

PETITIONER:
STATE OF KERALA AND OTHERS

Vs.

RESPONDENT:
KOLIYAT ESTATES

DATE OF JUDGMENT: 13/09/1999

BENCH:
K.T.Thomas, D.P.Mohapatro

JUDGMENT:

THOMAS, J.

The moot question is this: When a mortgage property, or any portion of it, is vested in Government by operation of law, would it amount to government acquiring the said property as contemplated in the last paragraph of Section 60 of the Transfer of Property Act (for short the TP Act). If the answer thereof is in the affirmative the next question is whether the mortgagor is entitled to have the mortgage debt slashed down pro tanto when the Government stands subrogated as the mortgagee. If that ancillary question is also to be answered in the affirmative, the appeal preferred by the State of Kerala by special leave has to be dismissed. To show how the question arose in this case, a brief sketch of the facts is necessary:

Respondent Koliyat Estates is a firm which possessed extensive acres of plantation in the northern districts of Kerala state. In 1967 the firm obtained a loan of Rs.46.61 lakhs from the Central Bank of India (the Bank for short). As the loan was sanctioned under a scheme propounded by the Government called Agricultural Re-financing Scheme, a tripartite agreement was executed on 23.10.1967 between the bank and the Koliyat Estate (the plaintiff for short) and the State Government of Kerala. Pursuant to the said agreement the plaintiff firm on the same day executed B1 mortgage deed in favour of the bank and the State Government stood as the guarantor for the due re-payment of the loan in terms of the agreement.

While the mortgage was subsisting certain developments took place in the socio-political set up in the State of Kerala. The provisions relating to land ceiling in the Kerala Land Reforms Act (KLR Act for short) came into force with effect from 1.1.1970 and consequently the right, title and interest of the firm over an area of more than 1200 acres of land covered by the mortgage became vested in the Government as per Section 86(2) of the KLR Act. This was sequel to the decision of a Taluk Land Board dated 1.8.1972 (Ex.A17). According to the plaintiff more than 2300 acres had been taken possession of by the Government on the premise that plaintiff had so much of land in excess of the ceiling limit prescribed under the KLR Act.

A little later, by virtue of the provisions of another enactment called the Kerala Private Forest (Vesting and

Assignment) Act 1971 (hereinafter referred to as Private Forest Vesting Act) another area of 273.75 acres of land, included in the mortgage deed, stood vested in the government as private forest. All those developments took place long before 1978.

On 7.9.1978 the State Government paid the mortgage debt to the bank and took assignment of the mortgage right under Ex.B1 as per Ex.B11- Assessment Deal. Armed with it the State Government threatened the plaintiff with proceedings under the provisions of the Revenue Recovery Act for realisation of the mortgage money.

It was in the aforesaid background that the plaintiff filed the present suit for redemption of the mortgage. Plaintiff claimed in the suit, a pro tanto reduction of the mortgage debt on the footing that State Government became the mortgagee when it took assignment of Ex.B1 mortgage right and the right of the mortgagor over a large area of mortgaged land has now become vested with the mortgagee. The aforesaid claim was made presumably under the last paragraph of Section 60 of the TP Act.

The State Government resisted the claim for pro tanto reduction in the mortgage debt by pleading firstly that the vesting process under the aforesaid two enactments took place long before Ex.B11 assignment which the original mortgagee made in favour of the Government, secondly, since such vesting took place free from all encumbrances, it is not an acquisition of the said land as mortgagee. The trial court repelled governments contention and passed a preliminary decree for redemption in terms of the plaintiffs plea for pro tanto reduction. The relevant reliefs granted by the trial court are extracted below:-

That the plaintiff is entitled for reduction of mortgage liability covered by Ex.B1, in proportion to the value of the properties taken by the Government under Ex.A17 order, and also, under the Kerala Private Forest (Vesting and Assignment) Act, as on the date or dates of the taking over of those lands.

That the proportionate value, for which the plaintiff is entitled for reduction, it is left open to be decided in the final decree proceedings, as the materials before me, is not at all sufficient to determine the same.

The State Government preferred an appeal before the High Court of Kerala against the aforesaid reliefs granted in the decree. A Division Bench of the High Court, by an elaborate judgment, confirmed the judgment and decree passed by the trial court. Hence the present appeal by special leave at the instance of the State Government.

Shri P. Krishnamurthy, learned Senior Counsel for the State contended that it was quite unnecessary for the High Court to have elaborately gone into the nature of the mortgage involved in Ext.B-1, as the said aspect would not help in resolving the question determinable in this case. According to the learned counsel the question of pro tanto reduction of the mortgage debt would never arise in a case where the mortgaged land vested in the Government in accordance with the provisions of a statute. He also contended that since the legislature has clearly kept encumbrances on the land untouched by the vesting process

there is no need to countenance the argument that the mortgagors share in the mortgage property was acquired by the State Government as a mortgagee.

Shri C. Sitaramiah, learned Senior Advocate addressed arguments in support of the decision impugned in this appeal. According to him the plaintiff has already lost a substantial portion of the well planted landed area on account of the vesting operations and therefore equity is in favour of the plaintiff entitling him to claim pro tanto reduction of the mortgage liability.

Shri T.L. Vishwanatha Iyer, learned Senior Advocate who also argued for the plaintiff adopted a different line. He conceded that plaintiffs right for pro tanto reduction of the mortgaged debt emanates from the last paragraph of Section 60 of the T.P. Act and then the word acquired in that paragraph must receive a wider interpretation. He also strongly supported the reasoning adopted by the Division Bench of the High Court.

Before we proceed to consider the focal points it is necessary to point out that under the provisions of the KLR Act the authority to determine the extent of the excess land in the possession of a person beyond the ceiling limit fixed under that Act is called Taluk Land Board (TLB). Once that is determined the person concerned has to surrender possession of the land of the Government. Section 85 (5) of the KLR Act empowers the TLB to determine, by order the extent and identity of the land to be surrendered. The process of vesting of the excess land becomes contemporaneous with such determination as provided in Section 86(1) of the said Act. The sub-section is quoted below:

86. Vesting of excess lands in Government.- (1) On the determination of the extent and other particulars of the lands, the ownership or possession or both of which is or are to be surrendered under section 85, the ownership or possession or both, as the case may be, of the land shall, subject to the provisions of this Act, vest in the Government free from all encumbrances and the Taluk Land Board shall issue an order accordingly.

(emphasis supplied)

Under the Private Forests Vesting Act, all private forests in the State would vest in the Government with effect from 10-5-1971, which is the appointed day, as per Section 3(1) of that Act. The sub-section is extracted below: 3. Private forests to vest in Government.- (1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished.

So the vesting of land in the Government was free from all encumbrances. In other words, Government would have no liability to clear any encumbrance on the land so vested. If the land is covered by a mortgage the liability therein

would not remain with that part of the land which Government got through the vesting process.

The question whether the mortgagor can claim pro tanto reduction of mortgage liability can now be considered. Section 60 of the T.P. Act deals with the right of a mortgagor to redeem, on payment or tender of the mortgaged money. The mode of effecting such redemption is prescribed in the section. The last paragraph of Section 60 reads thus:

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

The said paragraph can be vivisected into two segments. The first part contains a negation to the holder of part of equity of redemption to redeem that part alone on payment of the proportionate debt. The second limb of the paragraph provides the solitary exception to the aforesaid negating edict. The words in that second limb except only where are a pointer that the said exception would strictly be confined to the one situation envisaged therein.

In order to invoke the solitary exception to the disentitling fiat of the last paragraph of Section 60 of the T.P. Act there must be a conjunction of two postulates. One is that share of the mortgagor in the property should have been acquired. Second is that the person who so acquired should have been the mortgagee.

Shri T.L. Vishwanatha Iyer, learned senior counsel contended that the word acquired in the last paragraph of Section 60 must be given a very wide import, and in that angle even the vesting of part of the mortgage property must be held sufficient to amount to acquisition of the share of the mortgage property. Learned senior counsel contended that when the T.P. Act was enacted the legislative innovations in making provisions for vesting of land in the Government were not even in contemplation. According to him, the interpretation of a word in a statute should be attuned to the current realities and it is not advisable to cling to any obsolete thinking. He cited the decision of this Court in *SIL Import, USA v. Exim Aides Silk Exporters, Bangalore* {1999 (4) SCC 567} wherein it is held that for the need to update legislations the courts have the duty to use interpretative process to the fullest extent permissible by the enactment.

Francis Bennion in his *Statutory Interpretation* of 1984 edn. at page 356 said: The ongoing Act- In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since the Acts passing, in law, social conditions, technology, the meaning of words, and other matters.

Our attention was also drawn to the following observation which the Chancery Division has made in *Royco*

Homes Ltd. v. Eatonwill Construction Ltd. {1978 (2) AER 821}: (while construing the word acquired in Sec.15(1) and 20(1)(b) of English Public Health Act 1936)

In my judgment the term acquired in s.20(I)(b) embraces all forms of acquisition open to a local authority and is not limited to acquisition by agreement. It includes acquisitions by the operation of the legal maxim *quicquid plantatur solo, solo credit*. Moreover, if that doctrine applies with regard to the intermediate sewer it seems to me to apply in consequence of an agreement between Hurst Construction and the local authority that the intermediate sewer should be constructed in the highway, Batchworth Lane.

The word acquisition, which according to Blacks Law Dictionary means the act of becoming the owner of certain property. The statutory process by which the State becomes owner of the property cannot, therefore, be understood as different from acquisition made by the State. So there is nothing erroneous in interpreting that the state has acquired possession of so much portion of the mortgage property when it vested in the state by the statutory process envisaged in the two enactments.

But the above interpretation is not enough to resolve the question, for, the next limb of the issue has to be considered from a different perspective altogether. Should the acquisition of mortgagors share in the property be by the mortgagee himself when such acquisition was made?

It must be noticed, when part of the mortgage property vested in the Government under the provisions of the above two enactments, that the Government was not the mortgagee because Ext.B.11 Assignment was taken by the Government from the original mortgagee only on 7.9.1978. Vesting took place as early as 1970 and 1971 respectively. In other words, Government became owner of the part of the mortgage property not as a mortgagee, even apart from the fact that such vesting was through the statutory process.

The principle behind the exception to the prohibition clause in the last paragraph of Section 60 of the TP Act is, if the mortgagee is satisfied of a part of the mortgage debt by becoming the owner of a part of the mortgage property it is only equitable to allow the mortgagor to get *pro tanto* reduction of the mortgage debt, otherwise it would be unjust to allow the entire mortgage debt again to be borne by the remaining mortgage property. By becoming the owner of part of the mortgage property it is not necessary that the mortgage money would have been discharged even proportionately. It depends upon how the mortgagee got share in the mortgage property.

In an early decision of a Division Bench of the Calcutta High Court in Jasodha Kumar Dey v. Kali Kumar Dey & ors. (AIR 1930 Calcutta 619) a mortgagor sold one of the items of the mortgage properties to the plaintiff-mortgagee and in consideration thereof purchased another property of the plaintiff for the same price. In the suit for recovery of mortgage debt from the remaining properties the mortgagor contended that he is entitled to proportionate reduction of the mortgage debt. The Division Bench repelled the contention in the following terms:

The mortgagor by his conduct impliedly agreed by receiving the full value of the property that no portion of the mortgage debt would be extinguished by virtue of the purchase by the mortgagee. That being so the mortgagor is not entitled to claim in this suit that a portion of the mortgage debt should be held to be pro tanto extinguished by the purchase of one of the properties by the mortgagee.

Learned Judges of the Calcutta High Court relied on a Full Bench decision of the Bombay High Court in *Lakshmidas Ramdas v. Jhumandas Shankar Lal* (ILR 22 Bom. 304). In that case the mortgagee had purchased one of the properties in an auction sale in execution of a decree. The Full Bench held thus: If the mortgagee purchased the equity of redemption he must allow proportionate reduction of the value of the property purchased by him; but where the circumstances under which the purchase was made show that it was purchased free from all encumbrances, the plaintiff can enforce his entire security against the remaining property.

A Division Bench of the Madras High Court in *Eswara Krishna Iyer and anr. v. Mariya Susai Reddiar and ors.* (AIR 1940 Madras 498) held:

The principle underlying the last clause of Section 60 applies only in cases where the mortgagee in the character of a mortgagee acquires the equity of redemption outstanding in the mortgagor.

We concur with the said views which the High Courts of Calcutta, Bombay and Madras have adopted in the aforesaid decisions, on the interpretation of the last paragraph of Section 60 of the T.P. Act.

The upshot of the above discussion is this: vesting of portion of the mortgaged property with the government and the subsequent assignment of mortgaged right in favour of the government are not sufficient to formulate the exception provided in the last paragraph of Section 60 of the TP Act. So plaintiff is not entitled to pro tanto reduction in the mortgage money. Hence the judgment of the trial court which was confirmed by the High Court, would stand modified to the above extent. Appeal is disposed of accordingly.