

(1953) 02 KL CK 0005
In the High Court Of Kerala
Case No : Appeal Suit No. 542 of 1124

Sirkar	Vs	APPELLANT
Mahadeva Iyer Venkitasubramania Iyer		RESPONDENT

Date of Decision : 08-02-1953

Acts Referred:

Travancore Land Conservancy Act, 1091 — Section 6, 7, 9

Citation : AIR 1953 Ker 349

Hon'ble Judges : K.T. Koshi, C.J.; M.S. Menon, J

Bench : Division Bench

Advocate : N. Kumaran Achan, for the Appellant; N. Varadaraja Iyengar, for the Respondent

Judgement

Menon, J.—This is an appeal by the Government of Travancore against the decree of District Court of Trivandrum in O.S. No. 79 of 1117 awarding the Respondents compensation for the improvements effected on 82 cents of poramboke land.

2. That the 82 cents belonged to the Government and that the Respondents were registered holders only to the extent of 20 acres and 12 cents and not of 20 acres and 94 cents as claimed by them and as the re-survey would indicate, are now beyond controversy. It is also clear that the possession of the Respondents though long - 40 years and over-and apparently "bona fide" was not long enough on the date of their dispossession in 1105 for the prescription of a title by adverse possession as against the Government under the Travancore Limitation Act 6 of 1100.

3. The points urged by the learned Government Pleader in support of the appeal were:

(i) that as the Respondents had no title to the land and were but trespassers, they were not entitled to any compensation under the provisions of the Travancore Land Conservancy Act 4 of 1091;

(ii) that the suit was barred by limitation; and

(iii) that even if the Respondents were entitled to be compensated and their claim was not barred by limitation the amount awarded was excessive and should be reduced.

4. We indicated at the hearing itself that the points involved mixed questions of law and fact and that we were not prepared to consider the question of limitation (Point No. ii) as no such question was raised either in the written statement or in the memorandum of appeal. We also indicated that we will not consider any question regarding the amount of compensation (Point No. iii) as the quantum awarded was not challenged in the memorandum of appeal.

5. Section 9, Travancore Land Conservancy Act, 4 of 1091, on which reliance was placed in support of Point No. (i) reads as follows:

Any person unauthorisedly occupying any land for which he is liable to pay a fine u/s 6 and an assessment or prohibitory assessment u/s 7, may be summarily evicted by the Division Peishkar and any crop or other product raised on the land shall be liable to forfeiture and any building or other structure erected or anything deposited thereon shall also, if not removed by him after such written notice as the Division Peishkar may deem reasonable, be liable to forfeiture. Forfeiture under this section shall be adjudged by the Division Peishkar and any property so forfeited shall be disposed of as the Division Peishkar may direct.

6. It is clear from the Section (1) that the Government have the power to eject a trespasser from the Government land and (2) that the trespasser so ejected will undoubtedly have a right to remove the improvements he had effected unless as pointed out by Mr. Krishnaswami Iyer C.J in - Janardhanan Nair v. Nanu 1945 Trav LR 294 (304) (A), the right to remove the improvements had been lost "by an unequivocal order of forfeiture passed by the State u/s 9, Land Conservancy Act, read with the rules thereunder".

It is admitted that no such order was passed in this case and so the rights of parties have to be determined without reference to the provisions of the Travancore Land Conservancy Act 4 of 1091.

7. "What is affixed to the soil belongs to the soil" is not a maxim of general jurisprudence and there is the authority of the Privy Council, - "Vallabdas Narainji v. Development Officer, Bandra AIR 1929 P.C. 163 (B), to hold that it does not represent the law of India. Proceedings in ejectment have invariably recognised the right of a trespasser to remove the improvements he had made and this valuable right has admittedly been denied to the Respondents by the action of the Government.

8. It follows that the decree of the lower Court has to be upheld and the appeal dismissed.

9. We dismiss the appeal with costs.