

State of Kerala

Vs

Dr. S.G. Sarvothama Prabhu

Civil Appeal No. 4954 of 1989

(K. T. Thomas, S.S. Mohammed Quadri JJ)

26.02.1999

JUDGMENT

S.S. Mohammed Quadri, J

1. This appeal by the State of Kerala and others, is against the judgment and order of the High Court of Kerala in CRP No. 1158 of 1985 dated September 25, 1987. The short question that is posed here is whether Explanation 1 to sub-section (1) of Section 87 applies when land under Section 81(1)(k) of the Kerala Land Reforms Act ceases to be exempted.

This question arises in the following factual backdrop :

The respondent is a partner of a firm, an industrial undertaking. He claimed exemption of the land in question under Section 81(1)(k) of the Kerala Land Reforms Act (for short 'the Act'). The Taluk Land Board, Kodungallur, in proceeding under Section 85 of the Act opined that he was not entitled to the exemption as the land was not actually put to industrial use and directed him to surrender the excess land measuring 3.22.250 acres. The respondent carried the matter in revision before the High Court. Observing that there was nothing on record to show that the District Collector had issued nay notice under proviso to Section 81(1)(k), the High Court held that the respondent was entitled to avail the exemption. Thereafter, the Collector issued notice under the proviso directing the respondent to put to use the said land before December 12, 1982. On failure of the respondent to comply with the notice of the Collector, the Taluk Land Board proceeded under Section 85 of the Act, determined the excess land as on 1.1.1970 and directed him to surrender the said extent of land. The respondent again carried the matter in revision before the High Court of Kerala. It was pointed out by the High Court that in the earlier round of litigation the exemption under Section 81(1)(k) was held applicable but as it ceased to apply subsequent to the notified date (1.1.1970), section 87 of the Act was attracted and thus allowed the revision on September 25, 1987. The correctness of that order is assailed before us. Mr. G. Prakash, learned Counsel appearing for the appellant, argued that exemption under Section 81(1)(k) of the Act was according to use of the land and as the land was never used for any industrial purpose, the cessation of the exemption should be as on the notified date, 1.1.1970. In other words, the contention is that as the land in question was held by the respondent on 1.1.1970 and exemption ceased to apply due to non-user of the land for industrial purpose within the time specified by the Collector the cessation of exemption must relate back to 1.1.1970 hence there is no scope to invoke Section 87 of the Act. Mr.

T.L.V. Iyer, learned senior counsel appearing for the respondent, on the other hand, argued that on cessation of the exemption under section 81(1)(k) As Explanation 1 to section 87 squarely applies, so the land would be deemed to be acquired after the notified date. To resolve the controversy it will be useful to refer to the relevant provisions in Chapter III of the Act which deals with the restriction on ownership and possession of land in excess of ceiling area and provides for disposal of excess land. Section 81 of the Act contains various categories of land which are exempted from the provisions of Chapter III. Clause (k) of sub-section (1) of Section 81 with which we are concerned here, is extracted hereunder :

*"81 Exemptions - (1) The provisions of this Chapter shall not apply to -*

(a) to (j) \*\*\* \*\*

(k) lands belonging to or held by an industrial or commercial undertaking at the commencement of this Act, and set apart for use for the industrial or commercial purpose of the undertaking :

Provided that the exemption under this clause shall cease to apply if such land is not actually used for the purpose for which it has been set apart, within such time as the District Collector may, by notice to the undertaking, specify in that behalf."

A plain reading of clause (k) shows that to avail oneself of the exemption two requirements must be satisfied : (i) the land must belong to or held by an industrial or commercial undertaking at the commencement of the Act; and (ii) the land must have been set apart for use for industrial or commercial purpose of the undertaking. On fulfillment of these conditions the beneficial provision of the exemption must be given full effect to notwithstanding the fact the land is not actually used for industrial or commercial purpose. However, it must be noted that the exemption ceases to apply on non-user of the land, for the purpose for which it is set apart, within such time as specified by the Collector in the notice given to the undertaking. Obviously, the intention of the legislature is to exempt such land of industrial or commercial undertaking which though not in actual use for industrial or commercial purpose, perhaps due to economic or other constraints on the undertaking, was set apart for use in future for development of industrial/commercial undertaking. To ensure that in the guise of setting the land apart for industrial or commercial purpose the beneficial provision is not misused and the object of the exemption is not frustrated, proviso is added authorising the Collector to specify by notice to the undertaking time within which the land should be used for the purpose for which it has been set apart and providing that in the event of failure of the undertaking so to do the exemption shall cease to apply. Having regard to the fact that the requirements of clause (k) were satisfied by the respondent and the Collector had not specified by then the date within which the land should be used for the purpose for which it was set apart, the High Court in the first round of litigation held, in our view rightly, that he could avail himself of the exemption. But after the order of the High Court the Collector by notice to the respondent specified August 10, 1982 for using the land for the purpose for which it was set apart. The respondent failed to comply with the directions contained in the notice, so cessation of exemption would operate with effect from August 10, 1982. The contention of Mr. Prakash that on cessation of exemption due

to non-compliance of the notice of the Collector the land should be treated as held on 1.1.1970 and ceiling area should be worked out under Section 85 of the Act is attractive and appealing. It is apparent in this case that the respondent having claimed the benefit of exemption enjoyed possession of the land for more than 12 years and defaulted in complying with the requirements of the proviso to Section 81(1)(k), successfully avoided surrender of land under section 85(1) on the basis of calculation of the ceiling area as on 1.1.1970 and is thus getting benefit of his own wrong in claiming aid of Explanation 1 to section 87. But it cannot be lost sight of that the function of the Court is to interpret law according to the intention of the legislature and apply to facts of the case before it. And the intention of the legislature has to be ascertained from the language of the statute. If the words are unambiguous, clear and explicit there need be no recourse to any rules of interpretation.

Now it would be appropriate to refer to Explanation 1 to Section 87 of the Act which is as under :

*"87. Excess land obtained by gift, etc., to be surrendered - (1) Where any person acquires any land after the date notified under Section 83 by gift, purchase, mortgage with possession, lease surrender or any other kind of transfer *intervivos* or by bequest or inheritance or otherwise and in consequence thereof, the total extent of land owned or held by such person exceeds the ceiling area, such excess shall be surrendered to such authority as may be prescribed.*

*Explanation 1 - Where any land is exempted by or under Section 81 and such exemption is in force on the date notified under Section 83, such land shall, with effect from the date on which it ceases to be exempted, be deemed to be land acquired after the date notified under Section 83."*

The language of the provision extracted above, it could be seen, is clear, plain and lucid. Section 87 concerns itself with the surrender of excess land to the authority under the Act where a person acquires any land after the notified date, 1.1.1970, by gift, purchase, mortgage with possession, lease, surrender or any other kind of transfer *inter-vivos* or by bequest or inheritance or otherwise and in consequence thereof, the total extent of land owned or held by such person exceeds the ceiling area. Then question arises for purposes of sub-section (1) of Section 87 whether the excess land should be arrived at as on the date of notification under Section 83 (1.1.1970), or on the date of cessation of exemption of the land. To obviate this difficulty, Explanation 1 is appended to section 87(1) of the Act. The explanation says that where a land is exempted under Section 81 and such exemption is in force on 1.1.1970 then such land shall, with effect from the date on which it ceases to be exempted, be deemed to be land acquired after that date. For this purpose sub-clause (1A) imposes an obligation on the person who falls within sub-section (1) to file a statement containing the particulars specified in sub-section (1) of Section 85A within a period of three months of the date of the acquisition. Sub-section (2) further makes it clear that the provisions of sections 85 and 86 apply to vesting in the Government of the ownership or possession or both of the lands required to be surrendered under sub-section (1) of Section 87 only. This being the intention of the legislature, effect must be given to it ungrudgingly. Therefore, Section 85(1) which deals with surrender of excess land in excess of the ceiling area on the notified date (1.1.1970) cannot be applied in cases falling under Section 87 of the Act where under

land is deemed to be acquired after that date. In the instant case, exemption of the land under Section 81(1)(k) which was in force on 1.1.1970, ceased with effect from August 10, 1982. So in view of Explanation 1 to Section 87 of the Act there will be a deemed acquisition of that land after 1.1.1970. The High Court is, therefore, right in holding that the Taluk Land Board cannot again initiate proceeding under section 85 of the Act and determine ceiling area as on 1.1.1970. For the above mentioned reasons, we find no illegality in the order of the High Court. The appeal is, therefore, dismissed. But having regard to the facts of the case we make no order as to costs.