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STATE OF KERALA ETC.
v.
VARKEY MATHEW AND ORS. ETC.

DECEMBER 12, 1995

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

C

Kerala Land Reforms Act, 1964—Secs. 2(43), 81, 83, 85(6A), 85(7), 85(7A)—Computation of excess land owned or held by a deceased—Held, proceedings can be initiated under colour of successors-in-title or illegal means.

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Respondent No. 1 herein died in 1973 without filing a statement of excess lands as provided for under the Kerala Land Reforms Act, 1964. On the report given by the Special Tahsildar regarding excess land owned by the deceased as on 1.1.1970, the Taluk Land Board passed an order initiating proceedings under S.85(7) of the Act of 1964 against the successors-in-interest. On the representation of the successors-in-interest the Taluk Land Board cancelled its earlier order. The High Court on Revision held that since the proceedings were not initiated against the owner before his death, it cannot be initiated against the legal representatives and that even the Amendment by Sec. 85(6A) as against abatement of proceedings would not enable the State to proceed against the Respondents.

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In this Appeal, it was contended by the Appellant that once the person who owns the land is bound to file a statement under Sec. 85(2) or 85(3A), his estate still continues to be in excess of the ceiling limit and that the computation is against the estate of the deceased and therefore the successors-in-interest are liable to account for the excess land and computation thereof is done as per law.

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The Respondents contended that the word "Person" in Section 2(43) does not include the legal representatives or the successors-in-interest; that the legislature having realised the lacuna amended and brought on statute Section 85(6A) which prohibits abatement of the pending proceedings, and that therefore the legal representatives or successors-in-interest who succeed to the estate of the deceased are not liable to be proceeded with under Section 85(7) or 85(7A).

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Allowing the appeals this court

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HELD : 1. The persons who succeeds to the estate of the deceased found to be in possession or holds land in excess under colour of title or by illegal means would also be liable to be proceeded with under Section 85(7) of the Kerala Land Reforms Act, in computation of the excess land owned or held by the deceased person. [646-B]

B

2. Section 86(7) was made explicit by Section 85(6A) and the consequences of abatement due to the death of a person was statutorily annihilated. The person who succeeds to the estate according to law and have the lands under him would be in a better position than the person covered under pending proceedings envisaged under Section 85(6A). [645-F, H]

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2620 of 1989 ETC.

From the Judgment Order dated 14.7.87 of th Kerala High Court in C.R.P. No. 2731 of 1982.

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M.T. George for the Appellants.

P.K. Manohar for the Respondents.

The following Order of the Court was delivered :

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The appeals arise from the orders of the single Judge of the Kerala High Court made in CRP No. 2731/82 dated July 14, 1987. The admitted facts are that Kerala Land Reforms Act 1964 was enforced w.e.f. January 1, 1970 and by operation thereof the entire excess land stood vested in the State. Section 85 of the Act prescribes procedure for computation of the excess land. Under s.85(2), where a person owns or holds land in excess of the ceiling area such person shall within a period of three months from the date notified under s.83, file a statement before the Land Board intimating the location, extent and such other particulars as may be prescribed, of all the lands including lands exempted under s.81 owned or held by such person indicating the lands proposed to be surrendered. Admittedly, respondent Varkey Mathew did not file the statements and he died in 1973. The Special Tehsildar submitted his report regarding excess land owned by the deceased as on 1.1.1970 by his proceeding dated April 6, 1978. The Taluk Land Board passed an order on July 15, 1978 initiating

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- A the proceedings under s.85(7) against the respondents. On representation made by the respondents by proceedings dated September 26, 1981, the Board cancelled its earlier order finding that the earlier order was not legal. When it was questioned the High Court held that since the proceedings were not initiated against the owner before his death, no provision was made under the Act to initiate proceedings against the legal representatives.
- B Even amendment brought by s.85(6A) would not enable the appellant to proceed against the respondents and accordingly dismissed the revision. Thus this appeal by special leave.

- C Shri George, learned counsel appearing for the State, contended that once the person who owns the land is bound to file the statement under s.85(2) or 85(3A), his estate still continues to be in excess of the ceiling limit and the procedure prescribed under the Act is only for computation of the excess area. Then the persons in possession are liable to account for and therefore, notice was rightly issued to the successor-in-interest, namely,
- D the legal representatives or persons who holds the land or owns the land, as the case may be. In other words he contends that the computation is as against the estate of the deceased and therefore the successors-in-interest are liable to account for the excess land and computation thereof is done as per law.

- E Mr. P.K. Manohar, learned counsel appearing for the respondents contended that the word 'person' defined in Section 2(43) does not include the legal representatives or the successor in interest. The legislature having realised the lacuna amended and brought on statute Section 85(6A), which prohibits abatement of the pending proceedings. Therefore, the legal representatives who succeed the estate of the deceased as successors-in-interest
- F are not liable to be proceeded with under s.85(7) or 85(7A), as the case may be.

- G The question, therefore, is whether the successor-in-interest be it by intestate succession or testamentary or transfer *intra vivos*, are to be proceeded in computation of the excess land owned or held by a deceased, who in this appeal was Varkey Mathew. Section 85(2) admittedly enjoins the owner or holder of the land to file a statement within a period of three months from the date notified under s.83 and the amended statement as prescribed. Section 85(7) provides that where any person fails to file the
- H statement, the Land Board shall intimate the fact to the Taluk Land Board

and thereupon the Taluk Land Board shall, after necessary enquiries, determine the extent and other particulars of the land or lands which is or are to be surrendered. In other words, the statute prescribes liability on the person who owes or hold the land in excess of the ceiling limit and if such a person fails to file the statement in accordance with law, the Board is enjoined to proceed against such person.

So far there is no controversy. The controversy is whether the successor-in-interest, be it in any form known to law, is also liable to be proceeded to the extent of the land owned or held by the deceased person. Statute prescribed the ceiling limit and the excess land stands vested in the State. The computation and option retention of land of a specified area within the ceiling limit are merely procedural part. It is true that the legislature amended and introduced sub-s.(6A) of s.85 preventing abatement of pending proceedings and for continuation of determination of the excess land. The result of the same in that ownership or possession or both of which is or are to be surrendered by a deceased adult unmarried person or a family, the proceedings shall not abate on the death of that adult unmarried person or, as the case may be, the sole surviving member of that family, where it consists of only one person, or under s.85(A) in the case of any other family but shall be continued against the legal representatives of such adult unmarried person or sole surviving member or the remaining member or members of such family, as the case may be. Such legal representatives or remaining member or members shall be bound to surrender the same extent of land as if such adult unmarried person or sole surviving member or such family would been liable to surrender, if such adult unmarried person or sole surviving member or the person who filed such statement, as the case may be, were alive on the date of determination of the extent and other particulars of the land. It would thus be clear that what is laid down in Section 86(7) was made explicit by Section 85(6A) and that the consequences of abatement due to the death of the person was statutorily annihilated. In other words, if the estate was succeeded by any member of the family as envisaged thereunder, he/she would be liable to account for the excess land and proceedings could be continued for determination of the ceiling area and surrender of excess land or possessed or both, as the case may be, by the deceased person when such is the situation regarding the person who is liable to file the statement but died before proceedings were initiated, the person succeeds to the estate according to law and had the lands under him would not be in a better

A position than the person covered under pending proceedings envisaged under Section 85(6A).

We are, therefore, of the considered view that the persons who succeeds to the estate of the deceased and is found to be in possession or holds land in excess under colour of title or by illegal means would also be liable to be proceeded with under Section 85(7) in computation of the excess land owned or held by the deceased person.

The appeal is accordingly allowed. The order of High Court and Taluk Land Board are set aside. The matter is remitted to Taluk Board for computation of the excess land in accordance with law.

C.A. Nos. 12070 & 12071/95 (@ SLP (C) Nos. 13718 & 13981/89) and C.A. No. 4962/90

Leave granted.

D As these appeals contain question of law and facts common to the aforesaid appeal, these are disposed of in terms of the order in that appeal. No costs.

V.M.

Appeals allowed.