(1981) 04 KL CK 0015

High Court Of Kerala

Case No: C.R.P. No. 3053 of 1978-G

Sankara Varma		APPELLANT
	Vs	
Abdullakutty and Others		RESPONDENT

Date of Decision: April 10, 1981

Acts Referred:

- Kerala Land Reforms (Amendment) Act, 1969 - Section 10, 11, 13, 16, 4
- Kerala Land Reforms Act, 1963 - Section 103
- Malabar Tenancy (Amendment) Act, 1954 - Section 21
- Malabar Tenancy Act, 1929 - Section 10, 20, 25
- Transfer of Property Act, 1882 - Section 105

Hon'ble Judges: R.Bhaskaran, J

Bench: Single Bench

Advocate: N. Nandakumara Menon and T. Sudhakaran, for the Appellant; V. Sivaraman Nair and T.V. Ramakrishnan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bhaskaran, J.

This revision u/s 103 of the Kerala Land Reforms Act, Act 1 of 1964 as amended by Act XXXV of 1969 (for short "the Act") is directed against the judgment of the Appellate Authority (Land Reforms) Trichur, dated 10th January 1977 and made in A. A. No. 639 of 1975, reversing the order of the Land Tribunal, Kozhikode, dated 20th November 1973 and made in O.A. No. 739 of 1970, which was an application filed by the revision Petitioner u/s 16 of the Act for resumption of an extent of 4.80 acres of land, it being item No. 3 in the schedule to Ext. A-1 lease deed, dated 6th July 1871. The Land Tribunal allowed the application; but, as already noticed, in reversal of that order the Appellate Authority dismissed the application. It is aggrieved by the decision of the Appellate Authority that the present revision has been filed by the

land owner. What weighed with the Appellate Authority to come to the conclusion that the land owner was not entitled to resume the land from the cultivating tenant was its finding that in terms of the lease deed (Ext. A-1) the land owner was not entitled to resume the land, it being a lease in perpetuity.

2. The counsel for the revision Petitioner submitted that it is nobody''s case that the revision Petitioner did not require the holding bona fide for cultivation by himself; or that the Respondents were not in possession of land exceeding the ceiling area; or that by the resumption the total extent of land in the possession of the Petitioner would be raised above the ceiling area; or that the total extent of land in the possession of the Respondents would be reduced below the ceiling area by the resumption. His argument is that when there is no violation of any one of these conditions mentioned in Section 16 of the Act, an order for resumption should automatically follow upon an application being filed by the Petitioner (land owner) in that behalf.

3. Section 16 of the Act provides:

Resumption for personal cultivate on from tenant holding more than ceiling area.-A landlord (other than a sthani or the trustee or owner of a place of public religious worship) who requires the holding bona fide for cultivation by himself, or any member of his family, may resume from his tenant, who is in possession of land exceeding the ceiling area, the whole or portion of the holding, subject to the condition that, by such resumption, the total extent of land in the posseisson of the landlord is not raised above the ceiling area and the total extent of land in the possession of the cultivating tenant is not reduced below the ceiling area.

(Explanations omitted)

On behalf of the revision Petitioner it was contended that the nature of the lease granted, whether it is in perpetuity or otherwise, is immaterial; and under the scheme of the Act the land owner having less than the ceiling area requiring the holding bona fide for cultivation was entitled to resumed land from the tenant holding land in excess of the ceiling area subject to the condition that by such resumption neither the total extent of land held by the land owner would be raised above the ceiling area, nor the total extent of land held by the tenant is reduced below the ceiling area.

4. On behalf of the Respondents it was submitted by the counsel that the Land Reforms Act being a piece of progressive legislation aimed primarily at the protection of the interest and improvement of the lot of the tenants, the provisions of the Act have to be given a liberal construction to ensure the rights enjoyed by the tenants are not taken away from them. Section 16 does not begin with a non-obstanti clause as in the case of Sections 4 to 11 and 13. According to him the provisions of Sections 14 to 23 are not of an over riding nature so as to ignore anything to the contrary contained in any law, custom, usage or contract, or in any

decree, judgment or order of a court. This aspect is emphasised to press the point that when Ext. A-1 lease deed styled as Anubhava Pathram fixed no period of the lease and the kychit accompanying it, executed by the land owner on the very same day, showed that the lessee was not liable to be evicted at all. No resumption u/s 16 of the Act could be ordered. This being the nature of the lease, he would contend that the provisions of Section 16 have to be read and understood in the light of the terms embodied in the contract (Ext. A-1 lease deed) which allows the lessee to hold the land in perpetuity with total immunity from liability of being evicted. There is, no doubt, an objection raised by the Petitioner to the reliance placed by the Appellate Authority, and the counsel for the Respondents, on the recitals in the kychit stated to have been executed by the land owner on 6th July 1871 itself along with Ext. A-1 Anubhava Pathram. It is argued by the counsel for the Petitioner that the kychit had not been produced before the Land Tribunal or the Appellate Authority or, for that matter, even in this Court. That is stated to be a registered document of 6th July 1871; and the contents thereto is seen to have been referred to by the Appellate Authority in paragraph 4 of its judgment obviously for the reason that the document was available for perusal before that authority. The particulars regarding two parras of paddy, valued at 50 paise, payable annually by the lessee to the land owner by "janmavakasam" mentioned in that paragraph of the judgment clearly indicates that the document was available before the Appellate Authority. It might be that the document was produced before the Appellate Authority or the Land Tribunal but was not marked; but such procedural defect need not be taken too seriously bearing in mind that the procedure contained in the CPC has been made applicable to proceedings before the Tribunal only to a limited, specified extent. It is seen stated therein that the properties were being held by Moideenkutty even prior to that document on kanam panayam right, and that on payment of an additional amount of Rs. 2,500 the Anubhava Pathram (Ext. A-1) for enjoyments of the properties as a lessee in perpetuity was executed on 6th July 1871. There could, therefore, be no doubt that the purpose of the demise under the Anubhava Pathram was for enjoyments thereof by the transferee in perpetuity.

5. In Moore''s Malabar Law and Custom, Part II, Chapter VIII (3rd Edition) there is a reference to lease in perpetuity (at page 195 and 307). What is stated in page 195 of that book reads as follows:

In addition to the modes of transfer already noticed, grants of land are frequently made either for a consideration or as a reward for services rendered in the form of perpetual leases. The grant, if made to a Brahman, is termed santhathi Brahmaswam, if made to a non-Brahman, of caste equal to or higher than the grant or, it is called anubhavam or sasvitam, and if some nominal rent or ight to renewal fee is reserved, karankari or janmam koru. If made to a person of inferior caste, it is known as adima or kudima. Grants of temple land on service tenure, i.e., on condition of performing future services, are termed karaima. Grants under any of these forms are said to be resumable by the grantor on failure of heirs in the family

of the grantee. Deeds of gift except for religious uses are exceedingly rare.

What is stated in Chapter XIII at page 307 of that book reads as follows:

Grants of land pro servitis impensis vel impendendis, i.e., for past or future services, were usually in the form of perpetual leases.

* * * *

In Chera Mangalath Manakel Narayanan v. Uni Rarichan (A.S. 595 of 1878, H.C.) the High Court (Turner, C.J., ard Forbes, J.) accepted a finding by the District Judge of Touth Malabar, that the grants known as anubhavam or adima were perpetual leases irredeemable as long as the lard remained in the grantee''s family, and this decision was subsequently approved and followed in Manisheri v. Vakaytl Kantian Nayar (Kcrnan aid Kinderslcy, JJ.) (AS. 569 of 1879 H.C.) and more recently in Theyyan Nayar v. The Zamorin of Calicut ILR 27 Mad 206.

The ancient opinion seems to have been that such grants of lands were resum able by the grant or on failure of heirs in the grantee''s family and were inalienable except with the consent of the grantor.

6. Sundara Aiyar in his Malabar and Aliyasanthana Law has stated as follows:

Anubhavom is described in Groem''s Glossary as a gift of land as rev ard for services performed and it is stavd that the holder cannot be dispossessed and the right is hereditary but that on default of heirs it reverts to the jenmi, ard that on each succession, the jenmi is entitled to purushantaram or renewal fee. The last however was found against in Manavikrama v. Rama Pattar (1897) ILR 20 Mad. 275. In the Svddcr Court Proceedings it is staled that this tenure is sometimes granted for the performance of future services ard that the tenant cannot be ejected except where there are conditions imposed and the grantee fails to fulfil them. The grantee''s right is said to be only the ripht of erjoment and that he cannot alienate his title. To the same effect is Sir Charles Turner in his minute. In the last case, it has been held that anubhavam comes to an end on alienation following Achuta Menon v. Sankara Nair (1911) I L R. 36 380 which must be taken to be incorrect having regard to the decision in Ayyakuttt v. Krishna Pattar (1922) M.W.N. 192 as to Adimayavana and Santali Brahmaswom where it was held by a Full Bench of five Judges that Adimayavar a and Santati Brahmaswom tenures are not resumable on alienation.

The reference to anubhavam lease or tenure in Moore''s Malabar Law and Custom, and Sundara Aiyar''s Malabar and Aliyasanthana Law has been made to bring out the nature and extent of the right of a lessee under a document like Ext. A-1 Anubhava Pathram and the kychit which accompanied it under the pristine law, before the coming into force of the Transfer of Property Act, 1882 inasmuch as Ext. A-1 evidences a transaction of the year 1871. Having noticed the position under the pristine law before the coming into force of the Transfer of Property Act, 1882, we will pass on to the consideration of the rights and obligations of the land owner and

the tenant on the question of resumption under the Malabar Tenancy Act, 1929. Section 10 of the Malabar Tenancy Act, before its amendment by Act VII/1954, provided:

Notwithstanding any contract to the contrary entered into whether before or after the coming into force of this Act, every cultivating verumpattamdar shall have fixity of tenure in respect of his holding as hereinafter provided, and shall not be evicted therefrom except as provided in this Act.

Under Section 20 of that Act:

No suit for eviction of a customary verumpattamdar, kuzhi-kanamdar or kanamdar shall lie at the instance of his landlord except on the following grounds:

* * * *

* * * *

(3) that the period of the verumpattam, kuzhikanam or kanam as the case may be, has expired and no renewal has been obtained;

* * * *

Under Section 21 of the Amended Act (The Malabar Tenancy Act, 1929 as amended by the Madras Act VII of 1954):

Notwithstanding any contract to the contrary, whether entered into before e or after the commencement of this Act, every cultivating verumpattamdar, every customary verumpattamdar, every kanamdar, every kanamkuzhikanamdar, every kuzhikanamdar, every tenant of a kudiyiruppu and every holder of a protected ulkudi or a ludikidappu shall have fixity of tenure in respect of his holding and shall not be evicted therefrom except as provided in this Act:

* * * *

* * * *

Section 25 of the Act provides:

No suit for eviction of a customary verumpattamdar, kanamdar, kanam-kuzbikanamdar or kuzhikanamdar shall lie at the instance of his landlord except on the following grounds:-

* * * *

* * * *

(5) that the period of the verumpattam, kanam, kanam-kuzhi-kanam or kuzhikanam, as the case may be, has expired and the landlord nerds the holding or part thereof for he purpose of constructing a building bona fide for his own residence or for that of any member of his tarwad, tavazh'', illom, kutumba, kavaru or family who has a

proprietary and beneficial interest in the holding;

* * * *

In Mulla''s Transfer of Property Act, Fifth Edition at page 648 there is in the course of the discussion u/s 105 of the Transfer of Property Act a reference to leases in perpetuity which reads as follows:

As already stated a leave in perpetuity is unknown in English law. In India such a lease is created either by an express grant or by a presumed grant. Surh leases are generally agricultural leases or they are leases executed before the Transfer of Property Act.

What emerges from the survey of the pristine law before the coming into force of the Transfer of Property Act, 1882, and the rosiunn under Malabar Tenancy Act repealed by the Kerala Land Referms Act in regard to the rights and obligations of the tenants, is that a lease in perpetuity was intended to confer some sort of permanent right on the transferee to hold the property; the legislature in its anxiety to preserve and protect such rights deliberately thought it fit not to have the non-obstanti clause, with which Sections 4 to 11 and 13 commenced, in the case of Sections 14 to 22; and therefore land held by a cultivating tenant under a lease in perpetuity is not liable to be resumed u/s 16 of the Act. It would be importing into those Sections something not intended by the legislature if we interpret that Sections to mean that disregarding anything contained in any other law or contract to the contrary, usuage, custom or in any decree or order or judgment of any court, the land owner would be entitled to resume the land from the tenant holding land in excess of the ceiling area provided he satisfies the requirement of Section 16. The purpose of the Land Reforms Act mainly is to safeguard and lurther the interest of the tenant. Therefore it would be too much to presume that it was the intention of the legislature to take away the benefit enjoyed by the pristine law or under the Malabar Tenancy Act which was repealed by the Kerala Land Reforms Act. Moreover, as was pointed out in Lakshmi v. Kunkipperachan 1978 KLT 122 in the case of a piece of legislation intended for the benefit of a particular class of people, if two interpretations are possible, the anxiety of the court should be so to interpret it as to preserve the benefit of the class of people whose benefit the legislation was intended.

8. This being the position, though, as the counsel for the Petitioner very strongly urged, the Petitioner satisfied all the requirements in Section 16 of the Act the relief sought could not be granted to the Petitioner inasmuch as the Section has no overriding effect on any other law, contract to the contrary, custom or usuage, order to decree or judgment of any court. I therelore find no justification under the limited jurisdiction u/s 103 of the Kerala Land Reforms Act to interfere with the decision of the Appellate Authority holding that the land held by Respondents herein as lessees in perpetuity under an Anubhavadaram (Ext. A-1) could not be resumed by the

Petitioner (land owner) u/s 16 of the Act. They are entitled to fixity of tenure even without the aid of Section 13 of the Act.

The result is that the revision fails, and is dismissed; however, in the circumstances of the case, I would direct the parties to bear their respective costs.