

THE TALUK LAND BOARD, KAZHIKODE AND ORS.

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v.

DR. BABU COMMEN THOMAS

AUGUST 17, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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The Kerala Land Reforms Act, 1963 :

Ss.82(4), 84(1), 85(1), Explanation (a)—Agricultural land—Ceiling area—Cashewnut estate sold after publication of Kerala Land Reforms Bill, 1963—Held, the sale is void and of no effect—Not exempted by clause (a) of Explanation to s.85(1).

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The respondent purchased cashewnut estate on April 16, 1969. Section 84(1) of the Kerala Land Reforms Act, 1963 provided that all voluntary transfer effected after the date of publication of the Kerala Land Reforms Bill, 1963 i.e., 1.4.1964, would be deemed to be transfers calculated to defeat the provisions of the Act and would be invalid. The High Court decided in favour of the respondent-purchaser holding that the land got exempted by clause (a) of the Explanation to s.85(1) of the Act. Aggrieved, the State filed the appeal.

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Allowing the appeal, this Court

HELD : 1.1. The transfer was effected within the prohibited period, namely between April 1, 1964 and January 1, 1970. Therefore, the sale is a void sale and is of no effect. The respondents cannot save the cashewnut estate purchased under the void sale, from the purview of the Kerala Land Reforms Act, 1963. [814-B]

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1.2. The High Court was clearly in error in holding that the land got exempted by clause (a) of the Explanation to section 85(1) of the Act. Voluntary transfers which are void, cannot be saved in computing the excess land under Section 85 of the Act. Under clause (a) of the Explanation to s.85(1), the transfers effected within the prohibited period and saved by sub-s.(1) of Section 84 were treated to be valid transfers and to that extent they cannot have any effect while directing surrender of the excess land. [814-E; D]

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A *P.J Thomas v. Taluk Land Board and Ors.*, [1993] Suppl. 1 SCC 300, relied on.

State of Kerala v. Philomina Etc. Etc. & Ors., [1977] 1 S.C.R. 273, referred to.

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7830 of 1995.

From the Judgment and Order dated 27.6.89 of the Kerala High Court in C.R.P. No. 879 of 1989.

C M. T. George for the State.

S. Balakrishnan for the Respondent.

The following Order of the Court was delivered :

D Leave granted.

Respondent admittedly had purchased cashewnut estate on April 16, 1969. The State Government of Kerala introduced the Land Reforms Bill, 1963 on April 1, 1964. One of the clauses relates to taking away exemption of cashew nut estate or its conversion from the purview of the Kerala Land Reforms Act, 1963 [for short, 'the Act']. The Bill was made Act 35 of 1969 with affect from January 1, 1970. Section 82(4) of the Act declares that where after the commencement of the 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. Section 84 (1) reads thus:

G "84. Certain voluntary transfers to be null and void. - (1) 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-

(i) by way of partition; 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; A

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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 or otherwise than by way of gift in favour of his son or daughter or the son or daughter of his pre-deceased son or daughter by any 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.*" B C

(Emphasis supplied)

The voluntary sale is not one of the exempted transfer mentioned in Section 84(1). On the other hand, all voluntary transfers other than those excepted, should be deemed to be transfers calculated to defeat the provisions of the Act and should be invalid. The question, therefore, is whether the land purchased by the respondent was intended to defeat the purposes of the Act and is invalid. D

This Court in *P.J. Thomas v. Taluk Land Board and Others*, [1993] Supp. (1) SCC 300 considered the question of transfer and conversion under Section 82(4) and held that the conversion of cashew estate also will not be saved and it will come squarely within the mischief of Section 84(1) of the Act. This is what the Court held : "The transfer falling under Section 84 cannot be equated to the conversion falling under Section 82(4). The ceiling provisions contained in the Sections 82 and 83 came into force on January 1, 1970. The computation of the ceiling area has to be made in accordance with the provisions contained under Section 82 as it stood on January 1, 1970. Under Section 82(4) where any class of land specified in Schedule II has been converted into a plantation after the commencement of the Act, the extent of the land liable to be surrendered by a person owning or holding such land has to be determined without taking into consideration such conversion. Cashew estate is a land specified in Schedule II as on April 1, 1964 as well as on January 1, 1970. Therefore, the conversion of cashew estate after April 1, 1964 and before January 1, 1970 into plantation would squarely come under the mischief of this E F G H

A sub-section".

The facts of this case stand on a higher footing than the facts therein. In this case, section 84(1) specifically declares such voluntary transfers to be invalid. In other words, such transfers are void and of no effect. Admittedly, the transfer was effected within the prohibited period namely between April 1, 1964 and January 1, 1970. Therefore, the sale is a void sale. Thereby the respondents cannot save the cashew land purchased under the void sale from the purview of the Act.

Mr. Balakrishnan, learned counsel for the respondent, then sought to rely on Section 85 (1) explanation (a) and contended that the respondent having purchased the land was transferee under the transfer and, therefore, his rights in the land were not affected but the extent of land purchased can be calculated for fixing the extent of land to be surrendered and the company should be directed to surrender excess land excluding the land under the sale. We fail to appreciate the contention. The purpose of Section 85(1), clause (a) to the Explanation seems to be that such of the transfers effected within the prohibited period and saved by sub- s. (1) of Section 84 were treated to be valid transfers and to that extent they cannot have any effect while directing surrender of the excess land. But voluntary transfers which are void, cannot be saved in computing the excess land under Section 85 of the Act. Therefore, the High Court was clearly in error in its judgment dated June 27, 1989 in C.R.P. No. 879/89 that the lands get exempted by clause (a) to the Explanation to Section 85 (1) of the Act.

Mr. Balakrishnan also seeks to place reliance on *State of Kerala v. Philomina Etc. Etc. and Ors.*, [1977] 1 SCR 273. The ratio therein was also considered and explained by this Court in *P.J. Thomas's* case (supra). We respectfully agree with the reasoning in *Thomas* case.

The appeal is accordingly allowed. No costs.

R.P.

Appeal allowed.