CHEERANTHOODIKA AHMED KUTTY AND ANR. A

v.

PARAMBUR MARIAKUTTY UMMA AND ORS.

FEBRUARY 8, 2000

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

Land Reforms :

Kerala Land Reforms Act, 1963 : Section 72-K—Party possessing land in excess of the ceiling limit—Directed by Taluk Land Board to surrender C *excess land—A certain part of land tenanted to someone—Certificate of Purchase issued by the Land Tribunal in that respect—Tenant gifted the said part of land to a mosque—Office-bearers of the mosque sought de-linking of the gifted part of land from the said excess land—Taluk Land Board refused to delink the said part of land—In revision, High Court refused to inter-* D *fere—On appeal, Held : High Court erred in upholding the order of Taluk Board—Certificate of Purchase was conclusive proof regarding assignment to tenant of right, title and interest of landowner—No evidence against conclusiveness of the certificate to be adduced except on the plea of fraud or collusion—No such plea raised in the instant case—Taluk Land Board and the High Court erroneously put burden of proof on the appellant to substan-* E *tiate the validity and correctness of the certificates.*

Evidence Act, 1872 : Section 4—Conclusive Proof—Provision for treatment of a particular fact to be conclusive proof in an enactment—No evidence allowed to be given for the purpose of disproving it except on the allegation of fraud or collusion. F

M, the deceased husband of Respondent No. 1 (brought on record subsequently after the death of her husband) was found to be holding 877.500 acres of land by the Taluk Board. The said land was determined to be beyond the ceiling limit, under the Kerala Land Reforms Act, 1963, G **by 788.72 acres. When M was directed to surrender the said excess land, the appellants (office bearers of a mosque) claimed that 6.82.500 acres of land had been leased out by M, much before the said Act. A Certificate of Purchase, under Section 72-K of the Act, was also issued by the Land Tribunal in this regard. Thereafter, it was claimed, that the said land was gifted to the mosque. The appellants, therefore, contended that the said** H

A area should be de-linked from M's account. The Taluk Board, ignoring the Certificate of Purchase, determined the excess land including the land claimed by the appellants. In revision, under Section 105 of the Act, High Court refused to interfere with the aforesaid finding of the Taluk Board on the ground that no material was produced to show existence of a tenancy prior to 1964.

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The appellant contended that the High Court has failed to take into account the legal implications of Section 72-K of the Act which rendered a Certificate of Purchase as conclusive proof of the assignment to the tenant of the right, title and interest of the landowner and the intermediaries, if any, over the holding or portion thereon to which the assignment relates.

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Allowing the appeals, this Court

HELD : 1.1. When Section 72-K of the Kerala Land Reforms Act, 1963 enjoined that any evidence would be treated as conclusive proof of certain factual position or legal hypothesis the law would forbid other evidence to be adduced for the purpose of contradicting or varying the aforesaid conclusiveness. Of course, the interdict that the court shall not allow evidence to be adduced for the purpose of disproving conclusiveness, will not prevent a party who alleges fraud or collusion from establishing that the document is vitiated by such factors. Except regarding the said limited sphere the conclusiveness of the document would remain beyond the reach of controvertibility. [729-B-D]

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Chettiam Veetil Ammad and Another v. *Taluk Land Board & Others*, AIR (1979) SC 1573, relied on.

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Halsbury's Laws of England Para 28, Vol. 17, IVth Edn., referred to.

1.2. In the present case no party has averred that the Certificates of Purchase were collusively obtained. In fact, even the authorised officer who was to make a report under Section 105-A of the Act mentioned in the report that the said areas were covered by certificates of purchase referred to above. It is pertinent to point out that the authorised officer did not even suggest that the certificate were procured collusively. Even the Taluk Land Board did not hold that the Certificates of Purchase were the products of any fraud or collusion. It was unnecessary for the High Court to have remarked that the certificates were procured collusively as nobody had alleged them to be

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so. In the absence of any material to doubt the correctness of the Certificates of Purchase, the Single Judge should have given due weight to those documents as law enjoins. At any rate the party who relied on the certificates had no burden to prove that the certificates were issued after due deliberations or that there was no fraud in issuing the same. The Taluk Land Board and the High Court had put the burden on the appellants to substantiate the validity and correctness of the certificates. The said approach was fallacious and hence unsupportable. [730-B-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3067 and 8475 of 1997.

From the Judgment and Order dated 16.8.96 of the Kerala High Court in C.R.P. No. 1649 of 1991.

T.L. Viswanatha Iyer, Ms. Purnima Prasad, Ms. Astha Tyagi, M.K.D. Namboodri and Subramonium Prasad for the Appellants.

K.M.K. Nair for the Respondent in C.A. No. 3067/97.

Ms. Malini Poduval and Lansing Rongmir for the Respondent in C.A. No. 8475/97.

The Judgment of the Court was delivered by

THOMAS, J. Though the appellants in these two appeals are two different persons it would be advantageous to dispose of these two appeals together by a common judgment, on account of a common factor involving in both cases.

When Kerala Land Reforms Act, 1963 came into force there was prohibition in holding land in excess of the ceiling limit fixed thereunder. Taluk Land Board is one of the authorities under the Act to fix the area of the land in possession of landholders. One Moosakutty Haji made a declaration of the various lands in his possession. (His widow is arrayed as respondent No. 1 in these appeals since Moosakutty Haji had died). The Taluk Land Board found that the said Haji had 877.500 acres of land and on its premise determined that the excess land in his possession (beyond the ceiling limit) was 788.72 acres. Moosakutty Haji was directed to surrender the said excess land.

A While so, the appellants in Civil Appeal No. 3067 of 1997 (the office bearers of Vallambram Juma Masjid) put-forth a claim that an area of 6.82.500 acres of land in Survey No. 629 of Wandoor Amsan was erroneously recorded as the land in the possession of the said Moosakutty Haji. According to the appellants, the said land was leased by the land-owner to other persons long before the commencement of the Act and in B 1984 the Land Tribunal, Wandoor had granted Certificate of Purchase as per Section 72-K of the Act to the tenants thereof. The tenants have gifted the said land to the aforementioned Juma Masjid as per registered documents executed in 1986. Appellants, therefore, contended that the said area should be de-linked from the account of Moosakutty Haji.

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A similar claim was made by the appellants in CA No. 8475 of 1997 on the following facts :

An area of 1.5 acres in Survey No. 357/1 was outstanding on lease with two persons (Krishnan and Achuthan) long before the commencement D of the Act and those person assigned their rights in favour of the appellants. The Land Tribunal issued a Certificate of Purchase in *suo motu* proceedings No. 88/97. Thus the aforesaid 1.5 acres of land could not have been included in the account of Moosakutty Haji, according to the appellant.

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It seems the Taluk Board ignored the Certificate of Purchase and counted the aforesaid area of land in the account of Moosakutty Haji and then determined the excess land surrenderable by him. The High Court in revision petition filed by the appellants under Section 105 of the Act did not interfere with the aforesaid finding of the Taluk Land Board. Learned F Single Judge of the High Court had observed thus :

> "In the absence of any material to show any tenancy prior to 1.4.1964 the Taluk Land Board was right in not acting on the Certificate of Purchase issued by the Land Tribunal. Under the G circumstances it could not be treated as conclusive. Even otherwise it was not accurate on its face."

Similar observations were made about the claim put forward by the appellant in the other appeals also. Ultimately the appellants did not succeed in their claims and hence they have challenged the order of the H High Court in these appeals filed by special leave.

A Shri T.L. Vishwanatha Iyer, learned senior counsel for the appellant contended that learned Single Judge of the High Court has not taken into account the legal implications of Section 72-K of the Act which rendered a Certificate of Purchase as "conclusive proof of the assignment to the tenant of the right, title and interest of the landowner and the intermediaries, if any, over the holding or the portion thereon to which the B assignment relates."

When the enactment enjoined that any evidence would be treated as conclusive proof of certain factual position or legal hypothesis the law would forbid other evidence to be adduced for the purpose of contradicting or varying the aforesaid conclusiveness. This is the principle embodied in C Section 4 of the Evidence Act, when it defined "conclusive proof".

> "*Conclusive proof.* - When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of that one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it." D

Of course, the interdict that the court shall not allow evidence to be adduced for the purpose of disproving the conclusiveness will not prevent a party who alleges fraud or collusion from establishing that the document is vitiated by such factors. Except regarding the said limited sphere the E conclusiveness of the document would remain beyond the reach of controvertibility.

In this context a reference can be made to *Chettiam Veettil Ammad and Another* v. *Taluk Land Board and Others*, AIR (1979) SC 1573 where a two Judge Bench of this Court has observed that "if a certificate of F purchase is issued by the Land Tribunal to any such person and he tenders it in proceedings before the Taluk Land Board, the Board is required by law to treat it as conclusive proof of the fact that right, title and interest of the landowner (and intermediary) over the land mentioned in it has been assigned to him. It is however not the requirement of the law that the G certificate of purchase shall be conclusive proof of the surplus or other land held by its holder so as to foreclose the decision of the Taluk Land Board."

Learned Judges then stated that by using the expression "conclusive proof" it only means that no contrary evidence shall be effective to displace H

A it, unless so-called conclusive proof is inaccurate on its face or fraud can be shown. After referring to Halsbury's Laws of England (para 28, Vol. 17 of 4th edn.) it was further observed that "it will not therefore be permissible for the Board to disregard the evidentiary value of the certificate of purchase merely on the ground that it has not been issued on a proper appreciation or consideration of the evidence on record or that the B Tribunal's findings suffers from any procedural error."

In the present case no party has averred that Certificates of Purchase were collusively obtained. In fact, even the authorised officer who was to make a report under Section 105-A of the Act mentioned in the report that C the said areas were covered by certificates of purchase referred to above. It is pertinent to point out that the authorised officer did not even suggest that the certificates were procured collusively. Even the Taluk Land Board did not hold that the certificates of purchase were the product of any fraud or collusion. It was unnecessary for the High Court to have remarked that the certificates were procured collusively as nobody had alleged them to D be so.

The Taluk Land Board appears to have sidelined those two legally formidable conclusive proof while considering the claims put forward by the appellants. In the absence of any material to doubt the correctness of E the Certificates of Purchase learned Single Judge should have given due weight to those documents as law enjoins. At any rate the party who relied on the certificates had no burden to prove that the certificates were issued after due deliberations or that there was no collusion or fraud in issuing the same. The Taluk Land Board and the High Court had put the burden on the appellants to substantiate the validity and correctness of the certifi-F cates. The said approach is fallacious and hence unsupportable.

In the result, we allow these appeals and uphold the claim of the appellants in regard to lands for which the claims were made.

R.C.K. Appeal allowed.