

State of Kerala and Others

Vs

Varkey Mathew and Others

Civil Appeals No. 2620 of 1989 with Nos. 12070-71 of 1995 and 4962 of 1990

(K. Ramaswamy, B. L. Hansaria JJ)

12.12.1995

ORDER

1. The appeals arise from the orders of the Single Judge of the Kerala High Court made in CRP No. 2731 of 1982 dated 14-7-1987. The admitted facts are that Kerala Land Reforms Act, 1964 was enforced w.e.f. 1-1-1970 and by operation thereof the entire excess land stood vested in the State. Section 85 of the Act prescribes procedure for computation of the excess land. Under Section 85(2), where a person owns or holds land in excess of the ceiling area such person shall within a period of three months from the date notified under Section 83, file a statement before the Land Board intimating the location, extent and such other particulars as may be prescribed, of all the lands including lands exempted under Section 81 owned or held by such person indicating the lands proposed to be surrendered. Admittedly, respondent Varkey Mathew did not file the statements and he died in 1973. The Special Tehsildar submitted his report regarding excess land owned by the deceased as on 1-1-1970 by his proceedings dated 6-4-1978. The Taluk Land Board passed an order on 15-7-1978 initiating the proceedings under Section 85(7) against the respondents. On representation made by the respondents by proceedings dated 26-9-1981, the Board cancelled its earlier order finding that the earlier order was not legal. When it was questioned the High Court held that since the proceedings were not initiated against the owner before his death, no provision was made under the Act to initiate proceedings against the legal representatives. Even amendment brought by Section 85(6-A) would not enable the appellant to proceed against the respondents and accordingly dismissed the revision. Thus this appeal by special leave.

2. Shri George, learned counsel appearing for the State, contended that once the person who owns the land is bound to file the statement under Section 85(2) or 85(3-A), his estate still continues to be in excess of the ceiling limit and the procedure prescribed under the Act is only for computation of the excess area. Then the persons in possession are liable to account for, and therefore, notice was rightly issued to the successor-in-interest, namely, the legal representatives or persons who hold the land or own the land, as the case may be. In other words he contends that the computation is as against the estate of the deceased and therefore the successors-in-interest are liable to account for the excess land and computation thereof is done as per law.

3. Mr. P. K. Manohar, learned counsel appearing for the respondents contended that the word 'person' defined in Section 2(43) does not include the legal representatives or the successor-in-interest. The legislature having realised the lacuna amended and brought on statute Section 85(6-A), which prohibits abatement of the pending proceedings. Therefore, the legal representatives who succeed the estate of the deceased as successors-in-interest are not liable to be proceeded with under Section 85(7) or 85(7-A), as the case may be.

4. The question, therefore, is whether the successor-in-interest, be it by intestate succession or testamentary or transfer intra vivos, are to be proceeded in computation of the excess land owned or held by a deceased, who in this appeal was Varkey Mathew. Section 85(2) admittedly enjoins the owner or holder of the land to file a statement within a period of three months from the date notified under Section 83 and the amended statement as prescribed. Section 85(7) provides that where any person fails to file the statement, the Land Board shall intimate the fact to the Taluk Land Board and thereupon the Taluk Land Board shall, after necessary enquiries, determine the extent and other particulars of the land or lands which is or are to be surrendered. In other words, the statute prescribes liability on the person who owes or hold the land in excess of the ceiling limit and if such a person fail to file the statement in accordance with law, the Board is enjoined to proceed against such person.

5. So far there is no controversy. The controversy is whether the successor-in-interest, be it in any form known to law, is also liable to be proceeded to the extent of the land owned or held by the deceased person. Statute prescribed the ceiling limit and the excess land stands vested in the State. The computation and option for retention of land of a specified area within the ceiling limit are merely procedural part. It is true that the legislature amended and introduced sub-section (6-A) of Section 85 preventing abatement of pending proceedings and for continuation of determination of the excess land. The result of the same in that ownership or possession or both of which is or are to be surrendered by a deceased adult, unmarried person or a family, the proceedings shall not abate on the death of the adult unmarried person or, as the case may be, the sole surviving member of the family, where it consists of only one person, or under Section 85(A) in the case of any other family but shall be continued against the legal representatives of such adult unmarried person or sole surviving member or the remaining member or members of such family, as the case may be. Such legal representatives or remaining member or members shall be bound to surrender the same extent of land as if such adult unmarried person or sole surviving member or such family would have been liable to surrender, if such adult unmarried person or sole surviving member or the person who filed such statement, as the case may be, were alive on the date of determination of the extent and other particulars of the land. It would thus be clear that what is laid down in Section 86(7) was made explicit by Section 85(6-A) and that the consequences of abatement due to the death of the person was statutory annihilated. In other words, if the estate was succeeded by any member of the family as envisaged thereunder, he/she would be liable to account for the excess land and proceedings could be continued for determination of the ceiling area and surrender of excess land or possessed or both, as the case may be, by the deceased person. When such is the situation regarding the person who is liable to file the statement but died before proceedings were initiated, the person who succeeds to the estate according to law and had the lands under him would not be in a better position than the person covered under pending proceedings envisaged under Section 85(6-A).

6. We are, therefore, of the considered view that the person who succeeds to the estate of the deceased and is found to be in possession or holds land in excess under colour of title or by illegal means would also be liable to be proceeded with under Section 85(7) in computation of the excess land owned or held by the deceased person.

7. The appeal is accordingly allowed. The orders of High Court and Taluk Land Board are set aside. The matter is remitted to Taluk Land Board for computation of the excess land in accordance with law.

CAs Nos. 12070 and 12071 of 1995 [ @ SLPs (C) Nos. 13718 and 13981 of 1989] and CA No. 4962 of 1990

8. Leave granted.

9. As these appeals contain question of law and facts common to the aforesaid appeal, these are disposed of in terms of the order in that appeal. No costs.