

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 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

RP.No. 735 of 2015 ()

AGAINST THE ORDER IN CRP 590/2010 DATED 05-08-2015

PETITIONERS/RESPONDENTS 1 TO 3 :

- 1. FR.XAVIER KARUVALLIL
S/O.JOSEPH KARUVALLIL, KARUVALLIL HOUSE
EZHUPUNNA P.O., CHERTHALA.**
- 2. INNOCENT @ IGNATIOUS KARUVALLIL,
EZHUPUNNA MURI, NEENDAKARA, KUTHIYATHODU VILLAGE
CHERTHALA TALUK.**
- 3. MARY,
WIFE OF INNOCENT KARUVALLIL,
KARUVALLIL HOUSE, EZHUPUNNA MURI
CHERTHALA TALUK.**

**BY ADVS.SRI.P.R.AJITHKUMAR
SRI.K.JAGADEESCHANDRAN NAIR**

RESPONDENTS/REVISION PETITIONER & RESPONDENT 4 :

- 1. STATE OF KERALA
REP. BY SECRETARY, LAND BOARD,
THIRUVANANTHAPURAM - 695 001.**
- 2. INNOCENT PETER,
KUNDARAPPILLY, VYTTILA,
POONITHURA VILLAGE - 382 019.**

**R1 BY SPL. GOVT. PLEADER SMT. SUSHEELA R. BHATT
R2 BY ADV. SRI.B.RAMACHANDRAN**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 15-09-2015,
THE COURT ON 18-11-2015 PASSED THE FOLLOWING:**

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ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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R.P.No.735 of 2015

in

C.R.P.No.590 of 2010

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Dated this, the 18th day of November, 2015

O R D E R

Shaffique, J.

Respondents 1 to 3 in CRP NO.590/2010, which was decided as per order dated 5/8/2015, are the review petitioners. By the order under review, we allowed the revision filed by the State of Kerala and declared that the review petitioners are not entitled to claim benefit of deemed tenant under Section 7E of the Kerala Land Reforms Act (hereinafter referred as the 'KLR Act').

2. In the review, the petitioners contended that their claim *dehors* the application under Section 7E has not been considered by this Court or by the Taluk Land Board while deciding the matter on 30/6/2009, therefore, their claim under Section 85(8) on other points raised by them still survives and hence to that extent, the review is liable to be allowed. A perusal of the order dated 30/6/2009 of the Taluk Land Board refers to a

judgment dated 13/8/2008 in WP(C) No.14325/2008. On a perusal of the said judgment, it is clear that the petitioner has sought for a consideration of his claim under Section 7E of the KLR Act. Learned Single Judge observed as under “The petitioner now seeks a direction to the 1st respondent to close the proceedings against the petitioner in Ceiling Case No.2016/1981 based on Section 7E of the Act”. Though it was contended by the learned Government Pleader that in view of the Circular issued by the Secretary of the Land Board, there was no necessity to consider such applications, the learned Single Judge directed disposal of the petitioner's application under Section 85(8) of the KLR Act without reference to the circular issued by the Secretary of the Land Board or by any other direction in respect of Section 7E. It is pursuant to the aforesaid direction that the claim of the revision petitioners were considered. It is apparent from a bare reading of the order of the Land Board that they did not urge any other claim other than the benefit of Section 7E of the KLR Act which was considered and allowed in his favour. Once the said claim has

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been rejected by us based on the factual circumstances, we do not think that review petitioners are entitled to make any further claim in this regard.

3. It is a settled position of law and as held by a Division Bench of this Court in ***Kunhalan Haji v. State of Kerala*** (1994 (2) KLT 311) that the benefit of Section 85(8) of the KLR Act cannot be availed of by a person who does not claim any right prior to 1/1/1970.

4. It is argued that when by order in CRP No.1979 of 1999, the Land Board was directed to consider the claim under Section 85(8) afresh, that does not mean that any rights have been bestowed on the review petitioners for an adjudication that the declarants other properties shall be taken over after exempting the property in possession of the petitioners. That apart, there is no material to indicate that other than claiming the benefit under Section 7E before the Taluk Land Board, no other contention had been urged before the Taluk Land Board. Further, such ground is not available especially in view of the limited

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direction issued by this Court as per judgment dated 13/8/2008 in
WP(C) No.14325/2008.

In the result, we do not find any ground to review the order
and accordingly, the review petition is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge