

(2001) 02 KL CK 0040
In the High Court Of Kerala
Case No : W.A. No. 2380 of 1998 etc

Kozhencherry Grama Panchayat

APPELLANT

Vs

Mariamamma Chacko

RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Kerala Kuthakapattom Rules, 1947 — Rule 17, 26

Citation : (2001) 2 ILR (Ker) 251

Hon'ble Judges : S. Sankarasubban, J; Kum. A. Lekshmikutty, J

Bench : Division Bench

Advocate : K.P. Satheesan and N. Santha, Government Pleader, for the Appellant; K.C. John K.K. John, Asok M. Cherian and Philip J. Vettikad, for the Respondent

Judgement

S. Sankarasubban, J.—Of the above appeals, W.A. No. 2380 of 1998 is filed by the Kozhencherry Grama Panchayat, while the other three appeals are filed by the Government, against a common judgment in O.P. Nos. 14077/96, 14154/96 and 15570/96. The appeals have been filed by the State against the judgment in O.P. No. 14077/98, 14154/96, and 14239/96. The Panchayat has filed the appeal against the judgment in O.P. No. 14239/96.

2. The Kozhencherry Grama Panchayat wanted certain lands for the purpose of a bus stand. They found that the land occupied by the respondents who were the petitioners in the Original Petitions was Government land and that could be taken for the purpose of bus stand. With that purpose in view, the Government was intimated. Originally, the District Collector issued notice to the respondents to vacate their premises. The matter came before this Court in O.P. No. 4195 of 1996 and connected cases. This Court said that the proceedings can be continued only after giving an opportunity to the petitioners to substantiate that they are entitled to get it assigned in their name. The District Collector decided that the petitioners should vacate the land. The matter was taken before the Board of Revenue. The Board of Revenue upheld the order of the District

Collector and directed that the occupants should be evicted. It is against the order of the Board of Revenue, No.D.Dos 16680/96/LR(J) 3 dated 24.8.1996, that the respondents approached this Court by filing the above four Original Petitions. In the impugned judgment, the learned Judge found that occupants were occupying the lands on the basis of Kuthakapattom Rules. Learned Judge disposed of the Original Petitions holding that the Collector and Board of Revenue have not passed orders in accordance with the Kuthakapattom Rules. In paragraph 11 of the judgment, the learned Judge gave the following directions.

(i) The authority under R. 26(a)(iii) of the Kuthakapattom Rules shall issue notices to the petitioners in accordance with such Rules, if the Kuthakapattom in favour of the petitioners have to be cancelled, and shall pass appropriate orders in that regard.

(ii) In case the petitioners have to vacate the land necessarily, the Authority shall pass appropriate orders with regard to the compensation payable to the petitioners and the compensation amount shall also be paid to them before they are asked to vacate.

(iii) The authority under the Kuthakapattom Rules shall complete the proceedings if they wish so, at any rate within six months from today.

It is against the above judgment, the Writ Appeals have been filed by the Government and the Panchayat. The first direction is that under R. 26(a)(iii), notice should be issued to the petitioners in the Original Petition, if the Kuthakapattom in favour of the petitioners have to be cancelled. The second direction is that, in case the petitioners have to vacate the land, necessarily the authority shall pass appropriate orders with regard to the compensation and the compensation amount shall be paid before they are asked to vacate. The third direction is that, the Authority under the Kuthakapattom Rules shall complete the proceedings if they wish so, at any rate, within six months.

3. As already stated, the above Writ Appeals are filed against the said judgment. Subsequently, after disposal of the Original Petition, in accordance with the directions, the Tahsildar Kozhencherry issued notice to the occupants and by order dated 10.12.1997 rejected the objections filed by the occupants and held that they are not entitled to get assignment of the land and also the compensation for the improvements. Challenging those orders, O.P. No. 861/98 was filed by Mariamma Chacko and others, who are the respondents in W.A. No. 81 of 1998. That original petition was dismissed and against that W.A. No. 875/98 is filed. That Writ Appeal was also heard along with these appeals, but it is disposed of separately.

4. The main contention urged by the appellants in this case is that, the learned Single Judge was not correct in holding that the respondents are entitled to the value of improvements. According to them, as per the Kuthakapattom Rules, the respondents are not entitled to value of improvements. Learned counsel brought to our notice the Kuthakapattom Rules, 1947 (hereinafter referred to as the

"Rules"). R.26(iii) of the Rules states that;

"it shall t=be competent to the Tahsildar or other authority who granted the lease to cancel it without notice either on the termination of the lease or if the lessee violates any of the conditions of the grant. The lease or any portion thereof may also be cancelled at any other time, after three month"s notice, if the land or tree is required for Government or public purposes".

Thus it is clear that the lease can be terminated or cancelled if the land is required for a public purpose. Here the purpose is construction of a bus stand. Hence, the Tahsildar is within his power to cancel the licence under R. 26(iii) of the Rules. The other question is whether the occupants are entitled to value of improvements. R.28 says that, immediately after a lease is sanctioned and the security is deposited, the Tahsildar shall issue a grant in duplicate in Form D Annexed and obtain the signature of the lessee to the declaration on the duplicate. Form D of the Kuthakapattom Grant of the Rules mentions about the condition. Condition No. 15 is as follows:

"That the lessee shall not commit waste on the property, put up permanent structures, sink wells etc., erect walls, plant more trees, open roads or pathways or do any act or abet the commission of any act which would obstruct Government servant in the discharge of their duties or in any way prejudice the interest of the Government. He shall not in any way interfere with the land or make any alteration in the lie of the land..... If the lessee however desire to carry out any permanent improvements on the land such as construction of dwelling houses, digging of wells, planting of trees etc. he shall do so only after obtaining the previous sanction in writing of the officer or authority who sanctioned the lease. The lessee shall not be entitled to any compensation for the improvements effected by him in the event of the lease being determined or at the expiry of the period of the lease."

5. Learned counsel for the appellants relied on Conditions No. 15 of Form D of the Rules. Sri. K.C. John, counsel appearing for the respondents and other counsel supporting him contended that the lease in their favour was granted many years back and it was for the purpose of conducting certain shops that lease of the land was granted. He also tired to contend that the lease was granted even before the 1947 Rules, and at that time when the lease was granted there was no restriction regarding the value of improvements. But, the counsel were not able to pin point any Rule or Condition by which they are entitled to get the value of the improvements. Counsel submitted that the Kuthakapattom right of the lessee is a valuable right and there are decisions that this right can be sold in court auction. There is no dispute to that proposition. The question is whether as per the grant the occupants are entitled to the value of improvements. In Travancore Land Revenue Manual, Vol.III, Part I, Chapter VI discusses about Kuthakapattom. Para 67 defines Kuthakapattom as follows:

"Kuthakapattom means and includes-

- (i) Lease of Government land which cannot be permanently assigned away.
- (ii) Lease of trees standing on Government land.
- (iii) Lease of Poramboke land on fixed ground rent for putting up shops in bazaars and markets.
- (iv) Lease of Government land for temporary occupation in connection with fairs, festivals, marriages, public entertainment, etc."

Para 68 of Chapter VI of the Manual discusses the conditions of a lease with or without limit of time which is as follows:

68. Conditions of a lease with or without limit of time:

- (i) A lessee should not put up permanent structures, sink wells, erect walls, plant more trees, open roads or pathways on the lands leased or do, or aid the doing of any act which will injuriously affect the land or trees directly or indirectly or diminish their letting value, or which will obstruct the Government servants in the discharge of their duties or in any way prejudice the interests of the Government, or of the public. He should not in any way interfere with, or make any alteration in, the lie of the land.
- (ii) The lease shall be revocable at any time, if the land or tree or both is required for any Government or public purposes.
- (iii) When a lease relates to trees alone, (1) the lessee should not cultivate the land on which the trees stand, and (2) the lessee should manure the trees and keep them in such a condition as will not diminish their letting value or yielding capacity.
- (iv) The lessee should take care of the property, if any, included in Schedule II appended to the grant, but shall have no right of enjoyment over the same. He should intimate the Tahsildar if any tree on the property withers or is blown down or if any damage is caused to them.
- (v) If any of the conditions laid down above are not fulfilled or violated by a lessee, the leasehold could be resumed by the officer who sanctioned the lease, irrespective of the nature of the lease".

Para 71 of Chapter VI of the Manual states that on the termination of a lease, the lessee should surrender possession of the property leased. If he refuses or omits to do so, he should be considered as a tenant holding over liable to be proceeded against and evicted under the provisions of Regulation IV of 1901.

Para 73 of Chapter VI of the Manual discusses about the preparation of grant in Form C.

6. The Kuthagapattom Rules which were made in exercise of the powers of the Government Land Assignment Regulation, Regulation III of 1097, govern the Kuthakapattom prior to 1947. R. 17 states that immediately after a lease for a

definite period is sanctioned by the Tahsildar, he shall issue a notice to the party concerned, intimating the nature of the order and calling upon him to produce an amount not less than one year's rental as security for proper conduct of the lease within a period of 15 days from the date of notice. Form C is the form of Kuthagapattom Grant and it prescribes the conditions. Condition No. 19 stated that, on the expiry of the lease, or in the event of the cancellation of the lease, or in the event of resumption of the property, the lessee shall, unless the he has taken a further lease, surrender the property in tact to the Proverthicar. If he does not so surrender, he will be considered a tenant holding over liable to be proceeded against and evicted under Regulation IV of 1091. He will not however be entitled to compensation for any trees planted or for any improvements that he might have made on the land or for any structures raised by him thereon and not removed.

7. Thus substantially, there is no difference in Form C of the Rules of 1935 and Form D of Rules of 1947. It means that, the lessee is not entitled for value of improvements at the time of eviction. But he can remove those improvements before he is evicted. Thus we are of the view that the learned Single Judge was not correct in holding that the occupants are entitled to value of improvements.

8. Hence, we modify the judgment of the learned Single Judge by deleting the direction to pay compensation to the petitioners for value of improvements. But, we make it clear that even though the respondents are not entitled to value of improvements they will be free to demolish the structures put up by them and to carry away the materials used for the construction. Hence, we dispose of the W.As. by entitling the respondents to demolish the structures put up by them in the land in question before they are evicted, and the judgment of the learned Single Judge is modified to the above extent.