

Mother Superior, Infant Jesus Fransican Clarist Convent, Engandiyur Vs. Ambi Kunjumon and ors.

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Court : Supreme Court of India

Decided On : Nov-30-1995

Reported in : 1996IAD(SC)367; JT1995(9)SC21; 1995(7)SCALE250; (1997)7SCC173; [1995]Supp6SCR1

Judge : K. Ramaswamy and; S.B. Majmudar, JJ.

Acts : Kerala Land Reforms Act, 1961 - Sections 2(43) and 75

Appeal No. : Civil Appeal Nos. 11645-46 of 1995

Appellant : Mother Superior, Infant Jesus Fransican Clarist Convent, Engandiyur

Respondent : Ambi Kunjumon and ors.

Advocate for Def. : M.T. George and ; K.V. Mohan, Advs.

Advocate for Pet/Ap. : K.M.K. Nair, Adv

Prior history : Appeal From the Judgment and Order dated 20-10-1992 of the Kerala High Court in C.R.P. Nos. 87 and 2552 of 1991

Judgement :

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 'kudikidappu karan' (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 Kudikippukaran to shift to a new site.' Sub-section (3) says that notwithstanding anything contained in Sub-section (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 person which includes a company etc. Therefore, the Society which is registered under the Society 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 the land to construct building for orphanage when they intend to seek possession from Kudikidappu Karan.

3. They required the Government to acquire the land to which Kudikidappu Karan 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 Tehsildar 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 Kudikidappu Karan 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 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 in the alternative site given by the appellant. The

respondents are also at liberty to withdraw Rs. 4,000 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.

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