

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYASHTA, 1937

CRP.No. 182 of 2007

AGAINST THE ORDER IN TLB(Q) 214/1977 of TALUK LAND BOARD,
QUILANDY DATED 31-10-1991

PETITIONER/CLAIMANT:

A.K.AYISHA,W/O.ISHAC, PULIPARAMBIL HOUSE,
PANAYI, ANAKKAAM, MANJERI
MALAPPURAM.

BY ADV. SRI.P.M.POULOSE

RESPONDENTS:

1. TALUK LAND BOARD,QUILANDY,REPRESENTED BY
ITS CHAIRMAN.
2. THE THAHSILDAR,QUILANDY,KOZHIKODE
DISTRICT.
3. STATE OF KERALA REPRESENTED BY CHIEF
SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

R1-R3 BY SPL. GOVERNMENT PLEADER SMT. SUSHEELA BHATT

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P. BHAVADASAN, J.

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C.R.P. No. 182 of 2007
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Dated this the 9th day of June, 2015.

ORDER

On failure of Pakran Haji to file declaration as envisaged under the Kerala Land Reforms Act regarding the land in his possession, proceedings were initiated against his legal heirs, namely, his wife and five minor children. The declarant was directed to surrender 22.04 ½ acres of land. That was challenged before this Court and this Court remanded the matter to the Taluk Board to consider the claim of 46 cents in Sy. No. 52/2 covered by the gift deed. Taluk Land Board passed a fresh order directing surrender of 23.07 ½ acres of land. That was challenged before this Court and the matter was remanded. After remand, Smt. Ayanoth Beevi, who is the wife of Pakran Haji put forward a claim under Section 85(8) of K.L.R. Act in respect of 2.81 acres of land on the basis

of document No.2280/72 dated 31.12.1972. The Land Board rejected the claim on the basis that it is a partition deed and therefore the declarant is not entitled to any relief. The said order is challenged before this Court.

2. Learned counsel appearing for the revision petitioner contended that even assuming that the declarant is not entitled to benefit under Section 85(8) of the K.L.R. Act, still the petitioner is entitled to benefit under Section 84 (1A) of the K.L.R. Act as held in the decision reported in **Mehaboob Beevi v. Taluk Land Board** (2002(1) K.L.T. 305). If the Taluk Land Board is of the view that the petitioner did not have subsisting interest so as to get a portion of the property by partition, then certainly it amounts to a gift deed falling within the ambit of Section 84 (1A) of the K.L.R. Act and the petitioner is entitled to retain the same and the property cannot

be taken possession of by the Taluk Land Board.

3. The Taluk Land Board has not considered the claim of the petitioner on that basis. It simply rejected the claim of the petitioner without taking note of the fact that the document is a partition deed and ordered that the petitioner is not entitled to any relief.

4. In the decision reported in **Mehaboob Beevi v. Taluk Land Board** (2002 (1) K.L.T. 305), it was held as follows:

"5. Raman v. Taluk Land Board (1988 (2) K.L.T. 211) dealt with a case where a document was executed as though it was a partition deed between the father and sons on the assertion that the properties belonged jointly to the executants. The court found that it was on a wrong understanding of the rights of the parties that the assertion was made and that actually the father was the absolute owner and he has created rights over the properties under the document in favour of

his children. It was also found that it is not the nomenclature of the document that decides the real character of the transaction; that it is open to the court to look into all relevant circumstances, including the nature of the rights the executants had, the relationship between the parties, the intention and the attendant circumstances. It was also observed that when the father alone had absolute rights over the properties included in the document and when the allotment of shares to the children with the declaration that the properties allotted should be enjoyed by them absolutely, the clear intention is that the properties should vest in the allottees who had no pre-existing title or rights and that such transfer in favour of the children can only be construed as gift."

In the light of the above decision, it becomes necessary for the Taluk Land Board to consider the issue afresh and determine as to why the so-called partition deed cannot be treated as a gift falling

within the ambit of Section 84(1A) of the K.L.R. Act.

For the above reasons, this Civil Revision Petition is allowed, the impugned order as far as the petitioner is concerned is set aside and the matter is remanded to the Taluk Land Board for a fresh decision in accordance with law and in the light of what has been stated in this order.

sb.

P. BHAVADASAN,
JUDGE