

(1976) 07 KL CK 0020
In the High Court Of Kerala
Case No : C.R.P. No. 411 of 1973

Vengalath Madathil Tavazhi Karnavan and Another	APPELLANT
Vs	
Thorekkat Kunhikrishnan and Others	RESPONDENT

Date of Decision : 08-07-1976

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 1(3), 13A, 6A

Citation : AIR 1977 Ker 123

Hon'ble Judges : P. Govindan Nair, C.J.; P. Subramonian Poti, J.; P. Narayana Pillai, J

Bench : Full Bench

Advocate : T.R. Govinda Wariyar, for the Appellant; P.C.B. Menon and V.P. Mohankumar, for the Respondent

Final Decision : Dismissed

Judgement

Govindan Nair, C.J.—This revision petition has come up before the Full Bench on an order of reference by a Division Bench of this Court. The question that arises for consideration has to be answered on the interpretation of Sections 6-A and 13-A of the Kerala Land Reforms Act, 1963, for short the Act. Before we refer to these sections and the corresponding provisions in the previous enactments, we shall briefly state the facts.

2. The revision petitioner obtained a decree for redemption of the mortgage, Ext. A-1 dated 4-3-1936, executed in favour of the father of the counter-petitioner in O. S. No. 428 of 1955. This decree was confirmed in appeal in A. S. No. 44 of 1962, and on further appeal to the High Court in S. A. No. 129 of 1963. In execution of the decree the civil revision petitioner recovered possession of the property on 17-7-1967. The counter-petitioner's father, Raman was holding the property on an oral lease from a period anterior to 1930. It was while he was so holding the property on an oral lease that the property was mortgaged to him on 4-3-1936 under Ext A-1.

3. The respondents who got the rights of their father Raman made an application purporting to be u/s 13-A of the Act on 24-6-1970 for restoration of possession of the property delivered over on 17-7-1967. This application was allowed by the Land Tribunal on 21-1-1972 and the order was confirmed by the appellate authority, the Land Tribunal (Munsiff) of Kozhikode. We shall now extract Sections 6-A and 13-A of the Act.

"6A. Certain persons who were holding land on or after 1st December, 1930 to be deemed tenants -- Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage or in any judgment, decree or order of court, a person in possession of immovable property in any area in the State to which the Malabar Tenancy Act, 1929, extended, whether as mortgagee or otherwise, shall be deemed to be a tenant if--

(a) The property in his possession consists of agricultural land;

(b) he or any of his predecessors-in-interest was holding the property as a tenant on or after the 1st day of December, 1930; and

(c) the tenancy was terminated after the 1st day of December 1930 and before the commencement of this Act, but his predecessors-in-interest or himself continued in possession of the property, without interruption, whether as a mortgagee with possession or otherwise, from the date of such termination till the commencement of this Act.

Explanation I.-- For the purposes of clause (b), "tenant" means a tenant as defined in the Malabar Tenancy Act, 1929, as in force on the 1st day of November, 1956.

Explanation II.-- An interruption for a period not exceeding an agricultural year immediately following the termination of the tenancy shall not be deemed to be an interruption for the purposes of Clause (c).

13-A. Restoration of possession of persons dispossessed on or after 1st April, 1964,--(1) Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of court, where any person has been dispossessed of the land in his occupation on or after the 1st day of April, 1964, such person shall, if he would have been a tenant under this Act as amended by the Kerala Land Reforms (Amendment) Act, 1969, at the time of such dispossession, be entitled subject to the provisions of this section to restoration of possession of the land:

Provided that nothing in this sub-section shall--

(a) apply in any case where the said land has been sold to a bona fide purchaser for consideration before the date of publication of the Kerala Land Reforms (Amendment) Bill, 1968, in the Gazette, or

(b) entitle any person to restoration of possession of any land which has been resumed under the provisions of this Act.

(2) Any person entitled to restoration of possession under Sub-section (1) may, within a period of six months from the commencement of the Kerala Land Reforms (Amendment) Act, 1969, apply to the Land Tribunal for the restoration of possession of the Land.

(3) The Land Tribunal may, after such inquiry as it deems fit, pass an order allowing the application for restoration and directing the applicant to deposit the compensation, if any, received by the applicant under any decree or order of court towards value of improvements or otherwise and the value of improvements, if any, effected on the land after the dispossession as may be determined by the Land Tribunal, within such period as may be specified in the order.

(4) On the deposit of the compensation and value of improvements as required in the order under Sub-section (3), the Land Tribunal shall restore the applicant to possession of the land, if need be by removing any person who refuses to vacate the same."

4. The question arising for the application of Section 13-A is whether the person claiming restoration of possession has been a tenant under the Act as amended by the Kerala Land Reforms (Amendment) Act, 1969. According to counsel for the petitioner, on 17-7-1967 when the counter-petitioner was dispossessed, he would not have been tenant under the Act as amended by the Kerala Land Reforms (Amendment) Act, 1989. It was so contended on the basis of the words "till the commencement of this Act" occurring in Clause (c) of Section 6-A of the Act which we have already extracted. According to Clause (c), there should have been uninterrupted possession from the date of termination of the tenancy "till the commencement of this Act". Referring to the proviso to Section 1(3) of the Act it was argued that "till the commencement of this Act" must be understood as a reference to the coming into force of Section 6-A of the Act. We shall extract Sub-section (3) of Section 1 of the Act with the proviso.

"1.. ...

(3) The provisions of this Act, except this section which shall come into force at once, shall come into force on such date as the Government may, by notification in the Gazette, appoint;

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act, shall be construed as a reference to the coming into force of that provision."

According to counsel for the revision petitioner this section could have come into force only on the day mentioned in S. R. O. No. 2/70 issued by the Government in exercise of the powers conferred by Sub-section (3) of Section 1 of the Act. The Government appointed the 1st day of January, 1970 "as the date on which all the provisions of the said Act which have not already come into force, shall come into force." So it was submitted that Section 6-A and therefore necessarily

Clause (c) thereof came into force only on 1-1-1970 and by the wording of that clause a person claiming the benefit of Section 6-A will have to continue in possession till 1-1-1970. It was also submitted that the position would be the same even if the date of coming into force of Act 35 of 1969 which introduced Section 6-A of the Act by Section 8 thereof is taken as the relevant date. Section 8 substituted the present Section 6-A for Section 6-A of the Act which was in the statute book at the time Act 35 of 1969 came into force. By Section 1(2) of Act 35 of 1969 that Act would come into force on such date as the Government may, by notification in the Gazette appoint and the Government by S. R. O. No. 1/70 issued in exercise of the powers conferred by Sub-section (2) of Section 1 of Act 35 of 1969 appointed the 1st day of January, 1970 as the date on which the said Act shall come into force. It was urged that even if it is taken that Section 6-A of the Act had come into force on the date on which Act 35 of 1969 came into force possession will have to be continued till 1-1-1970 by a person claiming the benefit of Section 6-A. In support of this argument the decision of a Division Bench of this Court in *Devaki Aroma v. Ramakrishna Pillai* (1974 KLT 787) to which one of us was a party was relied on, That decision was concerned with a similar question which arose on a claim by a person who asked for restoration of possession u/s 13-A of the Act on the ground that he was a "deemed tenant" u/s 4-A of the Act. The question that arose was very similar though the wording of Section 4-A(1)(a) is significantly different in that instead of the words "till the commencement of this Act" in Section 6-A of the Act, Section 4-A(1)(a) insisted that the mortgagee or lessee should hold the land comprised in the mortgage "for a continuous period of not less than fifty years immediately preceding the commencement of the Kerala Land Reforms (Amendment) Act, 1969." It was held in the case that immediately preceding meant that the mortgagee or lessee must have continuous possession till the date of commencement of the Kerala Land Reforms (Amendment) Act, 1969. It was also held that the wording in the clause in the section insisted on continuous possession till 1-1-1970 the date on which the Kerala Land Reforms (Amendment) Act, 1969 came into force and that therefore the person claiming the benefit would have to continue in possession till 1-1-1970. The dispossession having taken place before 1-1-1970 Section 4-A, it was held, was not attracted for the reason that continuous possession till 1-1-1970, which the section insisted upon, had not been established. To construe the clause otherwise, it was said, would necessitate re-writing the words in the section which, it was felt, could not be done. So relief for restoration of possession was refused.

5. Counsel for the respondents contended that the words "such person shall, if he would have been a tenant under this Act as amended by the Kerala Land Reforms (Amendment) Act, 1969, at the time of such dispossession" in Section 13-A clearly necessitated the reading of the section introduced by the Kerala Land Reforms (Amendment) Act, 1969 into the Act on the date of dispossession and see whether under the provisions of the section relied on, the person dispossessed would or would not have been a tenant. The compulsion to

have to read the section at the time of dispossession clearly implied that it should be assumed that the section was in force at the time of dispossession. It was said that without the section being there at that time no question as to whether the person dispossessed would or would not be a tenant under the Act, as amended by the Amending Act would arise. By necessary implication therefore it has to be deemed, or taken, that the section was in force on the date of dispossession. If the section was so in force on the date of dispossession it must also necessarily mean that that provision had commenced. So in cases where Section 6-A is relied on, by virtue of the necessity to have to imagine that Section 6-A was in operation on the date of dispossession it was also to be assumed that the provision had commenced. The words "the commencement of this Act" occurring in Section 6-A will have to be understood in the light of the proviso to Section 1(3) of the Act as the commencement of the provision. The provision had commenced by the compulsion of Section 13-A on the date of dispossession. If the words "the commencement of this Act" occurring in Section 6-A have to be understood as the date of dispossession by virtue of the vigour of Section 13-A read with the proviso to Section 1(3) of the Act, those words cannot be understood in a different sense for the purpose of determining the period of possession for what the provision really insists upon is possession till the date of commencement of the provision. The argument of course proceeds on the basis that by the terms of Section 18-A retrospective operation has been given to the definition of the term "tenant" in the Act as also to those provisions in the statute which defined deemed tenants. It was submitted that the clear import of Section 13-A spelt such a consequence. The legislature it was urged clearly intended that the benefit of altered definition as well as the benefit of the definitions creating deemed tenants must accrue to all those who have been dispossessed of the land in their possession on or after the 1st day of April 1964. As far as Section 13-A is concerned, the only factors to be established are whether a person in occupation of the land had been dispossessed on or after the 1st day of April 1964 and whether such a person would have been a tenant on the date of such dispossession under the Act as amended by the amending Act 1969. If these two conditions are satisfied the benefit of the section must accrue to him. If the provisions in the sections which created "deemed tenants" are capable of the interpretation that possession till the date on which those provisions came into operation would be sufficient to create the deemed tenancy, it must be so understood. So it was emphasised that the words "till the commencement of this Act" in Section 6-A should be read as till the commencement of the provision and the commencement of the provision must be taken to be the date of dispossession by virtue of the terms of Section 18-A of the Act read with proviso to Section 1(3) of the Act. So ran the arguments of counsel for the respondents. The argument on the other side was that Section 13-A did not introduce the various sections which defined deemed tenants from the date of dispossession. It was also argued that even if such sections are taken to have come into operation on the date of dispossession those sections must be read according to their terms and no alteration should be made to the words

occurring in the sections. Section 4-A was particularly referred to and it was pointed out that the words in clause (a) of Sub-section (i) of Section 4-A of the Act "for a continuous period of not less than 50 years immediately preceding that commencement of the Kerala Land Reforms (Amendment) Act 1969" can never be understood to be the commencement of the provision and that even if the section was taken to have been in operation or in force on the date of dispossession all that could be done was to read the section as if it was in force on the date of dispossession and see whether its terms had been satisfied.

6. The two questions that arise for consideration therefore are: (1) whether by virtue of Section 13-A by necessary implication the new sections that have been introduced by Act 35 of 1969 defining deemed tenants must be taken to have come into operation or should be taken to have been in existence on the date of dispossession and (2) whether there will be any warrant for attributing to the words of the section a meaning different from that conveyed by understanding the words in their natural literal grammatical sense. This court in *Devaki Amma v. Ramakrishna Pillai* (1974 KLT 787) proceeded on the basis that Section 13-A does not by necessary implication introduce the new sections enacted and incorporated into the Act by Act 35 of 1969 defining tenants and deemed tenants from the date of dispossession of the persons in occupation. With respect we think that this view does not recognise or respect the full import of Section 13-A. Section 13-A has to be read and understood bearing in mind its purpose and object. It appears to us (to me also who spoke for the court in *Devaki Amma v. Ramakrishna Pillai* (1974 K LT 787) that the section had not been construed by bearing in mind the purpose and object sought to be achieved by the section and by understanding the words of the section in a manner that will be conducive to achieving that purpose and object. No doubt the above construction was induced by the ambiguous words of the section. But if the purpose and object of the section is highlighted the section is capable of a meaning different from that given to it in *Devaki Amma v. Ramakrishna Pillai* (1974 KLT 787). The purpose and the object of the section is obvious, and that is that all persons who would have been tenants on the date of dispossession according to the new definitions introduced by the amending Act of 1969 must get the benefit of those amended definitions and thus obtain recovery of possession. If this is the cardinal purpose behind the section, we think we have to read the section as providing the legal fiction that the new definitions introduced by Act 35 of 1969 were available on the dates of dispossession. If they were not available then there was no question of applying them. The fact that the section insists that it should be examined whether the person claiming the benefit of the new sections" would have been a tenant under the new section on the date of dispossession is certainly capable of being understood as necessarily implying that it should be imagined that those amended provisions were in force on the date of dispossession. So we have to take it that those provisions were in existence on the date of dispossession and therefore in force or in operation. To this extent with respect the observation in *Devaki Amma v. Ramakrishna Pillai* (1974 K LT 787) that the new section

introduced by Act 35 of 1969 cannot be deemed to have come into operation on the dates of dispossession by virtue of the operation of Section 13-A cannot be accepted.

7. The answer to the next question is more difficult. Even if the sections are taken to have been in force or in operation on the date of dispossession can it be said that there is justification for changing the terms of the definition or giving to the words of the section a meaning different from that conveyed by the words of the section. This we think cannot be done. The only thing that can be done is to give to the words of the section, as far as it is possible, a meaning consistent with the object. But if the words of the section are clear and incapable of being read in that manner the natural meaning of the words of the section must prevail. Supposing in a section defining the term "deemed tenant" it had been stated that a person claiming the benefit of the section should continue to be in possession till 1-1-1970 can the court substitute for 1-1-1970 the date of dispossession. We think that this would not be justified. Similarly if a section talked about continued possession till the date of commencement of the Kerala Land Reforms (Amendment) Act 1969 as it does in Section 4-A(1)(a) the court would not be justified in re-writing the section and substituting the date of dispossession for the date of commencement of the amending Act 1969. That was the main reason why relief was refused in *Devaki Anma v. Ramakrishna Pillai* (1974 KLT 787). But when we come to Section 6-A the position seems to us to be different because the words used in the section are "till the commencement of this Act." We are asked to imagine or to suppose or to proceed on the basis that the provision in which these words are contained were in force on the date of dispossession by virtue of Section 13-A. "Till the commencement of this Act" occurring in the provision read with proviso to Section 1(3) of the Act will have to be understood as a reference to the coming into force of that provision. Because of Section 13-A of the Act, that provision must be deemed to have been in operation on the date of dispossession. This means that the provision must be deemed to have commenced on the date of dispossession. If those words are to be so understood we think it would not be proper to give to those words a different meaning for the purpose of determining the duration of continuous possession insisted by the provision. The same meaning must be attributed and the question will have to be examined whether a person was in continuous possession till the date of coming into force of the particular provision, which will be till the date of dispossession. The combined effect of the proviso to Section 1(3) and Section 13-A is thus to give a specific meaning to the words "till the commencement of this Act" which will mean till the commencement of the provision. The dates of the commencement of the provision would be the various dates of dispossession in view of Section 18-A which insisted that we should imagine whenever Section 6A is relied on that that was in existence and was therefore in operation on the date of dispossession. So we have to proceed on the basis that on 17-7-1967 when the counter petitioner was dispossessed, Section 6-A was available and the question whether Section 6-A has been

satisfied must be decided by finding out whether the person was in continuous possession till the date of dispossession i.e. 17-7-1967. There is no case that the counter petitioner was not so in possession. Of course the other terms of Section 6-A will also have to be, satisfied. It has not been contended that any of the other conditions of Section 6-A have not been satisfied.

8. Section 10 of the Kerala Stay of Eviction Proceedings Act, 1967 (Act 9 of 1967) which came into force on 30-7-1967 introduced a section which was numbered as 6-A into the Act. Act 9 of 1967 was to remain in force only till the 31st December 1968. The Kerala Stay of Eviction Proceedings (Amendment) Act, 1969 (Act 5 of 1969) which came into force on the 12th February 1969 extended Act 9/1967 till the 31st day of December 1969. Act 5 of 1969 also introduced Section 2-B into the Act which was in these terms:

"2-B. Certain persons who were holding land on or after 1st December, 1930 to be deemed tenants -- Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of court, a person in possession of immovable property in any area in the State to which the Malabar Tenancy Act, 1929, extended, whether as mortgagee or otherwise shall be deemed to be a tenant, if--

(a) the property in his possession consists of agricultural land;

(b) he or any of his predecessors-in-interest was holding the property as a tenant on or after the first day of December, 1930.

Explanation:-- For the purpose of this clause, "tenant" means a tenant as defined in the Malabar Tenancy Act, 1929, as in force on the 1st day of November, 1956; and

(c) the tenancy was terminated after the 1st day of December, 1930 and before the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964), but his predecessors-in-interest or himself continued in possession of the property without interruption, whether as a mortgagee with possession or otherwise, from the date of such termination till the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964)."

Further a new Section 7-A was also introduced which ran thus:

"7A. Restoration to certain persons of their land-- (1) Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of court, where any person has been evicted from the land in his occupation on or after the 1st day of April, 1964 and such eviction would not have been made if the Kerala Stay of Eviction Proceedings (Amendment) Act, 1969 had been in force at the time, such person shall be entitled subject to the provisions of this section, to restoration of possession of the land:

Provided that nothing in this sub-section shall apply in any case where the said

land has been sold to a bona fide purchaser under a registered document for consideration on or before the date of publication of the Kerala Land Reforms (Amendment) Bill, 1968, in the Gazette.

(2) Any person entitled to restoration of possession under Sub-section (1) may within a period of sixty days from the commencement of the Kerala Stay of Eviction Proceedings (Amendment) Act, 1969, apply to the court for restoration of possession of the land.

(3) The court shall, if satisfied after such summary enquiry as the court deems fit, restore the applicant to the possession of the land.

(4) The court may also order the applicant to deposit in court the compensation, if any, received by the applicant under any decree, or order of court towards value of improvements or otherwise and the value of improvements, if any, effected on the land after the eviction as may be determined by the court."

It is clear from the history of the legislation that provision had been made though not in identical terms from the time Act 9 of 1967 came into force namely 30-7-1967 seeking to give protection to those who came within the definition of Section 6-A as it stood then. This is a pointer to the purpose and object of Section 13-A for it cannot be imagined that the protection that was afforded from 30-7-1967 is not to be covered by Section 13-A of the Act. No doubt Section 13-A on the interpretation that we have placed will give protection from dates anterior to 30-7-1967. This no doubt is a new object for which provision is made only by Section 13-A.

9. In the case before us the dispossession having been taken place on 17-7-1967 Act 9 of 1967 would not have protected the respondents. But we think that by virtue of Section 13-A they must get the benefit of Section 6-A and on the construction we have placed on Section 6-A, recovery of possession, This revision petition has to be dismissed. We do so.