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M.D. Seminary Vs P.J John and Others

Court: High Court Of Kerala

Date of Decision: Sept. 19, 1987

Acts Referred: Constitution of India, 1950 â€" Article 14, 19, 31, 31A
Kerala Land Reforms Act, 1963 â€" Section 10, 2(27), 2(57), 2(57), 2(7)

Citation: (1987) KLJ 1231

Hon'ble Judges: K.P. Radhakrishna Menon, J

Bench: Single Bench

Advocate: K.C. John and K.K. John, for the Appellant; V.O. John, Joseph J. Therattil, E.P.C. Type and Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.P. Radhakrishna Menon, J.
The questions arising for consideration in these Civil Revision Petitions are identical and therefore they are

disposed of by this common order. Respondents in these revision petitions, except the State of Kerala, claiming themselves to be cultivating

tenants, filed applications u/s 72 B of the K.L.R. Act for the purchase of the rights title and interest of the landlord in respect of the respective

holds held by them. The Land Tribunal entering the finding that they are cultivating tenants, allowed the applications. The Appellate Authority

concurred with the above finding of the Land Tribunal and as a result of which, the appeals filed by the landowner were dismissed by the orders

under challenge in the revision petitions.

2. Facts essential to decide the questions lie in a narrow compass; and virtually, they are admitted. The holdings are held under written documents,

styled as verumpattam deeds. The deeds, according to the tenants, evidence transactions creating tenancies. The landowner however, contends

that they create only Licenses. The landowner has a further case that the land involved in the cases, are not agricultural lands and hence the

provisions of the K.L.R. Act are not applicable to them.

3. The learned counsel for the petitioners has raised three points.

i) The lands involved in the cases are not agricultural lands and hence the holders of these lands cannot be said to be cultivating tenants entitled to

the benefit of Section 72B of the K.L.R. Act.

ii) The transactions evidenced by the deeds, are only licenses and not leases, and

iii) The holders are not cultivating the lands involved in the cases.

Regarding point No. (i): It is not disputed that the lands involved in the cases are situated within the Kottayam Municipality. That these lands are

interspersed between sites with buildings which can be used for purposes of commerce and also house sites without or with buildings meant for

human occupation, is beyond challenge. Such lands, going by the decision of the Supreme Court in Malankara Rubber and Produce Co. vs. State

of Kerala (1972 KLT 411 (S.C.) cannot be said to be lands meant to settle landless persons in implementation of agrarian reform, the main object

with which the K.L.R. Act has been enacted. Relying on this ruling, the learned counsel for the petitioners submits that the holders of these lands,

even assuming they are lessees and not licensees, are not entitled even to fixity of tenure. In this connection it is profitable to note that the Supreme

Court had no occasion to consider this aspect of the case. This argument of the counsel for the petitioners at the first blush is attractive, but a deep

probe into the question would show that the said argument is without any legal foundation. A reference in this connection to a Full Bench decision

of this Court is relevant. In the said ruing in Parameswaran Pillai v. Narayan Nair (1976 KLT 341 F.B.) after considering the scope of the various

provisions of the K.L.R. Act governing the claims of tenants for fixity of tenure, the Full Bench has held that the Act in some respects at least

applies to lands situated in Corporations or Municipalities also. The Full Bench was considering the scope of Section 4A conferring fixity of tenure

on mortgagees and lessees of mortgagees mentioned therein. Provisions similar to Section 4A protect the claims for fixity of tenure, of the tenants

not only of agricultural lands but also of non-agricultural lands and accordingly the Full Bench observed: ""it will be difficult, if not impossible, to

construe the Act as a whole as applicable only to lands which are agricultural in nature"". The Full Bench further stated ""the expression ''land''

therein (Section 4A) must normally take in all lands irrespective of where it is situate and for what purpose it is used and irrespective of its nature.

5. The above principle notwithstanding the argument advanced on behalf of the landlord before the Full Bench was that Section 4A must be given

a limited meaning in that it should be held that its terms would apply only to agricultural lands. In the said case, the land was situated in the heart of

the Trivandrum city. The land, as observed by the Full Bench ""may not reasonably be expected to be used for agricultural purposes now or in the

near future by any reasonable person"". From the above principle, enunciated by the Full Bench it is clear that if a limited meaning is given to the

language of Section 4A then this Court would be amending the Section which is not the function of the Court. The Full Bench therefore held that

the language of Section 4A as understood in the context in which it is used, would help one to infer that Section 4A takes in its fold non-agricultural

lands also. But the constitutionality of the Section and sections similar to it, is beyond challenge, because, the Act as a whole has been included in

the Ninth schedule. The Full Bench accordingly held: ""the Act having been included in the Ninth Schedule to the Constitution, is free from attack on

the ground that it violates article 14, 19, 31 and 31A"".

5. Consequently, the tenant of the holding, though the holding is situated in the heart of the Trivandrum Corporation, and belonging to the category

of lands called non-agricultural land was found eligible for the benefit of Section 4A of the K.L.R. Act. That means some of the provisions of the

K.L.R. Act are meant to protect the rights of tenants of non-agricultural lands also.

6. It is in this backdrop the cases on hand require to be considered. The lands involved in the cases, going by the principle enunciated by the

Supreme Court and the Full Bench of this Court mentioned above must be held to be non-agricultural lands. The discussion cannot be stopped

here.

7. There exists a connected question and it is this: can the holders of these lands claim fixity of tenure, assuming they are tenants within the meaning

of Section 2(57) of the K.L.R. Act. Before I consider this question, it is necessary to refer to few facts. The holders of the holdings contend that

the transactions under which they hold the respective pieces of land, in fact evidence verumpattam leases. On the other hand, the learned counsel

for the petitioners argues that on a reading of the document it is clear that what was created by the deeds was only licenses and not leases. Much

might be said on both sides. I therefore do not propose to burden this order with further facts. It however is necessary to refer to the provisions

contained in Section 10 of the Act. The Section provides that 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 licensee (leaving out unnecessary portions) must be deemed to be a tenant. That

means a licensee of a holding is also a tenant within the meaning of Section 2(27) of the Act. That a verumpattamdar is a tenant cannot be

disputed. If that be the position, whether the contesting respondents are licensees or verumpattamdars, they are tenants within the meaning of that

expression in Section 2 (57) of the Act.

8. Having understood the position thus, let us consider whether these tenants are entitled to apply for and get the benefits provided for u/s 72B. To

understand Section 72B one has to first understand the content of Section 72. u/s 72 all right, title and interest of the landowners and intermediaries

in respect of holdings held by cultivating tenants entitled to fixty of tenure vested in the government free from all encumbrances on a date notified by

the government. Who is a cultivating tenant. Going by the definition in Section 2A, he is one who is in actual possession of and is entitled to

cultivate the land comprised in his holding. The word cultivate is defined in Section 2 (7). Interpreting the definition, this Court in Lakshmy v.

Hendry- C.R.P. No. 1513,79-E (1981 KLT S.N. 71 Case No 128) has held that ""the cultivation done in the land is for the purpose of raising the

produce from the land."" Such a person alone is a cultivating tenant. As observed by the Full Bench of this Court in V.N. Narayanan Nair and

others v. State of Kerala and others (1970 KLT 659 F.B. Para 39) ""there must always be a cultivating tenant on agricultural land that has been

leased out"". That means that the tenant who claims the benefit of Section 72B must be a tenant of the holding which belongs to he category of land

called "agricultural land". The question therefore is, can the tenants in these cases be called cultivating tenants as defined u/s 2 (8) of the Act. On a

perusal of the pleading as also the recitals in the documents, it could be seen that the tenants are not persons cultivating agricultural lands for the

purpose of raising any produce therefrom. May be that they have planted some trees on the land. According to the counsel for the petitioners, they

cannot plant trees or raise any other improvement except to put up buildings for their occupation. The tenants however, have a case that they are

entitled to make improvements on the property. I do not propose to pronounce upon this aspect of the case, because, the holdings admittedly are

interspersed between buildings and building sites within the municipal area. The tenants therefore cannot he heard to say that they are cultivating

tenants within the meaning of the K.L.R. Act, entitled to obtain the reliefs provided for u/s 72B. The Full Bench in Narayanan Nair"s case has

observed thus:-

It is the purpose for which the land is held, not its accidental use at a particular point of time, that determines whether it is agricultural land or not. If

the land is held for purposes of agriculture or for purposes ancillary thereto (such as, for pasture or for the residence of cultivators of land,

agricultural labourers or village artisans), it is agricultural land.

Relying on this observation, the learned Counsel for the tenants, submits that the tenants, in as much as, they have been permitted to cultivate the

lands in dispute, are cultivators of agricultural land, entitled to the benefit of Section 72B This general observation without reference to the further

observations contained in the Full Bench decision, may perhaps support the above argument of the counsel for the tenants. The further

observations of the Full Bench extracted hereunder, would however show that the above argument is not sustainable. It reads:-

We suppose that something or other can be, and often is, grown on any vacant land, but, that would not necessarily make it agricultural land for

our purposes. To give an example the possibility of cultivation, or even the actual cultivation of, what is essentially a building site in the heart of a

town would not make it agricultural land.

This observation is consistent with the observation made by the Supreme Court in Malankara Rubber and Produce Co"s case. The above

argument therefore is rejected.

The orders under challenge, for the reasons stated above, are set aside.

The C.R.Ps. are allowed. In the circumstances no order as to costs.