(1973) 10 KL CK 0020

High Court Of Kerala

Case No: O.P. No. 97 of 1973

Abdullakutty		APPELLANT
	Vs	
Land Tribunal, Beypore and Another		RESPONDENT

Date of Decision: Oct. 29, 1973

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 18, Order 18 Rule 9, 75(b)
- Kerala Land Reforms Act, 1963 - Section 75(2)(c)(ii), 77

Citation: (1973) KLJ 972

Hon'ble Judges: P. Govindan Nair, J

Bench: Single Bench

Advocate: P. Ramakrishnan Nair, for the Appellant; Govind Bharathan and P.I. Mini, for the Respondent

Judgement

P. Govindan Nair, C.J.

The applicant under S. 77 of the Kerala Land Reforms Act, 1963, for short the Act, is the petitioner. His application has been rejected on the ground that the site to which be wanted the kudikidappukaran to shift is not fit for the erection of the homestead, and that the site was far away, more than a mile from the location of the present kudikidappu. One of the conditions subject to which alone a person in possession of the land if he bonafide requires the land is entitled to require the kudikidappukaran to shift is, that the new site shall be fit for erecting a homestead and shall be within a distance of one mile from the existing kudikidappu (see S. 75(2)(c)(ii) of the Act). In the proceedings before the Land Tribunal there was a report from the Special Revenue Inspector stating that the site to which the kudikidappu was sought to be shifted was within a mile from the existing kudikidappu and the site was fit for erecting the homestead. It appears the arguments in the matter were heard on 10-11-72. It further appears that the Land Tribunal itself made a local investigation and recorded its impressions in a report seen to be marked Ext. C2. Counsel for the

respondents has stated that this Ext. C2 is dated 10-11-72 and it is so stated in the appendix to the order Ext. P1. The report itself is not before me, as the records of the Land Tribunal have not been made available to me. I do not consider it necessary in the view that I take to call for the records. The order Ext. P1 dated 14-11-72 rejecting the application under S. 77, is entirely based on the report Ext. C2 of the Tribunal. The main contention urged by counsel on behalf of the petitioner in this case is that he has had no opportunity to meet what is stated in Ext. C2 report, that her was not even aware of the existence of such a report before the order Ext. P1 was seen by him and that there was violation of the principles of natural justice. Apart from that it was further argued that the procedure adopted by the Tribunal was to say the least most improper; that the Tribunal should never have set at naught the effect of the report of the Special Revenue Inspector on the basis of a report prepared by the Land Tribunal itself after inspection, that R. 137 of the Kerala Land Reforms (Tenancy) Rules, 1970, for short the Rules does not empower the Land Tribunal to inspect any property or to rely on a report of its own to contradict an existing report on the matter and decide the matter. This second point raised in the case is of great importance though it would be possible to dispose of this petition on the basis of the first contention, particularly in view of the admitted fact that the local inspection conducted by the Tribunal was without notice to the petitioner in this original petition. Counsel for the respondents suggested that the report Ext. C2 dated 10-11-72 must have been available in the records of the Tribunal from that date and the order Ext. P1 having been pronounced only on 14-11-72 and the petitioner before this Court (respondent before the Tribunal) not having cared to object to the contents of that report or to raise any contention that the report should not have been relied on by the Tribunal, cannot now be beard to canvass the correctness of the procedure followed by the Tribunal. It is not at all possible to come to the conclusion that the petitioner had notice of the filing of the report Ext. C2 on 10-11-72 or for that matter any day thereafter. No notice was admittedly given to the petitioner.1 do not think that there is any obligation cast on the petitioner to try and find out whether any reports have been filed before the Tribunal when the petitioner was not even aware of any local inspection being conducted by the Tribunal. So the submissions of counsel for the respondents cannot be accepted.

2. It is necessary to emphasise in view of what has happened in this case that the Tribunal should not conduct any inspections of property or thing concerning which any question had risen before the Tribunal without issuing specific notice to all the parties before the Tribunal who are concerned with that question about the date and time of inspection by the Tribunal of the property or the thing and requiring the parties to be present at the time of the inspection. This not having been done the report Ext. C2 is of no significance. It is not possible to conclude with any certainty that the Tribunal inspected the property to which the petitioner before me wanted the kudikidappu to be shifted. The possibility of the Tribunal inspecting some other property cannot be ruled out. There can also be the further possibility that the

interested opponent deliberately misdirected the Tribunal. I am not suggesting that this has happened in this case. I am only emphasising that such possibilities should be completely avoided particularly when exercising judicial functions officers have to make the, inspection and gather information which would assist or aid in assessing the evidence before him which should form the basis of the conclusion in the matter before him. I have no doubt therefore that the order Ext. P1 which as I said is entirely based on Ext. C2 report must be set aside and the case sent back for a de novo enquiry after affording reasonable opportunity to both sides to adduce their evidence.

3. As I indicated earlier there is a far more serious issue involved in the case; the scope and ambit of R. 137 of the Rules which I shall now read:

137. Power to inspect. The Land Tribunal or the Land Board or any other authority or officer may, at any stage of the proceedings, inspect any property or thing concerning which any question may arise.

This rule is identically worded as R. 18 of Order XVIII of the Code of Civil Procedure. The rulings under R. 18 of Order XVIII are clear that a court acting by virtue of the powers given to it under that rule cannot function as the Commissioner appointed for local investigation under R. 9 of Order XXVI of the CPC read with S. 75(b) of the CPC which permits local investigation. The purpose of R. 18 of Order XVIII of the CPC must therefore be much more limited and it is well established that the idea of a local investigation by a court is not for the purpose of collecting evidence with a view to base the decision on that evidence. If a court itself furnishes evidence on which a case has to be decided the procedure not only embarrasses the parties before the court but leads to a very unsatisfactory result for it is seldom possible to subject the evidence furnished by a court to that examination which includes the cross-examination of the person furnishing the evidence which is necessary for testing its probative value. Nor is it feasible that such evidence furnished by the court itself would easily or normally be contradicted by other evidence furnished by the parties or their witnesses. A judicial proceeding may thus easily get converted to a subjective satisfaction formed on subjective conclusions which is above scrutiny, which is above cross-examination and which is above contradiction, thus setting at naught the entire fabric of the judicial system. Limitations have therefore to be introduced into this apparently widely worded rule which gives unlimited power of inspection. Results of such inspection should normally be recorded in a report and this report will become the evidence in the case. This letting in of evidence by a quasi-judicial Tribunal must be avoided. It has therefore been ruled in decisions under role 18 of Order XVIII of the CPC that the inspection must only be for the purpose of enabling the authority to assess the already existing evidence in the case. I do not wish to expatiate further on this matter as the scope and ambit of R. 18 of Order XVIII of the CPC has been the subject matter of the numerous decisions saying in effect what I have said above and I have not been invited to any other

decision which has taken a contradictory view. So R. 137 of the Rules must also be understood in the same manner in which R. 18 of Order XVIII has been understood. That is how Viswanatha Iyer, J. interpreted the rule (vide the decision in Penakkot Ayisha Vs. Kodachery Thazham Pottayil Kunhathutty, . The Tribunals must take note of the limitations inherent in the power conferred by R. 137 and must act within the circumscribed limits of its authority under that rule. I set aside the order Ext. P1 and direct the Land Tribunal to deal with the matter afresh in the light of what I have stated above. Both sides will be afforded reasonable opportunity to adduce their evidence and the case will be decided on such evidence. I make no order as to costs.