

SUPREME COURT OF INDIA

Karunakaran

Vs.

V.Padmini

C.A.No.4535 of 2017

(Madan B.Lokur and Deepak Gupta,JJ.,)

28.03.2017

JUDGMENT

Deepak Gupta,J.,

SLP(Civil) No.23266 of 2014

1. Leave granted.

2. This appeal is directed against the judgment dated 06.02.2014 passed in Writ Appeal No.1335 of 2013, whereby the Division Bench of the Kerala High Court upheld the judgment passed by the learned Single Judge, dismissing the writ petition filed by the appellant.

3. Briefly stated the facts of the case are that one Mr. K.P. Gopinathan was a landlord whose lands came under the purview of the Kerala Land Reforms Act, 1963 (hereinafter referred to as the Act). The land which is the subject matter of the present proceedings was declared to be surplus land by the landlord. Originally, Respondent No.1 filed an application claiming Kudikidappukars (tenancy) rights on the land. This claim of Respondent No.1 was rejected by the Board constituted under the Act, some time in the year 1988. Thereafter, Respondent No.1 filed applications claiming assignment of the property measuring 8 cents in her favour on the ground that she was a landless agricultural labourer entitled to assignment of such rights in terms of Section 96 of the Act which reads as follows:-

“96. Assignment of lands by Land Board. (1) The Land Board shall assign on registry subject to such conditions and restrictions as may be prescribed, the lands vested in the Government under Section 86 or Section 87, as specified below:

(i) the lands in which there are kudikidappukars shall be assigned to such kudikidappukars;

(ii) the remaining lands shall be assigned to -

(a) landless agricultural labourers; and (b) smallholders and other landlords who are not entitled to resume any land: Provided that eighty-seven and a half per cent of the area of the lands referred to in clause (ii) available for assignment in a taluk shall be assigned to landless agricultural labourers of which one-half shall be assigned to landless agricultural labourers belonging to the Scheduled Castes, the Scheduled Tribes and such other socially and economically backward classes of citizens as may be specified in this behalf by the Government by notification in the Gazette.

Explanation. - For the purposes of this sub-section- (a) a kudikidappukaran or the tenant of a kudiyiruppu shall be deemed to be a landless agricultural labourer if he does not possess any other land;

(b) “kudikidappukaran shall include a person who was a kudikidppukaran to whom a certificate of purchase has been issued under sub-section (2) of Section 80C.”

On 23.10.1991, assignment of 6 cents of land was granted in favour of Respondent No. 1 by the District Collector, Kozhikode and Assignment Deed was entered into by Respondent No.1 with the State Government on 12.11.1991.

4. It would be pertinent to mention that at the time of verification of the assignment, inspection of the property was done. It was found that from the year 1978 Respondent No.1, along with her family had been residing in a building which covered 6 cents out of the total land measuring 8 cents. The remaining 2 cents of land was under a shed. Therefore, only 6 cents was assigned in favour of Respondent No.1. Thereafter, the original landlord filed O.P. No. 311 of 1992 in the High Court of Kerala claiming that since the land was admittedly covered by a building, the same did not fall under purview of the Act. The learned Single Judge allowed the petition and referred the matter to the Taluk Land Board for reconsideration of the entire case. Thereafter, Respondent No.1 filed Writ Appeal No.898 of 1992 before the High Court of Kerala. During the pendency of the Writ Appeal the original landlord stated that the matter had been settled out of court and he did not want to continue with the original writ petition itself. Therefore, the Division Bench set aside the judgment of the learned Single Judge and disposed of the Writ Appeal on 07.09.1993.

5. The appellant herein challenged the assignment of the land in favour of Respondent No.1 by filing a petition under Rule 29(8) of the Kerala Land Reforms (Ceiling) Rules, 1970 before the District Collector, Kozhikode. The main ground raised was that Respondent No.1 had obtained the assignment in her favour by playing fraud and by total misrepresentation of facts and hence was not entitled to the assignment. He, accordingly, sought cancellation of the assignment. The Collector, vide his order dated 22.08.2003 came to the conclusion that Respondent No.1 had played fraud and misrepresented facts and reviewed the Assignment Deed and recalled the earlier order assigning the land in favour of Respondent No.1.

6. Thereafter, Respondent No.1 filed a Writ Petition No.28218 of 2003 before the High Court of Kerala, challenging the order of the District Collector and the learned Single Judge held that the Collector had no power to recall the earlier order. He further held that even if there was some misstatement or misrepresentation that did not amount to fraud and hence the order of assignment could not be recalled. Against this order the appellant filed a Writ Appeal No. 1335 of 2013 which has been dismissed and hence the present appeal.

7. The appellant in his petition before the District Collector raised mainly four grounds, namely: (i) Respondent No.1 had claimed that she had obtained the land through an oral lease from K.P. Gopinathan in the year 1962. The appellant stated that, in fact, in the year 1962 K.P. Gopinathan was not the owner since his father K.P. Choyi was still alive. Therefore, the question of lease being executed by K.P. Gopinathan did not arise; (ii) Respondent No.1 was born in the year 1952 and, therefore, was only 10 years old in the year 1962 and hence the question of her obtaining a valid legal lease did not arise; (iii) that the Respondent first claimed tenancy rights which were rejected and, therefore, set up a false claim that she was a landless agricultural labourer; (iv) Respondent No.1 falsely stated that she was a landless agricultural labourer but in reality she was running an aluminium industry employing 9 persons and was also paying sales tax and income tax and hence the question of her being a landless agricultural labourer did not arise.

8. Para 4 of the Assignment Deed reads as follows:-

“4. This assignment is liable to be altered or cancelled if it is found that it was obtained by false representation, mistaken facts or fraud.”

Bare perusal of this Clause shows that if the assignment is obtained by false representation, mistaken facts or fraud, the same is liable to be set aside. We may also make reference to Rule 29 of the Kerala Land Reforms (Ceiling) Rules, 1970 which reads as follows :-

“29. Conditions and restrictions regarding assignment:-

(8) The assignment of any land under Section 96 shall be liable to be cancelled for contravention of any of the conditions or restrictions laid down in this rule and the land assigned shall be liable to be resumed by or at the instance of the authority which assigned the land as if such land is a land belonging to Government and in the unauthorised occupation of the person then in possession or occupation, provided that no such cancellation shall be done without giving the party affected thereby a reasonable opportunity of being heard.”

This provision also envisages that an assignment made under Section 96 is liable to be cancelled if there is contravention of any of the conditions laid down in the Rules.

9. The learned Single Judge held that the contraventions pointed out by the appellant/petitioner did not fall within the ambit of Rule 29(8). This finding was upheld by the Division Bench. Section 96 of the Act clearly envisages that assignment can only be made in favour of landless agricultural labourers or small holders and other landlords. In this case, we are only concerned with landless agricultural labourers. Even if we were to ignore the false claim set up by Respondent No.1 that she had obtained the tenancy rights on this land from K.P. Gopinathan in the year 1962, admittedly when she was only 10 years old and at that time K.P. Gopinathan was not the owner of the property as his father K.P. Choyi was still alive, yet we cannot ignore the fact that in the year 1988 Respondent No.1 was having a valid licence to run an aluminium industry and was employing 9 persons. Therefore, Respondent No.1 cannot claim to fall under the category of “landless agricultural labourer” . Therefore, she had obtained the assignment order by totally mis-representing the facts and had played fraud on the authorities. The law is well settled that fraud vitiates all contracts or agreements. This is a case where fraud is writ large. It is evident that assignment was obtained in total contravention of Section 96 of the Act and, therefore, Rule 29(8) was also applicable. Hence, we are not in agreement with the view expressed by the Division Bench of the High Court of Kerala. Accordingly, the appeal is allowed. The judgments of the learned Single Judge and the Division Bench are set aside and the writ petition of the appellant/petitioner is allowed. The order of the District Collector cancelling the Assignment Deed dated 22.08.2003 is restored.