

STATE OF KERALA AND ORS.

v.

PHILOMINA, ETC. ETC. & ORS.

August 20, 1976

[A. N. RAY, C.J., M. H. BEG AND P. N. SHINGHAL, JJ.]

Kerala Land Reforms Act, 1963— S. 84—Scope of—Interpretation—When a statute could be read retrospectively.

Section 84 of Kerala Land Reforms Act, 1963 declares that all voluntary transfers of land effected after the publication of the Kerala Land Reforms Bill on September 15, 1963, shall be null and void. Clause (ii) of this section which provided an exemption in respect of transfers made on account of "natural love and affection" was omitted in 1972 with retrospective effect from August 16, 1968. Section 81(1)(1) exempts kayal padasakharams of Kuttanad area from the restrictions on ownership prescribed by Chapter III of the Act. By an amendment of 1969, this exemption was withdrawn; but the amending section was not brought into force until January 1, 1970.

There were two sets of petitions before the High Court. In one set the High Court held that (1) voluntary transfers of kayal lands effected between September 15, 1963 and January 1, 1970, were lawful and valid, and in the other (2) that certain transfers by way of gift were invalid.

In the first set of appeals to this Court the State contended that the 1969 amendment should be given retrospective effect from April 1, 1964 *i.e.*, the date on which s. 84 was brought into force and in the second set the donees contended that the transfers were saved because they were effected on account of natural love and affection.

Dismissing all the appeals,

HELD: (1)(a) Even though by virtue of s. 84 all voluntary transfers effected after September 15, 1963 were invalid, transfers made in respect of kayal lands could not be held to be invalid because they were exempt from the provisions of Chapter III. Though that exemption was withdrawn in 1969, that amendment was not brought into force until January 1, 1970. Voluntary transfers made between September 15, 1963 and January 1, 1970 were therefore valid. [278 B-C]

(b) The 1969 amendment was neither curative nor declaratory of the previous law. It merely omitted cl. (1) from s. 81. A statute is not to be read retrospectively except of necessity. There is no such necessity in the instant cases, for the legislature decided to exempt kayal lands from the operation of the restrictions, and the 1969 amendment withdrawing the exemption was not brought into force until January 1, 1970. [278 E-F]

Pritam Singh Chahil v. State of Punjab and others, [1967] 2 S.C.R. 536 and *Channan Singh and another v. Jai Kaur* [1970] 1 S.C.R. 803 held inapplicable.

(2) In the other set of cases the impugned transfers were in favour of the donor's grand children by his daughter, who was alive and were effected between January 1, 1970 and November 2, 1972. It was held that it was futile to contend that s. 84 would not be attracted to the transfers on the ground that they were effected on account of natural love and affection within the meaning of the exemption provided by s. 84, because the exemption was taken away by Act 17 of 1972 which specifically stated that, that clause "shall be, and shall be deemed to have been omitted with effect from the 16th August, 1968" and they could not be said to fall within the exempted category because of the amendment made in s. 84 in 1972 restricting the exemption to gifts made in favour of a donor's son or daughter or the son of a daughter of his pre-deceased son or daughter. [279 A-C]

A CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 907-909/74.

Appeals by Special Leave from the Judgment and Order dated 27-3-73 of the Kerala High Court in O.P. Nos. 375-377/73 respectively.

CIVIL APPEAL NO. 1354/75

B Appeal by Special Leave from the Judgment and Order dated 9-7-75 of the Kerala High Court in C.R.P. No. 949/74.

CIVIL APPEAL NO. 1355/75

Appeal by Special Leave from the Judgment and Order dated 19-6-75 of the Kerala High Court in C.R.P. No. 611/74.

C *M. M. Abdul*, Advocate General for the State of Kerala, and *K. M. K. Nair* for the Appellants in CAs. 907-909/74 for rr. in CAs. 1854-1855/75.

T. S. Krishnamoorthy Iyer and *P. K. Pillai*; for the Appellants in CAs. 1354-1355/75.

Miss Lily Thomas for the Respondents in CAs. 908-909/74.

D The Judgment of the Court was delivered by

E SHINGHAL, J.—Civil Appeals Nos. 907, 908 and 909 of 1974 are by the State of Kerala and the Land Board, Trivandrum. They are directed against a common judgment of the Kerala High Court dated July 27, 1973. Civil Appeals Nos. 1354 and 1355 of 1975 are by petitioners who had applied for revision of the orders of the Taluk Land Board, Alathur, dated June 11, 1974 and April 27, 1974. The High Court dismissed the revision petitions by two separate judgments dated July 9, 1975 and June 18, 1975. All the appeals are by special leave. We have heard them together at the instance of the learned counsel for the parties, and will examine them in a common judgment.

F The controversy in all the cases relates to the application of certain provisions of the Kerala Land Reforms Act, 1963, hereinafter referred to as the Act, to the impugned voluntary transfers of Kayal lands. The State of Kerala feels aggrieved because the High Court has taken the view that the transfers made between September 15, 1963 and January 1, 1970 had to be “recognised and Kayal lands comprised therein excluded in reckoning the ceiling area and the excess lands to be surrendered after January 1, 1970.” The grievance of the other

G two appellants is that their revision petitions were dismissed even though the gift deeds in their favour were valid and did not fall within the mischief of section 84(1) of the Act. We shall examine these points of controversy but, before doing so, it may be mentioned

H that the validity of certain provisions of the Act was also challenged in the High Court, in the three petitions which were disposed of by the common judgment dated July 27, 1973, but the High Court upheld them. There is no such controversy before us as the Act, and the Acts which have amended it, have been specified in the Ninth Schedule to the Constitution. It may also be mentioned that we have not had the advantage of hearing any one on behalf of the respondents

in Civil Appeals Nos. 907 to 909 of 1974 as Miss Lily Thomas, who represented the respondents in Civil Appeals Nos. 908 and 909, informed the Court, at the commencement of the arguments, that they were not interested in the controversy.

While examining the petitions which are the subject matter of appeals Nos. 907 to 909 of 1974, the High Court thought it sufficient to refer only to the facts of original petition No. 283 of 1973. That case is not before us, but that would not matter as the appeals can be disposed of without reference to the details of that case. It will be sufficient to say that the petitioner in that case was M.T.J. Joseph, and the controversy centred round a settlement deed (Ex. P 8 made by him in favour of his children on June 15, 1957. The appellants in the three appeals (Nos. 907-909) are M.T.J. Joseph's children.

As has been stated, the High Court examined the constitutional validity of the provisions of the Act and upheld them. It next examined the question whether lands in excess of the ceiling area were in the lawful or permissive occupation of the petitioners (in the petition before the High Court), with reference to the argument that in view of the terms of Ex. R1, by which some of the excess lands were assigned to the holder, the occupation commenced with an implied permission on payment of the state dues. The High Court did not however think it proper to express its final views on that aspect of the matter as it found that certain proceedings were pending before the authorities concerned. It therefore left the matter after giving the direction that the Land Board will not pursue the proceedings in respect of those lands until the matter was finally decided in the pending proceedings. So also, the High Court left the question regarding the ownership of the lands which had been conveyed by the settlement deed of 1957, for investigation and decision by the Land Board.

The High Court however proceeded to examine the validity of certain transfers of lands between September 15, 1963 and January 1, 1970 with reference to the relevant provisions of the Act and held as follows :—

“Broadly stated, the effect of section 84, is to invalidate transfers effected by a person owning or holding land in excess of the ceiling area, after the date of publication of the Land Reforms Bill (15-9-1963). That being the object of the section, in order to determine whether the transfer was in excess of the ceiling area, what is material is the law relating to ceiling area on the date of the transfer, and not the law regarding ceiling area on the date of the acquisition or any date subsequent to the transfer.”

It therefore held that there was no justification for treating the alienations effected after September 15, 1963 and before January 1, 1970 as having been invalidated by reason of the subsequent amendments in the law, when they were lawful and valid under the “law relating to ceiling area at the time when they were made.” The High Court also examined the questions relating to the grant of compensation and improvements, but they do not arise for consideration before us.

A The only question which has been pressed for our consideration by the Advocate General, on behalf of the appellants, is that relating to the validity of the transfers of Kayal lands between September 15, 1963 and January 1, 1970. The writ petitioners in the High Court urged that they were exempt under section 81(1)(1) of the Act and could not be held to be invalid with effect from January 1, 1970 because of the subsequent amendment to the Act, and included in their ceiling area.

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The term "ceiling area" has been defined in section 2(3) of the Act to mean "the extent of land specified in section 82 as the ceiling area", and there is no controversy about its extent or content. Section 83 of the Act prohibits the holding of lands in excess of the ceiling area with effect from January 1, 1970, which had been notified by the government in the gazette as the date from which the prohibition was to be effective. Section 84 declares certain voluntary transfers to be null and void. The section as it stood before the amendments read as follows,—

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Section 84. Certain voluntary transfers to be null and void.—"Notwithstanding anything contained in any law for the time being in force, all voluntary transfers effected after the date of publication of the Kerala Land Reforms Bill, 1963, in the Gazette, otherwise than—

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(i) by way of partition; or

(ii) on account of natural love and affection; or

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(iii) in favour of a person who was a tenant of the holding before the 27th July, 1960, and continued to be so till the date of transfer; or

(iv) in favour of a religious, charitable or educational institution of a public nature solely for the purposes of the institution,

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by a family or any member thereof or by an adult unmarried person owning or holding land in excess of the ceiling area, shall be deemed to be transfers calculated to defeat the provisions of this Act and shall be invalid :"

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There is a proviso to the section with which we are not concerned. The validity of the transfers had therefore to be examined with reference to September 15, 1963 which was the date of publication of the Kerala Land Reforms Bill, 1963, in the gazette. The section was amended by Act 35 of 1969 by which the existing section was renumbered as sub-section (1) and a sub-section was added as sub-section (2) which dealt with voluntary transfers effected by any person "other than" a family or any member thereof or by an adult unmarried person owning or holding land in excess of the ceiling area. The amendment could not therefore be said to have any bearing on the present controversy. The section was however again amended by section 15 of Act 17 of 1972. It, *inter alia*, omitted clause (ii) of

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sub-section (1) and provided that the omission shall be deemed to have been made with effect from the 16th day of August, 1968. This had the effect of taking away the exception in favour of voluntary transfers on account of natural love and affection. But it is not the case of any one before us that there was any such transfer in respect of Civil Appeals Nos. 907 to 909, so that amendment also could not be said to have any material bearing on the controversy relating to these appeals.

The fact therefore remains that by virtue of section 84 of the Act, all voluntary transfers of land effected after September 15, 1963 (date of publication of the Kerala Land Reforms Bill, 1963 in the gazette) were invalid as they were to be deemed to be transfers calculated to defeat the provisions of the Act. So even if a transfer was found to have been made after September 15, 1963 but before January 1, 1970 (date notified under section 83 prohibiting the owning or holding or to possessing under a mortgage lands in the aggregate in excess of the ceiling area) the ceiling area for purposes of section 83 and bringing about the surrender of the excess land under section 85 had to be determined with reference to the position as on January 1, 1970 as that was the date notified under section 83. The reason is that the prohibition of section 83 applied with reference to that date and that, in turn, required a surrender of the excess land as on that date.

Section 85 is therefore an important section. It was amended by Act 35 of 1969, Act 25 of 1971 and Act 17 of 1972, but there was no change in its basic provision that when a person owned or held land in excess of the ceiling area "on the date notified under section 83", namely, January 1, 1970, he had to surrender it in accordance with the other provisions of the section. The crucial date for determining and surrendering the surplus land was therefore January 1, 1970, and not any earlier date, but the validity of any voluntary transfer effected after September 15, 1963 which was the date of publication of the Kerala Land Reforms Bill, 1963, had still to be examined with reference to September 15, 1963 in view of the clear requirement of section 84. This was the scheme of the Act.

We have made a reference to section 84 which clearly provides that all voluntary transfers of land effected after September 15, 1963 shall be deemed to be transfers calculated to defeat the provisions of the Act and "shall be void". It has not been urged that the impugned transfers fell under any of the exceptions provided by section 84. There can be no doubt that any transfer made after September 15, 1963 and before January 1, 1970 would be invalid unless it could be shown to have been saved by any other provision of the Act. In this connection section 81 of the Act is important for it prescribes the exemptions to the provisions of Chapter III. Clause (1) of sub-section (1) of section 81 specifically provides that the provisions of the Chapter shall not apply to,—

"(1) kaval padasakharams of Kuttanad area specified in Schedule IV, so long as such padasakharams are used for the cultivation of paddy or such other crops as the Government may, by notification in the Gazette, specify."

A It is not in controversy that the Kayal lands which are the subject matter of these appeals are of the category mentioned in clause (1) of sub-section (1) of section 81. They were therefore exempt from the restriction on ownership prescribed by the various sections of Chapter III referred to above. So even though by virtue of section 84 of the Act all voluntary transfers effected after September 15, 1963

B (date of publication of the Kerala Land Reforms Bill, 1963 in the Gazette) were invalid, the transfers made in respect of Kayal pada-sakharams in appeals Nos. 907-909 could not be held to be invalid for the simple reason that they were exempt from the provisions of Chapter III. That exemption was no doubt withdrawn by section 65 of Act 35 of 1969 which amended the Act, but it is not disputed before us that the section was not brought into force until January 1, 1970.

C The voluntary transfers made between September 15, 1963 and January 1, 1970 were therefore valid, and there is no force in the argument of the Advocate General that the amendment brought about by section 65 of Act 35 of 1969 should be given retrospective effect from April 1, 1964 as sections 82 and 84 of the Act were brought into force from that date. There is also no force in the other argument of the Advocate General that section 84 had the effect of invalidating the transfers effected after September 15, 1963 for that was the date of publication of the Kerala Land Reforms Bill in the Gazette. The argument overlooks the fact that, as has been mentioned, Kayal lands were exempt from the provisions of Chapter III until as late as January 1, 1970. In this view of the matter *Pritam Singh Chahil v. State of Punjab and others*⁽¹⁾ cannot avail the appellants. The amendment cannot also be said to be curative or merely declaratory of the previous law. The facts of *Chanan Singh and another v. Jai Kaur*,⁽²⁾ cited by the Advocate General, were quite different inasmuch as in the appeals before us the amendment which was made by section 65 of Act 35 of 1969 was neither curative nor merely declaratory. As has been stated, it, *inter alia*, omitted, clause (1) of section 81 of the Act which exempted the Kayal padasakharams which are the subject matter of the present controversy from the application of the provisions of Chapter III of the Act. It is well settled that a statute is not to be read retrospectively except of necessity. There is no such necessity in the cases before us, for the Legislature decided to exempt the aforesaid Kayal lands from the operation of the restrictions and even though amending Act 35 of 1969 was promulgated on December 17, 1969, section 65 thereof, which withdrew the exemption, was not brought into force until January 1, 1970.

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Thus there is no force in Appeals Nos. 907, 908 and 909 and they are dismissed.

This leaves Civil Appeals Nos. 1354 and 1355 for consideration. The transfers of lands in these cases were admittedly made during the period January 1, 1970 to November 2, 1972. As such they were not exempt from the restrictions of the provisions of Chapter

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(1) [1967] 2 S.C.R. 536.

(2) [1970] 1 S.C.R. 803.

III of the Act. Section 84 of the Act would be attracted to these transfers, and it is futile to contend that this would not be so because the transfers were affected "on account of natural love and affection" within the meaning of clause (ii) of the exceptions provided by section 84 because the exemption to that effect was taken away by Act 17 of 1972. Section 15 of that Act specifically stated that clause "shall be, and shall be deemed to have been omitted with effect from the 16th day of August, 1968." Moreover, as the High Court has pointed out, the impugned transfers were in favour of the donor's grand children by his daughter who was alive, and could not be said to fall within the exempted category because of the other amendment made in section 84 of the Act by section 15 of Act 17 of 1972 with effect from the 16th day of August, 1968 which restricted the exemption to gifts made in favour of the donor's son or daughter or the son of daughter of his predeceased son or daughter. There is thus no force in these two appeals also, and they are dismissed.

In view of the facts and circumstances of the cases, we leave the parties to pay and bear their own costs.

P.B.R.

Appeal dismissed.