
(2014) 10 KL CK 0177
In the High Court Of Kerala
Case No : C.R.P. (LR) No. 543 of 2013 (A)

State of Kerala

APPELLANT

Vs

Thomas Kurian

RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Kerala Land Reforms Act, 1963 — Section 103, 6C, 84(4), 85(8)

Citation : (2014) 4 ILR 593 : (2014) 4 KHC 324 : (2014) 4 KLJ 404 : (2014) 4 KLT 417

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Susheela R. Bhat, Spl. Government Pleader, Advocate for the Appellant; Sunil Nair Palakkat, K.N. Abhilash and Mohan C. Menon, Advocate for the Respondent

Judgement

V. Chitambaresh, J.—Issues concluded by orders of this Court and the Supreme Court have been turned topsy-turvy by the Taluk Land Board in purported exercise of its power to correct errors arising out of clerical or arithmetical mistakes. The same is challenged by the State of Kerala, the State Land Board and the Tahsildar in this Civil Revision Petition filed under Section 103 of the Kerala Land Reforms Act, 1963 ("the Act" for short).

2. The liability to surrender land as in excess of the ceiling area held by the first respondent declarant has become final by order dated 20.12.1976 in C.R.P. No. 3209/1976 and affirmed by the Supreme Court. The plea of the second respondent as a tenant under Section 6C of the Act in respect of a portion of the land has been turned down by order dated 25.11.1981 in C.R.P. No. 1315/1980. The claim of the children of the second respondent under Section 85(8) of the Act to set aside the order of the Taluk Land Board has also been rejected by order dated 21.03.1989 in C.R.P. No. 1335/1988.

3. However the Taluk Land Board was directed to call for a report from the

Tahsildar in order to rectify the mistake allegedly crept in the identity of excess lands by order dated 07.12.1989 in C.R.P. No. 2114/1989. The Taluk Land Board has pursuant thereto surprisingly upheld the tenancy of the second respondent and found that the declarant has no excess land to surrender by the order impugned. This is done in purported exercise of the power under Rule 136A of the Kerala Land Reforms (Tenancy) Rules, 1970 ("the Rules" for short) which reads as under:

"136A. Correction of mistakes in orders of Land Tribunal (or the Taluk Land Board) and Land Board.--Clerical or arithmetical mistakes in orders of the Land Tribunal (or the Taluk Land Board) or the Land Board or errors arising therein from any accidental slip or omission may at any time be corrected by the Land Tribunal (or the Taluk Land Board) or the Land Board as the case may be either of its own motion or on the application of any of the parties."

4. The power under Rule 136A of the Rules is only to correct the clerical or arithmetical mistakes in the orders of the Land Tribunal, the Taluk Land Board or the Land Board or errors arising therein from any accidental slip or omission. The power is akin to Section 152 of the Code of Civil Procedure to correct clerical or arithmetical mistakes [see Michael Job vs. Special Tahsildar (1981 KLT SN 90)]. The said power cannot be invoked to settle the claim of tenancy or upset the liability to surrender excess lands which have been concluded in the earlier proceedings. The Taluk Land Board erred in finding that the declarant has no excess land to surrender after upholding the alleged tenancy of the second respondent in purported exercise of that power.

5. The second respondent however makes a fervent plea to have his claim considered under Section 7E of the Act on the ground that the non obstante clause therein enables such adjudication notwithstanding previous orders. Section 7E of the Act was introduced with effect from 18.10.2006 only and the non obstante clause would practically efface the earlier proceedings in the adjudication. In other words the bar of res judicata would not operate in considering the claim of the second respondent under Section 7E of the Act in view of the non obstante clause. The Special Government Pleader alertly points out that the excess lands have long ago been taken possession of by the State and that the ceiling case cannot be reopened at this juncture.

6. No claim under Section 7E of the Act shall be countenanced and the ceiling proceedings re-opened under the provisos to Section 84(4) of the Act if the following factors are present which operate as a bar:

(i) Where the excess land has been physically taken over (without the junction of the declarant) and distributed to landless labourers or reserved for public purposes as provided in the Act.

(ii) Where the Taluk Land Board is satisfied that the transfer of land made by a person in possession of excess land is calculated to defeat the ceiling provisions under the Act.

(iii) Where any land has already been surrendered by or assumed possession from a person as in excess before the commencement of the Kerala Land Reforms (Amendment) Act, 2005.

7. It is for the Taluk Land Board to consider whether these supervening factors exist in the instant case for declining relief under Section 7E of the Act even if the conditions are satisfied. The second respondent contends that he holds the property under a kychet dated 21.04.1962 and that consideration was paid in addition while he was put in possession evidenced by documents. The Special Government Pleader points out that the second respondent allegedly executed the kychet in favour of a person other than the declarant and therefore Section 7E of the Act does not apply. I do not want to delve deep into all those aspects because it is for the Taluk Land Board to consider the plea initially on the basis of the documentary evidence adduced.

8. I set aside the impugned order of the Taluk Land Board and remand the ceiling case solely for the purpose of considering the plea of the second respondent made under Section 7E of the Act. The Taluk Land Board shall endeavour to pass fresh orders after notice to the parties interested expeditiously and at any rate within a period of four months from the date of receipt of a copy of this order.

The Civil Revision Petition is allowed. No costs.