Govinda Pillai Ramadas

Vs

Lakshmikutty Amma Ammukutty Amma and Others

Civil Appeal No. 3862 of 1984

(R. M. Sahai, B. P. Jeevan Reddy JJ)

17.09.1992

JUDGEMENT

B. P. JEEVAN REDDY, J.:-

1.This appeal by the plaintiff is directed against the judgment of a learned single Judge of the Kerala High Court dismissing the Second Appeal preferred by him.

2. The suit property was mortgaged by one Raman Pillai in favour of Madhav Pillai. Plaintiff purchased the equity of redemption from the daughter of Raman Pillai. First defendant in the suit is the assignee of the mortgagee's right whereas defendants 2 to 5 are his children. The plaintiff filed the suit for redemption of the mortgage. The defendant pleaded inter alia that by virtue of Section 4-A of the Kerala Land Reforms Act, 1964, he should be deemed to be a tenant, entitled to fixity of tenure. Trial Court upheld his plea on the finding that he has been holding the land comprised in the mortgage for a continuous period of not less than 50 years immediately preceding the commencement of the Kerala Land Reforms (Amendment) Act, 1969 as contemplated by Section 4-A. On that basis, it dismissed the suit. Appellate Court affirmed, the said view and dismissed the appeal. Plaintiff thereupon preferred the Second Appeal which too has been dismissed following the Full Bench decision of the Kerala High Court in Parameshwaran Pillai v. Narayanan Nair, 1976 Ker LT 341.

3. The learned counsel for the plaintiff/ appellant submitted that the land in question, of an extent of 12 cents, is not an agricultural land but a house site (with a building thereon) situated in the heart of Trivandrum city. Since the suit land is not an agricultural land, Kerala Land Reforms Act has no application. the courts below were, therefore, in error in extending the. benefit of Section 4-A of the Act to the plaintiff. In support of his contention, he relied upon certain decisions, which we shall presently refer.

4. Section 4-A is in force at the relevant time, and in so far as it is relevant for the purpose of this case, reads thus:

4(A). Certain mortgagees and lessees of mortgagees to be deemed tenants.- (1) Notwithstanding anything to the contrary contained in any law or in any contract, custom or usage, or in any judgment, decree or order of court, a mortgagee with possession of land other than land principally planted with rubber, coffee, tea or cardamom, or the lessee of a mortgagee of such land shall be deemed to be tenant if-

(B) the mortgagee or lessee was holding the land comprised in the mortgage for a continuous period of not less than fifty years immediately preceding the commencement of the Kerala Land Reforms (Amendment) Act, 1969; or....

5. The expression 'land' is not defined in the Act. All the same, contention of the learned counsel for the appellant is that the expression 'land' occurring in the Act as also in Section 4-A should be understood having regard to the object underlying the Act and the purpose for which it was enacted. Since it is a measure of agrarian reform, he submits, the Act should be understood as confined to agricultural land only.

6. For answering the contention of the learned Counsel for the appellant, it would have been necessary to examine the scheme of the enactment in the light of its provisions, but we are relieved of the task by several illuminating decisions of the Kerala High Court and of this court on the subject. A brief reference to them may be appropriate at this stage.

7. In Narayanan Nair v. State of Kerala (AIR 1971 Kerala 98) the validity of the Kerala Land Reforms Act, in particular the provisions introduced by Amendment Act 35/69 (inter alia imposing a ceiling upon the holdings of agricultural land) was questioned. The only defence available to the State at that stage was Article 31 (A) of the Constitution. The contention of the petitioners, however, was that some of the provisions of the Act are wide enough, on their wording, to apply to non agricultural lands as well and, therefore, the Act cannot be said to be "a measure of agrarian reform". For the said reason, it was argued, the Act cannot have the protection of Article 31 (A); it has to pass the test of Articles 14, 19 and 3 1. If so tested, it was submitted, the entire Act has to fail. This argument was rejected by the Full Bench holding that "so long as the field is severable why should not a provision be allowed to operate in the un-forbidden portion of the field and bar only from the forbidden portion?". Having said so, the Full Bench proceeded to observe:

> "For the aforesaid reasons, we shall consider the impugned provisions only in their application to agricultural land - as we have said, these petitions are not concerned with non-agricultural land, at any rate, not directly. We wish to make it clear that we are expressing no opinion whatsoever about their validity or otherwise in their application to non-agricultural land.
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> We do not think it can be denied that the Act as a whole is a measure of agrarian reform, its main object being to confer such benefits as fixity of tenure and fair rent on cultivating tenants, to abolish intermediaries like landlords, between the cultivator and the State, and to distribute lands held in excess of the ceiling to the landless. The Act as a whole must, therefore, get the protection of Article 31 Aeven if portions thereof have to fail for want of that protection."

8. An appeal was preferred in this Court impugning the correctness of the said decision. The decision of this Court is reported in (1972) 2 SCC 364 : (AIR 1972 SC 2097) (Kunjukutty Saheb v. State of Kerala). This court affirmed the judgment of the High Court. So far as the applicability of the Act to non-agricultural lands is concerned, this Court observed (para 19 of AIR):

> "We should, however, like to make it clear that we express no opinion where the provisions of this Act are utilised for lands which are not agricultural lands and do not constitute estates nor where the beneficiary happens to be a person not substantially connected with agriculture, occupying non-agricultural land or where

> the facts are not covered by the general test laid down in the case of Ranjit Singh (AIR 1965 SC 632) (supra)."

9. Indeed, this Court extracted the two paragraphs (extracted by us hereinbefore) and affirmed their correctness.

10. It is brought to our notice that the very Constitution Bench which decided Kunjukutty Saheb (AIR 1972 SC 2097) also decided a batch of writ petitions filed under Article 32 of the Constitution impugning the validity of the Act. That decision is reported in Malankara Rubber and Produce Company v. State of Kerala, (1972) 2 SCC 492 : (AIR 1972 SC 2027). The conclusions arrived at by the Bench are stated in paragraph 61 (of SCC) : (Para 54 of AIR) in the form. of ten propositions. Of these only propositions 1 and 10 are relevant for our purpose. They read as follows:

> "(1) It was for the petitioners to establish that the lands held by them and mentioned in the petitions were not "estates" so that they could be out of the purview of the Act. It was all the more necessary for them to do so in view of the categorical findings of the Full Bench of the Kerala High Court in paragraphs 5 and 99 of the judgment in Narayanan Nair's case (AIR 1971 Kerala 98) (supra). In the absence of material in the petitions to show prima facie that the lands of the petitioners were not estates we cannot hold that the petitions are not affected by the Kerala Land Reforms Act of 1964 as amended in 1969. In any event, so far as the provisions of the 1964 Act are concerned the same could not be challenged under Article 31-A by reason of its inclusion in the Ninth Schedule to the Constitution.
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> (10) Lands which are interspersed between sites of commercial undertakings and house-site in municipalities with lands surrounding them are not agricultural lands fit for acquisition under the Act."

11. The question whether the Act applies to non-agricultural land arose directly in Shankaran Nambisam v. Sarvottam Rao, 1972 Ker LT 891. It was held by the Division Bench that since the Act itself is a measure of agrarian reform, its operation is confined to agricultural lands only. It was held that it was no application to a land situated within the city of Calicut and which was being used for purposes wholly unrelated to agriculture. The Bench further held that the mere fact that the Amendment Act 35 of 1969 amending the Kerala Land Reforms Act has been placed in the Ninth Schedule by the Constitution Twenty Ninth (Amendment) Act, 1972 cannot serve to widen the scope and ambit of the Act. This view was, however, overturned by a Full Bench of the same Court in Parameshwaran Pillai v. Narayanan Nair, 1976 Ker LT 341. The Full Bench in Parameshwaran Pillai referred to the earlier Full Bench decision in Narayanan Nair (AIR 1971 Kerala 98) and understood the same in the following words:

> "The decision has proceeded on the basis that even if the Act was applicable to non-agricultural lands the provision or tile expression 'land' in the statute had a severable applicability in the field. We must also remember that the question that arose before the Court was about the validity of the statute. It was contended that the Act did not have the protection of Art. 31 -A as it related not merely to agricultural land but also to non-agricultural land. In all the cases dealt with by the judgment the subject matter was agricultural land and it was held that the Statute was valid as regards those lands. What is more important is that the Full Bench specifically left the question open in paragraph 21, which we have extracted, by saying that "we are expressing no opinion

whatsoever about the validity or otherwise in their application to non-agricultural land". It necessarily implies that the court understood the Act as applicable or as possibly applicable to non-agricultural lands as well."

12. It also referred to the decision of this Court in Malankara Rubber Producing Company (AIR 1972 SC 2027) and understood the same in the following words:

> "We do not think that the passage will support the respondents. What the Supreme Court has stated, if we may say so, with respect is the correct summary of the decision. Paras 20 and 21 of the judgment in Narayanan Nair's case (AIR 1971 Kerala 98), which we have extracted show that the court proceeded on the basis that the Act would be taken to have severable applications and it was valid as regards agricultural lands and as the cases before the courts were all concerned with agricultural lands, the validity was upheld. From the analysis we have made of the pronouncements of the court it appears to us that no decision of this Court has analysed the provision of the statute in S. 4A of the Act excepting the decision in 1971 Ker LT 484 : (AIR 1971 Kerala 314), to find out whether, that section applied to non-agricultural lands as well. The court held therein that the section was applicable to non-agricultural lands. There is no pronouncement of the Supreme Court on the matter. If we accept the reasoning of the decision in 1971 Ker LT 484 : (AIR 1971 Kerala 314), it is clear that S. 4A, as it stood then and as it stands now, takes in not only agricultural, but non-agricultural lands as well. The reasoning in the decision is in accordance with the wording of the section."

13. Ultimately, the Full Bench expressed its view in the following words:

> "It is impossible to give to the language of S. 4A a limited meaning and find that its terms would apply only to agricultural land. We have, therefore, to hold that S. 4A of the Act applies to the land in question notwithstanding the fact that it is situate in an important part, almost in the heart, of the city of Trivandrum, and may not reasonably be expected to be used for agricultural purposes now or in the near future by any reasonable person. To read the Act, particularly S. 4A as limited in its ambit and application to agricultural land alone is not possible. The Act having been included in the Ninth Schedule to the Constitution, what is the effect of making the Act applicable to non-agricultural land, and whether such application would take the Act outside the purview of Article 31A and whether the provision can be understood as a measure of promoting agrarian reforms we need not and cannot consider for deciding its validity. The Act having been included in the Ninth Schedule of the Constitution is free from attack on the ground that it violated Articles 14, 19, 31 and 31A. The person in possession of the property in O.S. 187 of 1965, the first defendant, has not appealed from the decree for redemption of the property scheduled to that plaint. So that decree against the first defendant cannot be altered."

14. The learned counsel for the plaintiff/ appellant submits that the decision of the Full Bench in Parameshwaran Pillai (1976 Ker LT 341) runs counter to the principle of. the. decisions of this Court in Kunjukutty Saheb (AIR 1972 SC 2097) and Malankara Rubber Producing Company (AIR 1972 SC 2027) and for that reason it should not be given effect. We are unable to agree with the learned counsel.

15. Admittedly, the expression 'land' is not defined in the Act. Several provisions in the Act, it is admitted, purport to apply to both agricultural as well as non-agricultural lands. When Narayanan Nair (AIR 1971 Ker 98) was decided the Kerala Land Reforms (Amendment) Act, 1969 (Act 35 of 1969) which introduced several far reaching provisions including the substituted Section 4(A) into the Act had not been placed. in the Ninth Schedule. Therefore, the only defence available to the State to support the constitutionality of the Act was Article 31-A. As rightly pointed out in the later Full Bench decision, Narayanan Nair did not say that the provisions of the Act must be read down to apply only to agricultural lands. It opined that so far as the Act applied to agricultural lands it enjoyed the protection of Art. 31 -A. They did not express any opinion on the validity of the Act in so far as any of its provisions applied to non-agricultural lands. But once the Amendment Act 35 of 1969 was placed in the Ninth Schedule by the Twenty Ninth Amendment Act (the principal Act was already placed in the Ninth Schedule by the Constitution Seventeenth (Amendment) Act) its validity could not be challenged on the ground that any of its provisions is inconsistent with or takes away or abridges any of the rights conferred by Part III and that is what the later Full Bench said in Parameshwaran Pillai (1976 Ker LT 341).

16. We cannot, therefore, agree with the learned counsel for the appellant that the Full Bench decision in Parameshwaran Pillai (1976 Ker LT 341) runs counter to the principle of the decisions of this Court in Kunjukutty Saheb (AIR 1972 SC 2097) and/ or Malankara Rubber Producing Company (AIR 1972 SC 2027). This court did not say either that the Act applies only to agricultural lands nor did it say that the Act must be read down as confined to only agricultural lands, with a view to save it from invalidity. This court did not express any opinion on the validity of the Act in so far as it applied to non-agricultural lands. All that this court said in Malankara Rubber Producing Company is that house-sites in municipalities. are not agricultural lands fit for acquisition under the Act. The said holding must be understood in the light of the constitutional position as it obtained at that time i.e., before the Amendment Act 35/69 was placed in the Ninth Schedule. It is significant to notice that the Amendment Act 35/69 was placed in the Ninth Schedule by the Constitution 29th Amendment Act, with effect from June 9, 1992, whereas the decision in Kunjukutty Saheb and Malankara Rubber Producing Company were rendered on April 26/28,1972 i.e., earlier to the said Constitution Amendment Act. We may also notice that the Full Bench decision in Parameshwaran Pillai has remained unquestioned since 1976 i.e., for a period more than 16 years and has been applied and followed in Kerala in innumerable cases. We do not think there are adequate grounds for departing from the view taken therein.

17. It is true, as contended by the learned counsel for the appellant, that normally the Land Reforms Act are confined to agricultural lands only but on that supposition we cannot cut down or abridge the plain sweep and ambit of the Act. May be that, having regard to the conditions obtaining in that State the Legislature of that State thought it advisable not to make a distinction between agricultural and non-agricultural lands in certain respects.

18. For the above reasons, the appeal fails and is dismissed with no order as to costs.

Appeal dismissed.

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