
(1983) 07 KL CK 0009
In the High Court Of Kerala
Case No : CR.P. No. 2923 of 1980

State of Kerala

APPELLANT

Vs

Varghese and Another

RESPONDENT

Date of Decision : 15-07-1983

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 84

Citation : (1983) KLJ 443

Hon'ble Judges : V. Khalid, J

Bench : Single Bench

Advocate : Varghese Kalliath, for the Respondent

Final Decision : Dismissed

Judgement

V. Khalid, J.—The State is the petitioner. The respondents were directed to surrender 3.56.817 acres of land. They filed C.R.P. 4268 of 1976 against the said order. This Court remanded the case and directed the Land Board to consider whether the two sale deeds executed by the 1st respondent in the year 1959 were wholly invalid or only to the extent they took in property exceeding the ceiling area. The Land Board after remand held that the declarant and his family were not in possession of any excess land. This revision is directed against that order. The declarant was in possession of 18.62.500 acres of land. Out of this an extent of 1.63.500 acres of land was in the exempted category. The declarant was entitled to retain 13.42.183 acres of land. The excess land as on 1-1-1970 with him was 3.56.817. The declarant had as per document Nos. 3415/69 and 3417/69 sold properties having an extent of 7.63 acres. The question that fell to be considered in the earlier C.R.P. was whether the two documents were wholly invalid or only to the extent they took in excess land. The Land Board has now found that the transactions could be invalid only to the extent they took in the excess area so far as the declarant is concerned. The respondents' counsel attempts to sustain the order both on the ground that the order is in accordance with the direction contained in the remand order of this court and also relying on

the Full Bench decision of this Court reported in *Kesavan Namboodiri v State & others* (1976 KLT 427). The Government Pleader on the other hand tries to contend that the order suffers from an apparent error in that the Land Board did not properly understand the principles settled by the Full Bench in the decision mentioned above.

2. In the earlier C.R.P. the direction given by this Court read:

The Taluk Land Board would consider whether the two sale deeds executed by the first revision petitioner in the year 1969 were wholly invalid or only to the extent to which they took in property exceeding the ceiling area. In this connection it may be noted that the documents would be invalid only to the extent to which they exceed the ceiling area and with respect to the balance area they are valid.

This clearly shows that the direction by this Court to the Land Board was that the documents were invalid only to the extent of the excess area. Therefore the order now under revision has been strictly in accordance with the direction contained in the remand order. The remand order not having been challenged by appropriate proceedings, is binding on both parties and the order passed pursuant to the remand order has therefore to stand.

3. I will now advert to the submissions made on the Full Bench decision reported in 1976 KLT 427 also. The Government Pleader submits that the decision holds that a transaction coming within the mischief of Section 84 of the Land Reforms Act would be invalid in toto while the respondents' counsel understands it to mean that it is bad to the extent it takes in the excess land. I find it difficult to agree with the manner in which the State's counsel understands the Full Bench decision. The important point that has to be borne in mind is that the relevant date for determination of the ceiling area is 1-1-1970. Documents of transfer prior to that date may take in lands in excess of the ceiling area. If for the purpose of determining the ceiling area, the entire lands covered by a transaction that took place prior to 1-1-1970 is to be taken into account along with the lands which the declarant held as on 1-1-1970, and not the excess lands covered by the transaction alone, the Land Board will be determining the ceiling area not with reference to 1-1-1970, the date under the Act, but with reference to the date on which the transaction took place. What the Government Pleader wants to do in this case is to tack on the 7.63 acres of land covered by the two documents along with the declarant's land as on 1-1-1970 and then contend that the excess land from such total has to be directed to be surrendered. This, I am afraid, cannot be permitted because by doing so, the Land Board will be invalidating even the valid portion of the transaction that took place prior to 1-1-1970. On the facts of the Full Bench case also, this is the conclusion deductible. There the Full Bench was dealing with a post 1-1-1970 transaction. In that case, the declarant had only excess of 6 cents of land as on 1-1-1970. He was entitled to hold 7.50 acres of land. He assigned 1.50 acres of land to his sister. The Full Bench held that the transaction in favor of the sister was bad only to the extent

of the excess 6 cents and not in its entirety.

4. The Land Board in this case has not gone against the guidelines settled by the Full Bench. This is the manner in which, with respect, Justice Chandrasekhara Menon also understood the Full Bench as is seen in the order in C.R.P. No. 1096 of 1978, a copy of which was made available to me by the respondents' counsel.

For the foregoing reasons, I hold that the order passed by the Land Board is correct, I dismiss the petition with direction to bear the costs.