

STATE OF KERALA

v.

K. MOIDEENKUTTY AND ORS.

MARCH 11, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Kerala Land Reforms Act, 1961 :*

*Taluk Land Board—Power to review order passed by it—Order passed declaring respondent to be in possession of excess land—Order attaining finality—Second order passed by Taluk Board holding that part of land was in occupation of tenants and remaining land was private forest land and therefore declarant was not in possession of excess land—Part of land held private forest on the ground that Settlement Officer had not taken possession of the land—Second order upheld in revision by High Court—Appeal—Held view taken by Court was not sustainable—High Court ignored the issue that Taluk Board has not considered the relevant factual matters—Taluk Board was wrong in going behind first order and stating in second order that declarant was not in possession of excess land—Failure to take possession of excess land is one facet and declaration of said land as private forest is another—Failure to take possession of land does not ipso facto establish that lands are private forest lands—Orders of High Court and Taluk Board set aside—Matter remitted for fresh examination.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4737 of 1996.

From the Judgment and Order dated 27.10.92 of the Kerala High Court in C.R.P. No. 1399 of 1987.

M.T. Geogre for the Appellant.

K. Sukumaran and N. Sudhakaran for the Respondents.

The following Order of the Court was delivered :

We have heard learned counsel on both sides.

Leave granted.

This appeal by special leave arises from the order of the High Court of Kerala at Ernakulam made on October 27, 1992 in CRP No. 1399/87. The admitted facts are that K. Moideenkutty, the declarant under the Kerala Land Reforms Act, 1961 was found to be in possession of 3171.53 acres of excess land in Thiruvampadi village. This finding came to be recorded by the Taluk Land Board, Kozhikode in its order dated March 29, 1985 under the Act. That order became final. Subsequently, the Taluk Land Board reopened the matter and by order dated August 5, 1986 found that the 877 tenants were in occupation of an extent of 1726.90 acres of land and that 1444.63 acres was a private forest. Consequently, K. Moideenkutty was not in excess of the land. That order dated August 8, 1986 came to be challenged in the revision. The learned single Judge dismissed the revision upholding the order of the second order passed by the Taluk Land Board. Thus, this appeal by special leave.

We think that the view of the High Court is wholly illegal and cannot be sustained. From the order of the Taluk Land Board it is not clear as to what extent of the lands was in possession of each tenant and whether it was prior to the Act came into force or was any purchase certificate given to them etc. All the details were kept delightfully vague by the Taluk Land Board. The High Court had not looked at this aspect of the matter and chose to confirm the order. Further 1444.63 acres of said land were found to be private forest with the finding that the settlement officer had not taken possession of the land. This finding also is wholly illegal. It was open to the declarant K. Moideenkutty to challenge the original order passed by the Taluk Land Board on March 29, 1985 declaring that he was in excess of the land; but he did not challenge the order. Was it right for the Taluk Land Board to go behind that order and declare that the declarant was not in excess of the land for the reason that possession of the land measuring 1444.63 acres was not taken and so it is of private forest. Failure to take possession of excess land is one facet and declaration of the said land as private forest is another. Failure to take possession of the land does not *ipso facto* establish that the lands are private forest lands. It was open to the owner to challenge it but was not done. Unfortunately, the High Court also had not gone into this aspect nor examined that aspect from the purview of the Land Reforms Act. The orders of the High Court and the Taluk Land Board are set aside. The matter is remitted to the High Court to the extent of land covered by the land said to be in possession of 877 tenants. The High Court is requested to call upon Taluk Land Board

to issue notice to all the so-called tenants and the appellant and after giving reasonable opportunity to them determine as to who are said to be tenants in possession of the land and to what extent and when they came into possession etc. The Taluk Land Board should give opportunity to the appellant to rebut the evidence adduced by the so-called tenants and transmit the recorded facts to High Court. The High Court would thereafter examine the matter afresh and then decide the question according to law.

The appeal is accordingly allowed. No costs. Mr. K. Sukumaran, the learned senior counsel has stated that his clients have been given purchase certificate by the Taluk Land Board. It would be open to them to place the same before the High Court and the High Court is requested to dispose of it according to law.

Appeal allowed.