State of Kerala Vs. Akhila Kerala Vala Samudaya Samithi

State of Kerala Vs. Akhila Kerala Vala Samudaya Samithi

SooperKanoon Citation : sooperkanoon.com/717661

Court : Kerala

Decided On : Dec-05-1978

Reported in : AIR1979Ker113

Judge : V.P. Gopalan Nambiyar, C.J.,; V. Balakrishna Eradi and; George Vadakkel, JJ.

Acts : Kerala Lands Reforms Act, 1964 - Sections 75 and 75(3); ;Companies Act, 1956 - Sections 2 and 2(43)

Appeal No. : Writ Appeal No. 311 of 1975

Appellant : State of Kerala

Respondent : Akhila Kerala Vala Samudaya Samithi

Advocate for Def. : K.K. Usha, Adv.

Advocate for Pet/Ap. : Govt. Pleader

Disposition : Appeal allowed

Judgement :

George Vadakkel, J.

1. It is common case that the respondent, a company formed and registered under the Travancore Companies Act, 1114, is a company coming within the purview of

the Companies Act, 1956. The question for consideration is whether it is entitled to apply to the Government for acquisition of land for the purpose of shifting a kudikidappu that is on its land on the ground that it requires its land for constructing a building for its residence under Section 75(3) of the Kerala Land Reforms Act, 1963, (hereinafter mentioned as the Act). An application dated 18-8-1970 filed in that behalf by it was as per Ext. P1 communication rejected by the Government stating that only a natural person can invoke Section 75(3) of the Act.

2. Section 75 of the Act enables a 'person' who, as owner or as tenant, holds land less than an acre in extent and on which there is a kudikidappu, to apply to the Government for the acquisition of land to which that Kudikidappu may be shifted, if he requires the land occupied by such kudikidappu for constructing a building for his own residence. It is submitted on behalf of the respondent that 'a company resides wherever it keeps house and does business', and that therefore, its requirement of its land on which there is a kudikidappu to construct a building 'to keep house and do its business', is one for its 'own residence' as envisaged by Section 75(3) of the Act. This argument found favour with the learned single Judge. The learned Advocate-General impugns the correctness thereof.

3. The phrase 'for constructing a building for his own residence' occurs in two places in Section 75 of the Act, It is first used in Section 75(2)(a) which enables a person in possession of land on which there is a kudikidappu to have that kudikidappu shifted to a new site belonging to him (subject to the conditions stated in Sub-section (2)) 'if he bona fide requires the land for constructing a building for his own residence or for the residence of any member of his family including major sons and daughters'. It is again used in Sub-section (3) whereunder a person holding land less than an acre in extent may apply to the Government for acquisition of land to shift a kudikidappu that is on his land 'if he requires the land occupied by such kudikidappu for constructing a building for his own residence' --here the words 'bona fide' are absent (presumably because good faith may be assumed in such cases) as also the words: 'or for the residence of any member of his family including major sons and daughters' wherefore, the requirement should be his own personal requirement and not 'of any member of his family'. Obviously, the 'person' mentioned in Sub-section (2)(a) in relation to the words: 'or for the

residence of any member of his family' therein can only be a natural person and not a juridical person like a company or a corporation which has neither family nor son nor daughter. Therefore, the word 'person in Section 75 does not mean the same in all places where it is used therein, and it would not be proper to understand that word wherever it occurs therein attributing to it all the meanings given to it by the definition clause, Section 2(43) of the Act, which, after all, is only an inclusive definition comprehending juridical persons like companies and even non-juridical entities like families and associations or bodies of individuals. The ordinary rule of interpretation that a word is used in the same sense in all places in the same provision in a statute cannot be applied here, and it is to be taken that the opening words: 'unless the context otherwise requires', in Section 2 of the Act have their full sway and control over the word 'person' used in several places in Section 75 of the Act.

4. Can any person other than a natural person have residence in a building, is the point mooted. 'Can a company reside in a building?' is the question that falls for examination.

5. Stroud's Judicial Dictionary (Fourth Edition -- Vol. 4) gives the following meanings to the words: 'Reside' and 'residence'.

'(1) 'Residence', 'signifies a man's abode or continuance in a place.'

(2) 'What is the meaning of the word 'resides'? I take it that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks and sleeps, or where his family or his servants eat, drink and sleep' (per Bayley J., R. v. North Curry, (1781) 4 B & C 952 (959). 'A man's residence is where he habitually sleeps' (per Blackburn J., Oldham, 1 O.M. & H. 158, citing R. v. Norwood, (1867) 2 QB 457 but see Walcot v. Botfield, (1854) 2 Eq. Rep. 758, infra). See further Wemyss v. Wemyss Trustees, 1921 S.C. 30 (Scot).

(3) 'Residence' has a variety of meanings according to the statute (or document) in which it is used' (per Erle C.J., Naef v. Mutter, (1862) 31 LJCP 359). It is an 'ambiguous word' and may receive a different meaning according to the position in

which it is found (per Cotton LJ, Re Bowie), ex p. Breull, (1880) 16 Ch D 484).

(4) 'The words 'residence' and 'place of abode' are flexible, and must be construed according to the object and intent of the particular legislation where they may be found. Primarily, they mean the dwelling and HOME where a man is supposed usually to live and sleep; they may also include a man's business abode, the place where he is to be found daily' (per Gibaon J., R. v. Fermanagh Justices, (1897) 2 Ir. Rep. 559 (563), approved by Homes LJ, R. v. Tyrone Justices, (1901) 2 Ir Rep 510, 511). See also Egmont National Park Board v. Blake, (1949) NZLR 177. See Resident Magistrate.'

Understood in their primary and ordinary sense, these two words cannot be used in relation to any person other than a natural person, for (as stated by Lord Buckmaster in Egyptian Delta Land and Investment Co. v. Todd, 1929 AC 1 at p. 35 (HL), residence is essentially a condition applicable to men, and the tests for its determination, such as living, and sleeping, can have no proper counterpart in an abstract entity such as an incorporated company which can neither live nor sleep.

6. Are we to understand the word 'residence' in Section 75(3) in any sense other than its primary and ordinary sense, has now, to be considered. We think, not. The argument advanced before us, and that accepted by the learned Single Judge, is that a company resides wherever it keeps house and does business. and that, therefore, a company may require its land for constructing a building for its own residence, that is to say, 'to keep house and do business'; and that if the other conditions mentioned in Section 75 (3) of the Act are satisfied, a company is entitled to invoke that provision, and to have an alternate land acquired by Government and given possession to it (the company) in the manner and in accordance with the provisions governing the same, Sub-sections (3A) to (3E) (both inclusive) in the main provision, Section 75 of the Act.

7. The idiom 'keep house' means 'to maintain or manage an establishment', and therefore, the usage 'keep house' and 'do business' only mean 'to maintain or manage an establishment and do business'. If we accept the argument advanced on behalf of the respondent, the result would be that an artificial person like a company can seek acquisition of land under Section 75 (3) of the Act, for shifting

to that land a kudikidappu that is on its land with the object of constructing a building thereon, for the purpose of maintaining or managing an establishment, and to do business therein; but a natural person cannot, for he can invoke Section 75(3) of the Act for constructing a building on his land only with the object of residence (in its primary sense) therein. We do not think, that the legislative intent is to confer on the artificial person a right which the natural person has not, under that provision. The alternative is to construe Section 75(3) as enabling a natural person to invoke that provision for constructing a building on his land for either of the two objects -- to reside therein or to do business therein -- but if that was the intention of the legislature, the words 'for his own residence' in that provision are superfluous and otiose. Legislature cannot be attributed with the intention of using idle words in a statute, and the attempt should be to give full effect to all the words in a statutory provision. So viewed, the inference is irresistible that the word 'residence' in Section 75(3) of the Act is to be understood in its primary sense and as 'a condition applicable only to men.'

8. The decisions relied on before the learned Single Judge have been cited before us also on behalf of the respondent. Faced with the question whether a foreign company having its chief seat of management and main business in England is liable to be assessed to income-tax on the basis that it is a person resident in England, the English courts evolved a rule that a company resides, for the purpose of the income-tax statutes, where its real business is carried on and that it can have, for that purpose, more than one residence. The decisions, De Beers Consolidated Mines Ltd. v. Howe, 1906 AC 455 (HL) and Koitaki Para Rubber Estates Ltd. v. Federal Commr. of Taxation, (1941) 64 CLR 241, are instances of the application of this rule. The same rule was applied to a converse set of facts, namely, to an English company which had the whole of its business abroad in Egypt, in the third decision, Egyptian Delta Land and Investment Co, Ltd. v. Todd, 1929 AC 1 (HL), referred to us. That the courts were constrained to give an extended and artificial meaning to the word 'residence' by analogy from natural persons is clear from the following passage in the judgment of Viscount Summer in the last mentioned case, (at p. 12):--

'At first, perhaps the Courts might have said that, as a corporation could not 'reside' anywhere in any true sense, they must leave it to the Legislature to enact residence in an artificial sense, but they felt bound to make the Acts work as they found them and arrived at a compromise, under which certain propositions, I think are now well settled. The word 'resident', it is laid down, has to be applied to artificial persons by analogy from natural persons. With these, residence depends on personal facts. Place of birth, nationality and allegiance are not the tests, nor is domicil, except in a sense that makes it barely distinguishable from residence. Voluntary choice and habitual and repeated action are mainly material, such as making a home, keeping an establishment, pursuing a settled object in or at a particular place. A man can change his residence at will, except that a certain duration of time or fixity of decision is requisite, and, but for the peculiar cases of a convict in goal or a lunatic lawfully detained in a madhouse, I do not think that residence is ever determined for a natural person simply by the law. Accordingly, under the decisions, as well as in principle, 'resident' is a term exceedingly unsuited to describe a statutory 'person', which can never be non-resident, because, by the law of its being, it is a fixture. The analogy that is really possible between a natural person and a company is that of carrying on business at a place, great or small, and in my opinion, for the purpose of income tax, both on the words of the Act and on the cases, the residence of a foreign company is preponderantly, if not exclusively, determined by this kind of fact.'

9. In the view expressed by us hereinbefore, we are unable to understand the word 'residence' in Section 75(3) of the Act, in any artificial sense by analogy from natural persons. We hold that word in that provision is to be understood in its true and primary sense, and so understood the same can have no application to an artificial person.

10. We set aside the judgment under appeal, and allowing this appeal, dismiss the writ petition, O.P. No. 2448 of 1974 (Ker) but in the circumstances of the case, without any order as to costs here or in the said original petition.