1969 KHC 113
Kerala High Court
V. R. Krishna Iyer, J.
MATHAI VARKEY v. MARIAM
C. R. P. No. 1266 of 1968
14 March, 1969

Kerala Land Reforms Act, 1963 - As amended by Act 9 of 1967, S.4A -- Waste Land -- One which of the time of mortgage was neglected and not put to any agricultural use but which can be put to agricultural use by effort of man (Para 4)

Interpretation of Statutes - Different connotations for same expression in different statutes -- Features emphasised in a legislation conferring fixity of tenure on tenants may be a matter of indifference in a statute which deals with acquisition of land by State and valuation for that purpose (Para 5)

Thomas P. Mathekkal; P. J. Varghese; For Petitioner
G. Viswanatha Iyer; K. N. Devadathan; For 2nd Respondent

ORDER

1 The only point that really arises in this revision petition is as to the applicability of S.4A which was introduced by Act 9 of 1967 into Act 1 of 1964. The suit out of which this revision arises is one for redemption of a possessory mortgage. The mortgagee, encouraged by S.4A, requested that the proceedings be stayed because he claimed to be a deemed tenant within the meaning of S.4A. It is trite law that before a person can claim to be a tenant within the meaning of S.4A he must fulfil four conditions, three of which are, at any rate, prima facie answers in favour of the mortgagee in the present case The disputed qualification is the one relating to the property comprised in the mortgage being waste land at the time of the mortgage.

2 Even at the outset I may state that the learned Munsiff was in error in pronouncing finally on the question as to whether the defendants were tenants under the Kerala Land Reforms Act because that was a conclusion to be reached after detailed investigation at the trial of the suit. All that the Court has to consider in a stay petition is a prima facie case as to whether the petitioner before it is a tenant or not. It has been so held by a Division Bench of this Court and so the observation of the learned Munsiff "*After hearing the parties and looking into the fresh evidence adduced in the case, I have come to the conclusion that the transaction in the present case is a tenure and defendants 1 and 2 are tenants and not mortgagees,.....*"is inept. He can only come to a tentative conclusion, prima facie finding, and cannot foreclose his mind by these observations when the suit comes on for trial at a later stage. I dare say the Court when it tries the suit will dispose of the issue regarding tenancy untrammelled by the observations made by the learned Munsiff in these proceedings.

3 Now to the crucial question canvassed before me. Counsel for the revision petitioner urged vehemently that the land in question was not waste land at the time of the mortgage. According

to him there was a serious error of law in the approach made by the Trial Court. I agree. This is what the learned Munsiff has observed in this connection:

"*The suit property is 29 cents of land and Ext. P1 states that there are one bearing jack tree, two non bearing ones, one mango tree, five bamboo groves and one Narakam. The mortgage deed further authorises the mortgagee to effect improvements. The number of trees is so negligible when compared to the extent of the property, and therefore the property can legitimately be considered as waste land."*

The criticism made is that the Munsiff has inferred that the land is waste land because the trees standing thereon are few. It is a well-founded criticism because whether a land is waste or not is to be ascertained from the character of the land and all that the statute means in the Explanation to S.4A(a) is that if a land is found to be a waste land that character is not nullified by the mere circumstance of the presence thereon of scattered trees. This Explanation cannot be construed to mean that even excellent garden land becomes waste land if there are only a few trees scattered thereon. The nature of the land has to be independently assessed and in the present case there is a house thereon, and attached to the house, as it were, there are various trees ordinarily found in a Kerala house compound, ancillary to the enjoyment of the homestead.

4 What is a waste land? There is no definition in the statute, but it is fairly clear that persons who, as mortgagees or otherwise, were allowed to improve land which was otherwise lying desolate, neglected or abandoned and who toiled thereon, made substantial improvements and thereby made it garden land or other fruitful holding, should be protected from eviction. This shows that at the time of the mortgage, when the mortgagee is inducted into possession, the land must be such as to be designated as neglected, uncultivated and not put to any serious agricultural use. Since S.4A also contemplates the holding having been improved substantially by the mortgagee, improvement, in this context, must generally mean by planting of fruit bearing trees etc., we cannot postulate that waste land should be unculturable land, incapable of tillage. Thus, the object of the statute, the context in which the provision is made and the effect of the various clauses in S.4A lead to the inference that a waste land is one which at the time of the mortgage was rather neglected and not put to any agricultural use but at the same time is a kind of land which can be put to agricultural use by the effort of man.

5 Waste land, according to the Shorter Oxford Dictionary means:

"Waste or desert land, inhabited (or sparsely inhabited), an uncultivated country; a wild and desolate region, a wilderness."

It also means:

"A piece of land not cultivated or used for any purpose, and producing little or no herbage or wood. In legal use a piece of such land not in any man's occupation, but lying common".

In the present case the circumstance that there ate few scattered trees cannot, having due regard to the explanation to S.4A(a), nullify the case that the mortgaged land is waste land But, independently of these few scattered trees, can we call it waste land in the sense in which I have explained above. On this, there is no evidence adverted to by the Trial Court. Nor is there such an approach to the question. All that the Court has done is to find out whether there are trees on the land; if so, whether they are few or scattered, and treated the presence of scattered trees as the test of waste land.

6 It may not be out of place to advert to a ruling of the Supreme Court reported in Raja Anand Brahma Shah v. The State of Uttar Pradesh (AIR 1967 SC 1081) where the concept of waste land fell for judicial consideration, under the Land Acquisition Act. Their Lordships observed: "On behalf of the appellant Mr. Iyengar referred to the Inspection Note of the Collector, dated December 15, 1951 at p. 91 of the Paper Book. It was pointed out that the Collector noticed that there were one lakh of trees in the acquired land and there were trees of 'Tendu, Asan, Sidh, Bijaisal, Khair, Bomboo dubs, Mahuwa and Kakora contained in the area'. It was contended that the land in dispute was 'forest land' covered by a large number of tress and cannot be treated as 'waste land or arable land' within S.17(1) or (4) of the Act. In our opinion, the argument put forward on behalf of the appellant is well founded and must be accepted as correct and in view of the facts mentioned in the affidavits and in the Inspection Note of the Collector, dated December 15, 1961 we are of the opinion that the land sought to be acquired is not 'waste land' or 'arable land' within the meaning of S.17(1) or (4) of the Act. According to the Oxford Dictionary 'arable land' is 'land which is capable of being ploughed or fit for tillage.' In the context of S.17(1) of the Act the expression must be construed to mean 'lands which are mainly used for ploughing and for raising crops' and, therefore, the land acquired in this case is not arable land. Similarly, the expression 'waste land' also will not apply to 'forest land'. According to the Oxford Dictionary the expression 'waste' is defined as follows: 'waste (from Latin, vastus waste, desert, unoccupied); uncultivated, incapable of cultivation or habitation; producing little or no vegetation; barren desert.'

The expression 'waste land' as contrasted to arable land' would, therefore, mean, 'land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation thereon'. It follows, therefore, that S.17(1) of the Act is not attracted to the present case....."

I must state that there may be different connotations for the same expression in different statutes and the features emphasised in a legislation conferring fixity of tenure on tenants may be a matter of indifference in a statute which deals with acquisition of land by the State and valuation for that purpose. However, it is useful to remember that arable land and waste land are antithetical in content and meaning. But the semantic significance of waste land under the statute I am considering, is not that it is altogether and ever uncultivable, but that at the given time it is uncultivated, barren and having no vegetation. When it is clothed with thick vegetation it ceases to be waste land, but when it is bare and desolate, although capable of bloom, it is waste land.

7. For this reason I must set aside the finding of the Trial Court, but only to the extent mentioned above. The other three features required under S.4A have been found to be present in this case and nothing has been placed before me to disturb the finding of the Court below thereon. I direct the lower Court to consider whether the land mortgaged was, at the time of the mortgage, waste land in the sense I have explained. For this purpose, if parties require an opportunity to lead evidence, they must be so allowed and, on the evidence, adduced and the other features present, the Court will record a finding as to whether the defendant mortgagee is a deemed tenant, within the scope of S.4A of the Act.

8 The revision petition is allowed. There will be no order as to costs.
