

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

CRP.No. 590 of 2010 ()

**AGAINST THE ORDER/JUDGMENT IN TLB L- 4755/1978 of TALUK LAND BOARD,
KANAYANNUR DATED 30-06-2009**

CIVIL REVISION PETITIONER(S):

**STATE OF KERALA, REP.BY SECRETARY,
LAND BOARD, THIRUVANANTHAPURAM.**

BY ADV. SPL.GOVERNMENT PLEADER SMT.SUSHEELA BHAT (REVENUE)

RESPONDENT(S):

- 1. FR.XAVIER KARUVALLIL
S/O.JOSEPH KARUVALLIL, KARUVALLIL HOUSE
EZHUPUNNA P.O., CHERTHALA.**
- 2. INNOCENT @ IGNATIUS KARUVALLIL,
EZHUPUNNA MURI, NEENDAKARA, KUTHIYATHODU VILLAGE
CHERTHALA TALUK.**
- 3. MARY, W/O.INNOCENT KARUVALLIL,
EZHUPUNNA MURI, CHERTHALA TALUK.**
- 4. INNOCENT PETER, KUNDARAPILLY,
VYTTILA, POONITHURA VILLAGE.**

**BY ADV. SRI.K.JAGADEESCHANDRAN NAIR
BY ADV. SRI.P.R.AJITHKUMAR
R4 BY ADV. SRI.B.RAMACHANDRAN
R1 TO R3 BY SRI.R.VENKITARAMANI**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
22/06/2015, THE COURT ON 05-08-2015 PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE P1: ORDER DT 24.5.05 IN CRP 1979/99.

ANNEXURE P2: THE JUDGMENT DT 13.8.2000 IN WPC
NO.14325/08.

ANNEXURE P3: ORDERS DT 13.8.1987 IN CRP 1470/1982.

ANNEXURE P4: ORDER DT 29.12.1980 OF TLB, KANAYANNUR.

RESPONDENTS' EXHIBITS

ANNEXURE R1(a) : TRUE COPY OF THE ORDER DT 2.5.1978.

ANNEXURE R1(b) : TRUE COPY OF THE LETTER DT 10.9.1978.

ANNEXURE R1(c) : TRUE COPY OF THE ORDER DT 7.4.1980.

ANNEXURE R1(d) : TRUE COPY OF THE ORDER DT 29.12.1980.

ANNEXURE R1(e) : TRUE COPY OF THE ORDER DT 2.11.1981.

ANNEXURE R1(f) : TRUE COPY OF THE ORDER DT 13.8.1987.

ANNEXURE R1(g) : TRUE COPY OF THE JUDGMENT DT
10.1.1989 IN OP NO.142/1989.

ANNEXURE R1(h) : TRUE COPY OF THE ORDER DT 21.6.1999.

ANNEXURE R1(J) : TRUE COPY OF THE STATEMENT OF OBJECTS
AND REASONS.

//True Copy//

PS to Judge

Rp

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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C.R.P.No. 590 of 2010

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Dated this, the 5th day of August, 2015

O R D E R

Shaffique, J

This revision is filed by the State of Kerala challenging the order dated 30/6/2009 of the Taluk Land Board (for short 'TLB') exempting an extent of 1 acre 02.750 cents of land under Section 7E of the Kerala Land Reforms Act and directing surrender of 49.250 cents.

2. Short facts involved in the above revision disclose as under:

The TLB initiated proceedings under the Kerala Land Reforms Act, 1963 (hereinafter referred to as the Act) against Sri.Innocent, the 4th respondent herein, for determining the ceiling area in respect of the land held by him. The TLB by order dated 2/5/1978 directed him to surrender an extent of 1.52 acres. When attempts were

made to take possession of the premises, it was found that the property was in the possession of Smt.Mary Gosmi, mother of the 4th respondent, pursuant to which the TLB issued a fresh notice to the declarant. As there was no response from him, the earlier order was confirmed on 29/12/1980. Thereafter, one Joseph staked a claim in respect of the above property on 26/2/1981. It was noticed that a gift deed had been executed by the declarant in favour of his mother Smt.Mary Gosmi and she had conveyed/assigned properties to different persons. The TLB found that the gift was invalid and direction was issued to enforce the surrender from the property covered by the land purchased and balance from the declarant. Though CRP No.1470/82 was filed, the same came to be dismissed as per order dated 13/8/1987. Certain alienees of the property, viz., respondents 1 to 3 herein, filed OP No.142/1989 before

this Court seeking for a declaration that they, being *bona fide* purchasers of the property, were not liable to surrender any land on behalf of the declarant. In the original petition it was contended that they had filed an application under Sec.85(8) of the Act before the TLB which was not disposed of and hence they sought for direction to dispose of the said application as well. By judgment dated 10/1/1989, this Court disposed of the matter directing the TLB to pass final order on their claim. By proceedings dated 21/6/1999, TLB formed an opinion that the declarant had created a gift deed dated 10/11/1970 in favour of his mother in respect of land in Sy.Nos.1036/3, 4, 5 of Punithura Village as per document No.2610/70 during the pendency of the ceiling case. Declarant's mother sold the properties to the petitioners who had put in claim petitions under Section 85(8) of the Act. Since the gift deed was not accepted by the TLB, the

claim petitions were rejected. Accordingly, there was a direction to take possession of 1 acre 52 cents of land in Sy.No.1036/3, 4 & 5 in Punithura Village as specified in proceedings No.K.2016/81 dated 2/11/1981. The above order came to be challenged before this Court by filing CRP No. 1979/1999. It was contended that the declarant had other properties and the transactions of the declarant were binding on him. Therefore, a request was made to consider whether the other properties of the declarant could be surrendered and the properties held by the petitioners may be exempted. By order dated 24/5/2005, this Court directed the TLB to consider whether the properties held by the petitioners, Joseph Karuvallil and Father Xavier Karuvallil, can be exempted, by taking over other properties of the declarant. The matter was remitted back to the TLB for fresh consideration. While the matter was pending before the TLB,

the 1st respondent filed WP(C) No.14325/2008 seeking for a direction to dispose of Ceiling Case No.2016/1981 on the basis of the amended provision under Section 7E of the Act. This Court by judgment dated 13/8/2008 disposed of the matter with a direction to the TLB to consider his claim, if an application is filed under Section 85(8) of the Act. It is pursuant to the said direction that the impugned order came to be passed.

3. In the impugned order, it is stated that Father Xavier Karuvallil had obtained title in respect of 41 cents of land in Sy.No.1036/5 as per sale deed No. 2932/1981 dated 10/6/1981 from Smt.Mary Gosmi, wife of Peter. Similarly, Sri.Innocent @ Ignatious had acquired right in respect of 41 cents of land in Sy.No.1036/5 as per sale deed dated 18/1/1982 registered as document number 128/82 from Smt.Mary Gosmi, wife of Peter. Another claimant Mary, wife

of Innocent, has obtained title in respect of 21.750 cents in Sy.No.1036/4 as per sale deed dated 15/6/1981 registered as document No.2933/1981 from Smt.Mary Gosmi. The prior title referred is the gift deed dated 10/11/1970 in favour of Mary Gosmi. What was considered was whether the said persons are entitled for protection under Sec.7E of the Act. It is found that an extent of 1 acre 2.750 cents in the possession of Father Xavier Karuvallil, Sri.Innocent @ Ignatious and Smt.Mary Innocent are liable to be exempted and the balance land alone has to be surrendered by the declarant.

4. Impugning the above order, it is contended by the State that the respondents were not entitled for any exemption under section 7E of the Act on account of two reasons. One is that the transferees, viz., respondents 1 to 3 herein, have not obtained the property from the declarant,

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who is the 4th respondent herein whereas they have acquired the property from Smt.Mary Gosmi, the declarant's mother, who had assigned the property on the basis of a gift deed which has already been found to be invalid by the TLB and secondly, the claimants have not established their claim by approaching the Land Tribunal as provided under Section 106B of the Act. Hence, it was contended that the TLB committed serious illegality and irregularity in the matter relating to exercise of jurisdiction to exempt the aforesaid land from ceiling proceedings.

5. Heard the learned special Government Pleader Smt.Susheela Bhat appearing on behalf of the State, Sri.R.Venkitaramani, Senior counsel assisted by Sri.P.R.Ajith Kumar appearing on behalf of respondents 1 to 3.

6. The short question involved in the above Civil Revision Petition is regarding the applicability of Section 7E

of the Act. Section 7E was incorporated by way of an amendment inserted by amending Act 21 of 2006, which had come into effect on 18/10/2006. Sec.7E reads as under;

“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 usage, 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”.*

7. By virtue of the above statutory provision, it is

declared that a person, who at the commencement of the Kerala Land Reforms (Amendment) Act, 2005, is in possession of any land, not exceeding 4 hectares (now amended as 4 Acres) in extent either 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 Land Reforms Act, 1963 and the Kerala Land Reforms (Amendment) Act, 2005, shall be deemed to be a tenant. There is no dispute about the fact that the present claimants have acquired the property in between the aforesaid two dates. The question is whether respondents 1 to 3 are entitled for the benefit of Section 7E as they came into possession of the property on the basis of sale deeds executed by declarant's mother who obtained the property by way of a gift deed which was treated as invalid by the

TLB. Therefore, this is an instance where respondents 1 to 3 came into possession of the property, not by way of a transfer from the declarant, but from another person, who did not have title to the property. The issue projected in the case is simple, in the sense that, if the transfer was from the declarant, the transferee could claim benefit under section 7E, whereas if the transfer is not from the declarant, can the transferee make a claim as deemed tenant?

8. The learned Special Government Pleader referred to the judgment in ***Chellappan Nair v. Taluk Land Board*** (2008 (1) KLT 650), wherein, a learned Single Judge of this Court held that a gift deed executed by the declarant would not come within the purview of Sec.7E. While considering the said case, learned Single Judge at paragraph 11 held as under;

"11. In order to attract S.7E and to hold that a person

is a deemed tenant, the following conditions must be satisfied:

(a) At the commencement of the Amendment Act, 2005, the person concerned is in possession of land not exceeding 4 acres in extent;

(b) the said land was acquired by him or by his predecessor-in-interest from a person holding land in excess of ceiling area;

(c) such acquisition by him was by way of purchase or otherwise;

(d) such acquisition must be on payment of consideration; and

(e) the acquisition must be between the date of commencement of the Kerala Land Reforms Act, 1963 (Act 1 of 1964) and the date of commencement of Amendment Act, 2005 (Act 21 of 2006).

A gift deed executed by the declarant would not come within the purview of S.7E. A specific condition stipulated in S. 7E is that the acquisition must be on payment of consideration. Learned counsel for the declarant submitted that a gift deed is supported by consideration and the consideration is love and affection; and therefore, even a gift deed is covered by S.7E. I am not inclined to accept this contention. The expression used is payment of consideration. Evidently, there cannot be any 'payment' in the matter of love and affection. The purpose sought to

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be achieved by the introduction of S.7E is to protect bona fide transfers for consideration where a third party has come into possession of lands, acquired by him from a declarant/ assessee . It is not intended to protect donees of declarants/ assessees and to exclude the lands covered by such gift deeds from the purview of the ceiling provisions".

Clause (b) in para 11 of the aforesaid judgment gives an indication that the land has to be acquired by the transferee or his predecessor-in-interest from *"a person holding land in excess of ceiling area"*. Whether Mrs.Mary Gosmi was a person holding land in excess of ceiling area is the question?

9. The learned counsel appearing for respondents 1 to 3 in support of the order passed by the TLB contended that *"any persons holding land in excess of the ceiling area"* as mentioned in Section 7E of the Act includes the person who was holding land in excess of the ceiling area even though he/she was not the declarant. The said land at the relevant time was in the possession of Smt.Mary Gosmi by

virtue of a gift deed executed by her son, the declarant. When it is declared that the gift deed was bad in law and invalid, the necessary presumption is that the declarant becomes the owner of the property and when the transfer is effected by the mother claiming to be the true owner of the property, the said transfer has to be treated as one falling within the parameters of Sec.7E of the Act. It is argued that the legislative intention is to protect all purchasers of property traceable to or belonging to the person liable to give a declaration under Section 85 and the words “any person” shall be read and understood to mean any person belonging to the family and deriving title or authority to sell or alienate properties belonging to the declarant or even an ostensible owner in terms of Sec.41 of the Transfer of Property Act. It is argued that for the purpose of Sec.7E, it is immaterial from whom the property was purchased under

the colour of title or otherwise. It is also argued that sub sections (1) and (2) of Sec.84, are to be disregarded as of no effect by reason of the *non obstante* clause both in sec.7E and sub section (4) of Section 84. Learned counsel made reference to the Statement of Objects and Reasons to Act 21 of 2006 and contended that the legislative intend is to give the status of deemed tenant to all transferees who acquired property for valid consideration.

10. Statement of Objects and Reasons to Act 21 of 2006 reads as under;

“Statement of Objects and Reasons

As per the existing provisions under the Kerala Land Reforms Act, 1963 small holders or cultivating tenants who came into possession of the lands previously owned by excess land holders after 1st April 1964 are liable to be evicted. These occupants purchased or otherwise acquired land for consideration evidenced by registered documents or otherwise are under threat of eviction or dispossession. It has been engaging the attention of

the Government for a pretty long time to protect these small holders and cultivating tenants from eviction or dispossession and these occupants are now covered by the Acts namely, the Kerala Stay of Eviction Proceedings Act, 1998, (5 of 1998), the Kerala Stay of Eviction Proceedings Act, 1999 (26 of 1999) and the Kerala Stay of Eviction Proceedings Act, 2001 (11 of 2001) the duration of which has been extended from time to time, the latest was up to 31st March 2004. There has been persistent demands from the general public and other organisations to safeguard the interests of these occupants who have acquired lands involved in ceiling cases on consideration evidenced by registered documents. The Government have examined the issue in detail and decided that those occupants of lands involved in ceiling cases who have acquired their lands for valuable consideration and under threat of eviction or dispossession shall be protected through appropriate legislation.

2. As per the proposed amendment these persons who possess lands not exceeding 4, hectares are considered as deemed tenants under section 7E. In order to protect the rights of the deemed tenants section 84(4) is proposed to be inserted validating the transfers from 1.04.1964 to the date of coming into force of the amendment and

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as per section 106(B), special provisions for issue of certificates of title are also being introduced.

3. *The Bill seeks to achieve the above objects”.*

11. Learned counsel for respondents 1 to 3 relied upon the judgment of the Supreme Court in ***Siraj-Ul-Haq v. Sunni Central Board of Waqf, U.P*** (AIR 1959 SC 198), wherein, the Supreme Court held that where the literal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative.

12. Several other judgments of the Supreme Court were also referred to viz.,;

(i) **Boddu Narayanamma v. Sri Venkataraman Aluminium Co.** [(1999) 7 SCC 589] [AIR 1999 SC 3549].

In this case the question considered was, whether a petition by a landlord seeking eviction of a tenant under Section 10(3)(a)(i)(b) of the A. P. Act from the demised building, let out under a composite lease for residential as well as non-residential purposes, was maintainable? In the Act, for purposes of eviction of tenants from residential and non-residential premises, separate grounds are provided. The ground of bona fide personal requirement of residence for evicting from residential building was not available for eviction of non-residential part of the building. It was held that such a building has to fall within one or the other category, namely, residential or non-residential - the classification which is made in Section 2(iii) of the A.P. Act, and it is difficult to infer that the legislature having brought such a building within the ambit of the Act and having provided for eviction of a tenant on the ground of personal

requirement of the landlord from such a building when it is let out for residential purposes or for non-residential purposes or separately for residential and/or non-residential purposes and having not taken away the right of the landlord to eject the tenant from such a building, left him in the lurch without providing the remedy of eviction of tenant when let out under a composite lease.

(ii) ***Mahadoeolal Kanodia v. Administrator General of West Bengal*** (AIR 1960 SC 936) it is held as under:

“8. The principles that have to be applied for interpretation of statutory provisions of this nature are well established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express

words, or necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning. The third rule is that if in any legislation the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary even by modification of the language used."

(iii) ***New India Assurance Co. Ltd. v. Nusli Nerille***

Wadia [(2008) 3 SCC 279] [AIR 2008 SC 876], the Apex

Court held as under:

"50.xxxxxxWith a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give

rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/ author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd. (supra).

51. Barak in his exhaustive work on 'Purposive Construction' explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words : "Hart and Sachs also appear to treat "purpose" as a subjective concept. I say "appear" because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfill their

constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."(Aharon Barak, *Purposive Interpretation in Law*, (2007) at pg. 87)

52. In *Bharat Petroleum Corpn. Ltd. v. Maddula Ratnavalli and Ors.*, (2007) 6 SCC 81, this Court held :

"The Parliament moreover is presumed to have enacted a reasonable statute (see Breyer, Stephen (2005): *Active Liberty: Interpreting Our Democratic Constitution*, Knopf (Chapter on Statutory Interpretation - pg. 99 for "Reasonable Legislator Presumption"))."

53. The provisions of the Act and the Rules in this case, are, thus required to be construed in the light of the action of the State as envisaged under Article 14 of the Constitution of India. With a view to give effect thereto, the doctrine of Purposive Construction may have to be taken recourse to. [See 2007 (7) Scale 753, *Oriental Insurance Co. Ltd. vs. Brij Mohan and others.*]"

(iv) ***Tirath Singh v. Bachittar Singh*** (AIR 1955 SC

530) the Supreme Court held as under:

"But it is a rule of interpretation well-established that,"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." (Maxwell's Interpretation of Statutes, 10th Edition, p. 229). Reading the proviso along with cl. (b) thereto, and construing it in its setting in the section, we are of opinion that notwithstanding the wideness of the language used, the proviso contemplates notice only to persons who are not parties to the petition."

(v) **Budhan Singh v. Babi Bux** (AIR 1970 SC 1880),

it is held as under:

"9.Before considering the meaning of the word "held" in Section 9, it is necessary to mention that it is proper to assume that the law-makers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words, as observed by Crawford in

his book on Statutory Constructions that the entire legislative process is influenced by considerations of justice and reason. Justice and reasons constitute the great general legislative intent in every piece of legislation. Consequently, where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute was not the one intended by the law-makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the Legislature, there is little reason to believe that it represents the legislative intent."

(vi) **Chief Justice of A.P v. L.V.A.Vikshitulu** (AIR

1979 SC 193) is referred to emphasise the following:

"63.The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same

must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

64. Where two alternative constructions are possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply

to the interpretation of our Constitution with greater force, because the Constitution is a living integrated organism, having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of the basic framework can be felt all over its body, even in the extremities of its limbs. Constitutional exposition is not mere literary garniture, nor a mere exercise in grammar. As one of us (Chandrachud J. as he then was) put it in Kesavananda Bharati's case (AIR 1973 SC 1461) "while interpreting words in a solemn document like the Constitution, one must look at them not in a school-masterly fashion, not with the cold eye of a lexicographer, but with the realization that they occur in 'a single complex instrument in which one part may throw light on the others' so that the construction must hold a balance between all its parts"."

13. Learned counsel also referred to following English decisions: (i) ***East End Dwelling Co. Ltd v. Finsbury Borough Council*** (1951(2) All.E.R.587) and (ii) ***Lister and Ors. v. Forth Dry Dock & Engineering Co. Ltd. and anr.*** {1989 (1) All.E.R 1134}. In ***Lister*** (supra), it is held

that applying the purposive construction of a word person “employed immediately before the transfer” should be interpreted and read as including “a person who would have been so employed if he had not been unfairly dismissed before the transfer for a reason not connected with the transfer”. The argument therefore is that section 7E has to be read as to include all property transactions and acquisitions of title during the relevant period irrespective of the question as to whether the purchase was made directly from the declarant or otherwise and any other construction would defeat the purpose of the Act.

14. With reference to the contention based on section 106B, it is argued that it is only an enabling provision which is not meant to convert the Land Tribunal into the Land Board. It is also argued that Section 84(4) of the Act, especially the 2nd proviso, clearly indicates that the subject

matter of Section 7E is directly related to determination of ceiling area and all consequences flowing therefrom is in the domain of Land Board. Section 84(4) reads as under:

"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 in 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. It is further argued that the purpose of section 106B is to facilitate a person deserving to obtain a purchase certificate, which is document of title, by approaching the Land Tribunal. But as far as the surrender of possession in a ceiling case is concerned, any transferee is entitled to approach the TLB and contend that his property shall be exempted from the ceiling provisions as he becomes the deemed tenant entitled for protection of tenancy which is liable to be exempted from the ceiling provisions.

16. It is a well settled principle of statutory

interpretation that if a literal construction would lead to an anomalous situation, Court has to apply the rules of purposive construction which would require construction of the Act in such manner so as to see that the object of the Act is fulfilled. In ***Tirath Singh*** (supra), it is held that where the language of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice, which were not intended, construction may be put upon it, which emphasise the meanings of the words and even structure of the sentence. These principles are well settled, but what is to be considered is whether the statute as it now stands requires a purposive interpretation in order to encompass persons like respondents 1 to 3 to be treated as deemed tenant under Section 7E.

17. Section 84(4) of the Act has been introduced by way of an amendment as per Act 21 of 2006. Section 84(4) starts with a *non obstante* clause and it is stated that *“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”*. The words *“the land liable to be surrendered*

by the transferor as excess land under the provisions of this Act”, indicates the position that transferor has to be the declarant. No other meaning can be attributed to the said words. The same will be the position as far as Section 7E is concerned where the words used as ‘any persons’ can only be the declarant. That apart, Section 7E read with Section 84(4) has been brought into the statute book as an exception, which is evident from the statement of objects and reasons. It is to enure to the benefit of cultivating tenants, small farmers who had acquired land from persons who were holding excess land in between the dates specified under Section 7E. However, such acquisition cannot be from a person who never had title to the property or was not entitled to surrender any excess land. For that reason also, we cannot agree with the submissions of the learned counsel for respondents 1 to 3. Section 7E is a

special provision which has been enacted for the purpose of giving benefit to certain persons who were transferees from persons holding land in excess of the ceiling area within a specified period. True that the transfer could be effected in any form, but it has to be on payment of consideration. But the transfer becomes effective only if the transfer is from the true or original owner. If the transfer is from a person who has no title at all, it is not a transfer which conveys any right on the transferee. Section 7E apparently contemplates a transfer from the declarant or his legal heirs who alone will have title to the property. Admittedly, the gift deed in favour of the mother was held to be invalid, which decision has attained finality. Even otherwise, a gift in favour of a member of the family, being without consideration, cannot be taken into consideration for the purpose of Section 7E as held in **Chellappan Nair** (supra). Therefore, the legislative

intend is very clear from Section 7E itself that the transferor should either be the declarant or persons who have derived title under him and not from a person who had no title at all.

18. It is apparent that Smt.Mary Gosmi was not the declarant and there was no ceiling case against her. Therefore, she does not come under the category of “any persons holding land in excess of the ceiling area” as stated in Section 7E of the Act. Hence, we do not think that the arguments raised on behalf of the learned counsel for respondents 1 to 3 are sustainable.

19. Now coming to the next question relating to section 106B of the Act, the learned Government Pleader submits that Kerala Land Reforms (Tenancy) Amendment Rules, 2015 has been promulgated as per SRO No.197/2015 and notified in the Gazette on 28/3/2015 by which the Kerala Land Reforms (Tenancy) Rules, 1970 has been amended

incorporating Rule 122A, by which any person claiming to be a deemed tenant under Section 7E of the Act is entitled to file an application before the Land Tribunal within six months from the date of publication of such Rules. Necessary format for obtaining certificate of title also forms part of the said notification. She also relies upon judgment dated 17/1/2012 of the learned Single Judge of this Court in OP(C) No.47/2012 wherein it is held that the consideration of the question as to whether the person is deemed tenant under Section 7E of the Act is outside the domain of consideration of the TLB as it has to be considered by the Tribunal. The contention is that the TLB ought not have considered the claim under section 7E, without there being a purchase certificate issued by the Land Tribunal under section 106B of the Act. This issue, in fact is considered by a learned Single Judge of this Court in **Rajeev v. District**

Collector (2014 (4) KLT 209), wherein, after referring to Section 7E read with Section 106B, learned Single Judge held at para 10 as under;

"10. I am not impressed by the argument of the State that a claim under S.7E of the Act would lie only after a certificate of title is issued under S.106B of the Act. S.106B of the Act is as follows:-

"106B. Special provision for issue of certificate of title:--(1) *Notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law for the time being in force, a person claiming to be a deemed tenant under Section 7E may apply, within such time and in such manner as may be prescribed, to the Land Tribunal having jurisdiction over the area, for a certificate of title in respect of the land held by him.*

(2) On receipt of an application under sub-s. (1) the Land Tribunal shall within a period of six months from the date of application, pass orders thereon after verifying the records as it may deem fit and where the application is allowed, issue a certificate of title in such manner as may be prescribed."

It is conceded by all that no rules have hitherto been framed prescribing the manner in which a land Tribunal could issue a certificate of title to a claimant

under S.7E of the Act. Moreover S.106 B of the Act is only a provision which enables such claimant to obtain a certificate of title in respect of the land held by him. The grant of a certificate of title under S.106B of the Act by the Land Tribunal is not a sine qua non to claim 'deemed tenancy'. Equally fallacious is the argument of the State that the application of S.7E of the Act can be raised only by a claimant and not the declarant. The extent of land (in respect of which the claim under S.7E of the Act is upheld) would be deleted from the account of the declarant. This would bring down the surrenderable liability and therefore the declarant is as much concerned as the claimant when a claim under S.7E of the Act is made".

20. Similarly another learned Single Judge of this Court in reference order dated 19/11/2013 in CRP No.217/2010 while considering a conflict of opinion expressed by another learned Single Judge (in OP(C) No.47/2012), held at para 12 as under;

"12. *The second proviso to sub section (4) of section 84 of the Act does not in my opinion take away the effect of section 7(E) of the Act which*

-:37:-

recognises and validates transfers by a person holding lands in excess of the ceiling area not exceeding 4 acres in extent by way of purchase or otherwise on payment of consideration from any person holding land in excess of ceiling area, during the period between the date of commencement of the Kerala Land Reforms Act, 1963 (1 of 1964) from the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005. In view of sub section (4) of section 84 of the Act, the Land Board cannot ignore a transfer covered by section 7(E) of the Act by a 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 held by him under the provisions of the Act. The Taluk Land Board will therefore necessarily have to determine whether the claimant before it is entitled to the benefit of section 7(E) of the Act. The second proviso to sub section (4) of section 84 of the Act does not in my opinion enable the Taluk Land Board to ignore a claim made under section 7(E) of the Act. The second proviso to sub section (4) of section 84 of the Act only enables the Taluk Land Board, if it is satisfied that transfer of lands by a person in possession of excess land is calculated to defeat the ceiling provisions, to take into account the lands thus transferred for the

purpose of determining the ceiling area of the transferor. In other words the second proviso to sub section (4) does not enable the Taluk Land Board to ignore transfers of the kind mentioned in sub section (4) of section 84 of the Act and to hold that the transferee cannot claim the benefit of section 7 (E) of the Act. In that view of the matter, I am not persuaded to agree with the view taken by a learned single Judge of this Court in O.P.(C) No.47 of 2012 that the question whether a claimant before the Taluk Land Board is a deemed tenant under section 7(E) of the Act is outside the domain of consideration of the Taluk Land Board. Though section 106(B) of the Kerala Land Reforms Act entitles a deemed tenant under section 7(E) of the Act to apply for a certificate of purchase, the said provision operates in a different field and does not in my opinion enable the Taluk Land Board to refuse to consider whether the claimant before it is a deemed tenant under section 7(E) of the Act. Section 106(B) was introduced in the Act along with section 7(E) and section 84(4) of the Act. The mere fact that the law enables the deemed tenant to apply for a certificate of purchase, does not in my opinion stand in the way of the Taluk Land Board from considering the question whether the claimant before it is a deemed tenant under section 7(E) of

the Act”.

21. Going by the statutory provision under section 106B and Section 7E, we are of the view that both the provisions operate in different fields. In a ceiling case or in an application filed under Section 85(8) of the Act before the TLB, it is always open for the TLB to consider whether the land is liable to be exempted, on the basis of the claim made by a deemed tenant or declarant under Section 7E of the Act. Similarly while defending a suit for possession, a claim of deemed tenancy can be raised by such persons. For that purpose, there is no requirement to obtain a purchase certificate as contemplated under Section 106B. However if a deemed tenant requires a purchase certificate, the remedy is to approach the Land Tribunal. The very words of Section 106B starts with a *non obstante* clause which permits a person claiming to be deemed tenant under section 7E to

apply to the Land Tribunal for a certificate of title in respect of the land held by him. The concept of deemed tenancy protects a deemed tenant from being evicted and claim fixity of tenure in terms of Section 13 of the Act. Tenant under section 13 includes a deemed tenant also, in view of Section 2(57)(j), which indicates that the tenant includes deemed tenant under Section 7E as well. Therefore, while becoming a deemed tenant, he gets all the protection as envisaged under Section 13 of the Act. Ceiling case excludes lands held by tenants from considering the holding of the declarant. Therefore, we are of the considered view that the opinion expressed by the learned Single Judge in **Rajeev's case** (supra) holds the field, and framing of Rule 122A does not change the situation.

In the light of the above opinion of ours, we are of the view that the Civil Revision Petition is to be allowed. Accordingly, we allow the Civil Revision Petition, set aside order No.L-4755/78 dated 30/6/2009 passed by the TLB and rejecting the claim of respondents 1 to 3.

ASHOK BHUSHAN, CHIEF JUSTICE

A.M. SHAFFIQUE, JUDGE

Rp