

(2001) 10 KL CK 0066

High Court Of Kerala

Case No: O.P. No. 14747 of 1995

Youth Voice Arts Social and
Cultural Organisation

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Oct. 30, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Kerala Government Land Assignment Act, 1960 - Section 4, 5
- Kerala Government Land Assignment Rules, 1964 - Rule 11, 11(2), 11(3), 11(4), 11(5)

Citation: (2001) 252 ITR 668

Hon'ble Judges: K.K. Denesan, J

Bench: Single Bench

Advocate: K.S. Madhusoodanan, for the Appellant; N.P. Samuel and D.P. Renu, Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

1. The challenge is against Ext. P4 order passed by the 1st respondent-Government rejecting the revision petition filed by the petitioner aggrieved by the Assignment on registry of 75 cents of government land in survey No. 319 and 320 of Aranattukara village in Thrissur District, in favour of the 4th respondent.

2. Petitioner says that Exts. P2 and P4 have passed malafide and flouting the mandatory provisions in the Kerala Government Land Assignment Act, 1960 (Act 30 of 1960) and the Kerala Land Assignment Rules, 1964.

3. "Government lands" for the purpose of the Kerala Land Assignment Rules (For short "the Rules") shall consist of lands belonging to Government and available for assignment as per lists prepared by the Revenue Department and approved by the competent authority under the Rules and such other lands as may be set apart for

the purpose of the Rules. "Assignment" is defined in Rule 2(c) of the Rules as transfer of land by way of registry and includes a lease and a grant of licence for the use of the land. Rule 11 says that before granting registry, Government shall cause to be prepared lists of the lands which would be reserved for Government or public purposes in each village and lists of the lands which may be made available for assignment in each village. This rule classifies lands to be reserved for Government or public purposes as including certain categories as per Rule 11(2) to (6). Thus the rule contemplates two lists prepared on the basis of the above classification; the lists of lands to be reserved for Government or public purposes and the lists of lands which may be made available for assignment. These lists shall be submitted to the Government for approval. The Rules say that action to assign such lands on registry shall be taken only after the Government or any authority authorised in that behalf approves those lists. Therefore, preparation of the lists and the approval of those lists under Rule 11 of the Rules are conditions precedent for initiating steps for assigning the land. Rule 12 says that before considering an application for assigning the land, the Tahsildar shall publish a notice inviting objections from interested persons to the registry of lands. The manner of publication of the notice is also specifically mentioned in the rule.

4. Respondent No. 4 submitted Ext. P1 application before the 2nd respondent-District Collector to assign land extending one acre comprised in survey Nos. 319 and 320 of Aranattukara village in Thrissur District. In that application he stated that he was in possession of the property and that he required the same for personal cultivation. The District Collector did not feel it necessary to allow the request of the 4th respondent and he passed order dated 13.2.1982 stating that the land in question was not feasible for cultivation.

5. Against this order of the District Collector, the 4th respondent approached the Board of Revenue (L.R.), Trivandrum. By Ext. P2 order dated 15.3.1993, the Board of Revenue allowed the appeal. The operative part of the order reads as follows:

"From the records it is seen that the person is entitled to win this appeal. However, I find that there is a proposal to assign 25 cents from this for a public purpose. It is not clear from the file the stage at which the matter stands. However, the learned advocate for the appellant concedes that it would be enough if appeal is allowed restricting its scope and the rest of the area actually available. In view of this submission there is no need to remand the case and so the appeal is allowed subject to the above submission of the appellant".

6. Challenging Ext. P2 the petitioner along with another filed O.P. No. 11670 of 1993 before this Court. This Original Petition was disposed of By Ext. P3 judgment directing he petitioners therein to avail the opportunity to file a revision against Ext. P2 before the Government. Accordingly, the petitioner preferred a revision petition. The Government by Ext. P4 order dated 20.4.1995 dismissed that revision petition.

7. Petitioner is a society registered under the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955 (Reg. No. 756/89). It is averred that the land in question was used by its members as a play ground. According to the petitioner, Exts. P2 and P4 were passed yielding to illegitimate political pressure exerted on the authorities and that the said orders are absolutely against public interest. The decision taken to assign the land to the 4th respondent is in violation of the mandatory provisions contained in the Kerala Land Assignment Act and the Rules, since the procedure prescribed under Rules 11 and 12 of the Rules was not observed.

8. In the counter affidavit filed on behalf of the 1st respondent and the counter filed by the 4th respondent no useful information regarding the observance of the mandatory provisions in Rule 11 and 12 of the Rules is available. As against the specific grounds urged in the Original Petition regarding the violation of Section 4 of the Act and Rules 7, 11 and 12 of the Rules, the counter affidavit of the 1st respondent contains only a vague and general statement which reads:

"9. The orders passed by the Government in this case is after observing the provisions laid down in KLA Rules, 1964. Hence there is no violation of Constitution as alleged.

10. Government have ordered to assign the land in this case only after observing the rules laid down in KLA Rules which is authorised and legal."

9. There cannot be any doubt that the above statements do not afford a satisfactory answer to the specific allegation in the Original Petition that the mandatory rules were not followed. The 1st respondent-Government which says in the counter affidavit that all the rules laid down in KLA Rules have been observed, in the same breath adds as follows :

"The lands has not been assigned to the 4th respondent so far. Only preliminary steps have been taken in this case to assign the land by the respondents. Necessary notices as contemplated in the Rules will be published at the appropriate time before assigning the land."

It is difficult to comprehend the contradictory statements made in paragraphs 9 and 10 of the counter affidavit of the 1st respondent. The only inference possible is that answer to the crucial question is cleverly evaded and the deponent of the counter affidavit does not want to admit or deny as to whether the procedure prescribed in Rules 11 and 12 have been followed. A perusal of Exts. P2 and P4 would make it clear that a decision has in fact been taken by the Board of Revenue to assign 75 cents of land in favour of the petitioner and that decision of the Board of Revenue has been affirmed with added force in Ext. P4 order of the Government. Hence the averments in the counter affidavit of the 1st respondent are devoid of any merit or substance. As rightly pointed out by the learned counsel for the petitioner a decision to assign the land cannot precede the preparation of the list contemplated by Rule

11. The publication of the notice also should be a condition precedent before taking the decision to assign government land to a private person.

10. Government and other authorities empowered by the statute to assign government land to private persons are not vested with absolute or arbitrary powers. The power of eminent domain is tailored by the constitutional provisions. Government which is the custodian of public property cannot act against public interest or in a manner offending Article 14 of the Constitution. Not only that such exercise of power must conform to the procedure and other guidelines streamlined in the legislative enactment and the rules, if any, framed thereunder, but also should be informed by reason and conform to the principles of fairness in action. Government have no power to transfer Government property to private hands according to its whims and fancies. Supreme Court in [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), held that even in the matter of distribution of largess the principles of equality enshrined in Article 14 of the Constitution should be observed. In *Parameswaran Pillai and Anr. v State of Kerala and Ors.* reported in 1961 KLJ 1192 a Division Bench of this Court (Ansari (CJ) and Raghavan (J)) held that "any assignment by the prescribed authority under the Kerala Land Assignment Act must be after the stages under Sections 4 and 5 been gone through". As far as assignment of Government land is concerned the first thing to be done is to identify the assignable land and then to prepare the lists and approve the same. Without taking any effort to find out whether the land in question is included in the list of assignable lands, the Board of Revenue and the Government have taken a decision in favour of the 4th respondent to assign land to him.

11. The averments in the counter affidavit of the 4th respondent are mainly intended to contend that the petitions have no locus standi to raise objections against the orders passed in favour of the 4th respondent in the matter of assignment of the land and further that the 4th respondent has been in physical possession of the property for personal cultivation for a long period of time. But the enquiry into facts as to whether the 4th respondent has got possession over the property nor not becomes relevant only after it is seen that the said land is included in the list of assignable lands as contemplated by the rules.

12. According to the 4th respondent, the petitioner which is a youth club registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955 ceased to be functional and this Original Petition at the instance of such a non-existing body of persons is not maintainable. I do not think that the above contention of the 4th respondent requires any serious consideration, in the light of the fact that the effect of the impugned order is one directly affecting the public at large. In a case where the authorities are taking steps to assign government property to a private person discarding and by-passing statutory inhibitions and mandatory provisions a petition brought under Article 226 of the Constitution to interdict the perpetuation of the illegality and resultant injury to public cannot be

thrown overboard by conducting an investigation into the juristic existence of the petitioner. In a case of this nature, the petitioner's role get transformed into that of a mere informant enabling this Court to take cognizance of the issue. It is an indisputable fact that the petitioner has been resisting the assignment and prosecuting the issue during the past more than 10 years. Ext. Rule 4(i) shows that the 4th respondent had instituted a suit in the Munsiff's Court, Thrissur and that the petitioner herein was impleaded as the 1st defendant in that suit. When the suit was decreed, the petitioner filed A.S. No. 117 of 2000 and in that appeal the 4th respondent was respondent No. 1. There was an earlier O.P. filed by the petitioner in 1993 on the same subject matter and this Court disposed of that Original Petition permitting it to file a revision before the Government. The present Original Petition has been filed challenging the correctness of the decision taken by the Government in the revision thus filed before it. I have no hesitation to reject the contention of the 4th respondent on the question of locus standi. Even assuming that the petitioner is adjudged as one not personally aggrieved by Ext. P4 order, in the sense that the petitioner has no legal right to claim assignment of the government land in its favour, this Original Petition cannot be dismissed on that ground because the issue in this case is not merely a dispute between the two private individuals or body of persons, but one of public interest as well. In cases where this Court under Article 226 of the Constitution has taken cognizance of the issue and is satisfied that the complaint is genuine and that refusal to grant the relief prayed for will result in serious injury to public interest including loss of public property, objections related to locus standi of the petitioner who brings the issue to the notice of the court, deserves to be over-ruled, to deal with the matter on merits.

13. I find force in the submission of the learned counsel for the petitioner that Ext. P4 was passed in flagrant violation of the statutory provisions. Government went wrong in affirmating the decision taken by the Board of Revenue in Ext. P2. In this connection, it is pertinent to note that the 1st respondent-Government which passed Ext. P4 affirming Ext. P2, has not come forward, while swearing to the affidavit, to say that the land in question has in fact been ordered to be assigned in favour of the 4th respondent. That is claimed in para 10 of the counter affidavit is that, though inconsistent with the averments made in the preceding sentences of the counter affidavit, only preliminary steps have been taken to assign the land. That alone is sufficient to hold that neither Ext. P2 nor Ext. P4 is legally valid or sustainable in law.

14. In the result, I allow prayer (ii) in the Original Petition and quash the impugned order. I direct respondents 1 to 3 to see that the land ordered to be assigned as per Ext. P4 will remain as Government land until a decision in accordance with the Act and the Rules is taken by the authorities under the Act.

15. Original Petition is allowed to the above extent.