PETITIONER:
CHEERANTHOODIKA AHMMEDKUTTY AND ANR.

Vs.

RESPONDENT:
PARAMBUR MARIAKUTTY UMMA AND OTHERS

DATE OF JUDGMENT: 08/02/2000

BENCH:
K.T. Thomas & D.P. Mohapatra

JUDGMENT:

Appeal (civil) 3067 of

Thomas J.
L...I...T.....T.....T.....T.....T.....T.....T..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 it 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.

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 t he said Moosakutty Haji. According to the appellants, the said land was leased by the landowner to other persons long before the commencement of the Act and in 1984 the Land Tribunal, Wandoor had granted Certificate of Purchase as per Section 72-K of t e 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.

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 of the Act and those persons 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.

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 u nder Section 105 of the Act did not interfere with the aforesaid finding of the Taluk Land Board. Learned single judge of the High Court 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 circumstances it could not be treated as conclusive. Even otherwise has observed thus: "In the absence of any material to show 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 High Court in these appeals filed by special leave.

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 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 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,"

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. Exc ept regarding the said limited sphere the 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 Vs. Taluk Land Board and others (AIR 1979 SC 1573) where a two Judge Bench of this Court has observed that "if a certificate of purchase is issued by the Land Tribunal to any s uch 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 the right, title and interest of the landowner (and intermediary) over the land mentioned in it has bee assigned to him. It is however not the requirement of the law that the 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 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 n a proper appreciation or consideration of the evidence on record or that the Tribunal's findings suffers from any procedural error."

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 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 t certificates of purchase referred to above. It is e 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 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 the Certificates of Purchase learned sing le 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 iss ing 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 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.