

**Mathew Mathai Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jun-08-1981

**Reported in :** AIR1982Ker40

**Judge :** U.L. Bhat, J.

**Acts :** Kerala Land Reforms Act, 1964 - Sections 85(5) and 85(8); ;[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 18, Rule 18

**Appeal No. :** C.R.P. Nos. 1206 and 1965 of 1979

**Appellant :** Mathew Mathai

**Respondent :** State of Kerala

**Advocate for Def. :** Govt. Pleader

**Advocate for Pet/Ap. :** K.V. Sadananda Prabhu, Adv.

**Judgement :**  
ORDER

**U.L. Bhat, J.**

1. In proceedings relating to the land held by the declarant Mathew Mathai, the petitioner in C. R. P. No. 1206 of 1979 and the second respondent in C. R. P. 1965 of 1979, the Taluk Land Board originally determined the excess land

belonging to him and directed him to surrender 8.32 acres of land as excess land. The declarant challenged the order before this Court in C.R.P. No. 76 of 1976, but the revision was dismissed on 4-10-1976. Thereafter Avira Ithapiri, the claimant, who is the second respondent in C. R. P. 1965 of 1979 moved an application under Section 85 (8) of Act 1 of 1964 contending that he is a tenant under the declarant in regard to 3.80 acres of land. The Taluk Land Board went into the claim and rejected his claim on 18-5-1977. This order was set aside in C. R. P. 1488 of 1977. This Court remanded the proceedings for fresh disposal. Thereafter the Land Board again went into the claim and upheld tenancy pleaded by him by a majority of 4 : 1, the Chairman alone dissenting. This order accepting the tenancy set up by the claimant is challenged by the State in C. R. P. 1965 of 1979. The declarant has filed C. R. P. 1206 of 1979 contending that when once the earlier order under Section 85 (5) of the Act has been set aside under Section 85 (8) of the Act, the Taluk Land Board had a duty to go into all the contentions put forward by him on merits, even those contentions which had been rejected earlier by the Taluk Land Board and also by this Court. The C. R. P. is filed because the Taluk Land Board did not go into these contentions of his.

2. The claimant who was not interested in the other disputes in the case and other land belonging to the declarant put forward only a claim to an extent of 3.82 acres as tenant under the declarant. On the first occasion the Taluk Land Board came to a definite finding that the tenancy set up is not true. Afterwards, the Taluk Land Board by a majority came to a definite decision that the tenancy set up is true. The earlier finding that the tenancy set up is false was set aside by this Court in the background of the scope of the enquiry under Section 85 (8) of the Act as explained in the order of this Court I quote :

'The Taluk Land Board has proceeded on the basis that the applicants have not established their tenancies. Under Section 85 (8), all that they need show is that they are persons interested in the land to be surrendered, and had sufficient cause for non-appearance before the Taluk Land Board earlier. The approach of the Taluk Land Board is therefore erroneous and the order has to be set aside. I do so.'

3. The parties are bound by the decision of this Court. This means that the Taluk Land Board has to proceed on the basis that the scope of enquiry under Section 85 (8) is very limited namely, to find whether the claimant is an interested person in the property and he was prevented by sufficient reason from appearing earlier before the Taluk Land Board. In other words, when a claimant sets up a tenancy, the Taluk Land Board initially is not called upon to adjudicate on the question whether the tenancy set up is true or not. What it is called upon to decide is the limited question whether on the basis of the materials placed before it it can be held that the claimant is a person interested in the property. In spite of this specific observation made by this Court earlier, it is unfortunate that the Taluk Land Board did not limit itself to a consideration of this limited question; on the other hand, the Taluk Land Board proceeded further and came to a definite finding that the tenancy, set up is true. If such a finding is arrived in the enquiry under Section 85 (8) of the Act, one fails to see what more remains to be decided in so far as the claim is concerned in proceedings under Section 85 (5) of the Act, which is after all the next step after an order is passed under Section 85 (8) of the Act. That is why it appears to me, M.P. Menon, J. in the earlier C. R. P. directed the Taluk Land Board to go only into the limited question referred to above. I therefore find that the Taluk Land Board has exceeded the direction given in the earlier order in coming to a conclusion that the tenancy set up is true.

4. However, in the light of the protracted history of this litigation I do not want to remand the case for a fresh enquiry under Section 85 (8) of the Act. The learned Govt. Pleader has vehemently contended that the tenancy set up is not true and the documents produced are either collusive or fraudulent. To hear this submission and to decide on that would amount to committing the same mistake which the Taluk Land Board did. It is sufficient for me at present to notice that the claimant has produced an unregistered lease deed and order of the Land Tribunal in suo motu proceedings granting him a certificate. Whether these documents are sufficient, in the ultimate analysis, to make the Land Board accept the lease and therefore to exclude this properly from the account of the declarant in ceiling proceedings is a matter which it is unnecessary for me to decide. It is sufficient for me to hold that these documents prima facie show that the claimant has come before the Land Board claiming some interest in the property. It is not as if his

claim is not supported by any material at all. There is some material in support of his claim. Whether that material is sufficient to uphold the tenancy is, as held in the earlier C. R. P. to be decided only later. On the material before, the conclusion that the claimant is a person having some interest in the property and he was prevented by sufficient reason from appearing before the Land Board is inescapable. For this reason the order of the Taluk Land Board has to stand. I make it clear that in subsequent proceedings under Section 85 (5) of the Act it will be the duty of the Land Board to go into the question of tenancy in a proper manner and come to a decision either way as to whether the tenancy is to be accepted or not and further decide whether that piece of land has to be included or excluded from the account of the declarant for the purpose of finding whether he is in possession of excess land etc.

5. In passing it is necessary to advert to one feature of the order of the Taluk Land Board. The Chairman of the Board has taken a view against the claim. The other four members took a view in favour of the claim. It appears the four members of the Board held a local inspection and prepared a report where they came to an opinion in favour of the claim. The finding of the majority of the Land Board is based on that report. A reading of the report shows that it reflects some sort of subjective satisfaction on the part of the four members of the Board. It is therefore clear that the majority finding is based on such satisfaction. In more than one decision this Court has made it clear that a decision of a judicial or quasi-judicial Tribunal should not be passed merely on the basis of the local inspection report or notes. It is true that in another decision, one of the learned Judges of this Court attempted a distinction, that is, in *Amina v. Land Tribunal, Badagara* (1974 Ker LT 496) but this decision itself came up for consideration before a Division Bench of this Court in *Cheekutty v. Land Tribunal* (1975 Ker LT 628) and the Division Bench was not prepared to accept the departure which the earlier decision sought to make. The position so far as this Court is concerned is therefore clear. The Land Board in the light of Rule 137 of the Tenancy Rules is entitled to hold local inspection; however, the purpose of local inspection is not to collect evidence or other material or to arrive at a subjective satisfaction in regard to the matters in dispute in the case. The purpose is only to make the Board understand and appreciate the contentions of the parties in a better manner. For this limited

purpose a local inspection is permitted. It is also needless to state that whenever the Land Board holds the local inspection, though the rule does not specifically state so, the Land Board is expected to prepare a local inspection note so that the parties may know all the circumstances which may guide the Land Board in appreciating the evidence or understanding the disputes. The Taluk Board as a whole or the majority are not legally entitled to hold a local inspection for the purpose of collecting evidence or other material or to arrive at a subjective satisfaction in regard to the dispute in the case on the basis of local inspection. The majority decision in this case is based entirely on the materials and impressions gathered by them on such a local inspection. That is certainly not warranted by law and contrary to what this Court has repeatedly laid down.

6. The learned counsel for the declarant contends that since under Section 85 (8) of the Act, this Court is confirming the decision of the Land Board setting aside the earlier final order in the ceiling case, the declarant must be given an opportunity to urge any contention which he may choose before the Land Board and the Land Board may be directed to decide all those contentions on merits. This submission is seriously counter-acted by the learned Government Pleader on the ground that the Land Board had already decided all his contentions and that order has been confirmed by this Court on merits in C. R. P. 76 of 1976.

7. Section 85 (8) of Act 1 of 1964 states that where the claimant satisfies the Taluk Land Board in regard to two ingredients namely that he is a person interested and that he is prevented by sufficient cause from appearing earlier, the ceiling order has to be set aside and thereafter the Taluk Land Board has to proceed under Sub-section (5) or Sub-section (7), as the case may be. In the present case, since a declaration has been given, the procedure adopted has to be under Sub-section (5). Sub-section (5) states that on receipt of a statement in a proper way the Land Board shall cause the particulars mentioned in the statement to be verified, ascertain whether the declarant owns or holds any other land and by order determine the extent and identity of the land to be surrendered. That determination has to be reflected in the draft statement which the Taluk Land Board is obliged to prepare. The enquiry and verification are dealt with in Rules 9 and 9A of the Kerala Land Reforms (Ceiling) Rules. That the determination is to be reflected in

the draft statement is clear from Rule 10 of these Rules. The draft statement has to be published under Rule 11 and has to be served on the interested persons under Rule 12. Once interested persons appear and file objections, the objections will have to be considered as contemplated in the second proviso to Section 85, Clause (6) of Act 1 of 1964. The enquiry before passing a final order is dealt with in Rule 13 of the above Rules.

9. It is argued that since Section 85 (8) of the Act states that the ceiling order has to be set aside and the Board has to proceed under Sub-section (5) or (7) as the case may be, in a case like this, it is the duty of the Taluk Land Board to go through all the steps contemplated in Sub-section (5) and the relevant rules. This will mean that the Land Board may have to proceed de novo by causing the particulars mentioned in the statement of the declarant to be verified and ascertain whether he owns or holds any other land and of course, pass a preliminary order for issuing a draft statement. In the large majority of cases, all these would not only be unnecessary but also pointless. In a case where the claimant is concerned with a small portion of the land either by way of a rival title or by way of claim of tenancy and where at his instance, under Section 85 (8) of the Act the ceiling order is set aside, does it mean that the Land Board should once again get the property measured, get the particulars verified even in regard to those matters over which the claimant has no sort of a claim I do not think that this question could be answered in the affirmative looking at Clauses (8), (5) and (7) of Section 85 of the Act. Reading these provisions together, it is clear that when the ceiling order is set aside under Clause (8) it does not follow that all the contentions which the declarant had raised earlier and which were decided by the Taluk Land Board or the revisional authority are once again open before the Taluk Land Board for fresh adjudication. These are matters which the declarant would have raised already and the Taluk Land Board and the revising authority would have decided already. It cannot be the intention behind Clause (8) to reopen all these settled matters merely because a claimant comes forward with reference to a small portion of the land and makes out a prima facie case for further investigation. In order to give relief to the claimant or deny him relief and in order to decide the extent of land to be surrendered by the declarant, what is needed is only to decide the claim put forward by the claimant. It is wholly unnecessary to give a decision on all those

questions which the declarant had unsuccessfully raised on the prior occasion. Such cannot be and is not the scope of the fresh enquiry under Clause (8) of Section 85. This conclusion cannot in any way be affected by Rule 15 of the Ceiling Rules adverted to by the learned counsel. To accept any other view would be to postpone finality in regard to settled matters indefinitely and to an unreasonable extent. It is always possible that after a claim is adjudicated, another claimant would come forward with his claim and after his claim is adjudicated, yet another may move the Land Board under Section 85 (8). It cannot be that whenever a claimant with a prima facie case approaches the Land Board and satisfies the conditions prescribed in Clause (8) of Section 85 of the Act, the entire matter affecting the declarant, his ceiling or exemptions etc., will have to be decided again or that the declarant must be permitted to put forward contentions unrelated to the claim put forward by the claimant. When an order is set aside under Section 85 (8), the conclusions arrived at by the Board earlier on other questions raised by the declarant are not wiped out. They continue to hold good. The provision of 'setting aside the order' must be read down and limited by the scope of adjudication contemplated by Section 85 (8). Reopening envisaged is only to the extent of deciding the claim put forward by the claimant under Section 85 (8) and to the extent such decision may have a bearing on ceiling area of the declarant and whether he has excess land and the excess land, if any and identity of such land. Therefore the declarant cannot be allowed to reagitate settled disputes.

9. So far as the contentions of the declarant are concerned, they were decided by the Taluk Land Board and also by this Court in earlier revision. The main contentions urged before me by the learned counsel relates to four and odd acres of land which he claims is rubber plantation entitled to exemption. This has been considered by the Board and by this Court already and his contention has not been accepted. To give him any other opportunity to reagitate the same contention would be to protect and delay the proceedings and such a course is not contemplated by a combined reading of relevant clause of Section 85. I therefore hold that in the proceedings to be taken by the Taluk Land Board, under Section 85 (5) of the Act, though notice certainly must be issued to the declarant, the Taluk Land Board will not be deciding any questions other than the acceptability or

otherwise of the claim put forward by the claimant to 3.80 acres of land. In regard to the other matters the Taluk Land Board would proceed on the data collected and conclusions arrived at already by it.

10. In the result the finding of the Land Board that the tenancy set up by the claimant is true is set aside. However, the order of the Land Board under Section 85 (8) of the Act setting aside the prior ceiling order is confirmed. The Land Board will take further proceedings in accordance with law and in the light of the observations made above. C. R. P. 1206 of 1979 is dismissed. C. R. P. 1965 of 1979 is disposed of as stated above.

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