

Anantharajan Vs. State of Kerala

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Court : Kerala

Decided On : Mar-11-2004

Reported in : 2004(2)KLT119

Judge : K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

Acts : [Constitution of India](#) - Article 227; Kerala Land Reforms Act - Sections 125 and 125(3)

Appeal No. : W.P.(C) No. 538 of 2004

Appellant : Anantharajan

Respondent : State of Kerala

Advocate for Def. : P. Jayasankar, Government Pleader,; Ram Mohan G.,; G.P.

Advocate for Pet/Ap. : M. Ramaswamy Pillai and; P.M. Joseph, Advs.

Disposition : Original petition allowed

Judgement :

K.S. Radhakrishnan, J.

1. This Writ Petition has been preferred under Article 227 of the [Constitution of India](#) seeking a direction to the second respondent to return the documents to the Rent Control Court without any further delay.

2. Petitioner who is the landlord of a building bearing number T.C. 28/2051 has filed O.P.(RCP) No.26 of 1994 seeking eviction of respondents 3 and 4 under Sections 11(2)(b) and 11(3) of Article 2 of 1965. Third respondent - tenant submitted that five cents of property comprised in survey numbers 726 and 727 of Vanchiyoor village where the scheduled building is situate was taken on lease by her husband late Peethambaran Nair during 1954-1955 period from its original jenmi, Pillaveedu family, for commercial purposes and he had constructed a shed for commercial purposes and therefore entitled to protection under Section 106 of the Kerala Land Reforms Act. She therefore prayed for reference of the matter to the Land Tribunal for adjudication.

3. Landlord resisted the petition contending that the attempt of the tenant is to prolong the eviction proceedings. The allegation that five cents of property was taken on lease during 1954-1955 was denied. The Rent Control Court on 25.11.1994 stayed all proceedings and the case was referred to the Land Tribunal for recording the findings. Counsel for the petitioner submitted that the Land Tribunal has not recorded any finding in the matter though more than ten years are over. Landlord is therefore put to considerable prejudice by the order passed by the Rent Control Court by referring the matter to the Land Tribunal. In such circumstances, counsel sought for the exercise of extra ordinary jurisdiction under Article 227 of the [Constitution of India](#) to recall the inference and direct the Rent Control Court to dispose of the same on merits. Counsel for the respondent submitted that the landlord is not justified in approaching this court seeking exercise of extraordinary jurisdiction under Article 227 of the [Constitution of India](#). We are of the view, this is an extra ordinary situation warranting exercise of extra ordinary jurisdiction under Article 227 of the Constitution.

4. Rent Control Court passed the order on 25.11.1994 directing the Land Tribunal, Trivandrum to pass orders on reference made under Section 125(3) of the Kerala Land Reforms Act and the matter is pending before the Tribunal. Court below has specifically stated that tenant has not let in any evidence; nor produced any documents showing that her husband took the five cents of property from the Pillaveedu family during 1954-55 and constructed any shed in the property. We may point out many of the Land Tribunals have become defunct. In such

circumstances, there is no reason to give a direction to the Land Tribunal to dispose of the reference at this stage of the proceedings though landlord has not challenged this order before any forum for the last so many years.

5. We are inclined to take the view that the Rent Control Court has committed an error in making reference to the Land Tribunal in case where the tenant has not adduced any evidence even prima facie warranting a reference. In order to attract Section 125 of the Kerala Land Reforms Act, it has to be specifically shown that the land has been leased for commercial purposes and the tenant has constructed a shed for such purpose before 25.5.1967.

6. The Apex Court in Thomas Antony v. Varkey (2000 (1) KLT 12) examined the scope of Section 125(3) of the Kerala Land Reforms Act, 1964 and held as follows:

'While making a reference to the Tribunal mandatory the legislature cannot be said to have intended that even a patently frivolous, mala fide and illegal plea of tenancy taken by a party merely to delay the proceeding and to remain in possession of the property is also to be referred to the Tribunal. The statutory provisions, in our considered view, envisage a case where a bona fide and legally sustainable plea of tenancy is taken by the party, that question shall be referred to the Tribunal'.

A Division Bench of this Court in Govinda Panicker v. Sreedhara Warriar (2000 (2) KLT 42) examined the scope of Section 125(3) vis-a-vis Section 106 of the Kerala Land Reforms Act, 1964 and held that there is no exclusion of the jurisdiction of the Civil Court either express or by implication in considering and deciding the question arising out of a claim by a person that he is a lessee entitled to the protection of Section 106 of the Kerala Land Reforms Act. Section 125 of the Kerala Land Reforms Act specifically bars the jurisdiction of the Civil Court from deciding or dealing with any question or to determine any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the Appellate Authority or the Land Board etc. Section 125(3) states that if in any suit or other proceedings any question regarding rights of a tenant or of a kudikidappukaran including a question as to whether a person is a

tenant or a kudikidappukaran arises, the Civil Court shall stay the suit or other proceeding and refer such question to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situate together with the relevant records for the decision of that question only. Section 125(8) states that civil court shall include a Rent Control Court as defined in the Kerala Buildings (Lease and Rent Control) Act, 1965. So far as this case is concerned, landlord has waited for nearly ten years for answering the reference by the Land Tribunal. So far Tribunal has not answered the reference putting the landlord to considerably prejudice. Landlord has sought eviction under Sections 11(2)(b) and 11(3) of the Act. Tenant is always benefited by the delay in disposing of the reference. Ten years is now too longer a period to wait for a decision from the Tribunal. In such circumstances, we are inclined to exercise of power under Article 227 of the [Constitution of India](#) and call for the records from the Tribunal and direct the Rent Control Court to determine the question as to whether the claim raised by the tenant is bona fide or not and whether such claim arises for consideration in this case. Consequently the order passed by the Rent Control Court in I.A. No.8795 of 1994 referring the question to the Land Tribunal is set aside and the Rent Control Court is directed to examine the I.A. afresh. Rent Control Court would give opportunity to adduce evidence in that regard and pass orders as expeditiously as possible at any rate within three months from the date of receipt of a copy of this judgment. The Original Petition is allowed as above.