
(2000) 07 KL CK 0057

In the High Court Of Kerala

Case No : W.A. No's. 86, 88, 93 and 208/94

Thambi Alias Ismail Rawther

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:

Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 — Section 2, 4, 5, 6, 6(2)

Citation : (2000) 07 KL CK 0057

Hon'ble Judges : Arvind Vinayakarao Savant, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : E. Subramani, for the Appellant; Mohamed Yousef, A.A.G. or Respondents Nos. 1 to 3 and K. Balakrishnan, for the Respondent

Judgement

K.S. Radhakrishnan, J.—These appeals have been preferred against the common judgment in O.P. Nos. 9914, 9792, 10716 of 1989 and the judgment in O.P. No. 7767 of 1993 respectively.

2. Question which arises for consideration in all these appeals is the same. Some of the Respondents in these appeals, who are members of the Scheduled Tribes, preferred applications u/s 6(2) of the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975, for restoration of their lands. The Sub Collector issued notices to the Appellants against whom complaints were preferred by the members of the Scheduled Tribes. In O.P. Nos. 9792 and 10716 of 1989, the only objection taken was that the applications themselves were time-barred, and therefore not maintainable. The main objection taken in O.P. No. 10716 of 1989 by the Petitioner therein was that she became the owner of the land in question by virtue of a transfer effected by third parties as per the certificate of purchase produced by her. All the applications preferred by the members of the Scheduled Tribes were allowed by the Sub Collector. Ext. P-1 is the order in all these cases. The ground of limitation put forward by the Appellants in some of the appeals was found unsustainable.

Regarding the claim of purchase from third parties made by the Petitioner in O.P. No. 10716 of 1989, it was found that the property in question, which belonged to the Scheduled Tribes, was actually encroached upon by the Petitioner. It was also found by the Sub Collector that the Appellants-Petitioners miserably failed to establish their independent title to the property. It was therefore ultimately found that the Scheduled Tribes, who have preferred applications, were entitled to get restoration u/s 4 of the Act. Aggrieved by the order passed by the Sub Collector, Appellants have preferred appeals before the District Collector. All the appeals were dismissed. Against those orders, Writ Petitions were preferred. Learned Single Judge concurred with the finding of the Sub Collector and District Collector. Aggrieved by the same these appeals have been preferred.

3. When the matter came up for hearing, counsel for the Appellants, Sri E. Subramani, submitted that the provisions of the Act could be invoked only in respect of a transfer as defined in the Act. Reference was made to Section 2(g) of the Act, which is extracted below for easy reference:

"transfer" in relation to immovable property, means an act by which immovable property is conveyed by any documentary or oral transaction, whether by way of mortgage with or without possession lease, sale, gift or exchange, or in any other manner, not being a testamentary disposition; and includes a charge, "vilapanayam", "unduruthi", contract relating to immovable property, mortgage, pledge or hypothecation of crops or standing trees on payment of consideration or otherwise, voluntary surrender and abandonment."

Counsel for the Appellants submitted that on a reading of Sections 4, 5 and 6 of the Act, it is clear that the authorities could invoke the provisions of the Act only in respect of a land which became alienated from a Scheduled Tribe by virtue of any of the processes referred to in the definition of "transfer" as contained in the Act. Counsel further submitted that in the investigation conducted by the authorities as is evident from the impugned orders, the Appellants are found to be trespassers and not transferees of the land from the Scheduled Tribes. Counsel submitted that under such circumstances, the provisions of the Act could not be invoked against the trespassers. It is his contention that the remedy open to the claimants is before the Civil Court.

4. Counsel appearing for the claimants as well as Learned Government Pleader submitted that the definition of "transfer" in Section 2(g) of the Act is very wide, which includes abandonment of property as well. According to them, a liberal interpretation has to be given to the expression "transfer". Consequently, the trespassers would also come within the definition.

5. We have examined the rival contentions of the parties. The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 was enacted to provide for restricting the transfer of lands by members of Scheduled Tribes in the State of Kerala and for restoration of possession of lands alienated by such members and for matters connected therewith. The Act has

been enacted to safeguard the interests of the Scheduled Tribes, a vulnerable section of the society. State Government noticed that the ignorance of Scheduled Tribes with regard to men and matters was taken advantage of by various persons by which properties belonged to them were appropriated through various modes. In order to safeguard the interests of the Scheduled Tribes, the Act has been enacted, so that even though they have lost the property, they could repossess the same under the provisions of the Act. We are of the view that when we interpret the provisions of the Act, we have to give a very liberal and purposive interpretation. The definition of "transfer" in Section 2(g) in relation of immovable property, means an act by which immovable property is conveyed by any documentary or oral transaction, whether by way of mortgage with or without possession, lease, sale, gift or exchange, or in any other manner, etc. Even the conduct of voluntary surrender and abandonment would also come within the definition of "transfer". Even though trespassers as such would not come within the expression "lease, sale, gift, etc., but by virtue of the expression "abandonment" used in Section 2(g), the conduct of abandonment by a Scheduled Tribe consequent on a trespass by a third party would fit in the definition of "transfer". The word "abandonment" as such is not defined in the Act. It is, however, profitable to refer to the dictionary meaning of the said word. The word "abandon" as given in Oxford Advanced Learner's Dictionary reads as follows:

go away from (a person or thing or place) not intending to return; for sake, desert. 2. Give up completely. 3. Yield completely.

New Webster's Dictionary of the English Language, 1971, gives the following meaning for the word "abandon":

1. To give up wholly, as to another; yield, or relinquish utterly; surrender without restraint; renounce; for sake or desert; also, to banish; 2. milit to bail out of, as an air craft, and let it crash; yield, as oneself, as to personal feelings-n, abandonment to naturalness of action or manner; freedom from conventional restraint.

Therefore the abandonment of lands in question in the face trespass by the Appellants would come within the definition of "abandon" and consequently would fit in the definition of "transfer" u/s 2(g) of the Act. We are of the view that the very purpose of the Act would be defeated if trespass is taken out of the definition of "transfer" as given in the Act. Even though the word "abandon" has got more than one meaning, as stated in Maxwell on the Interpretation of Statutes, 12th Edn., at page 208, the court has to give the following interpretation:

Whenever the language of the legislature admits of two constructions and, if construed in one way, would lead to obvious injustice the courts act upon the view that such a result could not have been intended, unless the intention to bring it about has been manifested in plain words. "If the court is to avoid a

statutory result that flouts commonsense and justice it must do so not by disregarding the statute or overriding it, but by interpreting it in accordance with the judicially presumed parliamentary concern for commonsense and justice.

6. In view of the above legal position, we are of the view that the abandonment of the property by the Scheduled Tribes consequent on a trespass by persons like the Appellants would come within the definition of Section 2(g). Consequently, the applications preferred u/s 6(2) of the Act are perfectly maintainable. It is not disputed that the Appellants have no title over the property in question. The fact that Appellants have trespassed into the property has already been admitted. The fact that the property originally belonged to the Scheduled Tribes is not disputed. Both the statutory authorities have found that the claim made by the Scheduled Tribes is bona fide and genuine. The said finding was confirmed by the learned Single Judge.

In the said circumstances, we find no reason to disturb the finding of the learned Single Judge. Writ Appeals lack merits and the same are accordingly dismissed.