(2014) 02 KL CK 0070

In the High Court Of Kerala

Case No : R.P. No. 39 of 2013

Varkey, Mariakutty, Vattoth House and Thomas — APPELLANT

Vs

Taluk Land Board and Others — RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Kerala Land Reforms (Amendment) Act, 2005 — Section 106B, 7E

Citation : (2014) 02 KL CK 0070

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Raju Joseph, Sri. J. Julian Xavier and Sri. K.T. Poulose Koratty by, for the Appellant;

Judgement

K. Vinod Chandran, J.—Both the State and the legal heirs of the original declarant are before this Court seeking review of the order in C.R.P. 951/1995 rendered on 29.11.2012. The parties are referred to as per their status in their original Revision, representatives of the original declarant as the revision petitioners and respondent State as the State. It is also to be noticed that there were a number of respondents impleaded in the CRP, after remand from the Honourable Supreme Court who were impleaded as additional respondents 5 to 33. The brief facts are that the original declarant was assessed as having in his possession 13.64 acres of land, as excess over the ceiling limit. Advance possession was taken of 3.37 acres in Palliperuvanna village. The CRP R.P.s. 39 & 333/13 filed by the original declarant was dismissed but with liberty to raise a claim with respect to 4.50 acres which according to him, was a subsequent purchase. That claim was successfully agitated by the declarant before the Taluk Land Board (TLB) which passed the order dated 13.11.1979 deleting such extent. Hence, the original determination was reduced to that extent and the excess land was reduced to 9.14 acres of which 3.37 acres was taken advance possession. The balance 5.77 acres were to be surrendered by the declarant.

2. The facts relating to the subsequent proceedings by the declarant have been

stated in the order. Suffice it to say that finally, there was a re-determination of the excess lands, in an order in a CRP relegating the declarant to the Taluk Land Board on the issue of exercise of option. The Taluk Land Board, though was entitled to look at the exercise of option; considered the exemption granted, with respect to two gift deeds and found the same to be R.P.s. 39 & 333/13 improper and hence, added a further extent; scaling up the total extent to be surrendered as 11.13 acres. The above CRP was filed challenging the said order which was, at the first instance, dismissed by order dated 25.9.1995. The matter was taken up before the Honourable Supreme Court in Civil Appeal No. 4992/1997 wherein the re-determination of the excess lands, was found to be improper and the CRP was remanded for fresh consideration. Hence, again the extent to be surrendered remained as 5.77 acres, out of which 1.77 acres; being in the possession of one Aduvat Amed, whose litigations against the declarant had failed; was surrendered. So much is beyond dispute and has been specifically stated in the order in the above CRP.

3. Though the petitioner had claimed for resumption of 3.37 acres which was taken advance possession, this Court specifically declined such prayer, since considerable time had elapsed. Some of the properties existing in the R.P.s. 39 & 333/13 hands of others also were assessed in the hands of the declarant. These others were the persons who were impleaded as additional respondents 5 to 33. Respondents 26 and 27 appeared before Court and contended that they have a claim under Sections 7E and 106B introduced by the Kerala Land Reforms (Amendment) Act, 2005. That right however, was not adjudicated upon by this Court in the CRP and their remedies were left open, to approach the appropriate authorities. None of the other additional respondents appeared.

4. This Court found that the balance lands remaining to be surrendered would be 4.02 acres; which the legal representatives of the original declarant were directed to surrender within a period of three months to the Government. Admittedly, the said extent has been surrendered as per Annexure-3 produced along with (I.A. 898/13) in R.P. 39/2013. The dispute now raised by R.P.s. 39 & 333/13 way of this review is the attempt of the Government to take possession of 1.84 acres of land remaining with the legal heirs of the original declarant which, according to the State, was taken possession of, after the present CRP was dismissed at the first instance. The prayer of the State in the R.P. 333/2013 is that the possession taken, of such 1.84 acres of land again in Palliperuvanna village may be conceded to the State and the said extent be deleted from the total area to be surrendered by the original declarant.

5. At the first instance, when the CRP was dismissed on 25.9.1995, State contends that it had taken possession of 1.84 acres of land by a mahazar produced as Annexure-1 in R.P. 333/13. Admittedly, a Civil Appeal was filed before the Honourable Supreme Court, in which a stay was granted on 20.12.1996. The contention of the State is that the possession was taken in the meanwhile, i.e., when the CRP was dismissed and before the stay was R.P.s. 39 &

333/13 granted by the Honourable Supreme Court. The revision petitioners however, would contend that they had been in possession of the lands continuously and at no point of time, the State had taken physical possession of such lands. They have not been issued notice of the mahazar too. It is contended that the State, in fact, had filed a criminal complaint before the jurisdictional Magistrate''s Court alleging trespass against the legal representatives of the declarant. That proceeding however, concluded in the acquittal of all the petitioners.

6. When C.R.P. 951/95 was admitted, this Court granted a stay of the proceedings of the Land Board on 18.4.1995. Again, after the Civil Appeal before the Honourable Supreme Court was disposed of in the year 2003, the Village Officer, Chakkittapara, issued a notice, for auctioning the right to tap the rubber trees standing in the 1.84 acres of property. The petitioners, then approached this Court with I.A. 295/2007, in which they R.P.s. 39 & 333/13 were granted a stay of the auction proceedings. It is on these facts, that both the petitioners and the respondent State seek review of the order of the CRP.

7. The revision petitioners in fact are aggrieved by the possession sought to be taken over of the 1.84 acres of land in Palliperuvanna village, which according to them, is the only property remaining with them, after surrender. The State however, seeks to review the order insofar as asserting their right of possession over 1.84 acres of land.

8. It is to be noticed that the alleged take over of the lands by the State was not brought to the notice of this Court at the stage when the CRP was heard. That restricts the scope of the review filed by the State. In any event, since possession was remaining with the revision petitioners, and the proceedings of the Taluk Land Board for surrender, was stayed by this Court, in CRP as also by the Honourable Supreme Court in the SLP filed before it, R.P.s. 39 & 333/13 the State cannot contend that a mahazar prepared in the intervening period; of the dismissal of the CRP and the stay granted by the Honourable Supreme Court in the SLP, would enure to their benefit to uphold the stand of physical possession having been taken of the said properties. The physical possession never was taken, of the said property. In the said circumstances, it is found that RP. 39/2013 is unnecessary, insofar as what is required is only a clarification that 1.84 acres of property remaining with the petitioners, cannot be taken over by the State based on a mahazar prepared in the year 1995, especially since the revision petitioners had surrendered the property directed to be surrendered by the order of this Court. That clarification is hence made, as an order of this Court. The Review Petition 39/2013 hence stands disposed of, with the above clarification. Review Petition filed by the State, R.P. 333/2013, on the aforesaid R.P.s. 39 & 333/13 findings, is found to be not maintainable and hence stands dismissed. The parties shall suffer their respective costs.