
(1972) 12 KL CK 0027
In the High Court Of Kerala
Case No : C.R. P. No. 1098 of 1972

Sivaramakrishnan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-12-1972

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 16, 56, 72H, 81, 81(1)

Citation : (1973) KLJ 259

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Advocate : T.P. Kelu Nambiar and C.S. Narayanan, for the Appellant;

Judgement

P. Subranmonian Poti, J.—An interesting question is raised for decision in this case and that is, whether, a person, holding land in excess of the ceiling limit, alienating pepper garden belonging to him prior to 1-1-1970, is entitled to claim that the area of such pepper garden alienated by him shall not be included in the total area of land held by him or in his possession reckoned for the purpose of determining the extent of land to be surrendered under S. 85 of the Kerala Land Reforms Act. The revision petitioner owned 42.30 acres of land. This included 13.15 acres of pure pepper garden, as defined in Explanation I to S. 81 (1) (g) of the Kerala Land Reforms Act 1 of 1964 (hereinafter called the Act". He alienated this under a sale deed dated 911968, with the result what was left with him was 29 acres 15 cents of land. Out of this 7 acres of land is rubber plantation and 55 cents is house site. Therefore these areas have to be excluded in determining the ceiling limit. So calculated, the balance would be 21 acres 30 cents. The revision petitioner"s family consists of more than 5 members and therefore the maximum permissible is 20 acres of land under S. 82 of the Act as it stands now. He will be liable to surrender only 1.30 acres if the area of pepper garden alienated on 911968 is not to be taken into account in determining the total area. Even with regard to this 1.30 acres the revision petitioner"s contention is that it need not be surrendered because he has licence from the Rubber Board to plant 2.50

acres and further that 55 cents of land more is required for house site. If this too is excluded, according to him, the balance will be below the ceiling area.

2. The Land Board, whose proceedings are under challenge in this revision petition, did not accept the revision petitioner's case with regard to the 13.15 acres alienated by him on 9/11/1968. That was because, according to the Land Board, the sale was invalid as the sale by a person who had land in excess of the ceiling area. Reference is made in the order to the "latest Ordinance", possibly referring to Ordinance No. 5 of 1972, and it is assumed that in view of the Ordinance even pepper garden alienated prior to the commencement of the Kerala Land Reforms (Amendment) Act 35 of 1969 would come within the scope of the ceiling provision. The contention that since he has licence for 2.50 acres for rubber plantation that area should not be reckoned for the purpose of the ceiling area and further that 55 cents is required for house site have not been accepted by the Land Board. The result is that the revision petitioner has been directed to surrender 14.45 acres of land and that is the order under challenge.

3. The Kerala Land Reforms Act 1 of 1964 came into force on 14/6/64. Chapter III of that Act dealt with restriction of ownership and possession of land in excess of ceiling area and the disposal of excess lands. S. 82 defined the ceiling area. S. 83 provided that with effect from such date as may be notified by the Government in the Gazette, no person shall be entitled to own or hold or to possess under a mortgage lands in the aggregate in excess of the ceiling area. The date notified for the purpose of this Section is 11/7/70. Therefore the ceiling provision becomes operative only from that date. Whatever might have been the extent of area held by a person prior to 11/7/70 for the purpose of S. 83 the question that is relevant is only the area owned or held or possessed under a mortgage by him on 11/7/70. Admittedly the revision petitioner is not possessed of the 13.15 acres on 11/7/70 and therefore that need not be reckoned as part of the ceiling area for the purpose of S. 83 unless it be that there is some other provision in the Act which provides that such area should also be reckoned. That is what I have to consider.

4. S. 84 of the Kerala Land Reforms Act prior to 11/7/70 stood thus:

84. Notwithstanding anything contained in any law for the time being, in force all voluntary transfers effected after the date of publication of the Kerala Land Reforms Bill, 1963, in the gazette, otherwise than:

(i) by way of partition; or

(ii) on account of natural love and affection; or

(iii) in favour of a person who was a tenant of the holding before the 27th July, 1960. and continued to be so till the date of transfer; or

(iv) in favour of a religious, charitable or educational institution of a public nature solely for the purpose of the institution,

by a family or any member thereof or by an adult unmarried person owning or holding land in excess of the ceiling area, shall be deemed to be transfers calculated to defeat the provisions of this Act and shall be invalid;

Provided that, without prejudice to any other right of the parties to any such transfer when any purchase price is payable under S. 56 or any compensation is payable under S. 88 for any land covered by the said transfer it shall be competent for the Land Tribunal to award to the transferee, out of the purchase price or compensation amount in respect of each of such land, such sum as the Land Tribunal may consider just and proper.

The original section was renumbered as sub-section (1) and sub-section (2) was added by the Amending Act 35 of 1969. Sub-section (2) which came into force only on 11/19/70 reads

(2) Notwithstanding anything contained in any law for the time being in force all voluntary transfers-effected by any person (other than a family or any member thereof or by an adult unmarried person) owning or holding land in excess of the ceiling area, after the 1st July, 1969, otherwise than:

(i) by way of partition; or

(ii) in favour of a person who was a tenant of the holding before the 27th July 1960; and continued to be so till the date of transfer; or

(iii) in favour of a religious, charitable or educational institution of a public nature solely for the purpose of the institution, shall be deemed to be transfers calculated to defeat the provisions of this Act and shall be invalid;

Provided that, without prejudice to any other right of the parties to any such transfer, when any purchase price is payable under S. 56 or any compensation is payable under S. 72H or S. 88 for any land covered by the said transfer, it shall be competent for the Land Tribunal to award to the transferee, out of the purchase price or compensation amount in respect of such land, such sum as the Land Tribunal may consider just and proper.

5. S. 84 of the Act is intended to take into account, for the purpose of computing ceiling area certain categories of land which belonged to a person, but which have been transferred by him after 15-9-1963, the date of publication of the Kerala Land Reforms Bill 1963 in the Government Gazette. S. 84 provides that notwithstanding anything contained in any law for the time being in force, all voluntary transfers effected after 15th September, 1963 by a family or any member thereof or by an adult unmarried person owning or holding land in excess of the ceiling area, shall be deemed to be transfers calculated to defeat the provisions of the Act and shall be invalid. The section itself provides that this would apply only to transfers other than those falling within certain categories. As it stood at the time when the Act came into force in 1964, there were four such categories so excluded. Though later those categories have undergone modification, by the addition of Sub-s. (2) for the purpose of this case, it is not

necessary to refer to such modification. S. 85 of the Act specified the obligation of a person owning or holding excess land on the date notified under S. 83 to surrender it. This obligation arose only if a person held land on 1-1-1970 in excess of the ceiling area. By reason of the provision in S. 84 that transfers other than particular categories mentioned therein effected after the date 15-9-1963 should be invalid, properties covered by such transfers should also therefore necessarily be considered as land belonging to the transferor and would be reckoned for the purpose of ceiling area. Since the transfer of 13.15 acres belonging to the petitioner effected on 9-11-1968 was not a transfer belonging to one or other of the categories exempted under S. 84, it is the case of counsel for the Land Board, that it should also be reckoned in calculating the ceiling area. Admittedly the transfer is not by way of partition or on account of natural love and affection, or in favour of a tenant or in favour of a religious, charitable or educational institution of a public nature solely for the purpose of the institution which are the categories exempted. But there is another matter to be considered. That concerns the application of S. 81 of the Act. That section is an exemption provision and that provides that all the provisions of Chapter III are not to be applied to certain categories of land. As the law stood till 1-1-1970, one of the categories which was so exempted was "pure pepper gardens" and "pure arecanut gardens" existing at the commencement of the Act and having a contiguous extent of five acres or more. The land alienated by the revision petitioner on 9-11-1968 is a pure pepper garden having a contiguous extent of more than 5 acres and therefore it was exempted from the provisions of Chapter III of the Act. It is true that by the provisions of Kerala Land Reforms (Amendment) Act 35 of 1969, S. 81(1) (g) was deleted. But it was not done retrospectively, with the result that the exemption provision was operative till 1-1-1970 though such exemption was not available in regard to such lands after that date. Therefore at the time when the transfer was effected by the revision petitioner the land was one to which provisions of Chapter III of the Act could not apply. That would mean that S. 84 of the Act would have no application in regard to such land and therefore that provision which would render any transfer by any person having land in excess of the ceiling invalid would be inapplicable in regard to transfer of land which is a pure pepper garden. In other words, when the revision petitioner effected the transfer it was not objectionable and therefore on 1-1-1970 when S. 83 came into force the area that was held by the petitioner was not inclusive of such area. The sale deed was valid. It is only by reason of the invalidating provision in S. 84 that, notwithstanding a transfer, the transferor is considered to be an owner of the property for the purpose of determining the ceiling area that the area alienated also has to be reckoned, but when S. 84 does not apply to the case, there is no scope of considering the land transferred as that belonging to the transferor notwithstanding the transfer.

6. The position would possibly have been different, had the amendment to S. 81 by Kerala Land Reforms (Amendment) Act 35 of 1969 deleting S. 81 (1) (g) been made retrospective from the commencement of the Land Reforms Act itself. That

is not the case. The result is that the exemption provision in Clauses (f), (g), (1) and (n) in S. 81 (1) were operative till 111970 and it is only thereafter that these exemptions would become operative. The necessary consequence is that it is only to the transfers after 11 1970 would S. 84 of the Act apply in respect of such land.

7. Now I will have to consider here whether Ordinance No. 5 of 1972 has any relevance on the question for the purpose of the exemption under S. 81(1)(g).I do not see any reason to think that it has got any relation to it but I am referring it only because the Land Board seems to think so and its order mentions:

In the latest Ordinance, the protection to transfer of lands within the ceiling areas the law existed at that time is restricted only to the transfers up to 1963.

The meaning is not quite clear to me. I assume that what the Land Board says is that by reason of the provisions in the Ordinance the transfers subsequent to 1963 even in regard to exempted lands is not protected. If that be the idea, then I must say it is certainly wrong. Ordinance 5 of 1972 concerned only with the amendment of S. 85 of the Act In Act 17 of 1972 which repealed the Ordinance the corresponding provision is seen in S. 16- That has not effected any relevant modification to S. 85 of the Act, It only qualifies an explanation to sub-section (1), of that section. S. 85 of the Act, as I have indicated, is intended to cover cases where between the period 18th December, 1957 and 15th September. 1963 alienations have been effected. Unlike in the case of alienations effected after 15th September, 1963 in the case of alienations effected during the period mentioned above the transfers themselves are not deemed as invalid but in calculating the ceiling area the land transferred during the period, otherwise than by way of certain specified categories of alienations are to be taken into account in determining the total area held by the person who has so transferred it. In other words, notwithstanding such transfer the area of the land transferred will also be considered in calculating the total area of land which the transferor could hold. The transfer itself is not invalidated, and the right of the transferor under the transfer is not affected. The only amendment made by Ordinance 5 of 1972 was to reiterate that and further provide that in cases where the transferor is possessed of land in excess of the ceiling area immediately before the transfer such transfer also would not be effective.

8. As I pointed out earlier, so long as the exemption provision was operative at the time when the transfer was effected all transfers of lands so exempted by the provisions is S. 81 (1) (f), (g), (1) and (n) were quite unobjectionable. They need not fall within the four categories specified in S. 84 of the Act so as to be excluded from the ceiling area, because they were excluded from the ceiling area by reason of the fact that S. 84 did not apply to such transfers. S. 85 of course would also not apply. If these did not apply, then in determining the ceiling area there is no reason to add that area which had already been transferred and which the transferor was neither owning or holding on 1-1-1970. Therefore the view taken by the Land Board is wrong and calls for interference. The Land Board

has rightly said that in respect of 2.50 acres of land in respect of which licence for planting rubber has been obtained and 55 cents of land claimed as house site the claims for exclusion have not been proved. That part of the order does not call for interference. That would mean that from the total area found, 13.15 acres will have to be deducted. If so, it would only be 1.30 acres that would be excess land liable to be surrendered. Which that land is to be is a matter that the Land Board will have to consider and the Land Board will have to pass fresh orders. Hence I set aside the order of the Land Board and remit the matter back to it for passing a fresh order as to surrender of 1.30 acres of land. In the circumstances of the case, I direct the parties to suffer costs in this revision petition.