

(2021) 09 KL CK 0187

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1881 Of 2018

Elsy Joshy, W/O.Late Joshy

APPELLANT

Vs

Village Officer, Kumbalangi

RESPONDENT

Date of Decision : 24-09-2021

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 218(i)
Kerala Land Assignment Rules, 1964 — Rule 9(1)

Citation : (2021) 09 KL CK 0187

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Murali Purushothaman, J

1. In the year 1976, one Smt. Thressia applied for assignment of an extent of 55 cents of land in Sy.No.1657 in Kumbalanghi village, Ernakulam District. The aforesaid land was part of a puzha puramboke of a total extent of 1376.49 acres leased out to one Anna Ouseph. Ext.P2 order under Rule 9 (1) of the Kerala Land Assignment Rules, 1964 ('Rules', for short) was issued on 20.01.1976 assigning the aforesaid 55 cents of land to Smt. Thressia as per LA 240/1974. However, pursuant to the assignment, no patta was issued though Smt. Thressia had remitted the land value.

2. Flashed back, by virtue of Ext.P1 Settlement deed executed by Smt. Thressia in the year 1962, the extent of 55 cents of land was set apart for her daughter-in-law, Smt.Thressiamma (the wife of Joseph, eldest son who predeceased Smt. Thressia) and Antony, son of Smt.Thressiamma and late Joseph.

3. As per Ext.P4 sale deed No.527/83 of SRO, Mattancherry, Sri. Antony transferred his right over the aforesaid 55 cents of land to Sri. Joshi. V.R, S/o. Raphel, another grandson of Smt. Thressia. Later, vide Ext.P5 sale deed No.5872/2006 of SRO, Mattancherry, Smt.Thressiamma also transferred her right

over the aforesaid 55 cents of land to Sri. Joshi. V.R. Though Sri. Joshi. V.R. approached the authorities for issuance of patta pursuant to Ext.P2 order of assignment, the same was not issued and he, therefore, approached this Court by filing WP(C) No.27034/2008. Sri. Joshi. V.R died during the pendency of the said writ petition and the present petitioners got impleaded as additional petitioners in the said writ petition.

4. The writ petition was resisted by the Revenue officials arrayed as respondents and it was contended that, even before issuing patta, the assignee had transferred the property in favour of Sri. Joshi. V.R as per Exts.P4 and P5 sale deeds and the same is unauthorized and the assignment is liable to be cancelled. It was further contended that, being a puzha puramboke land, the land in question could not have been included in the list of assignable lands. The decisions of this Court in O.P.No.17233/96 dated 27.6.1997 and O.P.No.16077/96 dated 13.1.1997 were also relied on for canvassing the position that puzha puramboke cannot be assigned.

5. This Court, by Ext.P9 judgment, found that Ext.P2 order of assignment was issued as early as in the year 1976 and the assignee had remitted land value and other amounts and no steps were seen taken for cancellation of the order of assignment, even after the lapse of 30 years. Referring to the objection regarding the unauthorized transfer effected by the assignee, this Court held that when the order of assignment was issued in 1976, the restriction for alienation was limited to 3 years by virtue of Notification No.41 dated 21.1.1970, published in the Kerala Gazette Extra Ordinary No.34, dated 21.1.1970 and in view of legislative changes, the objection raised regarding transfer cannot be sustained, since the transfer was effected much later. This Court also held that since no action was taken for revocation or cancellation of the order of assignment during the last 40 years, it would be highly unjustifiable to deny patta to the petitioner on the ground that there was irregularity in the procedure while ordering assignment. Objection raised referring to judgments in O.P.No.17233/96 dated 27.6.1997 and O.P.No.16077/96 dated 13.1.1997 was also held not sustainable as they related to assignment sought for by encroachers. Therefore, this Court took the view that Sri. Joshi. V.R, being the transferee of rights on the land in question from the assignee in favour of whom Ext.P2 order of assignment was issued, is entitled to get patta of the land and since Joshi. V.R is no more, the legal heirs (the petitioners herein, i.e., the petitioners 2 to 4 therein) are entitled to get patta of the land, subject to production of proof regarding legal heirship. The said writ petition was accordingly disposed of directing the Tahsildar, Kochi, the 2nd respondent, to consider and dispose of the application for issuance of 'Patta' on the basis of Ext.P2 order of assignment and taking note of the findings in the judgment, subject to their production of legal heirship certificate and original documents pertaining to transfer of rights on the land.

6. The 2nd respondent, by Ext.P10 order, rejected the application for issuance of 'Patta' submitted by the petitioners on the ground that no patta can be issued for

the said 55 cents of land which is puzha puramboke and that the petitioners could not produce proof regarding their relationship with the assignee.

7. Ext.P10 order was challenged by the petitioners before this Court in WP(C). No.27630/2014 and this Court, by Ext.P13 judgment, set aside Ext.P10 order and directed the 2nd respondent to reconsider the application for issuance of 'Patta' submitted by the petitioners in accordance with law as would apply for assignment of river puramboke and needful shall be done by the competent authority for the issuance of patta within a period of two months. It was also observed that the direction contained in the judgment in O.P.No.17233 of 1996 relied on by the Revenue officials has no bearing in the matter. To hold so, this Court observed that directions therein are issued taking into account the public interest in relation to the land involved, which would not take away the power vested to the statutory authority in terms of the Kerala Land Assignment Rules and such authority can exercise the power in genuine cases where patta need to be issued to the persons who are in occupation of the land and whose occupation does not cause any threat to the environment.

8. Being aggrieved by Ext.P13 judgment, the State and the official respondents filed W.A No.1366/2015 contending that the learned Single Judge went wrong in ignoring the judgment of this Court dated 27.6.1997 in O.P.No.17233 of 1996 wherein this Court held that river puramboke cannot be assigned. It was also contended that, the direction in Ext.P13 judgment that, "needful shall be done by the competent authority for issuance of patta within a period of two months" denies an effective opportunity to the Revenue officials to consider/examine the eligibility/entitlement of the writ petitioners for assignment of land. The Writ Appeal was disposed of by Ext.P14 judgment directing the competent authority to process the application made by the writ petitioners for issuance of patta strictly in accordance with law as would apply for assignment of river puramboke and subject to the writ petitioners establishing their right over the property in question on the strength of sale deeds bearing Nos.527/1983 and 5872/2006 of Sub Registrar Office, Mattanchery, as the legal heirs of deceased Joshi.V.R. In Ext.P14 judgment, this Court also made it clear that the competent authority shall not reject the application placing reliance on the judgment of this Court dated 27.6.1997 in O.P.No.17233 of 1996.

9. The application of the writ petitioners for issuance of patta was again rejected by the 2nd respondent by Ext.P15 order stating that the transfer of land was effected within 12 years of the original assignment order which is in breach of condition in the order of assignment. Another reason stated in Ext.P15 for rejecting the application for patta is that, the land for which patta is sought is river puramboke and river puramboke cannot be assigned. Ext.P15 order is challenged in this writ petition. The petitioners have also prayed for directing the 2nd respondent to issue patta in their favour in respect of 55 cents of land in Sy.No. 1657 in Kumbalangi village in terms of Ext.P2 assignment order.

10. A Statement is filed on behalf of the 2nd respondent in the writ petition

wherein it is stated that there is violation of conditions 1 and 2 of Ext. P2 order of assignment which provided that the land granted on registry shall be heritable but shall not be alienable for a period of 12 years and that the assignee or his predecessor shall reside in /cultivate the land within a period of one year from the receipt of patta. It is also stated that the land in question is not one inherited from the assignee, but transferred by executing sale deed and is a clear violation of condition No.1 which prohibits alienation. The Statement also supplements Ext. P15 order stating that the land in question is a river puramboke which is not assignable as per Rule 1A (vi) of the Rules and Section 218 (i) of the Kerala Panchayat Raj Act.

11. I have heard Sri. N.N. Sugunapalan, the learned Senior Counsel for the petitioners and Sri. M.H.Hanil Kumar, the learned Special Government Pleader for Revenue.

12. Sri. N.N. Sugunapalan, learned Senior Counsel, would submit that each time the respondents find out some different and flimsy reasons to reject the application for patta submitted by the petitioners. The Senior Counsel would submit that the contention that there is violation of the conditions in Ext.P2 order of assignment cannot sustain in the light of the findings in Ext.P9 judgment which has become final. The Senior Counsel would further submit that the question as to whether the land in question is assignable or not, is also concluded by Exts.P9, P13 and P15 judgments, which are inter parte judgments and the respondents cannot reject the application for patta made by the petitioners on any of these grounds.

13. The first reason stated by the 2nd respondent in Ext.P15 order for rejecting the application for patta is that, in Ext.P2 order of assignment, it is provided that the land shall be heritable but shall not be alienable for a period of 12 years, but the land was transferred within the period of 12 years and the condition in the order of assignment is violated and the assignment is liable to be cancelled. It is to be noted that, this was one of the contentions raised in WP(C) No.27034/2008 objecting to the issuance of patta and this Court, in Ext.P9 judgment, found that when the order of assignment was issued in 1976, the restriction for alienation was limited to 3 years by virtue of Notification No.41 dated 21.1.1970, published in the Kerala Gazette Extra Ordinary No.34, dated 21.1.1970 and in view of legislative changes, the objection raised regarding transfer cannot be sustained, since the transfer was effected much later. The said finding in Ext.P9 inter-parte judgment has become final and the respondents cannot reject the application for patta for contravention of conditions regarding transfer of land in the order of assignment. Therefore, the first and the foremost reason stated in Ext.P15 for rejecting patta is not sustainable.

14. Another reason stated in Ext.P15 for rejecting the application for patta is that, the land for which patta is sought is river puramboke and river puramboke cannot be assigned. This was the reason stated in Ext.P10 order which came up for consideration before this Court in WP(C) No.27630/2014 and this Court, in

Exts.P13 and P14 judgments, directed the 2nd respondent to process the application made by the writ petitioners for issuance of patta strictly in accordance with law as would apply for assignment of river puramboke and subject to the writ petitioners establishing their right over the property in question on the strength of sale deeds bearing Nos.527/1983 and 5872/2006 of Sub Registrar Office, Mattanchery, as the legal heirs of deceased Joshi.V.R. This Court, in Ext.P13, also observed that statutory authority has to exercise the power in genuine cases where patta need to be issued to the persons who are in occupation of land for long period and does not pose any threat to environment. As these are matters that fall within the domain of power of statutory authority while exercising discretion in accordance with law, the matter was relegated by this Court to the 2nd respondent, the statutory authority. However, in Ext.P15, there is absolutely no discussion or consideration of any of these aspects which were relegated for the consideration of the 2nd respondent by Exts.P13 and P14 judgments. Ext.P15 order is issued not in compliance with the directions in the earlier judgments of this Court.

15. Ext.P15 is set aside. The 2nd respondent is directed to consider the application made by the petitioners for patta afresh as per the findings and directions of this Court in the inter-parte judgments referred above. Orders as above shall be passed within a period of two months from the date of receipt of a certified copy of the judgment, after hearing the petitioners. The interim order granted by this Court will continue till fresh order, as above, is passed.

The writ petition is disposed of as above. No order as to costs.