

The State of Kerala and Another

Vs

M. T. Joseph (dead) by L. Rs. and Others

Civil Appeal Nos. 586-587 and 598-600 of 1976

(H.R. Khanna, V.R. Krishna Iyer JJ)

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

25.11.1976

JUDGMENT

BEG, J. –

1. These appeals by special leave raise the question whether the Kerala High Court had correctly interpreted and applied Section 8 of the Kerala Government Land Assignment Act, 1960 (hereinafter referred to as 'the Act') to the cases before us. This provisions reads as follows :

8. All provisions, restrictions, conditions and limitations over, contained in any pattah or other document evidencing an assignment of Government land shall be valid and take effect according to their tenor, any rule of law or usage to the contrary notwithstanding.

2. The facts upon which the provision was sought to be applied are these : On October 23, 1939, the Government of Travancore sanctioned a scheme for the reclamation of the Vimbana Lake upon terms and conditions which were set forth in a document dated October 4, 1939. The agreement provided that one M. T. Joseph and his father, on payment of Rs. 10 per acre, which were to be recovered in ten equal instalments, would be given possession of certain tracts of land which they undertook to reclaim. For the first two years after what is called the "registry" of the names of the two lessees no tax was to be levied. The "registry" was liable to be cancelled if adequate progress was not made within these two years. It appears that the agreement was modified by an order dated February 12, 1941, and a fresh agreement was executed in July 1941 by M. T. Joseph (now dead) who entered into possession of kayal land, constructed the ring buds at considerable expense, and brought the very large tracts of land to be reclaimed under paddy cultivation. In June 1957, M. T. Joseph executed a deed of settlement of all this land, after he had acquired full ownership rights by fulfilling the terms of the agreement. The Act which is sought to be now applied was then passed. After that, the Kerala Land Reforms Act of 1963 was passed so that the "State Land Board" started proceedings for the surrender of these lands in accordance with the provisions of the Land Reforms Act.

3. The only question now before us is whether, by an application of Section 8 of the Act, the whole land is to be treated as a singly unit belonging to M. T. Joseph (since dead), or, the dispositions made by M. T. Joseph, under the deed of settlement executed by him on June 15, 1957, distributing the land among his children, resulted in separate units for the purposes of compensation for the land surrendered. If the children had acquired rights under the deed of settlement each of them could be

treated as entitled to compensation for a separate unit. If the deed was of no effect, the mere fact that the children were in possession, under an authority from their father, could not change the ownership of the land in the constructive possession of the father.

4. We have been taken through the deed of agreement of July, 1941, with the Government, which contains the following term, the effect of which has to be determined :

Till the remittance of all amounts due to the Government by way of tharavila (land value) etc. the executant shall have no right of alienation in respect of the schedule property and the property shall remain with the Government as sole owner. The executant shall remit the tax at the thirteenth thoram in the village office every year after the first two years of registry so long as no default is made in the payment of instalment and obtain receipt therefor. Until the entire tharavila (land value) under this agreement as stated above is paid by the executant and until the assignment of the land and issue of patta is completed the executant undertakes not to do any act which may reduce the value of the property and if as stated above due to any reason the property is recovered from the executant he shall not put forward any claim for improvements etc. and the property shall be surrendered to Government.

5. It is clear to us that this term in the agreement operated as a restraint upon the alienation of rights only so long as all the amounts due to the Government as tharavila had not been paid up. The whole amount had to be paid up in ten yearly instalments. It had been paid up before 1957. Furthermore, as the Kerala High Court found, the settlement of land on June 15, 1957, had not merely been given effect to by a mutation in the relevant government records but pattas had actually been given by the Government, acting upon the settlement of 1957, in favour of the children of M. T. Joseph. Hence, it could not be said that there was any patta or other document containing any condition to which Section 8 of the Act could apply. We find, from the judgment under appeal, that several questions, which have no real bearing on the rights of the parties, were also argued. One of these questions was whether land could be acquired by adverse possession by the alienees of the allottees of the land from the Government under the scheme for its reclamation. We fail to see how a question of adverse possession arise here when the Government itself recognises the rights of the children of M. T. Joseph in the pattas executed by it in their favour.

6. The High Court recorded the following findings about the Government acting on the terms of the settlement of June 15, 1957, the correctness of which had not been challenged before us :

This settlement deed has been recognised by the Government, mutation has been effected in the names of the children and pattahs have also been issued to them. It has been further stated on behalf of the revision petitioners (the heirs of the said Joseph and those who took under the settlement deed dated June 15, 1957) that levy under the Kerala Rice and Paddy (Procurement by Levy) Order, 1966, has been collected from each of the shares under the deed of 1957, that land tax has been imposed on each of the shares separately and agricultural income-tax collected on the income of the properties of each of the sharers.

7. We do not think it is necessary to go into any other question. The High Court was of opinion that some facts had still to be ascertained when the case goes back to the Land Board for proceeding on the footing determined by the High Court. We think that we should make it clear that matters to be still determined could not, in view of our finding, involve determination of any question of adverse

possession of the claimants, the children of M. T. Joseph.

8. For the reasons given above, we dismiss these appeals. We make no order as to costs.

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