(2013) 02 KL CK 0013

In the High Court Of Kerala

Case No : C.R.P. No. 1603 of 2002

State of Kerala APPELLANT

Vs

Abdul Khader Rawther (Late) and Others RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(14), 83, 85(9A)

Citation : (2013) 2 ILR (Ker) 74 : (2013) 1 KHC 851 : (2013) 1 KLJ 759

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Susheela R. Bhat, Special Government Pleader, for the Appellant; M. Ramesh Chander , Sri Jawahar Jose and Sri K. Rajeevan, for the Respondent

Final Decision : Allowed

Judgement

S.S. Satheesachandran, J.—Revision is directed against the order dated 20-3-2001 passed by the Taluk Land Board, Hosdurg reviewing its previous orders in a ceiling proceeding, in exercise of its powers u/s 85(9A) of the Kerala Land Reforms Act, for short the Act. State has preferred this revision. Taluk Land Board, hereinafter referred to as the Board, under the impugned order reviewed its earlier order passed in the ceiling proceedings against one Abdul Khader, declarant, by which he was directed to surrender the excess area determined in such proceedings. Reviewing the previous order, the Board under the impugned order has excluded 26.50 acres of land from the account of the declarant holding such lands continued under the possession of tenants and they have obtained purchase certificates over such lands. Persons in whose favour such exemption has been granted by the Board are none other than the children of declarant and exercise of review power u/s 85(9A) of the Act to exclude the land from the account of declarant is patently erroneous and unsustainable and without jurisdiction, is the case of the State to assail such order in the revision.

2. Notice given respondents 2 to 8 have entered appearance.

3. I heard the Special Government Pleader and also the counsel for respondents.

4. Files relating to the ceiling proceedings and also those connected with the order passed in the review called from the Taluk Land Board were also perused. Ceiling proceedings against the declarant culminated in the Order dated 12-2-1976 by the Board directing the declarant to surrender 5.90 acres of land as excess area determining that as on 1-1-1970 he possessed 21.50 acres of land. Excess area determined as above was also taken over possession by the Tahsildar, Hosdurg on 16-3-1976. Much later, after section 85(9A) of the Act was brought into the statute, by amendment, the Board has reopened the ceiling proceedings of the declarant and, then, passed the impugned order. What were the circumstances under which the Board reopened the ceiling proceedings is not disclosed from the file other than that there was an office note by the Tahsildar that grounds for reopening of the case of the declarant u/s 85(9A) of Kerala Land Reforms Act are present and as such the Board''s order dated 22-2-1976 be reopened. On that office report, it is seen, an order ''reopened'' is made by two persons, perhaps members of the Board, with signatures alone and, another making an endorsement ''tenant possession shown in the ceiling case records is not supported by satisfactory evidence''.

5. Section 85(9A) of the Act reads thus:

85. Surrender of excess lands.--(1) Where a person owns or holds land in excess of the ceiling area on the date notified u/s 83, such excess land shall be surrendered as hereinafter provided:

(i) to 9 * * * * * *

(9A) Power of Taluk Land Board to review its decision--Notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force, or in any judgment, decree or order of any Court or other authority, the Taluk Land Board may, if it is satisfied that its decision under sub-section (5) or sub-section (7) or sub-section (9) requires to be reviewed on the ground that such decision has been made due to the failure to produce relevant data or other particulars relating to ownership or possession before it, or by collusion or fraud or any suppression of material facts the Taluk Land Board may review such decision after giving an opportunity to the parties of being heard and pass such orders as it may think fit:

Provided that the Taluk Land Board shall not reopen any such case after the expiry of three years from the date of coming into force of the Kerala Land Reforms (Amendment Act, 1989).

No previous Order passed by the Board in a ceiling proceedings can be reopened in exercise of the powers u/s 85(9A) of the Act unless the Board forms a satisfaction that its previous decision has been made due to the failure to produce relevant data or other particulars relating to ownership or possession before it, or by collusion or fraud or any other suppression of material facts.

Where reopening of the ceiling case is made in any one of the above grounds or more, that alone can be enquired into by the Board and not any claim of declarant or another over the land covered by the proceedings. So much so the order of reopening the case which had been terminated long ago, and that too with possession of excess area already taken over must disclose and reflect one or other ground indicated above to enable the Board to invoke its review power u/s 85(9A) of the Act No such ground is made out in the present case.

6. Reopening the case the Board has issued notice to the declarant, who by that time had passed away. One of the sons of the declarant filed a statement in which he asserted that excluding 5 acre 90 cents determined as the excess area, which had been taken over in the ceiling proceedings, the declarant had only 17 acres and 51 cents and he had executed settlement deeds over such lands in favour of his eight children, whose names with particulars of the land given to them were also furnished. What further steps have been taken after receiving such statement by the Board is not disclosed from the file. However, it is seen, the proceedings reopened continued with the legal heirs of the declarant filing statements and producing some documents to show that they have obtained purchase certificates over some lands. The Board, thereupon summoning the records of four O.A. cases from the Land Tribunal in which purchase certificates were issued to the children of the declarant had passed the impugned order holding that 26.50 acres of land ''shown in the account of the declarant previously'' are liable to be excluded as they continued in possession of tenants. Reference is made to a report of the authorised officer in the ceiling proceedings as if he had reported that declarant possessed a total extent of 46.50 acres, to pass an order for excluding 26.50 acres of land as under the possession of tenants, who, in the present case, are shown to be the children of the declarant. In the previous order passed by the Board dated 12-2-1976 the Board has held that the declarant possessed only 21.50 acres, and taking into consideration the land which could be possessed by him in relation to the members of his family, covered u/s 2(14) of the Act, he was found in possession of an excess area of 5.90 acres, which was later taken possession also by the Government. Without adverting to any of those aspects making reference to a report of the authorised officer in the ceiling proceedings of the declarant, the Board has passed the present order as if the account of the declarant included 48 acres of land in Kinanoor Village, and 26.50 acres of such land in his account continued in the possession and enjoyment of the tenants and they have obtained purchase certificates over such land from the Land Tribunal. No attempt was made by the Board, nor even any steps taken, to have an inquiry whether total extent of land in the account of the declarant exceeded than what is stated in its previous order as 21.50 acres determining 5.90 acres of land to be surrendered by him as excess area. When such be the case the order passed in review excluding 26.50 acres of land ''from the account of the declarant'' on the premise that such lands continued in possession of tenants who got purchase certificates, is patently unsustainable. Facts and circumstances of the present case indicate that while

passing the previous order the Board might not have correctly determined the extent of land possessed by the declarant, to determine the excess area to be surrendered by him. However, the manner in which review power provided u/s 85(9A) of the Act has been invoked, without stating the grounds of satisfaction to do so, reopening of the ceiling case cannot be approved. Reopening of the ceiling case of the declarant invoking powers of review u/s 85(9A) of the Act by the Board is found to be clearly unsustainable. Order passed by the Board excluding 26.50 acres of land from the account of the declarant, which is not even reflected in its previous order, that too in favour of the children of the declarant on the premise that they are tenants of such land, is nothing but an abuse of its jurisdiction by the Board. Order passed by the Taluk Land Board is set aside.

Revision is allowed.

