

Abraham Vs. State of Kerala

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Court : Kerala

Decided On : May-26-2006

Reported in : 2006(3)KLT138

Judge : Kurian Joseph, J.

Acts : Kerala Land Reforms Act, 1963 - Sections 85(5), 85(7), 85(9), 85(9A) and 86; [Limitation Act, 1963](#); Kerala Land Reforms (Amendment) Act, 1989

Appeal No. : O.P. No. 27499 of 1999

Appellant : Abraham

Respondent : State of Kerala

Advocate for Def. : Rajasree, Government Pleader

Advocate for Pet/Ap. : Jeo Joseph Kochikunnel and; Alex Jose Paikeday, Advs.

Disposition : Petition allowed

Judgement :

Kurian Joseph, J.

1. Whether an order under Section 85(9A) of the Kerala Land Reforms Act, 1963 is liable to be reopened under Section 85(9) is the question to be decided in this case. Ext.P2 notice issued by the 2nd respondent Taluk Land Board is under

challenge. As per the said notice dated 27.5.1999 the ceiling case No. C.R. 784/73 on the files of the Taluk Land Board, Ernad, transferred to Taluk Land Board, Nilambur and renumbered as S.R.I 15/97 was sought to be reopened by invoking the power under Section 85 (9A) of the Kerala Land Reforms Act, 1963. One main ground taken in the Writ Petition is that of limitation. Proviso to Section 85(9A) clearly provides for a period of three years from the date of introduction of the amendment for such reopening and it is now settled law that beyond the period of three years there cannot be reopening under Section 85(9A). Two decisions of this Court on the point are (1) Mary Michael v. Taluk Land Board 2001 (2) KLT 603 and (2) State of Kerala v. Sivasankaran Nair 2001 (3) KLT 408). Apparently, faced with such a situation, the stand taken in the counter affidavit is that the reopening is under Section 85(9) where the limitation is seven years. Then the question is whether in the facts and circumstances of the case reopening under Section 85(9) is permissible.

2. It is admitted in the counter affidavit itself that the ceiling case, C.R.No. 784/73 had been recorded by the Taluk Land Board, Ernad on 29.5.1981. It is stated in the counter affidavit that pursuant to orders passed by this Court in C.R.P.f4o. 2196/82 filed by the State, the case was again considered and revised order was passed on 28.9.1988...'upholding the original order 29.5.1981 '.After detailed enquiry and examination, the Taluk Land Board again dropped the case as per its order dated 21.6.1994 passed pursuant to the reopening as per notice dated 27.5.1992. That order is produced in the Writ Petition as Ext.Pl. It is clear from the order that the reopening was made under Section 85 (9A) of the Act. Once there is an order under Section 85(9A), the question is whether reopening under Section 85(9) is permissible.

Section 85(9) reads as follows:

The Taluk Board may, at any time, set aside its order under Sub-section(5) or Sub-Section, as the case may be. and proceed afresh under that sub-section if it is satisfied that-

(a) the extent of lands surrendered by, or assumed from, a person under Section 86 is less than the extent of lands which he was liable to surrender under the

provisions of this Act, or

(b) the lands surrendered by, or assumed from, a person are not lawfully owned or held by him; or

(c) in a case where a person is, according to such order, not liable to surrender any land, such person owns or holds lands in excess of the ceiling area:

Provided further that the Taluk Land Board shall not initiate any proceedings under this sub section (after the expiry of seven years) from the date on which the order sought to be set aside has become final).

Explanation I: For the removal of doubts, it is hereby clarified that the references in this sub-section to the Taluk Land Board shall, in cases in which the order under Sub-section(5) or Sub-section(7) has been passed by the Land Board, be construed as references to the Land Board.

Explanation II: For the purposes of this section and Section 86, 'hold' with reference to land shall include 'possess' land under mortgage with possession.

3. It is clear that reopening under Section 85(9) is only of the orders passed under Section 85(5) or under Sub-section 7. Order under Section 85(5) is the original order determining the ceiling case considering the statement filed by the declarant and on further enquiry. Section 85(7) order is passed when the declarant fails to file a statement. Thus the Taluk Land Board is not competent under Section 85(9) to reopen the case or an order in a ceiling case passed otherwise than under Section 85(5) or (7). That power is available to the Taluk Land Board only under Section 85(9A) where the Taluk Land Board is competent to reopen the case or an order in a ceiling case passed under Section 85(5), 85(7) or under 85(9). To the extent relevant the provision reads as follows:

(9A) Power of Taluk Land Board to review its decision - Notwithstanding anything contained in this Act or in the [Limitation Act, 1963](#) (Central Act 36 of 1963), or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, the Taluk Land Board may, if it is satisfied that its decision under Sub-section(5) or Sub-section(7) or Sub-section(9) requires to be reviewed

on the ground that such decision has been made due to the failure to produce relevant data or other particulars relating to ownership or possession before it, or by collusion or fraud or any suppression of material facts the Taluk Land Board may review such decision after giving an opportunity to the parties of being heard and pass such orders as it may think fit: Provided that the Taluk Land Board shall not reopen any such case after the expiry of three years from the date of coming into force of the Kerala Land Reforms (Amendment) Act 1989).

Thus the power under Section 85(9A) is to reopen only within three years from the date of coming into the force of the amended provision. Section 85(9A) came into effect on 30.5.1989. In the instant case what is sought to be reopened is an order passed under Section 85(9A) invoking the power under Section 85(9), if the stand in the counter affidavit is accepted though the impugned Ext.P2 notice dated 27.5.1999 shows that the attempt is to reopen the case under Section 85(9A). Neither under Section 85(9A) owing to limitation nor under 85(9) owing to lack of power, reopening of the ceiling case in the facts and circumstances of the case is permissible. Ext.P2 is quashed and the Writ Petition is allowed. No costs.

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