Baby

Vs

Travancore Devaswom Board and Others

Civil Appeals Nos. 5502-04 of 1998

(S. B. Majmudar, M. Jagannadha Rao JJ)

06.11.1998

ORDER

1. Leave granted.

2. These appeals are filed against the judgment of the High Court in revision given under the Kerala Land Reforms Act (hereinafter referred to as "the Act"). The High Court set aside the judgment of the appellate authority dated 20-12-1989 which affirmed the order of the Land Tribunal dated 24-11-1980. The dispute between the parties before the Tribunal was as to whether the appellant before us was the cultivating tenant.

3. A limited notice was issued in these appeals as to whether the High Court had acted within its jurisdiction under Section 103 of the Act. The section reads as under :

> "103. Revision by High Court. - (1) Any person aggrieved by -
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> (i) any final order passed in an appeal against the order of the Land Tribunal; or
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> (ii) any final order passed by the Land Board under this Act; or
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> (iii) any final order of the Taluk Land Board under this Act,
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> may within such time as may be prescribed, prefer a petition to the High Court against the order on the ground that the appellate authority or the Land Board, or the Taluk Land Board, as the case may be, has either decided erroneously, or failed to decide, any question of law."

4. Learned Senior Counsel for the appellant contended that the Taluk Land Board and the appellate authority have not failed to decide any question of law nor could it be said that any such question was erroneously decided. The High Court had interfered with the orders of the tribunals on the ground that several material documents including judicial proceedings were not adverted to by the tribunals. The High Court held that the legal effect of these documents was not considered by the tribunals. On those grounds, it was argued, the High Court was not entitled to interfere under Section 103 of the Act. Learned Senior Counsel for the appellant submitted that if certain documents were not considered or their legal effect was not taken into consideration, still that did not amount to an erroneous decision on a question of law, nor failure to decide a question of law. Learned Senior Counsel for the appellant submitted that the question of existence of tenancy was a question of fact and if certain documents which were relevant in that connection were not taken into

consideration it could not be said that the question of law was erroneously decided or was not decided.

5. We find sufficient force in the contention of the learned Senior Counsel for the appellant in regard to the meaning of the words "has either decided erroneously or failed to decide any question of law". On the facts of the present case, learned Senior Counsel is justified in submitting that the lower tribunals had neither decided any question of law erroneously nor failed to decide any question of law. Mere non-consideration of relevant documents including the relevance of certain judicial proceedings would not strictly fall within Section 103 of the Act.

6. But that, in our opinion, is not the end of the matter. The High Court had still powers under Article 227 of the Constitution of India to quash the orders passed by the tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the powers of revision under Section 103 of the Act. In that view of the matter, the High Court rightly set aside the orders of the tribunals. We do not, therefore, interfere under Article 136 of the Constitution of India. The appeals fail and are dismissed.

7. No costs.