

(2016) 03 KL CK 0158
In the High Court Of Kerala
Case No : WP(C) No. 619 of 2016 (B).

Manu Anand

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Kerala Government Land Assignment Act, 1960 — Section 3
Kerala Government Land Assignment Rules, 1964 — Rule 24
Kerala Land Conservancy Act, 1957 — Section 6

Citation : (2016) 2 KerLJ 883 : (2016) 3 KHC 164 : (2016) 2 KLT 529

Hon'ble Judges : A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : P.G. Suresh, G. Sudheer (Thuravoor), Rajan Vishnuraj and V. Harish, Advocates, for the Appellant; C.S. Manilal, Sr. Govt. Pleader and Philip J. Vettickattu & Vineeth Kuriakose, Advocates, for the Respondent

Final Decision : Allowed

Judgement

A. Muhamed Mustaque, J. - The petitioner in this writ petition challenges Ext.P4 Government Order dated 11.11.2015.

2. By the aforesaid Government Order, the Government empowered the District Collector to grant permission to use the land assigned under the Kerala Land Assignment Act and Rules for the purpose of starting industrial units, quarry, crusher etc.

3. The petitioner's case is that, the Government had assigned land to the 5th respondent for agricultural purposes. Now an attempt is being made by the 5th respondent to use the land for mining disregarding the mandate under the Land Assignment Act and Rules. It is submitted that the mining operation being carried by the 5th respondent is in violation of the Land Assignment Act and Rules and same would be regularised through the District Collector.

4. The stand of the Government is that, in the light of Section 3 of the Land

Assignment Act read with Rule 24 of the Rules, the Government is free to relax the condition on the original patta and to permit owner of the patta to utilise land for other purposes. It is further submitted that the Government, therefore, can permit mining in a land assigned for agricultural purposes.

5. The party respondent would contend that, the Government can pass such an administrative order in the absence of any statutory provisions. Further it is argued that, the grant of sub-soil rights would depend upon the conditions in the grant and sub-soil rights can be assigned by the Government.

6. The Government land is assigned for specified purposes under the Land Assignment Act. The patta holder, therefore, is entitled to use the surface of the land for the specified purposes, for which it was assigned. The pattadar has no ownership in the minerals below the surface of the land. In the decision rendered by a Division Bench of this Court in *Shibu v. Tahsildar* [1993 (2) KLT 870] it was held as follows :

"In the absence of an express covenant creating such an interest in the land, the Government's right to sole ownership of the minerals is not affected. The grant of sub-soil rights would depend upon the language used in the grant and that if there are no words in the grant from which the grant of the sub-soil rights could be properly inferred, the inam grant would only convey the surface rights to the grantee. The ryotwari pattadar has no ownership in the minerals below the surface of the land. The appellant's lessor and therefore the appellant cannot claim any right to the mineral on the ground that the lessor was a pattadar."

7. Section 3 of Land Assignment Act empowers the Government to assign land either absolutely or subject to restriction. The restriction may be in the nature of conditions as to the use of nature of the land. As per Rule 4 of the Kerala Land Assignment Rules, 1964, the land can be assigned for the following purposes.

"4. Purpose for which land may be assigned.- Government lands may be assigned on registry for purposes of personal cultivation, house-sites and beneficial enjoyment of adjoining registered holdings."

Section 4 of the Assignment Act and Rule 12 of the Assignment Rules prescribes the procedure to be followed for the assignment of land.

4. Procedure to be followed before Government land are assigned.-

(1) When any Government land is proposed to be assigned by the prescribed authority, otherwise than by way of lease or licence, the Tahsildar of the taluk in which the land is situate or any officer empowered by the Government in this 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, in writing, within a time which shall be specified in such notification.

(2) If any objection is preferred within the time specified in the notification, the

Tahsildar or such other officer shall enquire into the same and pass an order in writing either accepting or rejecting the claim in full or in part and intimate in writing the fact of such disposal to the claimant.

(3) For the purpose of the enquiry under sub-section (2) the officer making the enquiry shall have all the powers conferred upon the Collectors and Tahsildars by the law for the time being in force regarding summoning of persons for disposal of matters connected with revenue administration. Rule 11 mandates preparation of list of assignable lands and publication of the list in each village.

8. As per the Rule 4, the assignment can be either for the purpose of cultivation, house-sites and beneficial enjoyment of adjoining registered holdings. No power is reserved with the Government for assigning the land for any other purpose in terms of the Rules. However a residuary power is given in terms of Rule 24 to assign the land for any purposes in public interest. It is appropriate to refer Rule 24 which reads as follows :

"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."

9. Therefore, going by Rule 24, it is possible for the Government to assign the right to take minerals or subsoil rights or to relax conditions in the patta in public interest. The subsoil minerals vested with the Government certainly can be assigned by the Government in public interest.

10. However in this case, the question is whether the Government can delegate such power to the District Collector.

11. The Government has no matter of right to delegate the power to take decision based on "public interest" to the District Collector to assign land for taking subsoil or for using it for any other purpose violating the conditions in the patta. The Government alone can take a decision in the matter. The "public interest" as contemplated under Rule 24 cannot be assessed by the District Collector, whose decision certainly would be related to individual needs of the holder of the land. The "public interest" referable under Rule 24 is in principle required to be commonly or uniformly evolved to protect the State interest as whole rather than leaving to the discretion of the District Collector to vary its form and content depend upon the requirement of particular individual.

12. It is appropriate to refer the decision of a Division Bench of this Court in Varkey Abraham, v. Secretary to Government, 2007 (3) KHC 365 which held as follows :

"The various provisions in the Kerala Government Land Assignment Act and the Kerala Land Assignment Rules would unmistakably show that the Act and Rules are intended to protect landless people by assigning to them Government lands for cultivation and other purposes. The Act provides for assignment of

Government land absolutely or subject to such restrictions, limitations and conditions as may be prescribed. The Rules provides for assignment of lands on registry for purposes of personal cultivation. The Rules also provides for granting assignment of small extents of land for constructing houses and for the beneficial enjoyment of adjoining registered holdings. The Rules contain provisions for extending priority to landless people, members of Scheduled Caste and Scheduled Tribes, Ex-servicemen, persons disabled in active military service, persons who are dependants of those who are killed or disabled while in active military service, small holders whose family income is less than Rs. 10,000/-, certain category of kumkidars etc. The procedure for assignment is also provided in the Rules. Provision is made for preparing the lists of lands to be reserved for Government or public purposes and the lands to be set apart for assignment on registry. The lists are to be approved by the Government or an authorised authority. The authority to approve the list of lands available for lease or license shall be District Collector. Various authorities are also provided to whom the applications under the different categories are to be submitted. We are of view that the Act and Rules are not intended for enriching persons who hold extensive lands. Assignment on Registry of Government lands to such persons would defeat the very purpose of the Act and Rules. There is no vested right in any person to claim assignment on registry of Government land."

13. Another Division Bench of this Court in Pushpavally v. State [1996 (2) KLT 197] it is held as follows :

"Even though the Government's power to assign the land is not traced to any provision of the Act and the Rules, R.24 of the Rules in unmistakable terms confers power on the Government to assign the land. That rule begins with non-obstante clause; notwithstanding anything contained in the rules Government may assign land dispensing any of the provisions contained in the Rules and subject to such conditions as they may impose. The only restriction that is imposed on the Government in this regard is that the assignment should be in public interest. If the Government consider that it is necessary to assign the land in public interest, the order of the Government assigning the land is not open to challenge."

14. In the light of the above, this Court is of the view that the delegation of power to the District Collector is unsustainable, in terms of the Land Assignment Act and Rules.

15. The next question therefore is that, whether in terms of Section 6 of the Land Conservancy Act, the District Collector can be authorised. Section 6 reads as follows :

6. Earth, metal, laterite, lime-shell etc., not to be removed from land which is property of Government without permit.- (1) It shall not be lawful for any person to destroy, remove or appropriate for himself earth, sand, metal, laterite, lime-shell or such other articles of value as may be notified by the Government from

any land which is the property of Government, whether a pormaboke or not, except under and in accordance with the terms and conditions of a permit issued by the Government or such officer of the Government as may be empowered in that behalf and on payment of compensation at the rate prescribed under sub-section (2).

(2) The Government may, from time to time, by notification in the Gazette, prescribe the rate at which compensation shall be payable for earth, sand, metal, laterite, lime-shell or other notified articles of value destroyed, removed or appropriated from land which is the property of Government.

(3) Whoever unauthorisedly destroys, removes or appropriates for himself metal, laterite, lime-shell or other notified articles of value from any land which is the property of Government, whether a poramboke or not, shall be liable to pay such fine not exceeding fifty rupees as may be imposed by the Collector and shall also be liable to pay by way of damages an amount of equivalent to the compensation which would have been payable if sub-section (2) were applicable thereto.

16. There cannot be any doubt regarding the fact that the Government is entitled to authorise any officer to permit to use the Government land on a rate of compensation prescribed by the Government. It is to be noted that in this case there is no prescription of any such rate as contemplated under section 6(2). Going by the language of Section 6, it is discernible that such permission can be granted to the land which belongs to the Government to remove earth or laterite etc. by any person. This is essentially a land which otherwise considered as the land wherein the Government need to remove minerals and the said right is given to a third party as the Government may find it difficult to venture upon such exercise. The provision in the Land Conservancy Act has to be understood in the context of Land Assignment Act and Rules. The assignment of the land under the Land Assignment Act and Rules is to promote the agricultural activities and to promote the state interest and also for beneficial enjoyment of adjoining land owner. The assignment itself is in fact to secure such objectives. Therefore section 6 of the Land Conservancy Act would govern the land which is not used for any cultivation. In those lands the Government can permit third parties to remove minerals or metals etc. In this case it is to be noted that the decision of the Government in fact is not based on the Land Conservancy Act, but with reference to exercise of the power under the Land Assignment Act and Rules. Therefore, the Government Order delegating power to the District Collector cannot be justified. Accordingly, this Court is of the view that conferring the power on the District Collector has to be set side. It is made clear that the Government can take independent decision in this matter keeping the public interest as a paramount in individual cases. The assessment of public interest is a pre-requisite for taking such a decision.

17. Before parting with this judgment a word of caution. The report of the 64th U.N. General Assembly discussion reminds that by 2050, world need to double the food production to satisfy the need of the entire world population. The

soaring heatwave on account of climatic variation is pointer to the erosion of agricultural landscapes from the State. The food security and afforestation programmes cannot be ignored while evolving policy on public interest for assignment of Government Land. The State must bear in mind that any measure or action of the State ignoring inter-generational equity is also against public interest. It is true demographic challenges poised on market needs and developmental quest pursued by the State sometimes compelled the State to respond to the demand raised in the market. However, the State shall not be merely guided by the market conditions to determine "public interest". The kyoto protocol to the United Nations Frame Work Conventions on climate change reminds the nation to strive for the policies and measures to minimise adverse effects on climate change and to promote sustainable forms of agriculture in the light of climate change conditions. Therefore, the Government has to find whether any public interest would sub serve by allowing mining operation in agricultural land. This Court cannot determine what should be the policy, but the Court would be justified in reminding the Government about the constitutional obligations in the matter to protect the environment.

18. With the above observations, the writ petition is allowed setting aside and quashing Ext.P4, authorising the District Collector to assign the land for other purposes.