

State of Kerala and Others

Vs

K. A. Gangadharan

Civil Appeal No. 1177 of 1975

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

27.10.1976

JUDGMENT

RAY, C.J. –

1. This appeal is by special leave from the judgment dated October 10, 1974 of the High Court of Kerala.
2. The respondent in the High Court challenged the order of the Land Board directing him to surrender 8.78 acres of land. The High Court declared on a revision petition that the respondent was not liable to surrender the lands specified in the order of the Land Board.
3. The respondent filed a statement under Section 85(a) of the Kerala Land Reforms Act, 1964 hereinafter called the Act and showed there that the statement related to the family consisting of himself, his wife and children. Two of his children were minors on January 1, 1970. The ceiling area allowed under Section 82(1) of the Act for a family consisting of two or more but not more than five members is 10 standard acres which should not be less than 12 and more than five members is 10 standard acres which should not be less than 12 and more than 15 ordinary acres in extent. On this footing the respondent would be entitled to have not less than 12 acres on the notified date, namely, January 1, 1970. He was found to have a total area of 28.38 acres. He alone was the owner of all the lands. Out of 28.38 acres 3.87 acres were exempted under Section 81. Excluding 3.87 acres and another 12 acres for the ceiling area the excess land was 12.51 acres. A statement showing the determination was served on him and his wife. They were asked to file objections.
4. Two of the respondent's children a daughter and a son who were minors on January 1, 1970 attained majority in 1971 and 1973 respectively. On March 28, 1974 the respondent executed three deeds of gift transferring a total extent of 12.83 acres to his three children. To the eldest of them a daughter, who was a major on January 1, 1970 he transferred 3.84 acres. To the second daughter who became a major in 1971 he transferred 3.85 acres and to his son who became a major in 1973 he transferred 5.14 acres.
5. The respondent filed an objection on April 5, 1974 stating that he and his wife who were the remaining members of the statutory family did not hold more than the ceiling area available to the family and therefore he was not liable to surrender any excess land. The Land Board recognised the gift to the eldest daughter who was a major on January 1, 1970 and required the respondent to surrender 8.78 acres which was the subject-matter of the other two deeds of gift.

6. The respondent's contention which was accepted by the High Court was repeated here. The contentions were these. The donees were not minors on the date of the gift. Therefore, the son and the daughter would not constitute members of the family. Section 82 of the Act only fixes the ceiling area. The ceiling is 5 acres for an unmarried person or a family consisting of one sole surviving member. The ceiling is 6 acres for a family of two to five members, 12 acres for a family of more than 5 members, 10 acres increased by one acre for each member in excess of 5 etc. The respondent emphasises that the status or nature of the person or the family is relevant. If a person is a singly member family on the relevant date, he cannot claim a larger ceiling on the ground that he became a two-member or five-member family later. Under Section 83 of the Act the notified date is January 1, 1970. This notified date is relevant only for fixing such ceiling. Section 83 does not say that the particular person or family loses its title to the excess land on that date. Section 84 of the Act has two parts. The first part contains body of the section. The second part contains exceptions. Therefore, it is said by the respondent that all voluntary transfers of excess land falling in the body of the section shall be deemed to be transfers calculated to defeat the provisions of the Act and shall be invalid. The gifts in the present case are said by the respondent to fall under the last exception of Section 84 of the Act and it is said that the transaction is saved by the last exception.

7. The respondent further contends that on November 1, 1972 the Amendment Act 17 of 1972 deleted two exceptions in Section 84 of the Act with effect from August 16, 1968. The two deleted exceptions were first a transfer on account of natural love and affection and second a transfer in favour of a religious, charitable or educational institution. The Amendment Act of 1972 added an exception with effect from August 16, 1968. The exception is a transfer by way of gift in favour of his son or daughter, or the son or daughter of his predeceased son or daughter by any person owning or holding land in excess of the ceiling area.

8. The respondent contends that in the present case the two impugned gifts are gifts to a daughter and son respectively, and, therefore, they come directly under the newly added exception introduced by Act 17 of 1972 and the exception is deemed to be effective from August 16, 1968. The respondent further contends that Section 85 and Section 85A of the Act lay down the procedure for surrendering the excess land. Section 86 of the Act vests the excess land in the Government. The vesting happens both on the determination of the extent and other particulars of the lands, the ownership or possession or both of which is or are to be surrendered. The respondent contends that until then namely the vesting of the land the owner of the land i.e., the respondent in this case is the legal owner and his ownership or possession is not diverted. He can therefore deal with the land in legal valid manner. A gift under the last exception not being hit by the invalidity contemplated by Section 84 of the Act is a valid gift, which the respondent was competent to make.

9. The respondent contends that it is incorrect to say that a gift coming within the last exception of Section 84 is ineffective after January 1, 1970, inasmuch as such a contention will make Section 84 a dead letter after January 1, 1970. It is said that it could not have been the intention of the legislature which added the exception only on November 1, 1972. The exceptions introduced by the Amendment Act of 1972 to Section 84 are three. The first is partition. The second is transfer to a person who has been a tenant from July 27, 1960 up to the date of transfer. The third is a transfer to a son or a daughter or a grandson or granddaughter by a predeceased son or daughter. The respondent submits that the intention of the legislature is that in all these cases a person can transfer until he is divested of his ownership under Section 86. The respondent further contends that the scheme of the Act and of the Amendment Act of 1972 regarding gift is this. Until August 16, 1968 a gift to any person is valid if the gift was out of natural love and affection. After that date namely the Amendment Act of 1972 only gifts to sons, daughters and grandchildren of predeceased children are

valid. It is said that there is nothing in the Act which says that an owner like the respondent cannot deal with his land in a lawful and valid manner as long as he is the owner thereof or as long as ownership is vested in him. Section 87 of the Act says that where any person acquires any land after the date notified under Section 83 by gift, purchase, mortgage with possession, lease, surrender or any other kind of transfer inter vivos or by bequest or inheritance or otherwise and in consequence thereof the total extent of land owned or held by such person exceeds the ceiling area, such excess shall be surrendered to such authority as may be prescribed. Section 87 according to the respondent indicates that after the notified date January 1, 1970 valid gifts are possible, as such gifts are saved by exceptions to Section 84.

10. The Kerala Land Reforms Act of 1964 came into force on April 1, 1964. On January 1, 1970 the Kerala Land Reforms Act as amended by Act 35 of 1969 came into force. The respondent made gifts of his excess land on March 28, 1974. On April 5, 1974 the Land Board served notice on the respondent saying that the gifts were invalid and directed the respondent to surrender the excess land in excess of the ceiling area as found on January 1, 1970.

11. On behalf of the State it is contended that the view taken by the single Judge in the present case has been overruled by a Division Bench of the Kerala High Court in a decision reported in 1975 KLT 171. It is also said by the appellant that the decision of the Division Bench is affirmed by the Full Bench of the Kerala High Court in the judgment reported in 1976 KLT 362.

12. Section 82 of the Act lays down the principles governing the fixation of the land ceiling area in respect of different categories of persons. Section 83 of the Act states that with effect from the notified date no person shall be entitled to own or hold or to possess under a mortgage lands in the aggregate in excess of the ceiling area. Section 84 of the Act provides that all voluntary transfers effected after the publication of the Kerala Land Reforms Bill, 1963 in the Gazette, namely, September 15, 1963, otherwise than in certain modes specified in Section 84, shall be deemed to be transfers calculated to defeat the provisions of the Act and shall be invalid. Section 85(1) lays down that if any person owns or holds land in excess of the ceiling area on the notified date, such excess shall be surrendered as provided in the section. Section 86 lays down that on determination by the Land Board of the extent and other particulars of the lands to be surrendered by the person under Section 86 lays down that on determination by the Land Board of the extent and other particulars of the lands to be surrendered by the person under Section 85 the ownership or possession or both, as the case may be, of the lands shall vest in the Government free from any encumbrance, Section 87 deals with cases where persons have acquired lands after the notified date by transactions inter vivos, such as gift, purchase, mortgage with possession, lease, surrender or by bequest, or inheritance etc. and in consequence thereof the total extent of land owned or held by such person exceeds the ceiling area, such excess lands should also be surrendered to the prescribed authority and that such land shall also vest in the Government under Section 86.

13. These provisions in the Act establish the dominant legislative intent of the imposition of the ceiling on land holdings and the consequential obligation to surrender lands owned or held in excess of the ceiling area on the notified date, namely, January 1, 1970. The legislature noticed the possibility that after the proposal to introduce the Kerala Land Reforms Bill, 1963 published in the Gazette on August 15, 1963, there might be transactions of transfers with a view to circumventing the provisions of the contemplated legislation. It is to meet the said situation that Section 84 of the Act lays down that all such voluntary transfers that have taken place subsequent to the date of publication of the Bill, namely, August 15, 1963, otherwise than in the limited modes specified in the said section, shall be deemed to be transfers calculated to defeat the provisions of the Act and

shall be invalid. It is apparent that Section 84 was enacted with a view to making the provisions of Sections 83 and 85 effective. For purposes of calculation of the ceiling area and the determinative. For purposes of calculation of the ceiling area and the determination of the extent of the excess land to be surrendered by persons account will be taken not merely of the land actually owned and possessed by him on the notified date, namely, January 1, 1970, but also of land voluntarily transferred by him subsequent to the date of publication of the Bill in the gazette on August 15, 1963 by transactions not falling within the certain categories mentioned in Section 84. Section 84 prohibits persons from transferring their excess lands after August 15, 1963 except as provided in that section.

14. The effect of Sections 83 and 85 has been noticed by this Court in the decision dated August 20, 1976 in Civil Appeals 907-909 of 1974 and Civil Appeals 1354 and 1355 of 1975 (State of Kerala v. Philomina [(1976) 4 SCC 314]). It has been held there that the prohibition against ceiling area under Section 83 of the Act and the surrender of the excess land under Section 85 of the Act are both to be determined with reference to the position as on the notified date under Section 83 of the Act. The crucial date for determining and surrendering the surplus land is January 1, 1970 and not any earlier date.

15. Transfers which have been effected between August 15, 1963 and January 1, 1970 will be treated as valid provided they come within the excepted categories enumerated in Section 84 of the Act. The lands covered by such valid transfers will be treated as properties belonging to the transferors on the notified date for purposes of determining a ceiling area and the extent of excess land to be surrendered by him. In respect of transfers effected after January 1, 1970 the ceiling area applicable to a person and the extent of his liability to surrender, which became crystallized on January 1, 1970, will determine the excess land to be surrendered. The obligation to surrender the excess land owned or possessed by person as on January 1, 1970 cannot be affected by voluntary transfers even of the excepted varieties mentioned in Section 84 of the Act subsequent to the notified date. The transferor will continue to be liable to surrender to the Government the full extent of the excess land that was in his possession as on January 1, 1970.

16. The High Court erred in holding that the respondent was not to surrender the land. The appeal is accepted for the foregoing reasons and the judgment is set aside. Parties will pay and bear their own costs.

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