**(1970) 07 KL CK 0017**

**In the High Court Of Kerala**

**Case No :** O.P. No. 2705 of 1968

Maria Elizabeth Gomez APPELLANT

Vs

State of Kerala and others RESPONDENT

**Date of Decision :** 01-07-1970

**Acts Referred:**

Kerala Board of Revenue Abolition Act, 1996 — Section 7
Kerala Government Land Assignment Act, 1960 — Section 3

**Citation :** (1971) KLJ 250

**Hon'ble Judges :** P.T. Raman Nayar, C.J;K.K. Mathew, J

**Bench :** Division Bench

**Advocate :** K. Velayudhan Nair, V.S. Moothathu, N.R.K. Nair, K.J. Joseph and T.K.M. Unnithan, for the Appellant; K. Sukumaran and P.A. Mohammed (T) for Respondent 5, for the Respondent

**Final Decision :** Allowed

## Judgement

P.T. Raman Nayar, C.J.—We think that the impugned order (Ex. P8 dated 18-6-1968) made by the 1st respondent State Government has to be quashed on the short ground that it was made without jurisdiction. By Ex. P5 dated 22-2-1965, the 4th respondent Tahsildar (who, it is the common case, is the prescribed authority within the meaning of section 3 of the Kerala Government Land Assignment Act, 1960) ordered the assignment of the 13 cents of land in dispute to the petitioner. This order of assignment made by the Tahsildar was affirmed by the Revenue Divisional officer by Ex. P6 dated 4-1-1966 on appeal taken by the 5th respondent, a rival claimant, under sub-rule (i) of rule 21 of the Kerala Land Assignment Rules made u/s 7 of the Act. And it was reaffirmed by the Board of Revenue by Ex. P7 dated 17-10-1966 on a revision moved before it by the 5th respondent under sub-rule (8) of the rule. As the rules then stood this order of the Board of Revenue was final so far as those proceedings were concerned, there being no further appeal or revision, and the fact that the Board could have reviewed its order under S. 7 of the Kerala Board of Revenue Act, or that its order was open to collateral attack under rule 8(3) by a superior authority--there was none at that time within the meaning of the rules, the power of revision over the order of the Board being conferred on Government only later by sub-rule (9) of rule 21 made on 30-12-1967--or by way of suit or writ petition, or otherwise, does not alter the position, On 26-4-1967, the 5th respondent petitioned to the Government against the Board''s order. Eight months later, on 30-12-1967, the Government took power to revise such orders of the Board--sub-rule (9) of rule 21 was introduced for the purpose. It had taken care not to dispose of the 5th respondent''s petition meanwhile-that was done only another six months later by means of the impugned order, and the disposal was in the 5th respondent''s favour. The short question is whether this power of revision conferred in the following terms can be exercised in respect of an order made by the Board before the power was conferred:

The Government may at any time revise cancel or alter on their own motion or otherwise any decision made or order passed by the Tahsildar, Revenue Divisional Officer, District Collector or the Board of Revenue under these rules: Provided that no such decision or order shall be revised, cancelled or altered under the sub-rule without giving the party affected thereby a reasonable opportunity of being heard.

2. The sub-rule does not purport to be retrospective in the sense of taking past orders within its scope--it does not say either expressly or by necessary implication that it applies to orders made before its coming into force. So it follows from the decisions in AIR 1927 242 (Privy Council) and Keshavlal Jethalal Shah Vs. Mohanlal Bhagwandas and Another, (the later of which held that a power of revision was not a matter of procedure and that a provision conferring such a power could not be given retrospective effect on the principle that provisions relating to procedure are generally retrospective) that no power of revision was available under the sub-rule, in respect of orders like Ex. P8 made before the sub-rule was made. The words, "at anytime" occurring in the sub-rule, it is obvious, relate to the revision by the Government and not to making of the order sought to be revised.

3. It is argued that, by reason of the conferment of revisional power by the sub-rule, the Government become a superior authority in relation to the Board within the meaning of rule 8 (3) and that therefore the impugned order could be sustained as referable to the exercise of the power under that latter rule. But the power under rule 8(3) can be exercised only if certain conditions are satisfied, and neither the impugned order nor the affidavits filed in the case as much as attempt to make out that those conditions were satisfied.

4. It is next urged that, u/s 3 of the Act, the Government has full power to assign Government lands subject only to such restrictions, limitations and conditions as maybe prescribed by the rules. But, so has the prescribed authority, and, surely the power cannot extend to assigning land already assigned by the prescribed authority, and which has therefore ceased to be Government land. In the result we allow this petition and quash the order. Ex.P8.

 

We make no order as to costs.