
(2006) 12 KL CK 0079
In the High Court Of Kerala
Case No : C.R.P. No. 3173 of 2000

Thangavelu and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Kerala Land Reforms (Amendment) Act, 1979 — Section 11
Kerala Land Reforms Act, 1963 — Section 56, 72H, 82(1), 82(2), 84

Citation : (2006) 3 KLJ 911

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : V. Chitambaresh and S. Krishna Prasad, for the Appellant; Basant Balaji, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Revision Petitioners are the sons of the declarant by name Rangaswamy. Taluk Land Board vide its order dated 7-12-1975 directed the declarant to surrender an extent of 29.67 acres as excess land. That order was affirmed by this Court on 31-8-1976 in C.R.R No. 59 of 1976. Taluk Land Board later vide its proceedings dated 22-11 -1978 reduced surplus land by 0-3 8 acres being the "kudiyiruppu" of Ors. . Lands ordered to be surrendered by the declarant was taken over by the Tahsildar, Palakkad on 16-6-1976 but lands were not assigned to the eligible persons since the distribution was stayed by the District Collector on the ground that the lands included in the ceiling case are involved in gifts or partition during the period from 1-1-1970 to 5-11-1974 by the declarant to his sons. Declarant then filed application for restoration of ownership and possession or both of surplus land u/s 85(10) of the KLR Act. His claim was based on a partition deed No. 103/72 of S.R.O., Palakkad. It was stated by him that those properties covered under the partition deed were self acquired properties and they were allotted to his sons and the same would operate as gifts and therefore liable to be exempted u/s 84(1A) of the KLR Act. Claim of the declarant was allowed by the Taluk Land Board by order dated

29-6-1982 and ordered that the declarant need surrender only 6.79 acres of land. Consequently a direction was given to the Tahsildar to restore possession of the remaining lands. Later Taluk Land Board after a period of more than 18 years passed an order dated 28-11-2000 cancelling its earlier order dated 29-6-1982 and ordered that the declarant has to surrender 29.29 acres of land. Declarant died and his sons have come up with this revision.

2. Sri V. Chitambaresh, counsel appearing for the revision Petitioners submitted that the Taluk Land Board was not justified in cancelling its order dated 29-6-1982. Counsel submitted that the Taluk Land Board has rightly granted exemption u/s 84(1A) of the Act after having noticed that the properties were gifted to his sons between the period from 1-1-1970 to 5-11-1974. Counsel also submitted that the Land Board had failed to note the non obstante clause employed in Section 84(1A) of the KLR Act. Learned Government Pleader tried to support the impugned order and submitted that the Taluk Land Board has got power to set aside its earlier order dated 29-6-1982. Section 84(1A) came into effect on 1-1-1970 and the same was introduced by Section 11 of the Kerala Land Reforms (Amendment) Act, 1979. The said provision is extracted hereunder for easy reference.

84(1A). Notwithstanding anything contained in Sub-section (1), or in any judgment, decree or order of any court, or other authority, any voluntary transfer effected by means of a gift deed executed during the period commencing on the 1st day of January, 1970 and ending with the 5th day of November, 1974, by a person owning or holding land in excess of the ceiling area in favour of his son or daughter or the son or daughter of his predeceased son or daughter shall be not deemed to be, or ever to have been, invalid:

(a) if the extent of the land comprised in the gift does not exceed the ceiling area specified in Clause (a) of Sub-section (1) of Section 82; and

(b) if the extent of the land comprised in the gift exceeds the ceiling area specified in the said clause, to the extent of that ceiling area:

provided that nothing contained in this Sub-section shall apply:

(a) to a transfer in favour of a person who was an unmarried minor on the 1st day of January, 1970;

(b) in respect of any land which has been assigned on registry u/s 96, before the commencement of the Kerala Land Reforms (Amendment) Act, 1979.

Explanation. - For the purposes of Clause (b), a land shall be deemed to have been assigned on registry if the purchase price payable for the assignment of that land or the first instalment thereof has been deposited as required by the rules made under this Act.

(2) Notwithstanding anything contained in any law for the time being in force, all voluntary transfers effected by any person (other than a family or any member

thereof or by an adult unmarried person) owning or holding land in excess of the ceiling area after the 1st July, 1969, otherwise than:

(i) by way of partition; or

(ii) in favour of a person who was a tenant of the holding before the 27th July, 1960,

and continued to be so till the date of transfer;

(iii)* * * * *

shall be deemed to be transfers calculated to defeat the provision of this Act and shall be invalid:

Provided that without prejudice to any other right of the parties to any such transfer, when any purchase price is payable u/s 56 or any compensation is payable u/s 72H or Section 88 for any land covered by the said transfer, it shall be competent for the Land Tribunal to award to the transferee, out of the purchase price or compensation amount in respect of such land, such sum as the Land Tribunal may consider just and proper.

(3) For the removal of doubts, it is hereby clarified that the expression "ceiling area" in Sub-sections (1) and (2) means the ceiling area specified in Sub-section (1) of Section 82 as amended by the Kerala Land Reforms (Amendment) Act, 1969 (35 of 1969).

Facts would indicate that the properties included in the ceiling case were partitioned between the declarant and his sons as per partition deed No. 103/73 of S.R.O., Palakkad. Properties were self acquired properties of declarant. Allotment of each of the items to the sons would operate as a gift. According to the partition deed, actually 9-14 acres was allotted to one of his sons by name Thangavelu, 9-25 acres to his Anr. son Maruthachalam and an extent of 9-81 acres allotted to his son Natarajan. According to the provisions contained in the KLR (Amendment) Act the donees are entitled to hold and possess an extent of 5 standard acres or 6 to 7.50 ordinary acres. The recitals in the gift would reveal that the gifts were made to his son voluntarily without consideration and was accepted by them. Partition deed in my view have the character of a gift. In this connection I may refer to the decision of this Court in Ponnu v. Taluk Land Board 1981 KLT 780 where the learned Single Judge of this Court held that whenever the legislature wanted the operation of a particular provision to be restricted to documents bearing a particular name or style, it was taken care to state so. So it can be legitimately inferred that whenever the legislature did not want such a restricted approach to be made in regard to any Section, it has refrained from using phrases and clauses indicative of such a restricted approach. Legislature has refrained from using words indicative of such a restrictive approach in Sections 84, 84(1A) and the Explanation to Section 85(1). While Section 84 refers to certain types of transfers or transfers by way of gift or by way of partition, and the explanation to Section 85(1) also refers to transfers by way of

partition, etc. Section 84(1A) refers to transfers by means of gift. This Court in Ponnu's case held that there is nothing in these provisions to indicate that the legislature wanted the provision to be applicable only if the documents are styled in a particular way. I also subscribe the same and hold that partition deed No. 103/73 is essentially a gift and since it was executed between the period from 1-1-1970 and 5-11-1974 and Section 84(1A) of the KLR Act would squarely apply. Under such circumstance I am of the view that the Taluk Land Board was not justified in cancelling the order dated 29-6-1982. The order passed by the Taluk Land Board on 28-11-2000 is therefore set aside and the order dated 29-6-1982 would stand restored. C.R.P. is allowed as above.