

VALLAPALLY PLANTATIONS PVT. LTD.

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v.

STATE OF KERALA

MAY 6, 1999

[K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

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Tenancy and Land Laws :

Kerala Land Reforms Act, 1963 as amended in 1969 :

Sections 85(9), 85(1) 85(5) and 2(56-A)—Power of Taluk Land Board in setting aside its own orders—Scope of—Question regarding surplus land under the Act settled by the High Court between the parties in an earlier case—No appeal filed by the State—Within one year of the judgment, the law was changed by way of another decision of the High Court—Board issued notice to the appellant under Section 85(9) seeking to open the proceedings—proceedings dropped by the Board on the plea of the appellant that the issue settled inter parties by way of the earlier order of the High Court which was not challenged by the State—Held, provision of Section 85(9) intended to empower the Board to correct errors in its orders and not to upset any competent court's judgement, order or decree which had become final between the parties—To hold otherwise would amount to vesting power in the Board to reopen any proceedings at any time disposed of finally by a competent court—The result would be unsettling of the settled position between parties and would also go against judicial discipline.

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Section 85(9)—Res Judicata—Power of Taluk Land Board to set aside its own order and proceed afresh—Board may not set aside an order passed in pursuance of directions of the High Court because so doing the Board may only be complying with the order to the High Court—To vest jurisdiction in the Board to set aside such an order would be to permit the Board interfere with a decision of the High Court which had attained finality inter-parties—Civil Procedure Code, 1908, Section 11.

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The appellant owned 130.47 acres of land. While filing a return under Section 85A of the Kerala Land Reforms Act, 1963, it submitted that 125 acres out of the total area was in use as a rubber plantation as on 1.1.1970, and was thus exempt for the purpose of calculating the ceiling area. This

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- A plea was rejected by the Taluk Land Board on the ground that the area was not covered by the rubber plantation on 1.4.1964, on the date when the Act came into force, but only converted afterwards. The Board determined the land held in excess of the ceiling area to be 115.17 acres. This order was challenged by the appellant before the High Court and Single Judge held that as the Act was made applicable to the companies by Act 35 of 1969, which came into force on 1.1.1970, the said date would be relevant to determine the surplus land held by companies. High Court remanded the matter back to the Board for fresh disposal in light its observations. The Board in pursuance of this Order dated 18.5.1979 held that 125 acres being converted by rubber plantation as on 1.1.1970, the appellant could not be said to hold any surplus land and dropped the proceedings.

- Within a year a Division Bench of the High Court dealing with a similar question, held that the insertion of Section 82(1)(d) w.e.f. 1.1.1970 would have no impact on the applicability of Section 82(4) and hence the conversion of dry land into plantations after 1.4.1964 would be ignored for the purpose of calculating surplus holdings. As a result the judgement of the Single Judge stood overruled. The Board then issued notice under Section 85(9) to the appellant with a view to reopening the proceedings but dropped the proceedings on the basis of the contention of the appellant that the order of the Single Judge had attained finality inter parties and thus could not be opened under Section 85(9). The State challenged the order of the Board before the High Court by way of a revision petition, which was allowed by it and the matter was remitted back to the Board for fresh disposal in accordance with law. Hence this appeal. It was contended by the appellant that the earlier order of the High Court remitting the matter before the Board for fresh disposal was not challenged by the State, thus attained finality between the parties, and hence the *suo motu* power could not have been exercised by the Board; and that taking a view unsettling settled decisions between the parties would create confusion and chaos.

- It was contended by State that remand order passed by the High Court in revisional proceedings between the parties was no bar for this Court to consider the correctness or otherwise of the notice issued by the Board seeking to re-open the proceedings.

Allowing the appeal, this Court

- HELD : 1.1. The provision in Section 85(9) of the Kerala Land Reforms Act, 1963 is intended to enable the Board to set aside its order under sub-

section (5) or sub-section (7) , as the case may be. The power vested in the Board under the provision is in vide terms, and therefore, the necessity for circumspection in exercise of the power. The provision is intended to empower the Board to correct errors in its order and not to upset any judgement/ order/decree of competent court, which is binding on the parties. To hold otherwise will amount to vesting powers to reopen any proceedings disposed of by a competent court at any point of time (there is no period of limitation provided in the Section) which may result in unsettling positions settled between the parties. On a fair reading of the provision it is seen that power to set aside its order and reopen proceedings was exercised by the Board in a fair and reasonable manner. In a case where the dispute on being determined by the Taluk Land Board was carried in revision to the High Court by the person affected, or by Government and the revisional order passed by the High Court was not challenged before a superior court and had thus attained finality, vesting the power in the Taluk Land Board to ignore such an order and reopen the proceedings will not only result in unsettling settled positions between the parties but also go against judicial discipline. [1100-A-D]

1.2. No doubt, in the present case the order that was sought to be set aside was of Board, but the said order was passed in pursuance of the directions of the High Court in the revision petition. In other words, in substance and in effect, in passing the order, the Board was only complying with the direction of the High Court. To vest jurisdiction in the Board to set aside such an order will be permitting the Board to interfere with the decision of the High Court which has attained finality inter parties.

[1100-E-F]

Authorised Officer (Land Reforms) v. M.M. Krishnamurthy Chetty, JT, (1998) 7 SC 503, relied on.

Mathew v. Taluk Land Board, (1979) KLT 601; Authorised Officer v. S. Naganatha, AIR (1979) SC 1487; Kuruvilla v. Taluk Land Board, (1980) KLT 53 and Naganatha Ayyar v. Authorised Officer, (1984) LW 69, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 198 of 1995.

From the Judgment and Order dated 18.10.93 of the Kerala High Court in C.R.P. No. 562 of 1983.

Vinod A. Bobde, Joy Joseph and Rustom B. Hathikhanawala for the Appellant.

A G. Viswanatha Iyer, K.M.K. Nair and Vipin Nair for the Respondent.

The Judgment of the Court was delivered by

B **MOHAPATRA, J.** The appellant M/s Vellappally Plantations Private Limited, a company registered under the Companies Act, 1956 owned a total extent of 130.47 acres of land. It filed a return under section 85A of the Kerala Land Reforms Act, 1963 (hereinafter referred to as 'the Act') claiming that out of the total area 125 acres was covered by rubber plantation as on 1st January, 1970, and therefore, is to be exempted for the purpose of calculation of the ceiling surplus land. The Taluk Land Board (hereinafter referred to as 'the Board') Kanjirapally did not accept the claim for exemption of the land since C the area was not covered by plantation as on 1st April, 1964 and was converted into rubber plantation only thereafter. The Board treated the area in question as "other dry land" for the purpose of computation of ceiling surplus land. The Board by its order dated 24.2.1976 determined the ceiling surplus area to be 115.17 acres and directed the appellant to surrender the D same. The said order was challenged by the appellant before the Kerala High Court in C.R.P.No.2274/1976, wherein the learned single Judge set aside the order taking the view that companies were introduced in the Act by amendment of Section 82(1)(d) by Act 35 of 1969 which came into force on January 1, 1970 and that the said date was the relevant date for calculation of the ceiling surplus area in the hands of the company. The High Court remitted the matter E to the Taluk Land Board for fresh disposal with the following observations:

F "For the foregoing reasons the revision is allowed in part; the impugned order is set aside; and the matter is remanded to the Taluk Land Board for fresh disposal in the light of the observations contained in this order, and in accordance with law. The Taluk Land Board would ascertain as to what, if any, is the extent of land covered by rubber plantation as on 1.1.1970 out of the 130.47 acres held by the revision petitioner-company, and exempt such extent also, besides the extent of 30 cents already exempted, while reckoning the extent of land held by the revision petitioner for the purpose of ceiling area. There will be no order as to costs."

G The Board by a consequent order dated 18.5.1979 implementing the order of the High Court held that 125 acres being covered by rubber plantation as on 1.1.1970 the company could not be said to hold any land in excess of the ceiling limit. The proceeding was dropped.

H Sometime thereafter a Division Bench of the Kerala High Court

considering a similar question took the view that introduction of section 82(1)(d) in the Act w.e.f. 1.1.1970 has no impact on the applicability of section 82 (4), and therefore, conversions of dry land into plantations after 1.4.1964 had to be ignored for the purpose of computation of the ceiling area even in relation to companies vide *Kuruvila v. Taluk Land Board*, (1980) KLT 53. The High Court placed reliance on a decision of this Court in *Mathew v. Taluk Land Board*, (1979) KLT 601. The resultant position was that the decision of the Single Judge in *Vallapally Plantations* case (supra) stood overruled. A B

The Board in exercise of its power under section 85(9) of the Act issued a notice to the company seeking re-opening of the proceeding and for re-determination of the ceiling surplus land in the light of the decision of the Division Bench in *Kuruvilla*, case (supra). The Company raised objection against the attempt at re-opening of the proceeding contending that the decision of the learned single Judge in *Vallapally Plantations* case (supra) had attained finality inter parties and could not be re-opened in exercise of the power under section 85(9) of the Act. The contention found favour with majority of the Board which by order dated 20.2.1982 dropped the proceeding holding that it had no jurisdiction to re-open the proceedings. C D

The State challenged the said order in revision before the High Court in C.R.P. No.562/83. Placing strong reliance on the language of section 85(9) the State contended that in view of the wide powers vested in the (Board under the section there was no bar for it to exercise the said power in the case on hand even if the proceedings inter-parties had engaged the attention of the High Court and the Taluk Board had only passed a consequential order against the company carrying out the directions of the High Court in the remand order. The High Court by its judgment dated 18.10.1993 accepted the stand taken by the State, set aside the order of the Board and remitted the matter to it for fresh disposal in accordance with law to ascertain the extent of land, if any, held by the company in excess of the ceiling limit. The said order is under challenge in this appeal filed by the company. E F

The thrust of the submissions of Shri Vinod A. Bobde, learned senior counsel for the appellant was that the judgment of the High Court in the Civil Revision Petition No.2274/96 having not been challenged before any superior Court had attained finality between the parties. The order of the Board dated 20.2.1982 was merely a consequential order passed in compliance of the order of the High Court. In such circumstances, submitted the learned counsel, suo moto power vested in the Board to re-open the proceedings could not be G H

A exercised. According to the learned counsel taking a view otherwise would result in unsettling settled decisions between the parties and will create confusion and chaos.

B Shri G. Viswanatha Iyer, learned senior counsel appearing for the respondent on the other hand contended that the remand order passed by the High Court in the revisional proceeding between the parties is no bar for this Court to consider the correctness or otherwise of the notice issued by the Board seeking to re-open the proceeding. The learned counsel submitted that unless this Court comes to hold that the decision in the case of Kuruvila (supra) was wrongly decided there is no escape from the legal position that the order passed by the Board holding that the company was not in possession of any surplus land is erroneous, and therefore, the Board was right in issuing the notice for re-opening the proceeding.

D The core question that arises for determination in the case is whether on the facts and in the circumstances of the case the Board can re-open the proceedings for determination of ceiling surplus land on the ground that subsequent to the final order passed in the proceeding the position of the law has undergone a change in view of the later decision of the High Court taking a contrary view regarding the legal position.

E Before adverting to the point for determination it will be convenient to notice some statutory provisions which are relevant for the present purpose.

F Section 2 (56A) defines 'Taluk Land Board' to mean a Taluk Land Board constituted under Section 100A. Section 100A provides, *inter alia*, that the Government shall, by notification in the Gazette, constitute a Taluk Land Board for each Taluk in the State for performing the functions of the Taluk Land Board under this Act. In section 100C it is laid down "that for the purpose of performing its functions under this Act, the Taluk Land Board shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of matters enumerated in the section.

G Chapter III of the Act contains the provisions regarding restrictions of ownership and possession of land in excess of ceiling area and disposal of excess land. Section 81 to 98 A are included in that Chapter.

H Section 82 which contains the provisions regarding ceiling area provides in sub-section clause (d) that in case of any other person, other than a Joint family, ten standard acres, so however that the ceiling area shall not be less

than twelve and more than fifteen acres in extent.

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In sub-section (4) it is laid down that where, after the commencement of this Act, any class of land specified in Schedule II has been converted into any other class of land specified in that Schedule or into a plantation, the extent of land liable to be surrendered by a person owning or holding such land shall be determined without taking into consideration such conversion.

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In Section 83 it is provided that with effect from such date as may be notified by the Government in the Gazette, no person shall be entitled to own or hold or to possess under a mortgage lands in the aggregate in excess of the ceiling area.

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Section 85(1) provides that where a person owns or holds land in excess of the ceiling area on the date notified under section 83, such excess land shall be surrendered as provided under the said sub-section.

Under sub-section (5) of the said section power is vested in the Taluk Land Board- (a) to cause the particulars mentioned in the statement to be verified ; (b) ascertain whether the person to whom the statement relates, owns or holds any other lands; and (c) by order, determine the extent and identity of the land to be surrendered.

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In sub-section (8) provision is made that where the Board determines the extent of the land to be surrendered by any person without hearing any person interested, such person may, within sixty days from the date of such determination, apply to the Taluk Land Board to set aside the order and, if he satisfies the Taluk Land Board that he was prevented by any sufficient cause from appearing before the Taluk Land Board it shall set aside the order and shall proceed under sub-section (5) of sub-section (7), as the case may be.

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Sub-section (9) of section 85 which is very important for the purpose of the case is quoted hereunder:

“(9) The Taluk Land Board may, at any time, set aside its order under sub-section (5) or sub-section (7), as the case may be, and proceed afresh under that sub-section if it is satisfied that -

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(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

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A (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.

B PROVIDED that the Taluk Land Board shall not set aside any order under this sub-section without giving the persons affected thereby an opportunity of being heard:

C 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.

D Explanation 1 - For the removal of doubts, it is clarified that the references in this subsection to the Taluk Land Board shall, in cases in which the order under subsection (5) or sub-section (7) has been passed by the Land Board, be construed as references to the Land Board.

E Explanation 2 - For the purposes of this section and section 86, "hold" with reference to land shall include "possess" land under mortgage with possession.

F In Sub-section 9A, which was inserted by Kerala Land Reform (Amendment) Act, 1989 w.e.f. 30th May, 1989 power is vested in Taluk Land Board to review its decision. The said section provides inter alia that notwithstanding anything contained in this Act or in the Limitation Act, 1963 or in any other Act 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. In the proviso a period of limitation of 3 years from the date of coming into force of Kerala Land Reforms (Amendment) Act, 1989 is prescribed whereafter the

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H Taluk Land Board shall not reopen any such case.

Section 86 sub-section (1) which contains the provision regarding vesting of excess land in Government provides that on the determination of the extent and other particulars of the lands, the ownership or possession or both of which is or are to be surrendered under section 85, the ownership or possession or both, as the case may be, of the land shall, subject to the provisions of this Act, vest in the Government free from all encumbrances and the Taluk Land Board shall issue an order accordingly. The further steps to be taken by the person concerned and the other consequences to follow are enumerated in the provisions of the said section.

Section 103 of the Act which vests power of revision in the High Court provides under subsection (1) thereof that any person aggrieved by any final order of the Taluk Land Board under the Act may prefer a petition to the High Court against the order on the ground that the appellate authority or the Land Board or the Taluk Land Board as the case may be, has either decided erroneously, or failed to decide, any question of law. In a petition for revision under sub-section (1) the Government shall be made a party. In subsection 1B provision is made that the Government may within such time as may be prescribed, prefer a petition for revision to the High Court against any final order referred to in sub-section (1), on any of the grounds mentioned in that sub-section.

It may be relevant to state here that section 125 of the Act in which provision is made regarding bar on jurisdiction of Civil Courts it is laid down *inter alia*, that no civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled by the Taluk Land Board. In the proviso an exception is made to proceedings pending in any Court at the time of commencement of the Kerala Land Reforms (Amendment) Act, 1969. In sub-section (2) of the said Section it is laid down that no order by the Taluk Land Board made under the Act shall be questioned in any civil court except as provided in the Act.

From the statutory provisions referred to above the position is clear that in matters relating to determination of ceiling surplus land in the hands of a person the Board is vested with the power to determine all disputes and the order passed by the Board is subject to a revision petition which may be filed by any person aggrieved by the Government before the High Court.

Considering the question regarding applicability of section 85(9) to the case in hand in the conspectus of statutory provisions we are of the view

- A that answer to the question is in the negative. The provision in section 85(9), as we see it, is intended to enable the Board to set aside *its order* under sub-section (5) or sub-section (7), as the case may be. The power vested in the Board under the provision is in wide terms, and therefore, the necessity for circumspection in exercise of the power. The provision is intended to empower the Board to correct errors in its orders and not to upset judgment/order/decree of competent courts which are binding on the parties. To hold otherwise will amount to vesting powers to reopen any proceeding disposed of by a competent court at any point of time (there is no period of limitation provided in the section) which may result in unsettling positions settled between the parties. On a fair reading of the provision it is to be held that the power to set aside its order and reopen a proceeding should be exercised by the Board in a fair and reasonable manner. In a case where the dispute on being determined by the Taluk Land Board was carried in revision to the High Court by the person affected or by the Government and the revisional order passed by the High Court was not challenged before superior Court and thus attained finality, to vest the power in the Taluk Land Board to ignore such an order and reopening the proceeding will not only result in unsettling settled positions between the parties but also go against judicial discipline.

- E No doubt in the present case the order that was sought to be set aside was of the Board. But the said order was passed in pursuance to the directions of the High Court in the revision petition. In other words in substance and in effect, in passing the order the Board was only complying with the direction of the High Court. To vest jurisdiction in the Board to set aside such an order will be permitting the Board to interfere with the decision of the High Court which has attained finality inter-parties.

- F A somewhat similar question arose before this Court in the case of *Authorised Officer (Land Reforms) v. M.M.Krishnamurthy Chetty*, JT (1998) 7 SC 503 . In that case about 4.81 standard acres of land belonging to the respondent were declared surplus. Ultimately the matter came to the High Court. The Learned Judge of the High Court set aside the order and remanded the case for fresh consideration in the light of the judgment of the High Court in the case of *Naganath Aiyer v. Authorised Officer*, (1984) LW 69. While the matter was pending before the authorised officer the Supreme Court reversed the aforesaid judgment in the case of *Authorised Officer v. S. Naganatha*, AIR (1979) SC 1487. The authorised officer decided the proceeding in the light of the Judgment of the Supreme Court. The land holder went in revision before H the High Court challenging the order of the Authorised officer. A stand was

taken before the High Court that the order of remand passed by the High Court directing the authorised officer to decide the dispute in respect of the ceiling area in the light of the judgment of the High Court was not challenged by the Authorised Officer before the Supreme Court and as such it had become final. In other words the Authorised officer was bound by the order of remand passed by the High Court and it was not open to the Authorised Officer to consider the dispute in respect of the ceiling area in the light of the judgment of the Supreme Court. The High Court accepted this contention and allowed the civil revision filed by the land holder the respondent. This court confirming the order of the High Court observed as follows:

“The order passed by the High Court directing the Authorised Officer to examine the dispute in the light of the judgment of the High Court in the case of *Naganatha Iyar v. Authorised Officer* became final although the judgment on which the grievance had to be examined itself was reversed later by this Court. We find no fault with the reasoning of the High Court, it is well settled that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior courts. In the result the appeal fails and it is dismissed.”

On giving our anxious consideration to the entire matter we have no hesitation to hold that on the facts and in the circumstances of the case the Taluk Land Board rightly held that it had no power to reopen to proceeding in exercise of the powers vested in section 85(9) and the High Court was in error in interfering with the said order of the Taluk Land Board.

In the result the appeal is allowed. The impugned order of the High Court is set aside and the order of the Taluk Land Board dropping the proceeding under section 85(9) of the Act is restored. There will, however, be no order as to costs.

R.K.S.

Appeal allowed.