

State of Kerala and Others

Vs

Dr. Arvirah Poulouse (Dead)

Civil Appeal No. 2619 of 1982

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

25.09.1992

JUDGMENT

R. M. SAHAI, J. –

1. The short question of law that arises for consideration in this appeal directed against judgment and order of the Kerala High Court, is, if voluntary transfers by a declarant, prohibited under Section 84 of the Kerala Land Reforms Act (for brief the Act) are to be ignored and land covered by it is to be taken to belong to declarant or have to be taken into account only after determination of the ceiling area on material date for purposes of addition only that area from the voluntary transfers which was found in excess of the ceiling area notified under Section 83 of the Act.

2. Relevant facts necessary for determination of the legal issue as found by the High Court were that on June 1, 1970 the material date for determining ceiling area in the State of Kerala the declarant's family was possessed of 20.46 acres. Out of this 8 acres was exempted land since ceiling limit was 12 acres the declarant was found to have 00.46 cents as surplus. Against this determination the declarant approached the High Court which held that the land Board in treating the entire transaction as invalid and including it as land held by the declarant's family acted in disregard of the ratio of the Full Bench decision in Kesven Nambooderi v. State of Kerala (1970 KLJ 42) that such transactions were valid to the extent to which they were within ceiling limit.

3. Having explained the legal position the High Court first determined the total area held by the declarant on June 1, 1970 to be the total area minus the area which was transferred between 1963 to 1970. Since the declarant had only 20.46 acres of which nearly 14 acres had been transferred he was possessed of 7 acres only. In respect of transfers the court held that ceiling area being 12 acres the transaction was valid to that extent and invalid to the extent of 2 acres. The two figures thus arrived at, that is, 7 acres and 2 acres were added together and as it did not exceed 12 acres the declaration was held to be possessed of no surplus land.

4. Restriction on ownership and possession of the land in excess of ceiling area in the State of Kerala is dealt by Chapter III of the Land Reforms Act. What shall be ceiling area in case of different class of persons has been provided by Section 82 of the Act. From what date such restriction shall operate was left to be notified by the Government under Section 83. Thus power was exercised and the cut-off date was notified to be June 1, 1970. But the bill for ceiling limit was introduced in 1963. To cover up this delay between introduction of bill and imposition of ceiling limit and to avoid any effort on part of owners to escape provisions of the Act, Section 84 by a non-obstante clause declared, all voluntary transfers effected after the publication of Kerala Land Reforms Bill, 1963 to be invalid. Effect of the statutory prohibition was that all such land, was

deemed by operation of law, to belong to the declarant on June 1, 1970 thus liable to be included in his area for determination of ceiling limit. Any other construction would defeat the provisions of the Act and nullify the objective it sought to achieve. Exceptions to such inclusion have been provided in the Section itself. Nature of the provision is clear from the heading which reads "Certain voluntary transfers to be null and void". Although the heading of the Section is, normally, not conclusive for interpreting a provision but it can be taken help of for understanding it. The words 'null and void' does not appear to have been used anywhere but when the section says that such transactions are invalid then the nature of invalidity having been indicated in the heading to be null and void it cannot be taken as valid. It is not necessary to express any opinion on the correctness of the Full Bench decision of Kesven (1970 KLJ 42) where by help of the proviso it was held that the expression invalid should be understood in a restricted sense i.e. the transfers would be invalid to the extent they would operate to defeat the provisions of the Act. As stated earlier, if some transaction has been statutorily declared to be null and void then it does not survive. We may however, add that the invalidity attaches only for purposes of determining ceiling area of a declarant. We do not express any opinion if it may be valid for other statutes but so far the Land Reforms Act is concerned, or at least so far operation of Chapter III is concerned, any voluntary transfer as provided in sub-section (1) of Section 84 cannot have any other meaning except that such transaction is invalid and it cannot be excluded from consideration while determining ceiling area of the declarant.

5. Even assuming it could be valid for the part which was not in excess of ceiling limit the method adopted by the High Court was completely erroneous. What was laid down by Full Bench was that any transfer made by a declarant which would otherwise have been liable to surrender shall be determined to be invalid to the extent of excess only. But what the High court has done is that it has assumed the voluntary transfer to be valid and has determined the ceiling area of the declarant first by excluding the sale deed, which it could not under the provisions of the Act, and then determined the excess area from out of the voluntary transfers independently. In other words, instead of one determination the High Court proceeded to make determination twice. First it determined the ceiling area excluding the area covered by sale deed. After arriving at this it proceeded to determine if the area covered by sale deed was in excess of ceiling limit. Such was neither the ratio of the Full Bench nor the provision permits such exclusion. It has not been accepted as correct by a Full Bench of the High Court itself which overruled the decision in Ramanatha Reddiar v. Taluk Land Board (1985 Ker LT 412). The Bench held "to put it in a simple way, the Land Board would not take note of the transfers effected after September 15, 1963, while deciding the question of the extent of the land, if any, to be surrendered by a person who held land in excess of the ceiling area which he was not entitled to own, hold or possess after January 1, 1970 by the operation of Section 83 of the Act".

6. One of the contentions raised on behalf of the respondent before the High Court was that the voluntary transfers were in fact gift deeds which were liable to be excluded while determining ceiling area of the declarant as sub-section (1) of Section 84 itself provides that a voluntary transfer which is liable to be excluded should be other than by way of gift. This question was not examined by the High Court as it was inclined to grant relief on assuming the transfers to be sale deeds. Therefore, it appears appropriate to direct the High Court to decide this question afresh.

7. In the result this appeal succeeds and is allowed. The order passed by the Kerala High Court is set aside. But it is directed to decide if the voluntary transfers made by declarant during 1963 and 1970 were gift, and whether they were liable to be excluded.

8. Appellants shall bear their own costs.

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