

PETITIONER:

P.K. ABRAHAM THARAKAN (D) THROUGH LRS.

Vs.

RESPONDENT:

STATE OF KERALA & ORS.

DATE OF JUDGMENT: 25/04/2000

BENCH:

S.N.Phukan, S.N.Variava

JUDGMENT:

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J U D G M E N T

S. N. Variava, J.

This Appeal is against the Judgment dated 5th March, 1997 passed by the High Court of Kerala.

Briefly stated the facts are as follows: The present Appellants are the legal heirs of one Mr. Ouseph Joseph (since deceased). The said Ouseph Joseph had a family consisting of himself, his wife and four major sons. The said Ouseph Joseph had made a declaration under the Kerala Land Reforms Act claiming exemption from the ceiling limits on the ground that his lands fell in a rubber plantation and were, therefore, exempted from the ceiling limits. The total exemption claimed on the basis of it being rubber plantation was an area of approximately 95.24 acres. He had also claimed exemption for approximately 3.05 acres as land ancillary to the cultivation of the rubber plantation. This was the land on which there were structures like rubber nursery, quarters of Superintendents, smoke house, Office building, rolling shed etc.

The total area held by the said Ouseph Joseph and his family was an area of 122.35 acres. As there were six members in the family, the share of each member was 20.39 acres. It must be mentioned that in the total area of 122.35 acres there was an area of dry land of approximately 24.30 acres. Each of the sons claimed, before the Taluk Land Board, that their area of 20.39 acres each was totally exempted from ceiling as it was an old rubber plantation. In respect of the claims of the four sons, by separate Orders, the Taluk Land Board upheld the claims of the sons and exempted an area of 20.39 acres for each son on the basis that it was a rubber plantation. We are informed that Revision Applications filed by the Government against the Orders passed by the Taluk Land Board, so exempting the lands of the sons, were all dismissed.

Thereafter, the father, on behalf of himself and the mother, made a claim for exemption of 40.78 acres on the ground that this was also a part of the rubber plantation. This time the Taluk Land Board took note of the fact that

the total area of the land of the family was only 122.35 acres. It took note of the fact that in this area 24.30 acres was dry land and that only approximately 95 acres was rubber plantation with ancillary land of approximately of 3 acres. The Taluk Land Board took note of the fact that the four sons had already claimed exemption in respect of their shares of 20.39 acres each. The Taluk Land Board held that as the sons had already claimed exemption, and there had been no objection by the parents, it followed that the dry land of 24.30 acres could only be in the land which came to the share of the parents. The Taluk Land Board, therefore, deducted an area of 24.30 acres. However, the Taluk Land Board has, for unphantomable reasons, taken the rubber plantation to 107.25 acres and deducted 24.30 acres from that. The Taluk Land Board granted exemption for the balance area. As against this Order, a Revision Petition No. 2386 of 1990 was filed before the High Court. The High Court rejected the Revision by the impugned Order dated 5th March, 1997.

While rejecting the Revision Petition the High Court has noted all the above mentioned facts. The High Court has noted that the Taluk Land Board had by mistake counted the rubber plantation to be 107.25 acres, wherein, in fact, it was only 95 acres. The High Court noted that the Taluk Land Board had granted exemption in excess of the claim made by the declarant and in excess of what the family was entitled to. The High Court, however, chose not to interfere as no Revision had been filed by the Government against the Order of the Taluk Land Board. The High Court rejected, in our view rightly, the contention that as the claims of the sons to the extent of 20.39 acres each had been accepted the claim of the parents was also to be accepted. The High Court rightly rejected the contention that all the six sharers were entitled to get an area of 20.39 acres each exempted.

Before us it has been contended that there were six sharers in the land belonging to the family. It is submitted that share of each came to 20.39 acres. It is submitted that the total therefore comes to 122.35 acres. It is submitted that the earlier Orders of the Taluk Land Board (which were confirmed in Revision) exempting shares of all the sons were binding. It is submitted that the Taluk Land Board could not have taken a contrary decision in the case of the parents. It is submitted that earlier it had been held that the whole land was a rubber plantation. It is submitted that now the Taluk Land Board could not take a contrary decision. We see no substance in this submission. It is clear from the records, including the declaration made by the parents, that the rubber plantation was only of 95 acres. Another approximately 3 acres was ancillary land. This was the area for which exemption could have been granted. Out of the total area of 122.35 acres an area of approximately 24.30 acres was dry land. This area of 24.30 acres was, therefore, not a rubber plantation and was also not ancillary land. This area could not be exempted under Sections 81, 82 and 86 of the Kerala Land Reforms Act. As the parents had not objected to each of the sons getting an area of 20.39 acres exempted, a total area of approximately 81.66 acres had already been exempted. Therefore, all that could have been exempted was approximately another 16.34 acres. The Taluk Land Board has mistakenly granted exemption for an area of approximately 24 acres. Thus, the Taluk Land Board had granted exemption of more than what the

parties were entitled to. However, the Government did not file any Revision. Therefore, the High Court did not interfere. We also see no reason to interfere. But it is clear that the Appellants are bound to surrender an area of 16.95 acres, which they have been directed to do by the High Court.

In our view, the impugned Judgment is absolutely correct and requires no interference. Under the circumstances, the Appeal stands dismissed. There will be no order as to costs.

JUDIS