that in view of the Tea Act, 1953 and Section 120A of the KLR Act, the Registering Authority can refuse to

register the land which is subject matter of exemption without no objection certificate. I do not find any provisions in the Tea Act, 1953 to restrict right of alienation. Section 120A of the KLR Act enables the Registering Authority to refuse to register the document based on the information provided by the competent Authority of the Government on the ground that registration would defeat the provisions of the KLR Act. Therefore, it is submitted that the Registering Authority is justified in refusing to register the document involving exempted land without no-objection certificate from the District Collector or from the competent Authority. Section 120A of the KLR Act is an enabling provision. It is not a pre-requisite for registration of any document. The District Collector or any other Officer authorised by the Government has to satisfy that transfer of any particular land is being transferred in order to defeat the provisions of the Act. Therefore, satisfaction has to be done having regard to subject of each transfer. There is no record before this court to show that in any of the writ petitions, a decision has been taken by the District Collector or by the authorised Officer under the Government that the particular transaction intends to defeat the provisions of the Act. As afore-noted, there is no embargo in transferring whole or part of the exempted land. The only remedy available to Taluk Land Board or other Authority is to proceed against that property when conversion takes place. Even in converted cases, it cannot be said that the converted land also has to be surrendered unless in the ceiling proceedings, excess is determined after reckoning the limit of the land to be held by the exempted person as on 01/01/1970. Section 87 of the KLR Act only enables the Board to include the land in the account of the holder for determination of ceiling. Thus, it cannot be said that without determination of excess land to be surrendered that transfer is intended to defeat the provisions of the Act. Thus, I am of the view that the registering authority is not justified for insisting no-objection certificate as a pre-requisite for registration of the document covering exempted land.

14. In view of the above, these writ petitions are disposed with the following directions:

"i. There shall be a direction to the Revenue Officials to effect mutation in respect of the properties obtained by the purchasers based on valid title.

ii. If any of the properties are found to be converted before or after the purchase, the Revenue Officials are free to bring it to the notice of the Taluk Land Board or the appropriate Authorities to include the property in the account of the holder of land at the time of exemption for the purpose of ceiling.

iii. The registering authority shall not insist for no-objection certificate for the reason that the land is exempted land for the purpose of registration.

iv. The transfer of exempted land as a whole or in part can be acted upon for the purpose of registration or effecting mutation.

v. In the light of the directions above, the Registering Authority and Revenue Officials are directed to do the needful in these matters to register the document

and effect mutation within a period of four weeks from date of receipt of a copy of this Judgment. No costs."