(1993) 07 KL CK 0057

High Court Of Kerala

Case No: C.R.P. No. 501/82 and 3938/82 J

Sankaranunni Variyar and Others		APPELLANT
	Vs	
Ayyappan Ezhuthachan		RESPONDENT

Date of Decision: July 21, 1993

Acts Referred:

- Constitution of India, 1950 - Article 19, 300A
- Kerala Debt Relief Act, 1977 - Section 2(4)
- Kerala Land Reforms Act, 1963 - Section 72, 73
- Kerala Payment of Arrears of Rent in Instalments Act, 1979 - Section 13B, 13C, 3, 5, 5(1)

Citation: (1994) 2 KLJ 18

Hon'ble Judges: T.L. Viswanatha Iyer, J; P. Krishnamoorthy, J

Bench: Division Bench

Advocate: T.R.G. Wariyar and Sebastian Davis, for the Appellant; Pirappancode V. Sreedharan Nair and S.P. Aravindakshan Pillai and P.K. Behanan, Govt. Pleader for Respondent No. 1 in O.P. No. 3938 of 1982, for the Respondent

Final Decision: Allowed

Judgement

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Krishnamoorthy, J.
C.R.P. No. 501 of 1982 arises out of an application u/s 5 of the Kerala Payment of Arrears of Rent in Instalments Act, 1979, Act 29 of 1979, (hereinafter referred to as ''the Act''). The legal representatives of the decree holder in O.S. No. 208 of 1964 are the revision Petitioners. The decree-holder in that case obtained a decree for arrears of rent for the period 1134 to 1139 M.E. The final decree was passed on 1st September 1965. In execution the judgment-debtors tenancy right over the property

was brought to sale and sold and it was purchased by the decree-holder himself. The sale was confirmed on 15th November 1966. Thereafter, E.A. No. 125 of 1967 was filed for getting delivery of property and in pursuance to an order thereto decree-holder obtained possession of the property in January, 1967. When the Kerala Payment of Arrears of Rent in Instalments Ordinance, 1979 (10 of 1979) came into force, the judgment-debtor filed an application u/s 5 of the said Ordinance for restoration of possession of the property. The Ordinance was later replaced by Act 29 of 1979. It was alleged by the judgment-debtor who is the Respondent herein that the holding in his possession has been sold in execution of a decree for arrears of rent and that he was dispossessed before the commencement of the Ordinance and accordingly he is entitled to restoration of possession of the holding by deposit of the amount mentioned in Section 5.

2. To the above application the legal representatives of the decree-holder (the decree-holder having died in the meantime), filed an objection. contending that the final decree in the above case was passed on 1st September 1965, that the sale was confirmed on 15th November 1966 and that they got delivery of the property in January, 1967. They contended that the application itself is not maintainable as there was no arrears of rent due as on 1st January 1970 and outstanding at the commencement of the Act or the Ordinance, namely 19th day of July, 1979 and as such the judgment-debtor is not entitled to get restoration of possession. It was also contended by them that after they "obtained possession of the property in 1967 in the wake of Act 9 of 1967 the judgment-debtor tried to trespass upon the property and thereupon the decree-holder filed O.S. No. 175 of 1967 for injunction. That suit was decreed and the decree was confirmed in appeal. On the above grounds it was contended by them that the judgment-debtor is not entitled to any relief u/s 5 as the conditions mentioned in Section 5 are not satisfied and that the property was not sold for arrears of rent referred to in Section 3 of the Act.

3. The execution Court overruled the objection raised by the legal representatives of the decree-holder and it was held that Section 5 is squarely applicable. The execution Court further held that the decree was for arrears of rent and there was a sale in execution of that decree before the commencement of the Act which entitles the; judgment- debtor for an order for restoration of possession u/s 5 of the Act. It is this order that is challenged by the legal representatives of the decree-holder in the C.R.P.

4. O.P. No. 3938 of 1982 is filed by the revision Petitioners in the C.R.P., challenging the validity of the Act on the ground that it violates the fundamental right of the Petitioners under Article 19 as also under Article 300A of the Constitution. It is contended that the provisions contained in the Act are arbitrary, unjust and unreasonable and that it is liable to be struck down as violative of the fundamental right guaranteed to the Petitioner under Article 19 as also under Article 300A of the Constitution.

5. We shall first consider C.R.P. No. 501 of 1982. The question that arises for consideration is as to whether the judgment-debtor (Respondent herein) is entitled to restoration of possession of his holding u/s 5 of the Act. As stated earlier, it has to be remembered that the Court-sale in this case was confirmed on 15th November 1966 and delivery of property effected in January, 1967. In the light of the above facts the question to be considered is as to whether Section 5 of the Act will apply to the case or not Section 5 of the Act, so far as it is relevant, namely Sub-section (1), reads as follows:

(1) Notwithstanding anything to the contrary contained in any other law or in any judgment, decree or order of any Court or Land Tribunal, where any holding has been sold, in execution of a decree or order for arrears of rent referred to in Section 3, and the cultivating tenant dispossessed of the holding before the commencement of this Act, such cultivating tenant shall, subject to the provisions of this section, be entitled to restoration of possession of the holding.

Sub-sections (2) to (4) deal with the procedure for filing such an application and certain ancillary matters with which we are not concerned. On a reading of Section 5(1) it can be seen that if any holding has been sold in execution of a decree or order for arrears of rent referred to in Section 3 and the cultivating tenant dispossessed of the holding, he will be entitled to restoration of possession of the holding, subject to the other provisions of the section. The fact that'' the cultivating tenant was dispossessed of the holding before the commencement of the Act cannot be disputed. The other condition to be satisfied is that the holding should have been sold in execution of a decree for arrears of rent referred to in Section 3. So for applying Section 5, the decree or order for arrears of rent for the realisation of which the holding was sold must be arrears of rent referred to in Section 3. In that context it is pertinent to quote the relevant provisions of Section 3 which deals with payment of arrears of rent in instalments:

3. Payment of arrears of rent in instalments.-(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, custom or usage in any decree or order of any Court or Land Tribunal, all arrears of rent accrued due before the 1st day of January, 1970 and outstanding at the commencement of this Act shall be deemed to be fully discharged if such arrears together with the interest, if any, due thereon at such commencement are paid in six equal half-yearly instalments as provided in Sub-section (2).

Explanation.-For the purposes of this Sub-section, arrears of rent accrued due from a tenant before the 1st day of May, 1968, shall be deemed to be the amount which his landlord is entitled to recover from him u/s 73 of the Kerala Land Reforms Act, 1963 (1 of 1964).

On a reading of the above provisions it is seen that Section 3 refers to arrears of rent accrued due before the 1st day of January, 1970 and outstanding at the

commencement of the Act. In order that arrears of rent may come u/s 3, two conditions must be satisfied: (1) that it must have accrued due before the 1st day of January, 1970; and (2) that it must be outstanding at the commencement of the Act. So far as the first ingredient is concerned, it is satisfied in this case, for arrears of rent in the present case accrued due before the 1st day of January, 1970. But so far as the second condition is concerned, the sale in execution of the decree for arrears of rent having taken place in 1966 itself, it cannot be said ''that the arrears of rent, was outstanding at the commencement of the Act, namely, 19th day of July, 1979. In other words, the second condition necessary to satisfy Section 3 is absent in the case. As stated earlier, Section 5 will apply only in cases where a Court-sale has taken place in execution of a decree for arrears of rent referred to in Section 3. To satisfy that requirement, as stated earlier, the rent should have accrued due before 1st January 1970 and it should be outstanding on the date of commencement of the Act, namely 19th day of July, 1979. If the property was sold long before the commencement of the Act in satisfaction of a decree for arrears of rent, it cannot be said that arrears of rent was outstanding at the commencement of the Act. But Section 5 provides for setting aside any sale of a holding in execution of a decree before the commencement of the Act. If the holding is already sold for arrears of rent before the commencement of the Act, it cannot be a sale in execution of a decree for arrears of rent referred to in Section 3, for to satisfy Section 3 the arrears of rent must be outstanding on the date of commencement of the Act as well. If such a literal interpretation is given, Section 5 becomes unworkable, for no sale before the commencement of the Act could be set aside as there cannot be arrears of rent outstanding on the date of commencement of the Act. If a sale is held for the whole decree-debt, then the entire decree-debt is discharged and thereafter it cannot be said to be outstanding. If literal interpretation is given to Section 5 read with Section 3, then the provisions contained in Section 5 become inoperative. Counsel for the judgment-debtor-Respondent contended that while interpreting Section 5, the words in Section 3 "and outstanding at the commencement of this Act" shall be omitted and the section interpreted without those words in it. On the other hand, Counsel for the revision Petitioners contended that Section 5 must be interpreted in such a way that it can affect only Court sales after 1st January 1970 and before the commencement of the Act. There is really a difficulty in interpreting Section 5 in the light of Section 3, for the words "and outstanding at the commencement of the Act are irreconcilable with the provisions contained in Section 5. But, at the same time, it is clear that the legislature intended to give benefits to tenants whose holdings were sold for arrears of rent before the commencement of the Act. In such a situation the Court should give a reasonable interpretation to the section, in order to give full effect to the intention of the legislature and the purpose underlying the legislation. In such circumstances what the Court should do is eloquently stated by Lord Denning, J. in Seaford Court Estates v. Asher 1949 (2) All. E.R. 155 at 164.

Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English Language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to, give "force and life" to the intention of the legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.
There is a passage in Maxwell on Statutes, 10th Edn., page 229, to the following effect:

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman''s unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the Courts are very reluctant to substitute words in a statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense.

The above passages were quoted with approval in M. Pentiah and Others Vs. Muddala Veeramallappa and Others, , Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, .

6. In the light of the above principles we shall now consider the question as to how best Section 5 can be interpreted in order to give life to the intention of the legislature in enacting such a provision. We have already indicated that the legislature by enacting Section 5 of the Act intended to give benefits to tenants whose holdings were sold before the commencement of the Act. But how far it can

relate back will be the next question. If, as contended for by the Respondent-tenant, the words "and outstanding at the commencement of this Act" in Section 3 are omitted while interpreting Section 5, it will lead to disastrous consequences. The provisions contained in the Act do not limit the operation of Section 5 to Court-sales or dispossession in pursuance thereto within any limited time. If it is interpreted in the way the Counsel for the Respondent-judgment-debtor wants, the provisions contained in Section 5 may affect sales conducted at any time without any limit of time from the days of Adam and Eve. It will lead to inconvenience, absurdity and injustice which the legislature never intended. On the basis of such sales, title would have vested in the auction-purchasers and properties would have been assigned to bona fide transferees for value. There is no provision in the Act saving such rights and the result will be injustice and disaster which the legislature never intended. On the other hand, we are clearly of the opinion that by enacting Section 5 the legislature intended only to relieve the tenants whose holdings were sold for arrears of rent after 1st January 1970. After Act 1 of 1964 was amended by Act 35 of 1969, normally there cannot be any accrual of arrears of rent, save in exceptional cases, for u/s 72 of the Land Reforms Act the landlord''s right vests m the Government and the title of the landlord over the holding is extinguished. The legislature has enacted various enactments to ameliorate the conditions of tenants. By Section 73 of the Kerala Land Reforms Act (Act 1 of 1964) as it originally stood, tenants were granted certain concessions in the discharge of their arrears of rent. Section 73 was amended by Act 35 of 1969 by which it was provided that a landlord shall be entitled to recover towards arrears of rent accrued due before 1st day of May, 1968 and outstanding at the commencement of the Kerala Land Reforms (Amendment) Act, 1969 (i.e. 1st January 1970) only the amount, specified in that section. The maximum rent that was payable by the tenant was only three years'' rent, taking into account the area of land in the possession of the tenant. If the tenant was possessing not more than 5 acres of land, the entire rent will be discharged if one year''s rent or the actual amount in arrears is paid. So also, for tenants possessing more than 5 acres but not more than 10 acres of land, two years'' rent alone was realisable and in respect of tenants possessing more than 10 acres, the maximum rent that could be realised was only three years'' rent. Provision was made in the Kerala Stay of Eviction Proceedings Act, 1967 (Act 9 of 1967) for restoration of possession of land to the tenants whose holding has been sold in execution of any decree for arrears of rent. Section 6 of the Act provided that where any holding has been sold in execution of any decree for arrears of rent and the tenant dispossessed of the holding after the 1st day of April, 1964 and before the commencement of the Kerala Stay of Eviction Proceedings Ordinance, 1967 such tenant shall be entitled to restoration of possession of the holding subject to the provisions of that section. The provisions therein were applicable only to tenants who were dispossessed of the holding after the 1st day of April, 1964. Section 7 of the Act provided for cancellation of certain, sales where the tenant has not been dispossessed. The Respondent in this case had the opportunity to avail of the provisions contained in Act 9 of 1967. Thereafter, by

Act 35 of 1969 the Kerala Land Reforms Act was amended and Sections 13B and 13C were introduced by which provision was made for restoration of possession of the holdings to the tenants who were dispossessed in pursuance to a sale in execution of a decree for arrears of rent as also to set aside the sales even in cases where they were not dispossessed. Section 13B provides that if any tenant has been dispossessed, of the holding after the 1st day of April, 1964 and before the commencement of the Kerala Land Reforms (Amendment) Act, 1969 in pursuance to a Court sale of the holding in execution of a decree for arrears of rent, the sale shall stand set aside and the tenant shall be entitled to restoration of possession of the holding subject to the other provisions in that section. Here also it is pertinent to note that it will apply only to tenants who were dispossessed after 1st April 1964 and before 1st January 1970. Section 13C provides for cancellation of such sales where the tenant has not been dispossessed. It can be seen from the above provisions that from 1964 ameliorative provisions were being enacted to relieve the tenants from the burden of discharging their arrears of rent and even to set aside the sales in execution of decrees for arrears of rent. By virtue of the above provisions any tenant who was dispossessed of his holding before 1st January 1970 was given the right to get back possession of their holding, subject to certain conditions. The Act in question, namely Act 29 of 1979, was enacted thereafter as the legislature felt that a large number of tenants had been dispossessed of their holding for non-payment of arrears of rent and many proceedings are pending before the Land Tribunal and Courts for recovery of arrears of rent. It was in this background that the legislature enacted Act 29 of 1979. As stated earlier, tenants were given the right to get the Court-sales of their holdings set aside as also to get restoration of possession where they were dispossessed before 1st January 1970. The Respondent-judgment-debtor in this case had the opportunity to file applications either under Act 9 of 1967 or by virtue of the provisions contained in Act 1 of 1964 as amended by Act 35 of 1969, which he did not avail. From the various enactments mentioned above and on a reading of Section 5 of Act 29 of 1979, we are clearly of the opinion that by enacting Section 5 the legislature only intended to give benefit to tenants who were dispossessed of their holding after 1st January, 1970 in pursuance to a sale in execution of a decree for arrears of rent accrued due before 1st January 1970. It was never intended to affect any sales in pursuance to which the tenant had already been dispossessed of before 1st January 1970. It is also pertinent to note that Section 8 of Act 29 of 1979 provides that the provisions contained in the Act shall not apply in respect of arrears of rent due from a tenant who is a debtor as defined in Sub-section (4) of Section 2 of the Kerala Debt Relief Act, 1977 (Act 17 of 1977). A person is a debtor under the Kerala Debt Relief Act if his annual income or debt due from him does not exceed three thousand rupees. Debts coming within the purview of the Debt Relief Act as per the provisions contained therein would stand abated. It is clear from the above provisions that the legislature never intended to give benefit to tenants who were entitled to take advantage of any of the provisions contained in the enactments mentioned above. Accordingly we read down Section 5 of the Kerala

Payment of Arrears of Rent in Instalments Act, 1979 and hold that Section 5 therein will apply "only in cases where any holding of a tenant has been sold in execution of a decree or order for arrears of rent due on 1st January 1970 and the tenant dispossessed in executipn of such a decree after 1st January 1970. In the present case the holding of the tenant having been sold in 1966 and he having been dispossessed in 1967, long before 1st January 1970, he is not entitled to invoke the provisions of Section 5 of the Act and the application for restoration of possession is liable to be dismissed.

7. In the view that we have taken in regard to the interpretation of Section 5 of the Act, it is not necessary to consider the constitutional validity of the Act, which is the subject-matter of O.P. No. 3938 of 1982.

8. In the result, we allow the revision petition and set aside the order of the lower Court in E.A. No. 198 of 1979 in O.S. No. 208 of 1964 on the file of the Munsiff''s Court, Perinthalmanna. The Original Petition is dismissed as unnecessary. There will be no order as to costs in both the cases.