

\$*

C.A.No. 4963 OF 1998

ITEM No.106

Court No. 9

SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 4963 of 1998

STATE OF KERALA Appellant (s)

VERSUS

P.M. ABRAHAM Respondent (s)

(With office report)

Date : 29/01/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s) Mr. John Mathew, Adv.
Mr. K.R. Sasiprabhu, Adv.
for Mr. G. Prakash, Adv.

For Respondent (s) Mr. M.T. George, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties from 12.15 p.m. to 12.25 p.m.

The civil appeal is disposed of.

No costs.

[T.I. Rajput] [Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4963 OF 1998

State of Kerala

...Appellant(s)

Versus

P.M. Abraham . . . Respondent(s)

O R D E R

The order made by the High Court in a revision petition filed by the State challenging the correctness and validity of the order made by the Taluk Land Board [for short, 'the Board'] is impugned in this appeal. The total holding of the respondent was 272.22 acres of land, out of which an area to the extent of 214.22 acres of land was exempted as plantation under Section 81 of the Kerala Land Reforms Act, 1963 [for brevity, 'the Act']; three acres of land was exempted on account of buildings and roads; 15.60 acres of land was exempted on account of swamps, waste and rocky land; and an extent of 20.40 acres of land was sold in public auction for realisation of arrears of the employees provident fund and the same was exempted on that account by the Board. The High Court, by the impugned order, concurred with the finding recorded by the Board and in that view, dismissed the revision petition filed by the State.

...2/-

- 2 -

Before us, the learned counsel for the State contended that the Board as well as the High Court committed a serious error in holding that an area of 20.40 acres of land sold for realisation of arrears of the employees provident fund and an area of 15.60 acres of land, being swamps, waste and rocky land, were exempted. The learned counsel also urged that the Board, on an earlier occasion as early as on 2nd December, 1977, had held an area of 55.37 acres of land as surplus land and the respondent had to surrender the same; almost after eighteen years, i.e., 12th October, 1995, the Board set aside the order dated 2nd December, 1977 and concluded that the respondent had no surplus land to surrender. According to the learned counsel, the two items of land, mentioned above, could not be exempted under the provisions of the Act. The learned counsel for the respondent made submissions supporting the impugned order. He argued that an area of 20.40 acres of land sold in public auction for realisation of arrears of the employees provident fund, that too prior to 1st January, 1970, could not be included in the holding of the respondent; and an area of 15.60 acres of land, although swamps, waste and rocky land, was part of the plantation area. Hence, the impugned order is quite justified.

We have heard the learned counsel and considered these submissions. Looking to Section 81 of the Act, it is clear that the two items of land, mentioned above, could not be categorised as exempted lands. However, the land comprising 20.40 acres sold in public auction for realisation of arrears of the employees provident fund could

...3/-

- 3 -

not be included in the holding of the respondent for considering the surplus area in his possession. As far as 15.60 acres of land, being swamps, waste and rocky land, is concerned, the Board and the High Court have proceeded that such an area could be exempted. Looking to the provisions of the Act, it is clear that swamps, waste and rocky land does not come under the provisions of the exempted land. The argument of the learned counsel for the respondent that it could be treated as a part of plantation cannot be accepted as there is no foundation for the same. This apart, the Board as well as the High Court have proceeded on the ground that this land is exempted. As already stated above, the exemption could not be claimed in respect of the said land.

Under the circumstances, the appeal is entitled to succeed in part. The impugned order, insofar as it relates to an area of 15.60 acres of land, being swamps, waste and rocky, for which exemption is granted, is set aside. We hold that an area of 15.60 acres of land is to be counted in the holding of the respondent and to that extent, that area becomes the surplus land in the hands of the respondent. In all other respects, the impugned order remains undisturbed. The civil appeal is, accordingly, disposed of in the above terms.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.

[D.M. DHARMADHIKARI]
New Delhi,
January 29, 2004.