

P.K. Indeevirakshan

Vs

Taluk Land Board and Others

Civil Appeal No. 1053 of 1981

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

17.09.1929

JUDGEMENT

B. P. JEEVAN REDDY, J.:-

1. An order of a learned single Judge of Kerala High Court dismissing the Civil Revision Petition filed by the appellant is called in question in this Civil Appeal. The matter arises under the Kerala Land Reforms Act, 1964. It pertains to determination of ceiling of agricultural lands held by the appellant's family and surrender of surplus lands.
2. Appellant's father P. K. Ramankutty Vaidyar filed a return of his agricultural holding before the Taluk Land Board. After making an inquiry, the Board found that Ramankutty held a total extent of 47.91 acres of land. Out of it, 6.40 acres were exempted under Section 81 of the Act. After allowing an extent of 15 acres to be retained by Ramankutty's family, surplus land liable to be surrendered was worked out at 26.51 acres, This order was passed on 25-11-75.
3. Ramankutty died leaving behind him his widow, three sons and two daughters including the petitioner herein. One of the major sons, P. K. Ravindran filed a revision being CRP No.423/76 before the High Court of Kerala, contending that the properties contained in the declaration filed by Ramankutty belong to the joint family and not to the family unit of Ramankutty alone. He also contended that certain plantations entitled to be exempted under Section 81 of the Act were not exempted. The revision petition was dismissed by the High Court on 5-10-1975, whereafter the Taluk Land Board directed (in its proceedings dated 20-3-1977) the Tahsildar, Ottapalam to take possession of surplus land and to assign it to eligible persons. Accordingly, it appears the Tahsildar took possession of 21 acres 31 cents out of 26 acres 51 cents which he was asked to take possession of. This was done on 18-2-1980 as is evident from the report of the Tahsildar, Ottapalam dated 19-2-1980 addressed to the Chairman, Taluk Land Board, Ottapalam.
4. Sometime in 1979, the aforesaid Ravindran, appellant Indeevirakshan, and the other legal representatives of the Ramankutty filed an application before the Taluk Land Board raising certain objections to the order dated 25-11-75. They prayed that the said order be set aside and the matter be decided afresh. The objections raised by them are to the following effect:
 - (1) "The land included in many survey numbers or with the other's possession from a long time. The above lands are to be exempted in calculating the extent. The lands in other's possession are mentioned below....." (According to the particulars given in

the said application, a total extent of about 39 to 40 acres were in possession of different third parties).

(2) Ramankutty Vaidyar who gave the declaration in the above number, because of his old age and sickness was unable to give a 'statement after understanding the facts and inspecting the land. Therefore, the statement was given including the above shown lands also. Now the abovementioned facts are clearly understood when surveyor came to the spot and inspected as per the order of the Board. Even the Surveyor's report shows that the order dated 25-11-75 was passed on the basis of the wrong information."

5. The said application was dismissed by the Taluk Land Board on 29-9-79. The Taluk Land Board gave the following reasons for dismissing the said application.

(a) The declarant Ramankutty or his legal heirs did never claim before the Taluk Land Board that the properties contained in Ramankutty's declaration were in possession of the third parties. No such contention was ever raised by their counsel even though they had ample opportunity in doing so before the Board. The matter was pending before the Board from October 1973 to November 1975.

(b) The plea that the petitioners were not aware of the correct facts earlier cannot be accepted. The present petition is filed after lapse of nearly two years and, is therefore, barred by time.

(c) Even at this stage the applicants have failed to place any evidence before the Tahsildar in support of their contentions.

(d) A perusal of the connected records shows that the properties concerned herein were in actual possession and enjoyment of the family of the applicants till July '73. Even the recent report of the Tahsildar shows that the legal heirs have disposed of certain properties as late as 1978. The applicants cannot be allowed to raise fresh grounds at this stage.

6. Against the order of the Taluk Land Board aforesaid (dated 29-9-1979) the appellant preferred a Revision before the High Court of Kerala, from which revision the present appeal arises. In this revision, it appears to have been contended that the order of the Taluk Land Board dated 25-11-75 was a nullity inasmuch as it was passed after the death of Ramankutty and without impleading, or giving notice to, his legal representatives. The High Court dismissed the revision petition holding that what is challenged before it was not the order dated 25-11-75, said to be a nullity, but the order dated 29-9-79 passed on their application said to have been filed under sub-sections (8) and (9) of Section 85 of the Act. The learned Judge held that none of the conditions prescribed in the said sub-sections are attracted and, therefore, the application filed by the petitioner (and other legal representatives of Ramankutty) before the Land Board is not maintainable in law.

7. In this appeal, it is contended by the learned counsel for the appellant that inasmuch as Ramankutty died on 29-10-75 itself and because his legal representatives were not impleaded or given notice, the order passed by the Land Board on 25-11-75 is a nullity. He submitted that even a co-owner or a joint-owner is a person interested within the meaning of sub-section (8) of Section 85 and because none of the legal representatives were heard before passing the order dated 25-11-75, it

was a proper case where the Land Board ought to have set aside the said order and considered the matter afresh as contemplated by sub-section (8) of Section 85.

8. It is significant to notice that the contention now put forward at the forefront of the appellant's arguments viz., Ramankutty's death before the passing of the order dated 25-11-75 was not stated or urged in the application filed by the appellant (and other legal representatives) purporting to have been filed under sub-sections (8) and (9) of Section 85. We have already set out the grounds urged in the said petition. This particular allegation is conspicuous by its absence in the said application. It is for this reason that the order of the Land Board dated 29-9-79 does not refer to this fact /contention. It is equally relevant to notice that the order dated 25-11-75 was questioned before the High Court by one of the major sons P. K. Ramankutty. It is not, however, brought to our notice that this particular contention was raised in that revision petition. A copy of the counter affidavit filed by the Taluk Land Board in a writ petition filed by the appellant (O.P. No. 631 of 1980) in the High Court of Kerala has been placed before us from which it appears that this contention was not urged even in that revision petition. Be that as it may, we may well presume that it was not so raised in that revision petition from the fact that the said contention is not raised even in the application filed as late as 1979. (P. K. Ravindran is common to both these proceedings). This contention appears to have been raised for the first time in C. R. P. 454 of 1981. The learned single Judge did not go into the factual correctness of the said argument but brushed it aside saying that what is challenged before him is not the order dated 25-11-75 but the order dated 29-9-79. In these circumstances, we are not inclined to allow the appellant to raise this argument for the reason that it was not raised at any stage before the Taluk Land Board.

9. The question then arises whether the application filed by the legal representatives of Ramankutty, purporting to be under Section 85(8), was rejected contrary to law. On this aspect, it must be noticed that the Land Board dismissed the said application on merits and not on the ground that it is not maintainable under Section 85(8). (So far as sub-section (9) of Section 85 is concerned, it is agreed by the counsel for the appellant before us that it was not attracted in the facts of this case. He places reliance only on sub-section (8)). The Taluk Land Board considered the objections on merits with reference to relevant records and other relevant circumstances and rejected the same. It is only the High Court which, opined that the said application was not maintainable under Section 85(8) for the reason that none of the conditions stipulated by the said sub-section were satisfied in this case. We may also notice in this connection that possession of a major portion of the extent surrendered has already been taken possession of as far back as 18-2-1980. Another relevant circumstance which goes against the appellant is that Ramankutty himself had included these lands in his declaration and had never stated that they were in possession of third parties. A perusal of the order dated 25-11-75 shows that the objections put forward by Ramankutty were altogether different. Suffice it to say that he did not contend that any of the lands shown in his declaration, much less a total extent of about 39 to 40 acres, was in the possession of third parties and should, therefore, be excluded from his holding. We cannot accept the petitioners' case put forward in their application under Section 85(8) that their father was not aware of true facts and that true facts dawned upon the legal representatives only when the Surveyor came to the spot and inspected the lands. Indeed, it appears difficult to accept the contention that Ramankutty died before 25-11-75 as alleged by the petitioners. It appears more probable that after his death, his legal representatives are seeking to put forward new grounds which appear to be in the nature of afterthoughts. In these circumstances, it is not necessary to refer to the decision in *Rajagopalan v. State of Kerala*, 1977 Ker LT 114, cited by the counsel for the respondents.

10. Another contention urged by the learned counsel for the appellant is that the order of the Land

Board was passed without hearing the petitioners' counsel. No such contention appears to have been urged before the High Court as would be evident from the order of the High Court. It is true that such a contention has been raised in the grounds of revision but from that it does not necessarily follow that such a contention was indeed urged before the High Court. We must presume that if such a contention was in fact urged it would have been dealt with by the learned Judge in his order.

11. In the above circumstances, we are not inclined to interfere in the matter. The appeal accordingly fails and is dismissed. No costs. Appeal dismissed.

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