
(1991) 07 KL CK 0046
In the High Court Of Kerala
Case No : W.A. No. 86 of 1990

M. Bhaskaran Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-07-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Kerala Government Land Assignment Act, 1960 — Section 2(1), 3, 4, 7
Kerala Government Land Assignment Rules, 1964 — Rule 24

Citation : AIR 1992 Ker 86 : (1991) 3 ILR (Ker) 645

Hon'ble Judges : U.L. Bhat, Acting C.J.; P. Krishnamoorthy, J

Bench : Division Bench

Advocate : V. Sivaswamy, for the Appellant; V. Bhaskara Menon, Kurian Joseph and Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Krishnamoorthy, J.—Petitioner in O. P. No. 3931 of 1985 is the appellant. 1.94 acres of land in Sy. No. 299/2A & B of Alwaye Village was acquired in 1952 under the Land Acquisition Act from the 4th respondent, for the purpose of National High-way. The National Highway was constructed in 1954 and only about 1 acre of land was utilised for the construction. Petitioner alleges that he is the owner of the eastern property and accordingly he applied for assignment of the unutilised land. Thereupon, out of the balance area available, under Ext. P 1 dated 10-7-1962 50 cents of land was given on kuthakapattom to the petitioner for a period of 12 years, with a condition that if Government required the land for any other purposes, it should be surrendered. While so, petitioner filed an application Ext. P8 dated 21-12-1979 before the Advisor to the then Governor for assignment of the land to him. In the meanwhile, the 3rd respondent-Tahsildar issued a notice Ext. P2 dated 31-12-1979 to surrender the land leased out to the petitioner under Ext. P1 as it was needed for public purposes. The notice was served on 25-4-1980. Thereafter, the 50 cents of land was taken possession of from the petitioner on 2-5-1980. On Ext. P8 application filed by the petitioner he

was given a reply, evidenced by Ext. P6 dated 11-7-1980, by the Government stating that the land cannot be assigned to him as the same was required for public purposes. It is seen that thereafter also the petitioner had applied to Government for assignment of the land and Ext. P3 is a petition filed before the concerned Minister on 23-11-1982 reminding him of the petitioner's earlier petitions dated 7-2-1982 and 25-3-1982 for assignment and for taking suitable action in the matter. Petitioner has also produced a letter by the Superintending Engineer, National Highway to the District Collector, Ernakulam -- Ext. P4 dated 18-3-1981 -- in which it is stated that out of the remaining land only 22 metres from the top edge is necessary for further widening of the road. The petitioner alleged in the O.P. that he came to know that Government had passed an order dated 29-11-1984 directing the 2nd respondent -- Collector to reconvey 90 cents out of 1 acre 10 cents to the 4th respondent from whom the land was originally acquired in 1952. Petitioner has produced the aforesaid order of the Government as Ext. P7 along with his reply affidavit. Petitioner challenged Ext. P7 mainly on the ground that the procedure contemplated under the Kerala Land Assignment Act, 1960 and the Rules made thereunder has not been followed in passing the order assigning the land to the 4th respondent. He further contended that when once the land is acquired under the Land Acquisition Act and possession taken, the land absolutely vests in Government and no assignment by Government is possible without complying with the provisions contained in the aforesaid Act and the Rules. It is his case that the application for assignment evidenced by Ext. P3 is pending and no orders have yet been passed on the same. He contended that the land can be utilised only for agricultural purposes and Government acted without jurisdiction in ordering assignment of the land to the 4th respondent, without complying with the provisions of the Kerala Land Assignment Act and the Rules.

2. The State filed a counter-affidavit contending that 1.94 acres of land was acquired in 1955 for the purpose of National Highway, out of which 1.10 acres was lying unutilised. They denied the fact that the petitioner is the owner of the adjacent property. Government had issued orders regarding the disposal of unutilised portion of the acquired land by G. O. (MS) 530/67 dated 30-10-1967 and reconveyance of unutilised acquired land is governed by the said G. O. According to Government, assignment of such land is not governed by the Land Assignment Act or the Rules and they are free to reconvey the land to the original owner in accordance with the aforesaid G. O. The 4th respondent, original owner, had filed a petition before Government and after considering the case Government decided to reconvey 90 cents of land to him under Ext. P7 order. Their further case is that under the G.O. of 1967 the original owner has got every right to get the unutilised land reconveyed to him. It is alleged by them that neither the Government Departments nor the local bodies made any request for the unutilised land and in these circumstances Government decided to reconvey the land after realising the value paid to the 4th respondent under the land acquisition proceedings. They contended that the petitioner's application for

assignment of the land had already been rejected and it had become final and that the petitioner has no locus standi to file the Original Petition.

3. The 4th respondent also filed a counter-affidavit, practically raising the same contentions. He had also raised a contention that even if the Kerala Land Assignment Act and the Rules are applicable to the land in question, under Rule 24 Government have overriding power to assign lands without complying with any of the provisions contained in the aforesaid Rules and that the assignment to him was made in exercise of that power. According to him the petitioner has no locus standi to challenge the assignment made in his favour.

4. The learned single Judge after hearing all parties came to the conclusion that Government have jurisdiction to assign the unutilised land which was earlier acquired under the Land Acquisition Act in accordance with the provisions of the 1967 G. O. referred to above and that the petitioner has no locus standi to file the Original Petition as he has no enforceable legal right in the matter. It is against this judgment of the learned single Judge that the Writ Appeal is filed.

5. In the Writ Appeal the petitioner has filed CM.P. No. 1568 of 1990 for amendment of the Original Petition by adding a prayer to declare G. O. Ms. 530/67/RD dated 30-10-1967 as illegal and void, on the ground that it is against the provisions contained in the Kerala Land Assignment Act and the Rules and accordingly the said C. O. cannot have any legal existence in the light of the Act and the Rules. By a separate order we have already allowed the application for amendment.

6. Thus, the questions to be decided in this Writ Appeal are as to whether the petitioner has locus standi to file the Original Petition under Article 226 of the Constitution of India and whether G. O. Ms. 530/67/RD dated 30-10-1967 can have any legal validity in view of the provisions contained in the Kerala Land Assignment Act and the Rules framed thereunder.

7. We shall first deal with the question as to whether the petitioner has locus standi to file the Original Petition. The learned Judge came to the conclusion that the petitioner has no locus standi to file the Original Petition as his application for assignment of the land was rejected by Government as early as in 1980 (evidenced by Ext. P 6 order) and that he had not filed any appeal against that order. The learned Judge further held that the petitioner had not made any application under Rule 11(8) or under Rule 6 of the Kerala Land Assignment Rules. The learned Judge held that the petitioner has no enforceable legal right to move a petition under Article 226 in the aforesaid circumstances. After hearing counsel for all parties, with respect, we find it difficult to agree with the conclusion reached by the learned single Judge. Admittedly, the land in question is one coming within the purview of the Land Assignment Act. Section 2(1) defines Government lands. Under Explanation I to Sub-section (1), lands acquired under the Land Acquisition Act for the time being in force are Government lands within the meaning of the sub-section. The land in question

was acquired under the Land Acquisition Act and has vested in Government and the assignment of the same shall be governed by the provisions of the said Act. Like any other citizen petitioner is also entitled to apply for assignment of the land, provided he satisfies the other conditions mentioned in the Act and the Rules, if the Kerala Land Assignment Act and Rules are exhaustive in the matter of assignment of Government lands. The fact that his application for assignment was earlier rejected and that he did not file any appeal against the order cannot stand in the way of his making a fresh application for assignment of the land. Petitioner could not have filed any appeal against Ext. P6 order on two grounds. First of all, the order was passed by Government from which he could not file any appeal. Secondly, the order says that the assignment applied for by the petitioner cannot be entertained as land is required for public purposes. Ext. P2 dated 31-12-79 which was a notice issued by the Tahsildar requiring the petitioner to surrender the land which was given to him on kuthakappatom also states that the land is required for Government purposes. Petitioner was asked to surrender the land on the specific ground that it is needed for Government purposes or in other words, for public purposes. Thus, from Exts. P 2 and P 6 it is clear that Government directed the petitioner to surrender the land and also rejected his application for assignment solely on the ground that it is needed for a public purpose. But from the subsequent events in the case it is clear that the statement in Exts. P2 and P6 that the land is needed for a public purpose is incorrect, as, admittedly, the stand taken by Government now is that the land is not required for any such purpose. Petitioner filed Ext. P3 petition and the previous petitions mentioned therein for assignment of the land to him when there was admittedly a change of circumstances from that existed at the time of Exts. P2 and P6. If the Kerala Land Assignment Act and the Rules are exhaustive in the matter of assignment of Government lands, petitioner also will be entitled to apply for assignment of the land, provided he satisfies the other conditions necessary under the Act. His case has never been considered under the aforesaid Act and the Rules, but was rejected solely on the ground that the land is needed for a public purpose which is now proved to be incorrect. In that view of the matter, the question as to whether the petitioner has locus standi to file the O. P. will depend upon the question as to whether Government have retained any power to assign Government lands as they like dehors the Land Assignment Act and the Rules. If Government have no such power, certainly the claim of the petitioner for assignment of the land will have to be considered in the light of the provisions contained in the Act and the Rules and it cannot be said that the petitioner has no locus standi to move this Original Petition, when the land in question has been assigned to the 4th respondent in violation of the aforesaid Act and the Rules.

8. Now we shall consider the question as to whether Government have any power to assign Government lands otherwise than in accordance with the provisions of the Kerala Government Land Assignment Act and the Rules. As stated earlier, Government-lands are defined in Section 2(1) of the Act.

Explanation I to Sub-section (1) states that any lands acquired under the provisions of the Land Acquisition Act for the time being in force are Government lands within the meaning of that sub-section. Thus, it is clear that even lands acquired under the provisions of the Land Acquisition Act and vested in the Government are Government lands coming within the purview of the Land Assignment Act. Section 3 of the Act deals with assignment of Government lands. Under that Section, Government land may be assigned by the Government or by any prescribed authority either absolutely or subject to such restrictions, limitations and conditions as may be prescribed. From the aforesaid Section it is clear that assignment of Government land can be made either by Government or by the prescribed authority. Section 4 of the Act deals with the procedure to be followed before Government lands are assigned. Certain procedure is prescribed under that Section for assignment of Government lands, if the assignment is proposed by the prescribed authority. Section 4 does not deal with assignment of land by Government, it only lays down the procedure when the land is proposed to be assigned by the prescribed authority. The Section further provides that if the prescribed authority is proposing to assign the land, the Tahsildar of the Taluk in which the land is situate or any officer empowered by the Government in that behalf shall notify in the prescribed manner that such land will be assigned by public auction or otherwise and shall also call upon those who have got any claim to such land to prefer to him their objections, if any, within the time to be specified. Detailed provisions are made in the Rules as to what is the procedure for assignment of land by the prescribed authority and also the class of persons who have got preference in getting assignment from Government. Thus, it is clear on a reading of Sections 3 and 4 that the procedure prescribed u/s 4 and under the Rules will apply only if the land is to be assigned by the prescribed authority and not by the Government,

9. The decision in *Parameswaran Pillai v. State of Kerala*, 1961 KLT 1121 dealt with Travancore-Cochin Government Land Assignment Act of 1950, wherein a Division Bench of this Court considered the scope and ambit of Sections 3, 4 and 5 of the aforesaid Act. Section 3 of the said Act provided that Government land may be assigned by the Government or by any prescribed authority. But Section 4 of the Travancore-Cochin Act was different from the present Section 4. u/s 4 of the Travancore-Cochin Act it was provided that when any Government land is proposed to be assigned, the Tahsildar of the taluk in which the land is situate or any officer empowered by the Government in that behalf shall notify in the prescribed manner that such land will, by public auction or otherwise be assigned and call upon those who have got any claim to such land to prefer to him their objections, if any. Thus, u/s 4 of the Travancore-Cochin Act no distinction was made between the assignment by Government and the assignment by the prescribed authority and for assignment of Government land either by Government or by the prescribed authority, the procedure prescribed in Section 4 of that Act and the Rules had to be followed. But when we come to Section 4 of the Kerala Act, we see that a distinction is made, namely the procedure is

prescribed only if the assignment is to be made by the prescribed authority. Going by Sections 3 and 4 of the Kerala Act the procedure prescribed under the Act and the Rules is to be followed only if the assignment is to be made by the prescribed authority and the Government have retained in themselves power to assign lands without following the procedure prescribed in Section 4. Does it mean that the Government have an unfettered power to assign lands as they like to anybody, without taking into account any other factors relevant in the matter? We think that they have no such power, for Rule 24 of the Rules on which great reliance was placed by counsel for the respondents fetters the power of Government to assign lands without observing the provisions of the Rules, except where the assignment is necessary in public interest. Rule 24 is to the following effect:--

"24. Powers of Government. -- Notwithstanding anything contained in these rules the Government may, if they consider it necessary so to do in public interest assign land dispensing with any of the provisions contained in these rules and subject to such conditions, if any, as they may impose."

That rule certainly fetters the power of the Government and provides that Government land can be assigned otherwise than in accordance with the provisions of the Rules, only if it is necessary in public interest. By virtue of Rule 24 Government's power of assignment is restricted and circumscribed and if an unbridled power to assign land u/s 4 is to be assumed in favour of the Government, that Section itself may be unconstitutional as violative of Article 14 of the Constitution of India, as observed by a Division Bench of this Court in *Parameswaran Pillai v. State of Kerala*, 1961 KLT 1121 wherein Ansari C. J., interpreting Section 4 of the Travancore-Cochin Act, said as follows:--

"7. It was urged on behalf of the respondents that there are really two forms of assignment under the Act, one by the Government and the other under Sections 4 and 5, which apply only to assignments by the prescribed officer so that the authority of the Government to alienate land is not controlled by the aforesaid Sections. There are difficulties in accepting such residuary power being available to the Government after the Act. To begin with assignments under Sections 4 and 5 are after fair opportunity to persons having claims on the land, and the objections being after the rejection again adjudged by fresh appellate authority, which safeguards claimed for the Government by the advocate. The latter from is thus discriminatory, particularly in absence of direction about when it should be adopted, and so violative of Article 14. A Legislature cannot disregard the guarantee, and the Act has been passed after the inauguration of the Constitution. There is, therefore, the presumption against the conferment of such discriminatory power under the Act, and further such conferment would be void, should the Act be construed as having done so. We do not say that the Government like any ordinary owner has not the absolute domain of alienating its property in any way it likes. But we do say that the Government being in certain cases bound to follow a procedure that gives adequate safeguards to

persons having claim, cannot, without rational classification and having regard to the guarantee of equality before law, be authorised to follow at its will another procedure where such safeguard is not available. Were we to accept the argument urged by the respondents, of the Act having vested such power, it would be void on the ground of being discriminatory."

In *C.K. Kochittiathi v. State of Kerala*, 1967 KLT 186 on which reliance was placed by counsel for the respondents, it is observed as follows:--

"Subject to any statutory limitations -- and no violation of any statute or rule made thereunder is alleged -- Government is like any private party free to take such steps as it pleases in accordance with law for disposing of its property and for evicting trespassers thereon."

In *Fernandez v. State of Kerala*, 1971 KLT 7 also it was held, interpreting Section 4 of Land Assignment Act, as follows :--

"An absolute power of disposal ordinarily vests in the State Government just in the case of any other owner of property and what has been done u/s 4 is to impose certain fetters on the exercise of such power by the Government in cases where the grant of assignment is being made through the agency of a prescribed authority."

Thus, on a consideration of the Scheme of the Act and the Rules, we have no hesitation to hold that the provisions contained in the Land Acquisition Act and the Rules are exhaustive in the matter of assignment of Government lands coming within the purview of the Act and that the Government can assign lands without following the procedure prescribed under the Act and the Rules only if it is necessary in public interest.

10. The view which we have taken above is also in consonance with the decisions of the Supreme Court wherein their Lordships have dealt with the question as to whether Government have any power to dispose of or assign their property as they like. In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, Bhagwati J.*, on behalf of the Bench, said as follows (at p. 2000 of AIR):

"The Government, therefore, cannot, for example, give a contract or sell or lease-out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property."

In *Ram and Shyam Company Vs. State of Haryana and Others*, Desai, J., speaking for the Court, said (at p. 1152 of AIR) :

"Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song: On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose, viz., the welfare State may be able to expand its beneficial activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity, kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which Constitution envisages the setting up of a welfare "State."

These principles were reiterated by the Supreme Court in the decision reported in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, and it was observed as follows (at p. 1133 of AIR):--

"39. On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established : State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the Rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of

public justice is as important as doing justice. Nothing should be done which gives an appearance of bias. Jobbery or nepotism."

11. The land in question was assigned to the 4th respondent in this case only on the basis of G.O.Ms.530/67/RD dated 30-10-1967 which clarified an earlier G.O. dated 13-2-1957. The G.O. dated 30-10-67 is quoted in extenso by the learned single Judge. That order deals with reconveyance of land acquired under the Land Acquisition Act to the erstwhile owners in case the land is not utilised for the purpose for which it was acquired. The G.O. provides, among other things, that if the land is not required for the purpose for which it was acquired, or any other departmental purpose, the land will be immediately transferred to the control of the Revenue Department. Thereafter, the District Collector, after getting intimation about the lack of need of the land for the purpose for which it was acquired, should make a reference to all departments in the District requiring them to inform him whether any other Departments need that piece of land for its use. The Government order further provides that the local body of the area must also be consulted as to whether it needs the land for its use. If the local body of the departments do not require the land for any use, the Collector shall make an offer to the original owner or his successor-in-interest and if he accepts the offer, the land may be reconveyed after getting the money awarded on compensation including solatium. It is on the basis of this G.O. that Government have directed the Collector to assign the land to the 4th respondent though the petitioner was informed that it was necessary for a public purpose. u/s 2(1) of the Act, even lands acquired under the Land Acquisition Act are Government lands coming within the purview of the Land Assignment Act. We have also held that the provisions contained in the Land Assignment Act and the Rules are exhaustive in respect of assignment of land, except in cases where public interest is involved. The 1967 G.O. is only an executive order and it cannot have any legal efficacy in the face of the Land Assignment Act and the Rules. It is well-settled that an executive order cannot override or can have effect as against the provisions contained in an enactment or the statutory rules made thereunder. In that view of the matter and in the light of the provisions contained in the Kerala Land Assignment Act and the Rules thereunder, the 1967 G.O. cannot have any legal effect and Government is not entitled to reconvey the land to the original owner as was done in this case.

12. Under the 1957 G.O. as amended by the 1967 G.O., Government is obliged to offer the land to the erstwhile owner for the same price for which the land was acquired. Thus the right to make an offer for purchasing the land is open only to the erstwhile owner which effectively shut out rights of all other persons who may be entitled to assignment of the land under the provisions of the Act and the Rules. This provision seems to be ex facie discriminatory (See *Rashbihari Panda etc. Vs. State of Orissa*, Moreover, the land in question was acquired in the year 1955, as stated in the counter-affidavit. The 4th respondent was paid the value of the land as on the date of Section 3(1) notification and he was also paid solatium as the land was compulsorily acquired. It is an admitted fact that the

land is situate in a very important locality in Alwaye town. To assign such a land to the original owner after three decades for the same price is abhorrent and cannot be upheld. Government cannot part with their property for a price which existed in the locality three decades ago. It is well-known that the prices of property have enormously increased in the last thirty years and it will be against public interest if Government property is assigned to a person for a price which existed in the locality at the time of acquisition. In assigning the land to the 4th respondent there is no allegation nor any proof that public interest is involved and the assignment was solely based on the fact that he was the erstwhile owner. Such an assignment could not be made ignoring the provisions in the Act and the Rules. If, as we have held, assignment can be made only under the provisions of the Land Assignment Act and the Rules, certainly the petitioner also will be entitled to apply if he is able to satisfy the other conditions mentioned in the Act and the Rules. In that view of the matter also, the petitioner has locus standi to file this O.P. as his claim for assignment of the land was rejected solely on the ground that the land is needed for a public purpose, which seems to be incorrect in the light of the subsequent events.

13. In the result, we allow this Writ Appeal, set aside the judgment of the learned single Judge and quash Ext. P7 order directing reconveyance of the land in question to the original owner after realising the value as laid down in G.O. dated 30-10-1967. The parties shall bear their costs.