

CASE NO.:  
Appeal (civil) 2478 of 2002

PETITIONER:  
STATE OF KERALA & ANR.

Vs.

RESPONDENT:  
ROSALIND THOMAS

DATE OF JUDGMENT: 22/07/2002

BENCH:  
B,.NK..GK.irBpaallakrishnan, Arijit Pasayat.

JUDGMENT:

K.G. BALAKRISHNAN, J.

This appeal is preferred by the State of Kerala challenging the order passed by the Division Bench of Kerala High Court on 4.1.2000 in Writ Appeal No. 2391 of 1998. The matter arises under the Kerala Land Reforms Act, 1963 (for short, "the Act").

The husband of the respondent in his capacity as Managing Partner of a firm filed a statement before the Taluk Land Board under Section 85 (2) of the Act. Section 85 relates to surrender of excess land. The Taluk Land Board held enquiry and passed an order on 27th March, 1982 holding that an extent of 193.26 acres of land was to be surrendered by the declarant as excess land held by him. Against the final order passed by the Taluk Land Board, the declarant filed a Civil Revision Petition before the High Court of Kerala under Section 103 of the Act. Some properties had been earlier alienated by the declarant and as the alienees were affected by the order passed by the Taluk Land Board, they too filed two Civil Revision Petitions. The three Civil Revision Petitions were disposed of by a common judgment wherein certain observations were made by the learned Single Judge of the Kerala High Court. The purport of that order was that the extent of the land allowed to be retained by the declarant was fixed not strictly in accordance with the provisions of the Act. The learned Single Judge doubted the correctness of certain exemptions granted by the Taluk Land Board. All the Civil Revision Petitions were dismissed by the learned Single Judge.

After the disposal of the above Civil Revision Petitions, the Taluk Land Board issued two notices to the declarant. In these notices, it was stated that the Taluk Land Board cases had been reopened under Section 85 (9A) of the Act (Amendment Act 16 of 1989) and that the cases would be posted for enquiry in the light of the order of the High Court dated 21st January, 1991. passed in the Civil Revision Petitions. The two notices were challenged by the declarant. The learned Single Judge declined to interfere with the same, but on appeal the Division Bench held that under Section 85 (9A), the Taluk Land Board can suo motu reopen a case only on any of the grounds mentioned therein and not for any other reason and as there was no case of failure to produce relevant data or other particulars relating to ownership and possession before it, or collusion or fraud or any suppression of material facts, the notices issued by the Taluk Land Board were without jurisdiction and were accordingly quashed by the

Division Bench. Aggrieved by the same, the present appeal is filed by the State.

We heard appellants' counsel and also the counsel for the respondent.

Learned counsel for the appellants contended that the respondent has been issued with notice under Section 85(9A) of the Act to explain whether final order passed by the Taluk Land Board is liable to be varied or modified. It is pointed out that the Taluk Land Board has got power to review its earlier order if there was suppression of any material facts or if there was any failure to produce relevant data or other particulars relating to ownership or possession of the land or there was any fraud or collusion and that the earlier order passed in Civil Revision Petitions disclosed that Taluk Land Board granted exemption liberally and many material particulars were not produced.

Counsel for the respondent, on the other hand, contended that the Taluk Land Board has, suo motu, reviewed its order and issued notice without any authority and when the Civil Revision Petitions were dismissed by the learned Single Judge, no observations were made against the declarant and it is also argued that in the notices no reasons are given why the matter is reopened.

Section 85 (9A) was inserted in the Kerala Land Reforms Act by Section 10(b) of Kerala Land Reforms (Amendment) Act, 1989. Originally the Taluk Land Board did not enjoy the power to review its decision. Relevant portion of Section 85(9A) reads as follows :

" 85. Surrender of excess lands : Where a person..

(9A) Power of Taluk Land Board to review its decision.  
Notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, the Taluk Land Board may, if it is satisfied that its decision under sub-section (5) or sub-section (7) or sub-section (9) requires to be reviewed on the ground that such decision has been made due to the failure to produce relevant data or other particulars relating to ownership or possession before it, or by collusion or fraud or any suppression of material facts the Taluk Land Board may review such decision after giving an opportunity to the parties or being heard and pass such orders as it may think fit.

Provided that the Taluk Land Board shall not reopen any such case after the expiry of three years from the date of coming into force of the Kerala Land Reforms (Amendment) Act, 1989."

Section 85 (9A) says that a decision rendered by the Taluk Land Board under sub-section 5, 7 or 9 of Section 85 can be reviewed on the ground that such decision has been made due to failure to produce relevant data or other particulars relating to ownership or possession thereof, or by collusion or fraud, or any suppression of material facts. It is true that the impugned notices did not specifically state that there was any suppression of material facts or any collusion or fraud or there was any failure to produce the relevant data or other particulars. But, nevertheless, the impugned notices mentioned the order passed in the earlier Civil Revision Petitions and in that order the learned Single Judge had made certain observations. The respondent can very well appear before the Taluk Land Board and show that the earlier order passed by the Taluk Land Board was correct and justified. We are only at the notice stage. The Division Bench was not justified in holding that no ground had been made out for a suo motu review. After hearing the declarant, the Taluk Land Board can very well consider whether any ground had been made out to change or modify the order. The observations made by the learned Single Judge in the very same proceedings can certainly be a ground to have a fresh look over the matter. In that view of the matter, the order passed by the Division Bench is not sustainable. We set aside the same and direct that the Taluk Land Board may proceed with the matter in accordance with the notice issued to the respondent.

We make it clear that the respondent would be at liberty to raise any of the grounds available to him under Section 85 (9A) to show that the earlier order passed in her favour is not liable to be reviewed. The appeal is allowed. There will be no order as to costs.

JUDIS