
(1995) 10 KL CK 0021
In the High Court Of Kerala
Case No : O.P. 18757 of 1995

Senthil Kumar

APPELLANT

Vs

Taluk Land Board

RESPONDENT

Date of Decision : 18-10-1995

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 103, 85(8)

Citation : (1995) 10 KL CK 0021

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : G. Hariharan, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, J.—The petitioner is the son of Ramaswamy Gounder, respondent No. 9 in the Original Petition. In proceedings for determination of the ceiling area initiated against one Appuchamy Gounder, the husband of respondent No. 10 herein, respondent No. 9, raised a claim that he was a cultivating tenant under the declarant in respect of certain extent of land and consequently that extent should not be treated as lands held by the declarant. The Taluk Land Board, after a consideration of that question rejected the claim of respondent No. 9 that he was a cultivating tenant. The Taluk Land Board therefore determined the ceiling area of Appuchamy Gounder on the basis that Appuchamy Gounder held the lands claimed by respondent No. 9. Both the declarant and respondent No. 9, filed Civil Revision Petitions before this court under S. 103 of the Kerala Land Reforms Act. The revision of respondent No. 9 was CRP 2216 of 1989. He contended that the finding of the Taluk Land Board that he was not a tenant, was erroneous in law. This court found against his contention and dismissed the Civil Revision Petition by order dated 26-10-1989. The finding that respondent No. 9 herein had no tenancy in respect of the lands in question was thus finally confirmed. Similarly, a revision filed by the declarant was also dismissed. The ceiling case was remanded for the purpose of enabling

the declarant to exercise an option. At that stage, the petitioner herein, the son of 9th respondent whose tenancy had been finally found against, came forward with an application for reopening the question of tenancy raised by his father, respondent No. 9 on the ground that the said tenancy right belonged to the joint family consisting of respondent No. 9, himself and others and was not the separate property of respondent No. 9 and since he had no notice of the proceedings the same was liable to be reopened under S.85(8) of the Act. In view of the clear finding of the Taluk Land Board as affirmed by this Court that there was no tenancy in favour of respondent No. 9, there is no scope for considering any question whether the tenancy claimed by respondent No. 9 enured to himself or to his joint family. Learned counsel for the petitioner submits that since the petitioner was not co-nominee a party before the Taluk Land Board, he had the right under S.85(8) of the Kerala Land Reforms Act to come forward at this stage and to raise a contention that as a matter of fact there was a tenancy in favour of his father, According to him, the ratio of the decision in Velayudhan v. State of Kerala (1981 KLT 696) is in favour of the stand adopted by him. Here, the case of the petitioner cannot be said to be independent of respondent No. 9 in the sense that he had no case that he had a right of his own on the basis of an entrustment in his favour. His claim is that the tenancy which enured to his father, respondent No. 9, was a tenancy that enured to the joint family consisting of respondent No. 9 and himself. In other words, the claim is that the tenancy that existed in favour of respondent No. 9 was that of the joint family and not that of respondent No. 9 as such. That claim of tenancy raised by Respondent No. 9 having been found against by the Taluk Land Board and affirmed by this court in revision, there is no scope for investigating the question, whether the tenancy that was claimed to exist in favour of respondent No. 9, the father of the petitioner, enured to the joint family or not. The claim of the petitioner is not independent of the claim raised by the respondent No. 9. On the other hand it is only a claim flowing out of the right set up by respondent No. 9 which has been found against. Under such circumstances, in my view, S.85(8) of the Act cannot be invoked by the petitioner, to raise the contention that he has an independent claim to urge before the Taluk Land Board. I am therefore of the view that the reliefs sought for in this Original Petition cannot be granted. The Taluk Land Board has only to comply with the directions in the order of remand since the decision of the Taluk Land Board as affirmed by this court finding against the tenancy set up by respondent No. 9, has become final. Considering the nature of the claim it could be even said that respondent No. 9 represented the interest of the petitioner in the proceedings before the Taluk Land Board. Consequently, it could really be said that the claim of the petitioner in that regard is also barred. I therefore dismiss this Original Petition. I make no order as to costs.