

(2024) 01 KL CK 0189
In the High Court Of Kerala
Case No : Writ Petition (C) No. 28725 Of 2022

Bijimon K.R

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 25-01-2024

Acts Referred:

Kerala Government Land Assignment Act, 1960 — Section 7
Forest (Conservation) Act, 1980 — Section 2

Citation : (2024) 01 KL CK 0189

Hon'ble Judges : A.Muhamed Mustaque, J;Shoba Annamma Eapen, J

Bench : Division Bench

Advocate : George Abraham, Joseph Gopuran, Joby D Joseph, Mary Catherine Priyanka P.S., K.P.Jayachandran

Final Decision : Dismissed

Judgement

A.Muhamed Mustaque, J.

1. The writ petitioner, a resident of Ernakulam District applied for assignment of land invoking provisions of the Kerala Land Assignment (Regularisation of Occupation of Forest Lands Prior to 1-1-1977) Special Rules, 1993 (hereinafter referred to as the 'Special Rules 1993'). The application was submitted for assignment of 4 acres of land in Survey No.384, 400/1 of Block No.36 in Vathikudy Village of Idukki District. According to the petitioner, his predecessor-in-interest was in occupation of the land prior to 1/1/1977. The petitioner applied for assignment of land on 8/12/2017.

2. Admittedly, the land is situated in Cardamom Hill Reserve in Udumbanchola Taluk. There is no dispute to the fact that Special Rules 1993 would apply for assignment of land situated in Cardamom Hill Reserve.

3. According to the petitioner, this land was part of Survey No.1/1 of Konnathady Village of Udumbanchola Taluk. The petitioner submitted that the predecessor-in-interest Shri Monikutty Mathew made an application for leasing the land for

cardamom cultivation. It is further submitted that occupation of land by predecessor-in-interest was acknowledged by the revenue authorities as evident from Exts.P1(a), P2 and P3. The petitioner, placing reliance on Ext.P3(a), a report of the Special Deputy Tahsildar, Devikulam, to the Assistant Settlement Officer, Kumali, submitted that the entire area was converted much prior to 1977 and, therefore, there is no embargo in assigning the land under the Special Rules 1993. The petitioner's application for assignment was considered by the Special Tahsildar. The Special Tahsildar, by Ext.P17 found that the land is not included in the list prepared under the Special Rules 1993 and absolutely no records were produced to show that this land is included in the fair land register as an assignable land. It is further observed that if such assignment is given, it will adversely affect the Cardamom Hill Reserve.

4. Now we shall advert to the Special Rules 1993. In exercise of the powers conferred on the Government of Kerala under Section 7 of the Land Assignment Act, 1960, Government of Kerala made Rules for assignment, settlement and regularization of forest lands under occupation prior to first January 1977. The validity of these rules was questioned before this Court and the Apex Court. The Apex Court negated the challenge by upholding the legality of the rules. {See *Nature Lovers Movement vs State Of Kerala & Ors* [2009 (5) SCC 373]}.

5. Land is defined under Rule 2(f) of the Special Rules, 1993 as follows:

"Land" means the Forest land subjected to joint verification as defined in sub-clause (e) and Cardamom Hill Reserve land which are converted for non-cardamom cultivation prior to 1-1-1977 in Idukki District which have been transferred from Forest Department to Revenue Department and covered in the Resurvey Records and list of lands recommended to Government of India for concurrence under Section 2 of the Forest (Conservation) Act, 1980 (Central Act 69 of 1980) but does not include lands in wild life Sanctuaries.

6. Rule 5 of the Special Rules 1993 states that the land sought for assignment under the Rules should have been in occupation of the assignee or predecessor-in-interest prior to 1/1/1977. Rule 6 of the Special Rules 1993 mandates preparation of a list of assignable lands. It is appropriate to reproduce Rule 6 which reads thus:

List of assignable lands and applications.-

(1) The joint verification reports or the records of resurvey of the land conducted under the Kerala Survey and Boundaries Act, 1961 (Act 37 of 1961) containing the details of lands found eligible for assignment under these Rules shall be published in the concerned Village Offices and Taluk Offices inviting applications for assignment within the period specified therein.

(2) Application for assignment shall be made in Form No.2 before the Tahsildar within seven days of the publication of the list.

(3) Each application shall bear court-fee stamp of the value of Rupees two.

Note.- Applicants belonging to Scheduled Castes/Scheduled Tribes shall be exempt from affixing court fee stamp on their applications.

7. It is also appropriate to refer Rule 7 of the Special Rules 1993 which reads thus:

7. Enquiry into claims and objections.

(1) Immediately after the receipt of the applications for assignment, the Tahsildar shall publish in the Village Office and Taluk Office a notice in Form No. 3 under his signature inviting claims or objections in writing from the interested persons to the regularisation of occupation by assignment on registry of the land.

(2) Claims or objections if any shall be preferred within seven days from the date of publication of the notice.

(3) In case where claims or objections have been preferred the Tahsildar shall duly enquire into them and pass orders thereon within fifteen days of receipt of such claims or objections, recording the reasons in writing for rejection or admission of the claim or objection as the case may be:

Provided that the Government may if they consider it necessary so to do in public interest vary or reduce or dispense with the time limits stipulated under sub-rule (2) and (3).

(4) The fact of the disposal of the claims or objections together with reasons for "such disposal shall be communicated to the person who preferred the claim or objection.

(5) If no claims or objections are preferred the Tahsildar shall straight away assign the land to the applicant.

8. Rule 8 of the Special Rules 1993 refers to procedure for assignment which is reproduced as follows:

8. Procedure for assignment.

After the disposal of the claims and objections in the manner specified in Rule 7, the Tahsildar shall prepare a list of eligible applicants and order of assignments shall be issued in Form No. 4.

9. A combined reading of Rule 5 to 8 makes it clear that this was a one-time measure envisaged under the rules to assign the land to those who have occupied such land prior to 1/1/1977. That means, if the applicant for assignment or his predecessor was in occupation prior to 1/1/1977, he will be eligible to apply for assignment provided that the land is included in the list of assignable lands under Rule 6. If the land is not included in the assignable list, no one can seek for assignment of the land coming under the meaning of land covered by Rule 2(f). The preparation of the list was a one-time exercise under Rule 6 as it has to be done by a joint verification of reports by revenue and forest. As seen from Rule 6 itself, it was mandated that details of land found

eligible for assignment have to be published in village offices and taluk offices, inviting application for assignment within the period specified therein. That means, if the land was not included in the list, an occupant of such land will have to raise an objection against non-inclusion of the land in the list. Once the list is published and finalised, the list cannot be expanded after long lapse of time by claiming that it is an assignable land under the Special Rules.

10. In this case, the Tahsildar categorically found that the land was not included in the fair land register. That is a register reflecting the list of assignable land. The petitioner, neither has a case that his predecessor-in-interest raised any claim for assignment of land under the Special Rules, nor he has a case that they raised any objection for non-inclusion of the land in the list prepared. The petitioner refers to Ext.P23 produced along with IA No.1/2023, a map prepared by the Ministry of Environment and Forest, Government of India, to claim that the land was converted to non-cardamom cultivation. It is further submitted that the resurvey records were not updated, and for mere reason that the land in question was not found in the resurvey records or any other register, and therefore, it cannot result in denial of assignment of land to the petitioner. As we noted earlier, this was a one-time exercise to benefit those occupants of lands prior to 1/1/1977. If they had not raised any claim after publication of the list, their successor-in-interest cannot rake up the claim after a long lapse of time. It is not even discernible, how, the petitioner obtained the property from his predecessor-in-interest. The petitioner was 47 years old at the time of submitting the application in the year 2017 that means he was 7 years old in the year 1977. The Special Rules never intended to benefit any occupant after 1977. Thus, the occupation of the petitioner is illegal as land is not liable to be regularised under the Special Rules 1993. In such circumstances, he will have to vacate the land.

We, therefore, dismiss the writ petition and direct petitioner to vacate the land within one month, and on failure, the District Administration shall take steps to restore the land without much delay.