
(1988) 01 KL CK 0048
In the High Court Of Kerala
Case No : C.R.P. No. 1551 of 1985

State of Kerala

APPELLANT

Vs

P.M.C. Narayanan Namboodiri

RESPONDENT

Date of Decision : 01-01-1988

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(40), 85(1)

Citation : (1988) 1 KLJ 538

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : P.R.Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

Varghese Kalliath J.

1. In this Civil Revision petition, the State has challenged the order of the Taluk Land Board, Alathur. The Taluk Land Board directed the declarant to surrender an extent of 80.48 acres. According to the revision petitioner, the declarant is liable to surrender more than 80:48 acres. The learned Government Pleader advanced four points for my consideration. He submitted that the finding of the Taluk Land Board that an extent of 3.29 acres in Sy. No. 153/32 and an extent of 0.84 acres are held by lessees The Taluk Land Board has held so relying on the report of the authorised officer. The learned Government Pleader was not able to attack the report of the authorised officer on any valid ground. The scheme of the Kerala Land Reforms Act gives great evidentiary value to the report of the authorised officer in ascertaining the true facts necessary for the determination and decision by the Taluk Land Boards. Anyhow, this is a question of fact and I do not think that I can interfere with the finding since my power u/s 103 of the Kerala Land Reforms Act is only to examine whether the authorities have failed to decide a question of law or decided a question of law wrongly.

2. The declarant contended that an extent of 11.81 acres in Sy No. 1/7A of

Thenur amsom and another 16.39 acres in Sy. No. 83/2 are private forests and so those items have to be excluded. This aspect of the matter was considered by the Taluk Land Board and the Taluk Land Board found that these two items have to be deleted. Further, the Taluk Land Board observed that the matter has to be referred to the Divisional Forest Officer, Palghat for action. On this aspect also, the Taluk Land Board has relied on the report of the authorised officer. I think what the Taluk Land Board did is correct and requires no interference in this civil revision petition.

3. The last point argued before me by the learned Government Pleader is in regard to 1.97 acres and 2.23 acres of land in Sy. Nos. 82/1 and 82/8 respectively. These two items of properties are the subject matter of an agreement executed on 5-10-1962 by the declarant in favour of an educational institution (High School). The possession of this property was given exclusively to the educational institution. In regard to this factual aspect of the question, the Taluk Land Board on the basis of the report of the authorised officer held that "as per the agreement the declarant has given possession of the land to the other parties 2 and 3 in the agreement on 5-10-1962. Therefore, the declarant is dispossessed of 4.20 acres of land as on 1-1-1970 and it is not available for calculating the ceiling limit of the declarant. The Taluk Land Board therefore decides to delete this extent from the draft statement". The Government Pleader advanced a contention that there is no legal transfer in regard to this land to an educational institution, though the declarant lost possession in 1962. The Government Pleader also submitted that the alleged transaction took place only in 1962 and thus it is hit by the Explanation to section 85 (1) of the K.L.R. Act. It reads thus:-

Where any land owned or held by a family or adult unmarried person owning or holding land in excess of the ceiling area was transferred by such family or any member thereof or by such adult unmarried person, as the case may be, after the 18th December, 1957, and on or before 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 18th December, 1957, 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 purposes of the institution.

4. I have no doubt that the explanation to section 85 (1) of the K.L.R. Act has no application here because the transfer of possession in this case was to an educational institution of public nature and solely for the purposes of the institution. The Government Pleader now pressed his alternate contention that in this case there is no legal transfer of ownership, and so, the declarant should be deemed to be the owner for the purpose of determining the ceiling ares. The submission of the Government Pleader would appear prima facie correct in so far

as there is no registered document transferring the ownership of the property to the educational institution. Nevertheless, we cannot shut our eyes to the compelling circumstances unfolded in the case. It is found by the Taluk Land Board that the properties are now held, possessed and enjoyed by the educational institution solely for its purpose. The Taluk Land Board also found that the declarant has lost possession of the land in question irretrievably as on 1-1-1970 and that it is not available for determining the ceiling limit of the declarant. The facts revealed in the case would unhesitatingly tell us that the declarant has now retained no right to recover the property from the educational institution. The principal question I have to decide in this case is whether in the circumstances, can it be said this property is an item of property, which can be included or reckoned for the purpose of fixing the ceiling area of the declarant.

5. So the problem is what should I do in this case when I know that the petitioner has absolutely no right over the property and no entitlement to recover the possession of property from the educational institution. Should I allow the Taluk Land Board to treat that the petitioner is the owner of the said land and that the Taluk Land Board should reckon this land also in the account of the petitioner. I am sure that if I do so, it will be against reality.

6. I share that root belief of Lord Denning. The Master of Rolls said: My root belief is that the proper role of the Judge is to do justice between the parties before him. If there is any rule of law which impairs the doing of justice, then it is in the province of the judge to do all that he legitimately can to avoid that rule - or even to change it - so as to do justice in the instant case before him. He need not wait for legislation to intervene because that can never be of any help in the instant case. I would emphasise, however, the word "legitimately"; the judge is himself subject to the law and must abide by it".

7. I feel bound to bear in mind in the judging process that courts are dominantly concerned with the fitness of the solution to the problem posed before it. A Just solution for a particular case is the crucial factor in the decision process and considerations of justice are directly relevant to the justification of any decision. General propositions do not decide concrete cases and "the life of the law has not been logic; it has been experience". Justice is linked with, not only linked with, but even also identified with a definite attitude of the mind, a willingness to be fair and a readiness to give recognition to the claims and concerns of others". It is unmistakably clear and plain that the mere cultivation of a mental attitude of fairness and concern for other is not in itself sufficient to bring about a just decision. The "good will to do justice" should be implemented by practical measures.

8. Now, I turn to interpret the law on this question. Section 83 of the K. L. R. Act obliges that persons who have got excess land should surrender their excess land. Section 85 reads thus:-

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.

The notified date is 1-1-1970. The question is what is the content and scope of the words used "a person owns". Section 2 (40) defines "owner" to mean

"a person entitled to the absolute proprietorship of land and includes -

(a) a trustee in respect thereof;

(b) a pattadar or ryotwari land.

The above definition of "owner" makes it plain and clear that to be an owner in the sense of section 2 (40) of the K. L R. Act, it is mandatory that he should be entitled to the absolute proprietorship. The two words "absolute" and "proprietorship" in the definition are significant and important.

I shall quote Halbury's Law of England (3rd Edn.) Vol. 29 Page 371 to indicate the true concept of ownership.

Ownership consists of innumerable rights over property, for example, the rights of exclusive enjoyment, of obstruction, alteration and alienation, and of maintaining and recovering possession of the property from all other persons. Such rights are conceived not as separately existing, but as merged in one general right of ownership.

Ownership is a relationship. It denotes the relation between a person and an object. That object is the subject matter of his ownership. It is not one right, it takes in its fold a complex of rights perhaps all of which are rights in rem. If we go into the incidence of ownership the first and foremost incident to be noted is that the owner will have a right to possess the thing which he owns. He should have mediate or immediate possession. The owner normally has the right to use and enjoy the thing owned, i.e. the right of management, the right of user, the right to take income of subject matter owned. Right to possess in the strict sense, is a right in itself. But, the rights to use and enjoy the thing owned are not rights in the strict sense, They are more in the realm of liberty. From what I have said above, it is clear and plain that the concept of ownership consists of a number of rights and liberties over the property owned. The meaning of the word "proprietor" in Oxford Dictionary is that one who holds something as property; one who has the exclusive right or title to the use or disposal of a thing; an owner. The word "absolute" means (Ramanatha Aiyer's Law Lexicon) "complete, perfect, final without any condition or limitation, eg., an absolute estate; an order "of absolute discharge. Absolute property is property which is free and not controlled by others. So, to attract the definition, it is necessary that the person concerned should have absolute and exclusive right or title to the use or disposal of a thing. In this case, it is not possible to say that all the component rights and liberties, which constitute ownership exist in respect of the property in question with the declarant.

In the result, I hold that the declarant is not the owner of the property in

question, namely, 4.20 acres, for the purpose of determining his ceiling limit. The Taluk Land Board said that the property in question has to be deleted from the total extent of property held by the declarant. I think it is a just and correct decision and I cannot interfere with the-order of the Taluk Land Board.

The Civil Revision Petition is only to be dismissed. I do so, No order as to costs.