

Mother Superior, Infant Jesus Fransican Clarist Convent, Engandiyur

Vs.

Ambi Kunjumon and Others

Civil Appeals Nos. 11645-46 of 1995

(K. Ramaswamy, S. B. Majmudar JJ)

30.11.1995.

ORDER

1. Leave granted.

2. The only question is whether the appellant's Orphanage is a person within the meaning of Section 2(43) of the Kerala Land Reforms Act, 1961. Section 75(1) says of "kudikidappukaran" (homestead dweller) to have fixity of tenure and shall not be liable to be evicted from his homestead except on grounds mentioned in sub-sections (i) to (iv) thereof. Sub-section (2) says "Notwithstanding anything contained in sub-section (1), the person in possession of the land on which there is a homestead or hut in the occupation of a kudikidappukaran may, if he bona fide requires the land for constructing a building for his own residence require the kudikidappukaran to shift to a new site". Sub-section (3) says that notwithstanding anything contained in sub-sections (1) and (3) where the total extent of land held by a person, either as owner or as tenant is less than one acre and there is a kudikidappu on any land held by him, he may, if he requires the land occupied by such kudikidappu for constructing a building for his own residence apply to the Government for the acquisition of land to which the kudikidappu may be shifted. Section 2(43) defines the person which includes a company etc. Therefore, the Society which is registered under the Societies Registration Act doing charitable work, namely, orphanage by nuns and sisters is a person within the meaning of Section 2(43) of the Act. Thereby, under sub-section (3) read with sub-section (2) of Section 75 of the Act, the appellant is entitled to the land to construct a building for an orphanage when they intend to seek possession from kudikidappukaran.

3. They required the Government to acquire the land to which kudikidappukaran may be shifted. It is stated across the bar that the appellant has already offered attractive accommodation to the respondents. In paragraph 7 it is stated that the Special Tahsildar accordingly after notice to the parties with the assistance of the Revenue Inspector and Village Officer measured out the site and fixed up the shifting expenses at Rs 8000. Thereafter, a draft sale deed was prepared and on approval of the draft by the Tribunal, the appellant registered the sale deed in favour of the kudikidappukaran in respect of the site measured and set out by the Tahsildar. Under these circumstances, the appellant had clearly complied with the provisions of the Act and entitled to construct the building for an orphanage and the residence of nuns and sisters. The appeals are accordingly allowed. The respondents are at liberty to take the expenses of Rs 8000 per each of the two huts and construct the huts on the alternative site given by the appellant. The respondents are also at liberty to withdraw Rs 4000 directed to be deposited by the appellants in the Registry of this Court. Counsel for the respondents are at liberty to deduct his fee and give the balance to the respondents, if any.