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Court : Kerala

Decided On : Jun-17-1975

Reported in : AIR1976Ker103

Judge : T. Chandrasekhara Menon, J.

Acts : Kerala Land Reforms Act, 1964 - Sections 29A; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 145

Appeal No. : O.P. 1483 of 1975

Appellant : Koshy Koshy

Respondent : State of Kerala

Advocate for Def. : Govt. Pleader,; K. George Varghese,; Thomas V. Jacob

Advocate for Pet/Ap. : Siby Mathew, Adv.

Disposition : Petition allowed

Judgement :

ORDER

T. Chandrasekhara Menon, J.

1. A preliminary order dated 5-3-1975 passed in M. C. 13/75 initiating proceedings under Section 145 of the Code of Criminal Procedure, attaching the properties

concerned and appointing the village officer, Venmony as the Court agent in respect of the properties is sought to be quashed in this original petition.

2. The petitioner is said to be in possession of the properties concerned. He has taken proceedings under Section 72-B of the Kerala Land Reforms Act (shortly stated the Act) for purchasing the right, title and interest of the land owner on whose behalf, in the meanwhile, a suit has been filed in the Munsiff's Court for declaration of his title and possession. In the suit on the petitioner's contention, an issue was raised whether the petitioner is a cultivating tenant or not. The said issue has been referred to the Land Tribunal under Section 125 (3) of the Act.

3. While the matter is thus seized by the Land Tribunal, petitioner received the preliminary order in the proceedings under Section 145, Criminal P. C. Though the petitioner immediately is alleged to have moved the Executive First Class Magistrate bringing to his notice the existence, of the proceedings under the Act, the learned Magistrate has not dared to vacate the preliminary order passed by him marked in this proceeding as Ex. P-4. Therefore this writ proceeding has been filed seeking to quash the same.

4. Sri Siby Mathew, learned counsel for petitioner contends that in view of Section 29-A (1) of the Act, Ex. P-4 is void and passed without jurisdiction. Section 29-A (1) reads as follows :

'29-A. Bar of proceedings under Chapter XII of the Code of Criminal Procedure in certain cases:

(1) Where a person claiming to be a tenant applies for the preparation of a record of rights or for the determination of the fair rent or for the purchase of the right, title and interest of the land owner and the intermediaries if any, in respect of the land cultivated by him, then, notwithstanding anything contained in any Other law, no Magistrate shall have jurisdiction under Chapter XII of the Code of Criminal Procedure, 1898, in respect of a dispute between that person and any other person claiming to be in possession of that land relating to that land pending disposal of the application.

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5. The jurisdiction of the Executive First Class Magistrate to take proceedings under Section 145, Criminal P. C. is expressly taken away by the above section in cases where any person claims to be a tenant and applies for the preparation of a record of rights or for the purchase of the right, title and interest of the land owner in respect of the land cultivated by him. Here the petitioner has filed an application under Section 72-B of the Act for the purchase of the landowner's right. Hence I have no hesitation in holding that Ex. P-4 is without jurisdiction and quashing the same. The second respondent shall also take no further proceedings in pursuance of Ex. P-4.

6. It is no doubt true that Section 29-A was struck down by this Court --a Full Bench of this Court--in *Narayanan Nair v. State of Kerala*, (1970 Ker LT 659) = (AIR 1971 Ker 98) (FB). The section was struck down solely on the ground that the same is bad for offending Article 14 of the Constitution. I will quote here what Raman Nayar, C. J. said about the section:

'By Section 29-A, the jurisdiction of a Magistrate to take action under Chapter XII of the Code of Criminal Procedure in respect of a dispute between a person who, claiming to be a tenant, has applied for the preparation of a record of rights or for the determination of fair rent or for the purchase of the right of the landowner, and any other person claiming to be in possession of the land, is ousted pending disposal of the application, and, if in any proceeding under that Chapter of the Code possession was handed over to the other person and a suit regarding the right to possession of the land was pending on the date of the publication of the Kerala Land Reforms (Amendment) Bill, 1968 the applicant is entitled to continue on the land or obtain possession thereof till the final decision in the suit. What this amounts to is this. If there is a dispute as to possession of the land between a person claiming to be a tenant of the land and another, a Magistrate's power to interfere, even if the dispute threatens a breach of the peace, so long as the person claiming to be a tenant has made certain application in pursuance of his claim is taken away. A person has only to make an application of the kind mentioned putting forward a claim of tenancy to forcibly trespass on another's land

with impunity. To encourage trespass and consequent breaches of the peace under a false claim of tenancy is surely not a measure of agrarian reform and we can think of no reason why disputes regarding possession under a claim of tenancy should, so far as the preservation of the peace is concerned, be placed on a different footing from disputes regarding possession under other claims. In our view, no reasonable classification can be made between threats to the peace or a peaceable possession of property arising out of a disputed claim of tenancy and such threats arising out of some other disputed title. We consider this section to be bad for offending Article 14-- it cannot have the protection of Article 31A--and it must be struck down accordingly.'

7. By the inclusion of the Act in the Ninth Schedule of the Constitution, the section has revived with the operation effective from the date of the Act--See *L. Jagannath v. Authorised Officer*, *L. R. Madurai* (AIR 1972 SC 425).

8. Sri Siby Mathew has also brought to my notice the decision of my learned brother Mr. Justice Khalid in *Somadasa Pandiyar v. Krishna Kurup*, (1972 Ker LJ 863) where this question had been dealt with and it was held that Section 29-A is a live section from the date of its enactment.

9. Sri. Thomas V. Jacob appearing for the 3rd respondent put forth the plea, that Section 29-A is invalid not because it was held to be void being violative of Article 14 of the Constitution but also because by the section the Legislature is usurping judicial power. The basis of his contention is against the reasoning of Raman Nayar, C. J. in *Narayanan Nair v. State of Kerala*, (AIR 1971 Ker 98) (FB) (cited *supra*) in holding Section 125 (7) of the Act as invalid.

10. His Lordship said:

'Worse still is the provision in the sub-section by which any injunction granted, or appointment of a receiver made, by the Civil Court before the coming into force of the amending Act stands cancelled. This is not merely an encouragement to trespass but is a usurpation of judicial power -- see in this connection *Basanta Chandra v. Emperor*, (AIR 1944 FC 86) and *Shri P. C. Mills v. Broach Municipality*, (AIR 1970 SC 192)'.
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11. This observation of the learned Chief Justice as regards Section 125 (7) is clearly inapplicable in considering Section 29-A of the Act, because by Section 29-A no existing order of the Court is cancelled, rescinded or interfered with. Subject to the constitutional limitation, the Legislature is competent to take away or abridge the right to move the Courts. That will not amount to usurpation of judicial power.

12. The O. P. is therefore allowed, but I make no order as to costs.

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