

1969 KHC 40
Kerala High Court
***P. T. Raman Nayar; V. R. Krishna Iyer, JJ.**

SBT v. GOPALAKRISHNA PANICKER
Parallel citation(s) : 1969 KHC 40 : 1969 KLT 149
CaseNo : A. S. No. 138 of 1967
Date : 17/09/1968

Agriculturists Debt Relief Act, 1958 (Kerala) -- S.2(a) -- Agriculturist -- It is essential character, not more accidental use that determines whether land is agricultural land or not -- Land in town must essentially be building site and its accidental use to grow vegetables cannot make it agricultural land

Important Para(s):1

Important Para(s):2A

Referred: 1959 KLT 396; 790; 1961 KLT 366; 1958 KLJ 786; Referred to

Advocates:

K. C. John; For Appellant
K. Velayudhan Nair; V. S. Moothathu; N. R. K. Nair; K. J. Joseph; T. K. M. Unnithan; For Respondent

JUDGMENT

1. The 10 cents of land on the ownership of which the respondent rested his claim (a claim that has been allowed by the court below) to be an agriculturist within the definition in S.2(a) of Act 31 of 1958 and therefore entitled to bring an application under S.15 thereof is, on his own showing, in the heart of the Kottayam town. It is contiguous to and virtually forms part of the adjoining plot of land owned by the respondent, 16 cents in extent and in which there are three houses in one of which the respondent resides, the remaining two being let. That 16 cent plot is not claimed to be agricultural land. What, according to the respondent, serves to make the 10 cent plot agricultural land is the accident that he has chosen to describe it as a separate item of property and what we might

call the further accident that he has planted three or four coconut plants there and has also grown yam and plantains. It seems to us that the 10 cent plot can only be regarded as appurtenant to the 16 cent plot, the two together forming one unit, in which case according to the decisions in Abdul Kareem v. Ismail Sheriff Sahib, 1958 KLJ 786, Abdul Kadar v. Indo Mercantile Bank Ltd., 1959 KLT 396, Morris v. Mrs. Veera D'Cruz 1959 KLT 790, and Harihara Iyer v. Bhaskaran 1961 LLT 366 the entire 26 cents must be regarded as non agricultural land. Indeed, we would go further and say that even if the 10 cent plot had stood by itself we would still have been prepared to say that it was not agricultural land. Non agricultural land can be put to agricultural use a kitchen garden would be an example. And vice versa, for example the recovery of clay from paddy land. It is its essential character, not a mere accidental use, that determines whether a land is agricultural land or not. It must, we think be obvious that land in the very heart of a town which (as the respondent's own evidence shows would sell at Rs. 700/- a cent must essentially be building site and what we have called its accidental use to grow vegetables cannot make it agricultural land.

2. In answer to the claim made by the respondent in his application under S.15 of the Act that he was an agriculturist with in the meaning of the Act, the appellant denied that the respondent was an agriculturist and added that he had been assessed to income tax during the relevant years. This does not mean that it was conceded that the respondent was an agriculturist within the body of the definition and was ejected therefrom only by the second of the three exclusions thereunder. Indeed, the order Of the court below shows that the question whether the 10 cent plot could be regarded as agricultural land or not was one of the main points in dispute. There is therefore no substance in the argument that the appellant is precluded by the pleadings from disputing that the 10 cent plot is agricultural land.

3. It follows that the respondent is not an agriculturist within the meaning of the Act and that his application under S.15 thereof ought to have been dismissed. We do so now, allowing this appeal. The respondent will pay costs both here and in the court below.

Krishna Iyer. J:-

1A. Let me add a few words of my own to what has already been said by my

learned brother on behalf of both of us.

2A. Whether a small plot of land in the down town area of a large town or city can be characterised as agricultural land, when no one would normally think of buying it or using it except for commercial or building purposes, is the precise point arising here. The answer is self evident. It is irrelevant whether, till putting it to its legitimate and only sensible use, some minor agricultural crop has been raised on it. The essential, enduring character of the land and its adaptability for non agricultural or agricultural use, taking the totality of circumstances, such as its situation in the heart of the town or in the bazaar area or in the industrial belt or rural parts settles the question as to whether it can be designated agricultural land and not the accident of actual cultivation or commercial exploitation for the time being. Agricultural land may be put to non agricultural use for a time (of village festivals) and non agricultural land may also be put to agricultural use for a time (raising paddy on the flat roof of a building I have seen it grow well!) but this is not decisive of the central issue of the land being agricultural. The primary consideration, on which its value would be assessed by users and buyers, is one of the sure tests in this behalf. The rulings referred to by my learned brother must be deemed to refer to abiding agricultural purpose or use. Viewed that way, the appellant must win.

3A. The object of the legislation is to help indebted agriculturists and it would travesty the Act if a man like the appellant, owning valuable urban land and no arable land and is unconnected with agricultural occupation, should illegitimately enjoy the advantages of staggering the payments of his debts and secure the distribution of his assets in an ameliorative way. Non agriculturists, masquerading as agriculturists, and claiming benefits meant for a different, deserving class, produce cynical reactions from the community at large not a healthy sentiment for a society where the rule of law is expected not only to reign in form but also to rule in fact. The law should not be fooled.