
(2014) 07 KL CK 0076
In the High Court Of Kerala
Case No : WP (C). No. 31268 of 2007 (V)

Autumn Wood Resorts

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Constitution of India, 1950 — Article 141, 162, 226, 300A, 300A
General Clauses Act, 1897 — Section 6
Kerala Land Conservancy Act, 1957 — Section 3, 3(1)(b)

Citation : (2014) 3 KHC 305 : (2014) 3 KLT 526

Hon'ble Judges : Dr. Manjula Chellur, C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : K. Jayakumar and P.B. Krishnan, Advocate for the Appellant;
Susheela R. Bhat, Spl. Government Pleader, Devan Ramachandran and K.M.
Aneesh, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—The petitioner seeks the following reliefs:

- i) Issue a Writ of Certiorari or any other appropriate writ or order quashing that part of Ext. P11, which purports to remand the matter to the District Collector, Idukki for final disposal;
- ii) Declare that the proceedings under the Cardamom rules, 1935 and the Land Assignment Rules, 1964, initiated against the petitioner stand dropped and terminated by Ext. P11;
- iii) Declare that the proceedings under the Cardamom Rule, 1935, Land Assignment Rule, 1964, and the Land Conservancy Act and rules and the actions of the Task force, Munnar against the petitioner are illegal, arbitrary, and ultra-vires the Constitution;
- iv) Issue a Writ of Mandamus or any other appropriate writ, order or direction, directing the respondents to pay an amount of Rs. 15,00,00,000/- (Rupees Fifteen Crores only) to the petitioner as compensation/damages for demolition of

the resort/structures of the petitioner in violation of the Fundamental Rights of the petitioner;

v) Issue a Writ of Mandamus or any other appropriate Writ, order or direction, directing the respondents to hand over possession of the properties resumed by Ext. P1 to the petitioner forthwith;

2. The facts involved in the writ petition would disclose that an order of resumption was passed by the District Collector in respect of land in the possession of the petitioner having an extent of 1.00.68 hectares situated in Sy. Nos. 130/1, 130/2 and 87/1 of Chinnakkanal village. According to the petitioner, out of the aforesaid extent of land, 34.32 Ares coming under Sy. Nos. 130/1 and 130/2 were forming part of patta land under the Cardamom Rules, 1935. The balance extent of land coming under Sy. No. 87/1 forms part of land assignment pattas as per LA Nos. 41/77 and 15/77. The petitioner preferred an appeal before the Land Revenue Commissioner who had set aside the order passed by the District Collector by finding that there is violation of the principles of natural justice. The matter is remitted back to the District Collector.

3. Immediately after the order of resumption was passed by the District Collector by way of Ext. P1 dated 29/5/2007, petitioner preferred an appeal before the Land Revenue Commissioner as per Ext. P2 dated 31/05/2007. He also submitted an application for stay of further proceedings. Writ petition W.P.C. No. 16732 of 2007 was also filed apprehending immediate action for resumption. The writ petition was dismissed reserving right to agitate the matter before the appellate authority. An appeal was filed before the Division Bench as W.A. No. 1272 of 2007. The Division Bench did not interfere, but 24 hours time was granted to remove the furnitures and fixtures. Though the petitioner moved for stay of proceedings before the Land Revenue Commissioner, by the time the petitioner was dispossessed and the buildings in the property was demolished.

4. It is inter alia contended that the Government has no right in respect of the property coming under Sy. Nos. 130/1 and 130/2. Since Cardamom Rules, 1935 is no longer in force, it is not open for the District Collector to invoke Rule 28 and even otherwise he has no jurisdiction to invoke Rule 28, the competent authority being the Government. Orders had been issued by the District Collector in gross violation of the principles of natural justice and the buildings had been demolished without a proper order being passed in the matter. Hence the petitioner seeks the reliefs as sought for. It is inter alia contended that the Land Revenue Commissioner has no power to remit the matter back to the District Collector. Its power to confirm, vary or cancel under Rule 21(8) of the Land Assignment Rules 1964 does not enable remand.

5. Counter affidavit is filed by the 4th respondent inter alia stating that the petitioner has already filed a suit for declaration of title in respect of the very same property in O.S. No. 57/2007. Hence petitioner is not entitled to seek any relief in the present writ petition. It is further indicated that the property

described in Ext. P2 sale certificate forms part of cardamom hills in Udumbanchola taluk. According to the Government it was not known whether the property was assigned on registry in favour of the defaulter or that it was a lease in his favour. It is not known whether the land was under concessional registry. It is indicated that the petitioner has constructed a resort consisting of 11 buildings. There was no permission in terms of Rule 33 of the Cardamom Rules and therefore proceedings can be taken under the Kerala Land Conservancy Act wherein the Collector is the competent authority to evict persons in unauthorised occupation of Government lands. It is reiterated that the petitioner has violated Rule 28 of the Rules by cutting and removing trees and constructing buildings. That apart, cardamom hill reserve satisfies the definition of forest and therefore Forest Conservation Act, 1980 applies. Reference is made to Ext. R4(b) stating that by notification dated 24/08/1897, Travancore Government notified certain areas as forest and the land in question will come within the said notification. It is therefore contended that even assuming that Ext. P12 is valid, subsequent transactions are void. The same situation applies to Exts. P20 and P21 pattas as well. It is contended that enquiry revealed that Ext. P20 and P21 pattas are bogus. As far as LA Nos. 41/77 and 15/77 are concerned, no entries are seen recorded in Book No. 2 or in the village office records. The respondent also denied the fact that the petitioner had invested Rs. 5 Crores for construction in the property and therefore they denied the liability to pay damages of Rs. 15 Crores, as claimed.

6. Reply affidavit is filed by the petitioner supporting their stand and also producing additional documents.

7. Having regard to the factual situation arising in this case, the short question to be considered is whether Ext. P11 issued by the Land Revenue Commissioner is liable to be set aside and that the petitioner is entitled for any compensation, as prayed for and for restoration of possession of the property.

8. Ext. P1 is the order passed by the District Collector. In Ext. P1, it is indicated that the construction of 11 commercial buildings in the property in Sy. Nos. 130/1 and 130/2 of Chinnakkanal village is in clear violation of Rule 28 of the Cardamom Rules 1935 and Rule 18 of the Rules for lease of Government Lands for Cardamom Cultivation 1961 (hereinafter referred as "1961 Cardamom Rules"). It is further observed that the claim of the petitioner in respect of 66.36 Ares of Revenue land in Sy. No. 87/1 as per L.A. Nos. 41/77 and 15/77 which is lying adjacent to the other lands in Sy. Nos. 130/1 and 130/2 and claimed to have been assigned as per LA Nos. 41/77 and 15/77 is not seen in the records maintained in the Taluk Office or in the Village Office. Hence, based on such reports, the property is resumed. The Land Revenue Commissioner, while considering the petitioner's appeal found that the property held by the petitioner in Sy. Nos. 130/1 and 130/2 is governed by the provisions of the Cardamom Rules, 1935. It is further observed that the spirit of Rules 28 to 36 of 1935 Rules is that the said land should be put to economic use for growth of cardamom and

the same should not result in ecological destruction. Since buildings have been constructed in the land set apart for cardamom cultivation, there is apparent violation of the said rules. However, it is observed that since an opportunity has not been granted to the petitioner for preferring objections, and on finding that the land assignment orders cannot be cancelled merely for the reason that the records are not forthcoming, the District Collector was directed to locate the files, make necessary enquiry and thereafter take appropriate action in accordance with law. It is also indicated that the appellant should be given proper opportunity to adduce evidence regarding validity of patta held by him.

9. Heard Sri. P.B. Krishnan learned counsel appearing on behalf of the petitioner and Smt. Susheela R. Bhatt, learned Special Government Pleader appearing on behalf of the respondents.

10. One of the contentions urged by the petitioner is that the District Collector has not issued any order or proceeding as per Ext. P1 as it does not bear his signature. Though the District Collector is made a party to the proceedings as 7th respondent, no affidavit has been filed by him. It is further argued that 1961 Cardamom Rules has no application in so far as no lease has been granted in favour of any person with reference to the aforesaid land. The terms of the grant is with reference to Cardamom Rules, 1935, and in so far as the Rules have been repealed, Rule 28 or any other provision cannot be invoked at all. Even assuming that Rule 28 applies, it is an inchoate right which cannot be enforced by the authorities specified under the rules. Reference is made to the judgment of this Court in Lakshmi Amma Alias Echuma Amma v. Devassy [1970 KLT 204 (FB)]. Certain conditions are specified as part of the Cardamom Rules, 1935 and there is no contention that any such condition has been violated. It is further contended that even assuming that Rule 28 applies, the power of resumption can only be exercised by the Government on a report of the Commissioner, Devikulam. In so far as the Government has not exercised the power, the District Collector has no authority at all. It is also contended that the 1935 Rules had become a dead letter by applying the principle of quasi repeal by Desuetude. Still further, it is argued that Rule 28 of Cardamom Rules could be invoked only if there is wanton destruction of teak wood. Respondent does not have such a case. The resort is constructed without cutting the trees and the trees within the rooms as well. Reference is also made to the judgment of the Supreme Court in Wazir Chand Vs. The State of Himachal Pradesh, , Bishan Das and Others Vs. The State of Punjab and Others, , Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, and M. Far Hotels Ltd. Vs. Union of India (UOI), , to contend that, in the absence of a statutory provision enabling the District Collector to resume the land, no such power can be exercised and therefore the order of resumption is illegal and without jurisdiction. With reference to patta lands covered by LA Nos. 15/77 and 41/77, the submission is that unless the patta is cancelled, there cannot be any order of resumption. Petitioner therefore contends that the whole process of the State in demolishing the structures on a summary order passed by the District Collector without

application of mind is absolutely illegal and is totally misconceived. The entire intention was only to take over the lands contrary to the constitutional right available to the petitioner under Article 300A. Hence the petitioner seeks compensation placing reliance on the judgment of the Supreme Court in *Rudul Sah Vs. State of Bihar and Another*, , *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, . *Vibin v. State of Kerala* [2013 (1) KLT 103] to contend that under Article 226 of the Constitution of India, the court can award compensation, as damages for infringement of fundamental rights as well as constitutional rights.

11. The first question to be considered is whether the writ petition is maintainable especially in the light of the petitioner having filed O.S. No. 65/2007 before the Sub court, Kattapana. It is inter alia contended that the suit was filed at a time when the petitioner was expecting an adverse order. The suit was filed even before Ext. P1 order was passed. The relief sought was for declaration of title and for injunction. It is true that the claim for declaration of title is a matter to be adjudicated by the civil court and we do not intend to express any opinion in regard to the question of fact which has to be adjudicated after taking evidence in the matter. The only question to be considered in this writ petition is whether the order of resumption in terms of Ext. P1 is bad in law, whether the Land Revenue Commissioner was justified in relegating the matter to the District Collector, and whether any compensation is payable for the alleged illegal act of respondents. The adjudication of rights of the petitioner regarding title will not preclude the petitioner from challenging Exts. P1 and P11 orders. Hence we do not think that pendency of the suit O.S. No. 65/2007 is a bar for this Court for considering the contentions urged in the writ petition.

12. Still further, learned Special Government Pleader argues that the petitioner has challenged Ext. P1 before this Court and Ext. P4 and P5 are the judgments. Since this Court did not interfere with Ext. P1, the present writ petition challenging the order of the Land Revenue Commissioner, the basis of which is Ext. P1, is not maintainable. It is relevant to note that though the petitioner had filed writ petition challenging Ext. P1, the same was dismissed permitting the petitioner to approach the appellate forum. The Division Bench also did not interfere with the said order but granted time to the petitioner to remove its furnitures and fixtures. Ext. P11 is the order of the appellate authority which gives a separate cause of action to the petitioner to challenge the same. Under such circumstances, we are of the view that this writ petition is maintainable and it is open for the petitioner to challenge Ext. P11 order in this writ petition.

13. When land in possession of a person is resumed or taken possession by the Government or any other person, it can be done only by observing due process of law. When the District Collector, an officer of the Government invokes his power for resumption of land in the possession of a person, necessarily he can act only within the powers available to him under a particular statute. The Constitution Bench in *Bishan Das* (supra) held that "the action of the

Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property." After referring to Wazir Chand (supra) it is held that "the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts." In Bishamber Dayal Chandra Mohan (Supra) the Supreme Court, held that Article 300A provides that no person shall be deprived of his property save by authority of law and the State Government cannot take recourse to the executive power of the State under Article 162 to deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. It is further held that "The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State legislature, a rule, or a statutory order, having the force of law, that is positive or State made law." This position of law has also been reiterated by a Division Bench of this Court in M. Far Hotels (supra). Having regard to the above settled legal position, the question to be considered is whether the District Collector has passed Ext. P1 order, with reference to any statutory provision.

14. In regard to the contention regarding repeal of Cardamom Rules, 1935, we have already held in Vincy Cherian and Others Vs. State of Kerala and Others, that the Cardamom Rules, 1935 has been repealed by virtue of Section 9(3) of the Kerala Land Assignment Act, 1960. The learned special Government Pleader however relied upon Section 6 of the General Clauses Act which inter alia indicates that even if a Central Act is repealed, it shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Reference is made to the judgment of the Supreme Court in India Tobacco Co. Ltd. Vs. The Commercial Tax Officer, Bhavanipore and Others, and Gammon India Ltd. Vs. Spl. Chief Secretary and Others, . The learned counsel for the petitioner on the other hand relied upon the judgment of the Supreme Court in Rayala Corporation (P) Ltd. and Another Vs. The Director of Enforcement, New Delhi, and Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, . In Rayala Corporation (supra) the Constitution Bench held that when the amendment to the rule indicates affording protection only for action already taken while the rule was in force, there is no justification in initiating new proceedings when the rule had ceased to exist. In Kolhapur Canesugar Works (supra), another Constitution Bench held that when Section 6 of the General Clauses Act applies to repeal of Central Act and Regulation, it is not possible to apply the said provision to a case of repeal of a rule. Section 4 of the Kerala Interpretation of General Clauses Act corresponds to section 6 of the General Clauses Act, 1897. The said provision cannot have any application when the question relates repeal of Rules. Therefore the view expressed by us in Vincy Cherian (supra) holds good. 15. The facts being so, when the parties to the grant

are governed by the terms of grant the District Collector has no authority to exercise any power under Rule 28 of the Cardamom Rules, 1935 to take action against the petitioner, especially on account of repeal of the Rules. Therefore the jurisdiction excised by the District Collector is without authority of law. For that reason itself the Land Revenue Commissioner's order is bad in law.

16. In the absence of any statutory provision which enables the District Collector to pass Ext. P1 order, definitely the contract between the parties governs the issue. Perusal of Cardamom Rules, 1935 indicates that if the assignment of land is on registry and the assignee has complied with all the requirements under the Rule, the parties are bound by the terms of the grant either by way of an agreement or the conditions of patta. The Rules also prescribe certain conditions to be complied with by the assignees. The said conditions or terms as available in the agreement or the conditions prescribed at best can form part of a contract between the parties. If there is any dispute regarding the contractual terms, the matter has to be resolved by a civil court. On account of the repeal of the Rules, the authorities under the Rules cannot take any action by invoking such provisions.

17. The respondent has also taken a contention that the property involved comes within forest area and therefore Forest Conservation Act, 1980 applies. Ext. P1 or P11 does not contain any such indication. At any rate, if the area in question is covered by any notification stating that it is a reserved forest, it is always open for the authorities under the said Forest Conservation Act to take appropriate proceedings in accordance with law.

18. Another argument raised by the respondent authority is that they are entitled to invoke Land Conservancy proceedings under the Land Conservancy Act. According to the petitioner, they have valid title and they have been paying tax in respect of the property in question. The property has been mutated in their names as evident from the basic tax register. Land Conservancy Act can be invoked only if the land belongs to the Government. Property of Government is described under Section 3 of the Land Conservancy Act, which reads as under:

3. Property of Government defined.- (1) All public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same the bed of the sea and of harbours and creeks below high water mark, the beds and banks of rivers, streams, irrigation and drainage channels, canals, tanks, lakes, backwaters and water courses, and all standing and flowing water, and all lands whosoever situated, save in so far as the same are the property of -

(a) Jenmies, Wargdars or holders of Inams; or

(b) persons registered in the revenue records as holders of lands in any way subject to the payment of land revenue to the Government; or

(c) any other registered holder of land in proprietary right; or

(d) any person holding land under grant from the Government otherwise than by

way of a lease or licence; or

(e) any person claiming through or holding under any of the persons referred to in clauses (a), (b), (c) or (d), are, and are hereby declared to be, the property of Government, except as may be otherwise provided by any law for the time being in force, subject to all rights of way and other public rights and to the natural and easement rights of other land owners and to all customary rights legally subsisting.

In so far as the petitioner has been paying tax for the property in question, and claims to be the successor of a grantee from the Government, he comes within the exemption of section 3(1)(b) and (d) read with clause (e).

Hence the said property cannot prima facie be termed as Government land. Under such circumstances, we do not think that the respondent can invoke land conservancy proceedings in respect of the property in question.

19. The petitioner has a contention that the District Collector has not signed Ext. P1 document. Having regard to our finding that the District Collector has no jurisdiction or authority to invoke Cardamom Rules, 1935, we do not think that there is any necessity to consider the aforesaid issue.

20. As far as cancellation of LA pattas are concerned, the right to cancel lies with the person who is the competent authority to cancel the said pattas. The pattas at Exts. P20 and P21 have been issued by the Special Tahsildar under Kerala Land Assignment Act, 1960. If the pattas are wrongly issued, definitely it is possible for the competent authority to take appropriate proceedings for cancellation of the said patta, by invoking rule 8(3) of the Kerala Land Assignment Rules, 1964 and of course on compliance with the relevant statutory provisions. However, without cancelling the patta, no action can be taken to resume the land covered by the said pattas.

21. Having regard to these factual findings, we are of the view that the entire procedure adopted in terms of Ext. P1 and P11 are bad in law. Since Ext. P1 is already set aside by the Land Revenue Commissioner Ext. P11 alone survives which is liable to be set aside.

22. As far as the claim for damages is concerned, it is not in dispute that the 11 buildings belonging to the petitioner has been demolished. Petitioner relies upon various documents to prove the damages suffered by him. It is not in doubt that when the property is being demolished after passing illegal orders, the holder of the property is entitled for compensation. But, quantification of such compensation is a matter which gains importance. It is not in dispute that the petitioner was running a resort in the building. The question is still at large as to whether the petitioner was entitled to construct buildings in the land allotted for cardamom plantation. As already held, the Cardamom Rules, 1935 had been repealed and the question depends upon the conditions of the grant. The conditions of the grant does not prohibit construction of buildings in the land but

presumably when the land is given for cardamom cultivation, any construction can be made only with permission from the Government. But, as far as the construction of buildings in the land obtained under the LA pattas are concerned, there is no such prohibition. The prohibition is only to cut and remove the trees which belongs to the Government.

Condition (1) in the patta reads as under:

(1) The full right over all the trees within the grant and specified in the Schedule vests in the Government and the assignee is bound to take care of all such trees standing on the land at the time of assignment or that may come into existence subsequent to it.

All the trees therefore belongs to the Government even in the patta land. All the trees standing thereon as well as trees which are grown subsequently belongs to the Government.

23. It is absolutely a question of fact as to whether the petitioner has cut and removed trees. No material is available other than a bald statement that trees were cut and removed. The respondent authority cannot form such an opinion without any material on record. Under such circumstances, the entire action of the respondent authority in issuing Ext. P1 order was illegal, arbitrary, high handed and without jurisdiction.

24. In *Vibin* (supra) a Division Bench of this court held that:

Therefore, in view of the case law set out on this point under Art. 141 of the Constitution of India, it is very clear in our mind that notwithstanding the right to remedies under Civil suits or Criminal proceedings, this Court can grant compensation in exercise of jurisdiction under Art. 226 of the Constitution of India under public law to the victims who suffered infringement of their right to life and personal liberty guaranteed under the Constitution.

This court, in fact, has considered the entire case law on the point including *Rudul Sah* (supra) and *Nilabati Behera* (supra). Hence the claim for compensation in the writ petition is justifiable. Right to property is a constitutional right, it is a legal right and even a human right. It cannot be taken away by abuse of power in a democratic society, where rule of law prevails. Such abuse of powers are liable to be curbed and award of compensation is one among such method to be adopted. Shutting our eyes on such patent illegalities would result in chaos which should not be permitted and hence we are of the view that the State is liable to compensate the petitioner for the wrong done.

25. But sufficient materials are not available for quantification of the loss caused to the petitioner. Therefore, leaving open the right of the petitioner to agitate his rights for claiming compensation before the civil court, we fix a rough estimate of Rs. 10,00,000/- as provisional compensation which the 1st respondent is liable to pay to the petitioner.

In the result, this writ petition is allowed as under:

i) Ext. P11 is quashed.

ii) The 1st respondent is directed to pay to the petitioner an amount of Rs. 10,00,000/- (Rupees ten lakhs only) as provisional compensation for destruction of the buildings in the property.

iii) The respondents are directed to restore possession of the property to the petitioner within a period of one month from the date of receipt of a copy of this judgment.

iv) The petitioner shall not make any construction activity in the cardamom area without permission from the Government until final decision is taken in appropriate proceedings.