

(1969) 03 KL CK 0004
In the High Court Of Kerala
Case No : A.S. No's. 1 and 2 of 1969

Varkey Thomas

APPELLANT

Vs

Annamma Abraham

RESPONDENT

Date of Decision : 28-03-1969

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 112, 132, 75, 75(4)

Citation : (1969) KLJ 658

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;P. Narayana Pillai, J

Bench : Division Bench

Advocate : K. George Varghese and Thomas V. Jacob, for the Appellant; K. Ravindranathan Nair for Respondent 1 and 2, for the Respondent

Judgement

T.S. Krishnamoorthy Iyer, J.—These two appeals raise a common question of law and they are therefore disposed of by a common judgment. The lands belonging to the appellant in A.S. 1 as well as the appellant in A.S. 2 were compulsorily acquired under the Travancore Land Acquisition Act 1960. The respondents in A.S. 1 of 1969 and the respondent in A.S. 2 of 1969 were kudikidappukars in some of those items and in view of the dispute regarding the apportionment of compensation money there was a reference to the Land Acquisition Court. The learned Subordinate Judge has now found that the respondents are entitled to 90 per cent or the land value calculated at the rate fixed in the award passed by the lower court with the statutory solatium and interest. The question to be considered is whether this decision of the learned Subordinate Judge requires interference. In granting the decrees to the respondents the learned Subordinate Judge relying on the decision of Madhavan Nair J., in S.A. 612 of 1964 followed the principle laid down by Section 112 of Act 1 of 1964. The submission on behalf of the appellants was that Act 1 of 1964 will not apply while the submission on behalf of the respondents was that since Act 1 of 1964 has become law on the date of the apportionment of the compensation money the said provisions will have to be applied. Since the acquisition of the property was in 1960 we entertain no doubt that the apportionment of compensation money

should be based on the rights of parties as on the date of acquisition. Act I of 1964 cannot therefore apply to decide the extent of the rights of parties in apportioning the compensation. The learned counsel for the respondents is not right in his submission that S.A. 612 of 1964 has decided that the rights of parties should be decided under the law in force on the date of the apportionment. On the other hand, Madhavan Nair J., has only held that the apportionment has to be made on the basis of the rights on the date of the acquisition. But in deciding the sharing of the compensation money between the landlord and the kudikidappukaran. His Lordship accepted the equitable principle embodied in Section 112 of the Act 1 of 1964. It was not even held in S.A. 612 of 1964 that Section 112 of Act 1 of 1964 would apply if the acquisition had taken place prior to the Act. There cannot be any doubt about the proposition laid down by the Full Bench in *Valia Raja v. Veeraraghava Iyer* 1961 KLT 103 that the question of apportionment of compensation has to depend upon the rights of the parties on the date of the acquisition. The question to be decided therefore is what are the rights of the parties on the date of the acquisition. It is not denied that the respondents in both the appeals were kudikidappukars of the land owners in the properties wherein they were residing. Section 4 of the Travancore-Cochin Prevention of Eviction of Kudikidappukars Act 1955 (Act XIII of 1955) conferred upon a kudikidappukaran permanent right of occupancy in the kudiyruppu and Section 6 of the said Act made the interest of a kudikidappukaran in his kudiyruppu heritable but not alienable. Section 7 of the said Act prevented the eviction of kudikidappukaran from the kudiyruppu except on any of the grounds mentioned in the said provision. There is no evidence to show that the respondents got themselves registered as kudikidappukars under the Travancore Prevention of Eviction Act 1124. Act XIII of 1955 was in force on the date of the acquisition. It was repealed only by Section 132 of Act 1 of 1964. It is therefore clear that on the date of the acquisition a kudikidappukaran had permanent right of occupation in the kudiyruppu subject to the right of the owner to evict him on certain grounds. The rights available to a kudikidappukaran under Act 1 of 1964 are almost the same as those conferred on him by Act XIII of 1955. Sub-section 4 of Section 75 provided that when a kudikidappukaran is shifted from one part to another part of the land the owner of the land shall transfer to the kudikidappukaran ownership and possession of land equal to the extent of the existing kudikidappu subject to a minimum of three cents and a maximum of 10 cents, and Section 112 of Act 1 of 1964 as already stated fixes the apportionment of land value in cases of acquisition as between land owner, intermediaries, cultivating tenant and the kudikidappukaran and sub-section 2 of Section 112 of Act 1 of 1964 provides that the kudikidappukaran shall be entitled to ninety per cent of the value of the land occupied by his homestead or hut. When therefore the rights of the kudikidappukaran conceded by Act XIII of 1955 and Act 1 of 1964 are identical even though Section 112 of Act 1 of 1964 is not retrospective the valuation of the content of rights of kudikidappukaran as against the land owner adopted in Section 112 of Act 1 of 1964 can be safely adopted for the purpose of valuing the

interest of the kudikidappukaran even in the case of acquisitions prior to Act 1 of 1964. This is exactly what Madhavan Nair J has said in S.A. 612 of 1964 and with great respect we endorse the same view.

2. If so, the question is whether the amount awarded by the learned Judge to the respondents in each of the appeals is correct. The learned Judge has allowed ninety per cent of the value of 10 cents of land to the respondents. If the principle underlying section 112 of Act I of 1964 is accepted it follows that the respondents are entitled to ninety per cent of the value of the land occupied by the homestead or hut. According to Section 75 (4) of Act 1 of 1964 a kudikidappukaran is entitled to a minimum of three cents and a maximum of 10 cents of land we are satisfied that the interests of justice will be satisfied by allowing the respondents in each of the cases ninety per cent of the value of four cents of land calculated at the rate of Rs. 200/- per cent the value fixed by the Subordinate Judge. There was considerable discussion at the Bar as to the extent of the land necessary for locating the homestead or hut. The counsel for the appellants submitted that value of three cents alone should be granted while the counsel for the respondents was dissatisfied even with the value of five cents. It is no doubt true that the matter was not approached by the trial court keeping this aspect in view. But we do not think it necessary to remand the cases for fresh trial even though there is some amount of arbitrariness in the view that we are taking in these appeals. Taking into consideration the description of the hut as shown in the mahazar prepared at the time of the acquisition we are satisfied that an extent of four cents of land is quite sufficient for locating the homestead or hut of the respondents. We therefore modify the award of the lower court and allow the respondents ninety per cent of the land value of four cents of land. They will also be entitled to get a solatium of 15 % on the said amount and also interest at the rate of 4% on such amount from the respective dates on which the State took possession of the properties. The judgment and decree of the court below are modified accordingly. The appeals are thus partly allowed and we direct the parties to bear their costs in this court.