NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4499-4501 OF 2010

STATE OF KARNATAKA ...APPELLANT

VERSUS

Y. MOIDEEN KUNHI (D) BY LRS. & ORS. ...RESPONDENTS

J U D G M E N T

ANIRUDDHA BOSE, J.

The State of Karnataka is in appeal before us primarily assailing a common judgment of the High Court of Karnataka delivered on 7th November, 1990 confirming a decision of the Tribunal under the Karnataka Land Reforms Act, 1961 treating a large part of an estate held by the respondents as plantation land. The effect of such treatment would be that such land under plantation would be exempted from the restrictions on holding imposed under that statute. Such exceptions have been laid down under the provisions of Section 104 of the said

Act. The dispute involved in this appeal originated from a declaration filed by three individuals, being Y. Moideen Kunhi (in some documents referred to as Noideen Kunhi), Y. Mohammed Kunhi and Y. Abdulla Kunhi under Section 66(4) of the said Act on 5th December, 1975. As would be evident from the copy of a sale deed made annexure "P-I" to the Special Leave Petition, the subject land was purchased by Y. Mohideen Kunhi and Company, a registered partnership firm by the said deed registered on 24th January, 1957 for a consideration of Rs. 2,75,000/-. From this deed, it appears that the property was known as "NERIYA CARDAMOMS ESTATE". The particulars of such land and its user status would appear from the schedule to the said deed. The relevant extract thereof we are reproducing below:-

"THE TOTAL ACREAGE IN THE ABOVE SCHEDULE:

PRICE (RS.)

1.	Cardamom Planted area	50.89 acres	25,000-00
2.	Coffee area inter-planted with orange-young-not yield about	30.00 acres	10,000-00
3.	Paddy Punam Cultivation (Kumri)	462.00 acres	20,000-00

			55,000-00
4.	Buildings:- The residential Buildings-tiled One Smoke house-tiled One set coolly line-tiled Shed and Wall Masonary		20,000-00
5.	Forest Area; Consisting of partially cleared and un cleared area	3485.83 acres	Rs.2,75,000-00”

(quoted verbatim)

2. The declaration under Section 66 of the Act was made by the aforesaid three individuals before the Tahsildar (Land Reforms), Belthangady Taluk. The declaration referred to properties situated in different Taluks, including the estate in Neria village, Belthangady Taluk in South Kanara district. In the “Remarks” column of the declaration, there was disclosure to the effect that though the subject-lands were classified as “dry”, the same were being used for plantation purpose. The Land Tribunal at Belthangady considered a spot inspection report dated 25.8.1982 carried out by the Special Tahsildar, which found that out of the whole estate, Cardamom plantation was covering 2500 acres, rubber plantation covered 220 acres and 100 acres was covered by coco. The declarants had claimed exemption of 635.60

acres of land, as Rocks and hill slope, Road, streams and river, buildings and area not covered by plantations. This inspection was followed by another spot inspection by the Land Tribunal at Belthangady carried out on 10th September 1982 before the Tribunal gave its decision. A copy of this report has been made annexure "P-5" to the special leave petition. This report records that 2500 acres of land was covered by cardamom cultivation and 100 acres of land was covered by rubber cultivation, so far as plantation lands were concerned. A revised order bearing No. LRY 167/74-75 was issued on 16th September 1982 to the following effect:-

> "The declaration filed by the declarents, the sketch of the surveyor, the spot inspection report of Land Tribunal Secretary and available other relevant records have been perused. The Chairman and the members of the Tribunal after conducting spot inspection opined that the declarents after exempting are holding 530.16 acres of D class agricultural land and as per their eligibility 162 acres of D class land is to be in their possession and remaining 368.16 acres of D class land or its equivalent land are ordered as surplus land under section 67(1) of Karnataka Land Reforms Act, and to surrender the Same to Govt. under Section 67(2). The special Tahsildar to take further action in the matter. The decision of the Tribunal is unanimous."
>
> (quoted verbatim)

3. Learned counsel for the appellant has brought to our notice another order of the Land Tribunal, Madikeri (annexure "P3") in which declarations were filed under Section 66 (in form no. 11) by the wives of the said three individuals along with certain other persons. There is reference in this order, dated 24th August 1982, to the pending declaration before the Tribunal at Belthangady.

4. There was a review of the said order of the Land Tribunal at Belthangady passed on 16th September 1982. In the review order dated 10th November, 1982 majority of the members confirmed the earlier order, with the Chairman of the Tribunal giving dissenting note. The said order is reproduced below:-

> "In the above case the Land Tribunal Belthangady after examining the declarations filed by Sri Y. Mohiyuddeen Kunhi, Y. Mohammed Kunhi and Y. Abdul Kunhi under Sec. 66 of KLR Act ordered that declarants were eligible to hold only 62.00 acres of D Class land and remaining 368.16 acres of land were declared excess land under sec.67(1) of KLR Act on 27.9.82. In the later stage it has come to the notice of the concerned authorities that Land Tribunal erred while considering the case. The Land Tribunal committed mistakes misconceiving the facts while issuing judgment on 27-9-82. Hence in order to rectify the errors, this case was re-examined under section 122 'A' of KLR Act. The declarents have

been given opportunities and finally examined on 10-11-1983.

Sri Y.Abdul Kunhi, one of the declarnats, has appeared before the Land Tribunal and given written statement. He has also given explanations to series of queries raised by Land Tribunal. He has explained that land purchased on 24-1-57 by M/s. Y.M.K. & Co. is entirely plantation land. The declarents failed to prove that land purchased by the company is plantation land. Hence arguments of the declarents that declarents may be exempted under Sec.104 of KLR Act and Sec. 66 not applicable is unjustifiable. It is also of the opinion that the case attracts Sec.66 and to be dealt by Deputy Commissioner under sec. 79 B of KLR Act. Hence

Majority Judgment

The orders of Land Tribunal dated 16-9-82 and 27-9-82 is as per law. Before issuing this order Land Tribunal examined the witnesses and inspected the land in question. During inspection of land it is noticed by Land Tribunal that land belonging to declarants are covered by plantation crop like Rubber and coco. Extent of land used for road, road margin, river streams and buildings are excluded while determining excess land. Ultimately after considering all these factors 368.16 acres of land found excess. The declarants have given entire information of the land in their declaration. They have not given false information or hide any reality.

This case to be dealt under section 104 of KLR Act and hence sec.79B is not applicable. The Land Tribunal has got authority to review and reconsider the case only in such cases wherein declarants have given incomplete and false information in their declaration. But here declarants have given correct information about land in question. Hence in this

majority judgment we resolve that for no reason this case shall be reviewed.

This judgment is pronounced in this open court on 10.11.1982 under sec.122A of KLR Act.

Sd/-

Sd/-

Sd/-

Sd/-

Chairmans' Minority Judgement

The declarants represents a partnership firm. Hence these case cannot be considered under sec.66 of KLR Act. Their declarations are to be examined by Deputy Commissioner under section 79B of KLR Act. As explained in the preamble, Land Tribunal misconceived the facts and misled by the incomplete information given by the declarants. Hence it is right to review, Land Tribunal's orders dated 27-9-82 under Section 122A of KLR Act. It is hereby ordered to submit this case to Deputy Commissioner."

(quoted verbatim)

5. The State's contentions are that the estate having been purchased by a firm and a large portion of the estate being forest land, declaration under Section 66 of the Act was not the proper course to be followed for ascertaining the position of the land vis-à-vis the ceiling limit as contemplated under the 1961 Act. The stand of the State is that the

status of such land should have been dealt with in terms of the provisions of Sections 79A and 79-B of the 1961 Act. Both the State and the estate owners, who are represented before us approached the High Court of Karnataka invoking its constitutional writ jurisdiction seeking invalidation of the Tribunal's order or part thereof.

6. The case of the State of Karnataka was registered as Writ Petition (C) No.10920 of 1983 whereas the declarants' writ petition was registered as Writ Petition No. 40425 of 1982. The declarants' case was that they were in possession and enjoyment of a total extent of 4040 acres and 95 cents and if out of that total land, deduction was permitted in respect of area covered under plantation, land under tenants with occupancy right and interspersed land, their holding would be within the ceiling limit. The State's argument has been summarised in paragraph 4 of the judgment of the Karnataka High Court delivered on 7th November, 1990. By this judgment, both the writ petitions had been dealt with. The said passage from that judgment reads -

> "4. Likewise the State aggrieved by the order of the Tribunal at Annexure-B filed Writ Petition no.10920 of 1983 contending that the Tribunal was not right in placing reliance on the report of the Secretary to the

> Tribunal to arrive at the actual holdings of the declarants. Secondly, in all fairness the Tribunal should have served a notice on the Government before taking the decision on the total holdings of the declarants. Thirdly, the Tribunal erred in not taking into consideration that the petitioners are not entitled to claim separate 10 units each on the date of filing their declaration as they were the partners of the firm. Further, the Tribunal erred in not taking into consideration that the firm as such is not entitled to hold any land as under Section 79-A of the Land Reforms Act, there is a prohibition. The learned High Court Government Pleader also contended that the Tribunal erred in incorrectly excluding the land alleged to have been covered under the planation without giving an opportunity to the State to find out whether the lands are covered under the planation or otherwise. For these reasons, the State also submits that the order of the Tribunal may be quashed."
>
> (quoted verbatim)

7. The High Court found the State's case to be without any merit. The reason for this, as observed in the judgment under appeal, was that correct classification was made by the Tribunal on the basis of the report submitted by the Secretary/Tahsildar who was a responsible officer for the State.

8. As regards contention of the State that the provisions of Section 79-B of the 1961 Act would be applicable, it was negated by the High Court with the following reasoning:-

> "……the next contention that in view of section 79-B of the Act the declarants are not entitled to hold any land is also incorrect. They claimed the lands not as partners, but in their personal capacity….."
>
> (quoted verbatim)

Further observation of the High Court was that in proceeding under Article 226 of the Constitution, the Court was not to investigate into disputed question of facts. The writ petition of the declarants was dismissed as withdrawn and the State's writ petition was dismissed.

9. The State took out a petition for review of the said judgment in the year 2004. Before the Review Court, the State had stressed on applicability of Section 79-B of the 1961 Act but this plea was rejected by the Review Court. It was held by the Review Court that definition of land under Section 2(18) of the Act included forest land and plantation land. Referring to Section 104 of the Act, the Review Court observed:-

> "Section 2(18) of the Act defines the word "land". The said definition is comprehensive definition. The "land" includes forest land and plantation land. It is clear from provisions of Section 79-A and 79-B and Section 80 shall not apply to plantation lands. The explanation to Section 104 of the Act further denotes that the plantation means the land used by a person principally for the cultivation of plantation crop or for

> any purpose ancillary to the cultivation of such crop or preparation of the same for the market, and agricultural land interspersed with the boundaries of the area cultivated with such crop. Thus, it is not mandatory for the holder of the plantation lands to file application under Section 79-B of the Act, though the purchaser of the lands is a firm or company."
>
> (quoted verbatim)

10. There are, in fact, three appals by the State of Karnataka. In two appeals, common judgment of the Single Judge of the Karnataka High Court delivered on 7th November 1990 dismissing both the writ petitions are assailed. The judgment of the High Court delivered in the Review Petition on 26th September, 2007 has also been challenged before us in the third appeal. Before the Review Court, plea of fraud on the part on the declarants and also the Tahsildar was asserted by the State. This plea was rejected by the Review Court and the Review Court came to the conclusion that finding of fact was given by the final fact-finding authority, being the Tribunal, and there was no scope of further interference by the writ court. From the judgment of the Review Court, we find that point was taken by the State that the estate was purchased by a firm but declaration of holding under Section 66 was given by three individuals. But the Review Court did not find any flaw

in such exercise being undertaken by the individual declarants. On the other hand, the declaration filed under Section 66 of the 1961 Act was found to be valid for the reason that it was not the firm who had filed the declaration but three persons in their individual capacity.

11. For proper appreciation of the controversy involved in this appeal, it would be necessary to refer to the following provisions of the 1961 Act:-

(a) "**2(18).** "land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non-agricultural purposes;

x x x

66. Filing of declaration of holding.- (1) (a) Every person who on the date of commencement of the Amendment Act holds,—

(i) ten acres or more of lands having facilities for irrigation from a source of water belonging to the State Government; or

(ii) twenty acres or more of lands on which paddy crop can be grown with the help of rain water; or

(iii) forty acres or more of lands classified as dry but not having any irrigation facilities from a source of water belonging to the State Government,

shall on or before the 31st day of December 1974];

(b) every person who acquires land in excess of the extent specified in clause (a) in any manner referred to in section 64; and

(c) every person whose land is deemed to be in excess of the ceiling area under section 65-A,

shall, within the prescribed period, furnish a declaration to the Tahsildar within whose jurisdiction the holding of such person or the greater part thereof is situated containing the following particulars, namely:—

(i) particulars of all the lands;

(ii) particulars of the members of the family; and

(iii) such other particulars as may be prescribed.

(1-A) Where a person holds different categories of land mentioned in clause (a) of sub-section (1), the total extent of lands held by such person shall, for purposes of this section, be determined by converting all categories of land into any one category in accordance with the following formula, namely:—

One acre of land referred to in category (i) = two acres of land referred to in category (ii) = four acres of land referred to in category (iii).

(2) Without prejudice to the provisions of sub-section (1), the Tahsildar shall have power to issue notice requiring any person who he has reason to believe, holds land, or resides within his jurisdiction to furnish to him a declaration of all lands held by him within such period as may be specified in the notice (not being less than thirty days from the date of service of the notice), and it shall be the duty of such person to furnish the declaration.

(3) Every declaration furnished under sub-section (1) or sub-section (2), shall be in the prescribed form; and the person furnishing the declaration shall be entitled to obtain a receipt therefor.

(4) Notwithstanding anything contained in sub-section (1), every person who had held on or after 18th November 1961 and before the commencement of the Amendment Act,—

(a) ten acres or more of lands having facilities for irrigation from a source of water belonging to the State Government; or

(b) twenty acres or more of lands on which paddy crop can be grown with the help of rain water; or

(c) forty acres or more of lands other than those specified in clauses (a) and (b),

shall in respect of the land so held by him also furnish a declaration within one hundred and eighty days from the eleventh day of September 1975 to the Tahsildar within whose jurisdiction the holding of such person or a greater part thereof is or was situated containing the following particulars, namely,—

(i) particulars of the land;

(ii) particulars of the members of his family;

(iii) particulars of lands transferred or disposed of in any manner prior to 24th January 1971 and subsequent to that date;

(iv) particulars of the persons to whom lands if any, have been transferred or disposed of;

(v) such other particulars as may be prescribed.

(5) The provisions of sub-sections (1A), (2) and (3) shall *mutatis mutandis* apply to the declarations to be furnished under sub-section (4).

x x x x x x

(b) The Karnataka Land Reforms Act underwent certain amendments by the Karnataka Act 1 of 1974 Sections 79-A and 79-B were introduced. The restrictions under Section 79-A were primarily based on family income criteria whereas under Section 79-B of the Act, it was on the basis of extent of holding. These provisions contained in Chapter V of the Act imposed restrictions on acquisition and holding of land by certain persons. Section 79-A (1) specifically prohibited person or family or a joint family with specified amount of annual income from sources other than agricultural lands from acquiring any land as land owner, landlord, tenant or mortgagee with possession or otherwise or partly in one capacity and partly in another.

For the purpose of sub-section (1) of Section 79-A, the aggregate income of all the members of a family or a joint family from sources other than agricultural lands is to be deemed to be income of the family or joint family, as the case may be from such source. Methodology for computation of aggregate income is based on average annual income of such person or family from such source.

As we have already referred to, Section 79-B deals with prohibition of holding agricultural land by certain persons beyond a specified limit. Sub-clause (1) (a) provides that no person other than a person cultivating land personally shall be entitled to hold land. The said section further provides:-

(b) it shall not be lawful for,-

(i) an educational, religious or charitable institution or society or trust, other than an institution or society or trust referred to in sub-section (7) of section 63, capable of holding property;

(ii) a company;

(iii) an association or other body of individuals not being a joint family, whether incorporated or not; or

(iv) a co-operative society other than a co-operative farm,

to hold any land.

(2) Every such institution, society, trust, company, association, body or co-operative society,—

(a) which holds lands on the date of commencement of the Amendment Act and which is disentitled to

hold lands under sub-section (1), shall, within ninety days from the said date, furnish to the Tahsildar within whose jurisdiction the greater part of such land is situated a declaration containing the particulars of such land and such other particulars as may prescribed; and

(b) which acquires such land after the said date shall also furnish a similar declaration within the prescribed period.

(3) The Tahsildar shall, on receipt of the declaration under sub-section (2) and after such enquiry as may be prescribed, send a statement containing the prescribed particulars relating to such land to the Deputy Commissioner who shall, by notification, declare that such land shall vest in the State Government free from all encumbrances and take possession thereof in the prescribed manner.

(4) In respect of the land vesting in the State Government under this section an amount as specified in section 72 shall be paid.

Explanation.—For purposes of this section it shall be presumed that a land is held by an institution, trust, company, association or body where it is held by an individual on its behalf.

x x x x x

104. **Plantations.**— The provisions of section 38, section 63 other than sub-section (9) thereof, sections 64, 79-A, 79-B and 80, shall not apply to plantations.

Explanation.—In this section 'Plantation' means land used by a person principally for the cultivation of plantation crop and includes,—

(i) any land used by such person for any purpose ancillary to the cultivation of such crop or for preparation of the same for the market; and

(ii) agricultural land interspersed within the boundaries of the area cultivated with such crop by such person,

not exceeding such extent as may be determined by the prescribed authority as necessary for the protection and efficient management of such cultivation."

12. On construction of different provisions of the 1961 Act, we find that in the event the Tribunal's finding is correct that the major part of the land which the declarants have claimed to be plantation fits that description, then the prohibition imposed on holding of land by entities referred to in Sub-section 1 of Section 79-B would not apply, having regard to the provisions of Section 104 of the Act. But there is a factor which has not been clarified before us in course of hearing, which in our opinion would have had material impact on the rival claims. As per the deed of sale, the partnership firm had obtained forest area of 3485.83 acres. In the event this area is not held to be under plantation, then the land which has been found by the Tribunal to be beyond ceiling limit would be much beyond than what has been computed. Another

issue which also appears to have not had been considered by the Tribunal and also the High Court is that the estate was originally purchased by registered firm. It has not been explained by the declarants as to how the estate of the firm devolved upon its partners. No legal instrument has been brought to our notice through which property of the firm became the partners' individual property. This issue is of significance because under Section 79(1)(b)(iii), there is prohibition on an association or other body of individuals not being a joint family, whether incorporated or not in holding land. The latter factor, however, would assume importance in the event the land claimed to be under plantation is found to be incorrect as originally major part of the estate was forest land. But to determine this question, we do not think proper examination of factual situation had been undertaken. On this aspect of the dispute, State's plea is that the spot inspection took place in a single day and having regard to the area involved, such an exercise was impossible. If this contention is examined in isolation, we would have had accepted the view of the High Court that at this stage there ought not to be any factual enquiry. But considering the fact that land purchased included large tract of forest

land, we are of the view that the scrutiny on the part of the authorities in the case of the declarants' land was inadequate. This is one of the main grounds on which the present appeal is founded. There is reference to a Writ Petition in the paper book filed by the original declarants with prayer for felling of trees on the subject-land. The petition was registered as Writ Petition No.42774 of 1982. In that proceeding an interim order was passed permitting felling of trees by the petitioners as per a list subject to the provisions of the Karnataka Preservation of Trees Act, 1976. After obtaining the interim order permitting such felling of trees, however, the writ petition was dismissed as not pressed at the instance of the declarants by an order passed on 7th November, 1990. The said writ petition was dismissed as withdrawn after obtaining interim order, we do not think that the result of that writ petition would have any bearing on the present appeal. In our opinion, neither the High Court nor the Tribunal has considered these important aspects of the subject controversy. Without determining how forest land shown in the sale deed got transformed into plantation land in the declaration, the decision on ceiling limit could not be taken. We accordingly set aside the judgments of the High Court in the Writ

Petition No.10920 of 1983 and also judgment of the Review Court in Review Petition No.817 of 2004. We do not consider it necessary to independently express our opinion in the appeal arising out of W.P. No.40425/1982 as our opinion expressed in this judgment delivered in the other two appeals cover that decision as well. The Tribunal's orders in original and review, being LRY 167/74-75 dated 16th September, 1982 and LRY 167/74-75 dated 10th November, 1982 also are quashed. We direct the Tahsildar to undertake fresh proceeding on the basis of the declaration filed under Section 66 of the 1976 Act by the predecessors of the respondents. It shall be open to the authorities undertaking such proceeding to examine as to whether declaration under Section 66 of the Act was proper course or not for determining the issues in dispute, including the question of vesting of the land or part thereof in the State. As substantial time has lapsed, we direct the proceeding under the applicable provisions of the said Act to be completed in accordance with law within a period of sixteen weeks.

13. The appeals stand allowed in the above terms.

14. Interim order, if any, shall stand dissolved. All other applications shall stand disposed of.

15. There shall be no order as to costs.

…..…….J.
(Deepak Gupta)

……..…….J.
(Aniruddha Bose)

New Delhi,
April 27, 2020.