

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

CRP.No. 567 of 2009 ()

SM 19/1981 of TALUK LAND BOARD, CHITTUR

REVISION PETITIONER(S)/CLAIMANT:

P.KRISHNAN, S/O. PONNAN, RESIDING AT
CHUYNAMBUKAL THODU,
VELANTHAVALAM, PALAKKAD.

BY ADV.SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.C.A.ANOOP

RESPONDENT(S) /RESPONDENTS:

1. THE STATE OF KERALA REPRESENTED BY
THE CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE TALUK LAND BOARD, CHITTUR,
REPRESENTED BY ITS CHAIRMAN.
3. THE TAHSILDAR, CHITTUR, PALAKKAD.
4. DEVADAS, S/O.SWAMINATHAN, RESIDING AT
CHUNNAMBUKALTHODE, VELANTHAVALAM, CHITTUR,
PALAKKAD.

ADDL. R5 IMPEADED.

5. LATHA, W/O. DANDAPANI,
BHAVARAJI NAGAR,
VELAMTHAVALAM P.O.,
CHITTUR, PALAKKAD.

ADDL. R5 IMPEADED AS PER ORDER DATED 20.1.2010 IN
I.A. 3251/09 IN C.R.P. 567/09.

ADDL.R5 BY ADV. SRI.GEORGE JACOB (JOSE)
R1 TI R3 BY SPL. GOVERNMENT PLEADER
SMT. SUSHEELA BHAT

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 28-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

P. BHAVADASAN, J.

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C.R.P. No. 567 of 2009
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Dated this the 28th day of May, 2015.

ORDER

This is yet another instance of the State conferring a benefit to some persons resulting in re-opening and reconsidering of earlier ceiling matters which almost had attained finality. One is unable to understand the rhyme and reason for the amendment except to hold that it is not a bonafide one. Going by the ceiling provisions, the state of affairs as on 1.1.1970 is the criterion. While soon thereafter came an amendment validating certain transfers between 1.1.1970 and 1.1.1974. One could ignore that. But Section 7E brought into the statute book defies all logic, reason and common sense and betrays the whole statute itself.

2. Whatever that be, now on to the facts of this case.

3. The petitioner before this Court is an assignee from a member of the statutory family of Swaminathan who was the declarant in S.M. No. 19 of

1981. Proceedings were finalized against Swaminathan and he was directed to surrender 20.90 ½ acres, out of which 20.79 ½ acres was taken possession of on 13.1.1998 and it is also claimed by the State that subsequently the balance extent was also taken possession of.

4. Krishnan, the present petitioner approached this Court by way of C.R.P. 617 of 1992 agitating his claim based on his assignment deed and this Court then observed that being an assignee from a minor of the statutory family, he is not entitled to any benefit and therefore declined to grant relief. At that time since Section 7E of the Kerala Land Reforms Act was not in the statute book.

5. Thereafter the petitioner filed O.P. 28358 of 1999 seeking to avoid his dispossession from the property involved in the ceiling case initiated against Swaminathan. There was an interim order in the said Original Petition to

maintain status quo until further orders. That Original Petition was later dismissed by order dated 22.11.2007 with a direction to the Taluk Land Board to pass appropriate orders.

6. The Taluk Land Board, in pursuance to the direction issued by this Court, considered the claim put forward by the petitioner again and held that the assignor of the petitioner was a minor as on the relevant date and therefore his claim could not be considered and rejected his petition. It is the said order that is impugned before this Court.

7. Learned counsel appearing for the petitioner pointed out that now that Amendment Act 21 of 2006 published on 18.10.2006 has introduced Section 7E and the claim of the petitioner is to be considered in terms thereof. In support of his claim, he points out that in the earlier proceedings, i.e., writ as well as in the C.R.P. he had asserted that he had been in possession of the property all the time and nobody

else had taken possession of the land which was held by him as per the deed. Learned counsel went on to point out that the mere fact that ceiling proceedings against the original declarant might have been completed is not a ground for not considering the claim based on Section 7E of the Act. The contingency under which a claim under Section 7E can be declined is mentioned in Section 84(4) proviso. There is no enquiry in that regard and there is nothing on record as of now in the impugned order to show that any of the contingencies under Section 84(4) proviso exist to deny the relief to the petitioner. If that be so, relying on the decision reported in **Rajeev v. District Collector** (2014(4)K.L.T. 209) and **State of Kerala v. Thomas Kurian** (2014(4) K.L.T. 417) learned counsel for the petitioner points out that the Taluk Land Board has to be directed to consider the claim of the petitioner under Section 7E of the Act.

8. In this petition, it has to be noticed that additional fifth respondent has sought herself to be impleaded and wanted to put forward her case. She pointed out in the affidavit in support of the impleading petition that she is a landless person and she had applied for assignment of land as per Rule 27 of the Kerala Land Reforms (Ceiling) Rules, 1970. It is also pointed out that despite assignment, land was not assigned to her. Therefore, she filed W.P.(C) 2980 of 2009 seeking direction to the respondents to complete the proceedings. It is asserted in the affidavit that the property which was found to be excess has already been taken possession of long ago and it is subject matter of distribution. It is therefore pointed out that the petitioner is not entitled to any relief.

9. In the counter affidavit filed by the State, they also asserted that the petitioner is not entitled to any relief. After having pointed

out the various proceedings before the Taluk Land Board and also the history of the litigation, claimed that scrutiny was made with regard to the claim put forward by the petitioner. It is also pointed out in the counter affidavit by the State that pattas have been issued in respect of the land assigned and even assuming that the petitioner has any right, it can no longer enforceable. They also prayed for a dismissal of the petition.

10. What needs to be noticed is that the petitioner currently bases his claim on Section 7E of the Act which reads as follows:

"7E. Certain person who acquired lands to be deemed tenants.-

Notwithstanding anything to the contrary contained in Section 74 or Section 84 or in any other provisions of this Act, or in any other law for the time being in force or in any contract, custom or in any judgment, decree or order of any Court, Tribunal or other authority, a person who at the commencement of the Kerala Land Reforms (Amendment) Act, 2005, is in possession of

any land, not exceeding four hectares in extent, acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area, during the period between the date of the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964), and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005 shall be deemed to be a tenant."

11. It seems that the petitioner has a document of title in his favour from one of the legal heirs of Swaminathan who has been granted a purchase certificate in respect of the property covered by the sale deed. The petitioner has also produced documents before this Court to show that as early as in 1983 he has been put in possession of the property assigned to him and that he has been in continuous possession thereof. For this aspect, he also produced two proceedings wherein he asserted that he continues to be in possession and in one of the Original Petitions he has approached

this Court and this Court ordered not to disturb his possession. O.P. 28358 of 1999 was disposed of directing the Taluk Land Board to consider the claim of the petitioner. That is dated 22.11.2007. It has to be noticed that the judgment was after the introduction of Section 7E in the statute book.

12. Learned Special Government Pleader points out that the land which was found as excess land of Swaminathan has already been taken possession of and it is subject matter of distribution to various landless persons. Therefore, the learned Special Government Pleader points out that Section 84(4) proviso applies and if that be so, the claim put forward by the petitioner is only to be rejected. In this regard, the learned Special Government Pleader gets sufficient support from the counsel appearing for the additional fifth respondent also who has filed a counter in the matter. In the affidavit filed by the fifth respondent and also in the counter

affidavit filed by the learned Special Government Pleader, it is pointed out that the property is subject matter of distribution.

13. This Court had occasion to consider the scope of Section 7E of the Act in two decisions namely **State of Kerala v. Thomas Kurian** (2014(4) K.L.T. 417) and **Rajeev v. District Collector** (2014 (4) K.L.T. 209). In both the decisions, the scope and ambit of Section 7E of the Act was considered and this Court also considered the restricted area in which Section 7E of the Act operates and the conditions under which the said right cannot be recognized. However, pointing out that if the ingredients attracting Section 7E are made out, the Taluk Land Board is bound to consider the claim. In both the decisions, this Court in unambiguous terms pointed out that it is for the petitioner who claims benefit under Section 7E to show that he is in uninterrupted possession of the property as per the document of title. However, this Court also

held that agreement for sale coupled with continuous possession may also be sufficient for the said purpose. This Court then did not countenance the argument that Section 7E of the Act can be considered only in the light of Section 106B of the Land Reforms Act wherein the issuance of purchase certificate is dealt with. This Court was of the view that Section 7E will have to be viewed independently of Section 106B and on its own merits.

14. Though strange and shocking, one has to note the statutory provision. Obviously the order under challenge does not deal with the claim of the petitioner under Section 7E of the Act. True his purchase is long after the notified date. True also that it is after the ceiling proceedings case has been filed against the declarant. But it is fortunate that he is entitled to claim benefit only due to legislative wisdom. Ingredients of Section 7E are as follows:

"The following pre-requisites have to be satisfied before claiming the benefit of '*deemed tenancy*' under SE. 7E of the Act:

i) The claimant should be in possession of the land not exceeding the permissible extent.

ii) The possession should have been acquired by the claimant or his predecessor-in-interest.

iii) The acquisition should be by way of purchase or otherwise on payment of consideration.

iv) The acquisition by the claimant should be from any person holding land in excess of his ceiling area, and

v) The acquisition should be during the period between the date of commencement of the Kerala Land Reforms Act, 1963 and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005."

However, one has to notice Section 84 also in this regard. Section 84 so far as relevant for the present case reads as follows:

"84(4) Notwithstanding anything contained in sub-sections (1), (1A) or (2), or in any judgment, decree or order of any Court, Tribunal or other authority, no acquisition of land referred to in Section 7E shall be deemed to be invalid, or ever to have been invalid by reason only of the fact that the land so acquired was found included as, or forming part of, the land liable to be surrendered by the transferor as excess land under the provisions of this Act and no suit or other proceedings including proceedings for eviction relating to the said land shall be instituted, maintained or continued in any Court or Tribunal against any person who is a deemed tenant under Section 7E and every such suit or proceedings pending shall stand abated:

Provided that no ceiling cases wherein excess land has been physically taken over and distributed to landless labourers or reserved for public purposes as provided in this Act shall be reopened:

Provided further that if the Taluk Land Board is satisfied that the transfer of land made by a person in possession of excess land is calculated to defeat the

ceiling provisions, it may take into account the land so transferred or determining his ceiling area, and may direct him to surrender such extent of land held or possessed by him:

Provided also that no ceiling cases or proceedings in which any land has already been surrendered by, or assumed from, a person as excess land before the commencement of the Kerala Land Reforms (Amendment) Act, 2005 shall be reopened."

15. Section 84(4) was introduced by the same amendment by which Section 7E was introduced in the statute book. Section 84(4) and its provisos seem to be a check on indiscriminate granting of land. If the conditions stipulated under Section 84(4) are shown to exist, then that may defeat the claim of the petitioner under Section 7E. But that is a matter for enquiry.

16. In the case on hand, there is a rival contention regarding possession. While the petitioner would bank on the order of status quo thereby contending that ever since the document in

his favour, he is in possession and that has been recognized by this Court, he has not lost possession thereof and therefore Section 84(4) cannot have any application.

17. The State on the other hand would contend that even before the status quo order, they had taken possession and distribution has commenced. Whether the benefit of Section 7E is available and also which of the restrictions under Section 84(4) will apply are matters to be gone into by the Taluk Land Board. One can only lament the state of affairs of the poor landless persons for whose benefit the Land Reforms Act was enacted. Indiscriminate and deliberate amendments were brought about so as to defeat those rights which amount to nothing but fooling the people. Whatever that be, this Court is constrained in the light of statutory provision brought in by way of amendment to direct the Taluk Land Board to reconsider the issue.

In the result, this Civil Revision Petition is allowed, the order impugned is set aside and the matter is remanded to the Taluk Land Board to consider the matter afresh. It is made clear that the status quo order passed by which the petitioner claims to be in continuous possession will be a status quo as on the date on which the order was passed. It is also made clear that the Taluk Land Board will provide an opportunity of hearing to the additional 5th respondent and others similarly placed before taking a final decision in the matter. Parties to appear before the Taluk Land Board on 17.6.2015. The Taluk Land Board may make every endeavour to dispose of the matter within three months thereof.

sb.

P. BHAVADASAN,
JUDGE