

(2023) 05 KL CK 0045

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 34257, 35502, 36460, 37996 Of 2022

Mohandas P.D

APPELLANT

Vs

District Geologist Office Of The District Geologist, Mini Civil
Station, Chembookkavu, Thrissur, 680020

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Constitution of India, 1950 — Article 162
Forest Conservation Act, 1980 — Section 2
Kerala Land Assignment (Regularisation of Occupations of Forest Lands Prior to
01.01.1977) Special Rules, 1993 — Rule 3, 9(3)

Citation : (2023) 05 KL CK 0045

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Binoy Vasudevan, T.P.Sajan

Final Decision : Disposed Of

Judgement

N. Nagaresh, J

1. These writ petitions raise a common question of law almost on similar facts. Hence, they are heard together and disposed of by a common judgment.
2. For convenience, facts of the case in W.P.(C) No.34257 of 2022 are narrated here. Facts in other cases are almost identical. The petitioner is in ownership and possession of 0.297 Hectares of land situated in Peechi Village of Thrissur Taluk. The petitioner wanted to construct a residential building on the property. The Grama Panchayat, after verification, granted Ext.P3 Building Permit.
3. For the purpose of construction, ordinary earth has to be removed from the property. The Building Plan approved by the Panchayat indicated the quantity of ordinary earth to be removed for facilitating the construction. The ordinary earth so removed is to be transported out. Ordinary earth being a minor mineral, the petitioner requires Mineral Transit Passes to be issued by the 1st respondent-

District Geologist.

4. The District Geologist, instead of issuing Mineral Transit Passes, issued Ext.P5 letter dated 23.02.2022 to the Range Forest Officer asking for his opinion as to whether the land of the petitioner being originally one assigned under the Kerala Land Assignment (Regularisation of Occupations of Forest Lands Prior to 01.01.1977) Special Rules, 1993 (hereinafter referred to as "the Special Rules, 1993" for brevity) and since the Possession Certificate also indicated that it is an 'assigned land', can permission be granted to remove and transport out earth from the land for construction of residential building.

5. According to the petitioner, the Forest Range Officer did not respond to the communication sent by the District Geologist and the District Geologist is refusing to issue Mineral Transit Passes without the concurrence of the Forest Range Officer. According to the petitioner, the District Geologist, in issuing Mineral Transit Passes, is exercising a statutory power and cannot exercise that power based on the opinion of the Forest Range Officer. The petitioner would argue that this Court, in Exts.P7 to P9 judgments, has held that ordinary earth can be permitted to be removed and transported for the purpose of construction of residential houses.

6. The Special Government Pleader (Forests) resisted the writ petitions filing Statements/Counter Affidavits. On behalf of the Range Forest Officer, it is submitted that the assignment of the forest land is made under Rule 9(3) of Kerala Land Assignment Rules (Regularisation of Occupations of Forest Lands Prior to 01.01.1977) Special Rule 1993. The land was formerly part of Paravattanimala Notified Reserve. As per Rule 3 of the rules the purpose of assignment is for personal cultivation, house construction or shop room construction. So the land cannot be used for any other purpose. The petitioner is entitled to construct building in the property but under the guise of house construction, the soil of the forest land cannot be removed from the said land. The petitioner obtained the aforesaid land falling under Survey Number.3385/P of Peechi Village through a partition deed among his siblings and registered as Document No.1949 of 2014 of S.R.O. Ollukkara dated 20.05.2014. The land was formerly forest land and it was actually assigned as part of regularization of the occupation of forest land. The petitioner has not submitted any application before the Divisional Forest Officer, Thrissur or any other subordinate forest officers for the removal of earth from his forest assigned land.

7. The petitioner's forest assigned land is located at the right side of Poolachodu-Mayilattumpara Road. This land is situated in 2 meters height from the road. The land is just 200 meters away from Mayilatumpara forest area of Paravattanimala Notified Reserve. Soil excavation from the land would affect climatic and edaphic factors of the area. The Patta of the land attached by the petitioner as Ext.P6 with the petition is the same as the Patta annexed as Ext.P6 in W.P.(C) No.35502 of 2022 filed by Jayaprakash before this Court for similar matter. The petitioner of this petition and the petitioner, Jayaprakash of W.P.(C) No.35502 of 2022 are

brothers and received the property through a partition deed as Document No.1949 of 2014 of S.R.O. Ollukkara dated 20.05.2014. After perusal of the patta annexed as Ext.P6 of both Writ petitions, it is discernable that a total of 0.2833 Hectares of forest land was assigned to Chellamma (Mother of the petitioner) W/o Late Divakaran, Pathikalayil House, Peechi.P.O on 17.05.06 by Special Tahsildar (Land Assignment), Trichur. As per the land tax receipts annexed as Ext.P2 of the petitions of Jayaprakash and Mohandas, they are now in possession of 0.5936 Hectares of land. It can be assumed that the petitioners are in illegal possession of 0.3103 Hectares forest land. It can also be seen that there is no explanation in the petition regarding this excess land held by the petitioners. It is clear from the documents annexed by the petitioners before this Court with their petitions that they are in possession of more land than the land being assigned by the authority and it can be inferred that such excess land held by the petitioners is illegal. It is only through a detailed investigation that it can be decided to which category the excess land held by the petitioners belong. In that case, it can be seen that the petitioners have sought removal of soil from the land which is yet to be ascertained into which category the total area of land falls. It is also being investigated whether the petitioners are behind the soil mafia group, which sells illegally excavated soil in patta and other land areas.

8. The Patta and other land documents along with the petition also certifies that this land was part of a forest ecosystem. Then the soil excavated at the site has the inherent biological properties of the forest ecosystem with high levels of humus. It can be removed from the site only with the prior permission of the Forest Department. It is not justifiable to remove forest soil seemingly to a place without proper monitoring and environmental benefits. Till date, the petitioner has not applied to the forest department for permission to remove the soil from the assigned forest land. Permission cannot be granted to remove forest soil from assigned forest land even if the petitioner makes an application. Only soil levelling is permitted on the site for erecting the house and soil removal is not permitted. The respondent is unable to give permission to remove forest soil from the forest assigned land even if the petitioner makes an application, only soil levelling is allowed at the site where the house is to be built and no soil removal can be allowed.

9. I have heard the learned counsel for the petitioners and the learned Special Government Pleader (Forests) appearing for the respondents.

10. The petitioners hold properties in Peechi Village of Thrissur Taluk and in Neriamangalam Village in Kothamangalam Taluk. The properties were originally assigned under the Special Rules, 1993. The petitioners want to construct residential houses in their respective land holdings and have obtained Building Permits and Approved Plans from the Local Self Government Institutions.

11. The Building Permits / Approved Plans would indicate that a certain amount of red earth has to be excavated for the purpose of construction of buildings. The Grama Panchayats concerned have quantified and indicated the quantum of earth

to be excavated, in the Building Permit / Approved Plan. The petitioners desire to transport red earth / ordinary earth so excavated. The Kerala Minor Mineral Concession Rules, 2015 and the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015 make it a legal requirement to obtain Mineral Transit Passes from the Geologist for transportation of ordinary earth which is a minor mineral.

12. When the petitioners submitted applications for issuance of Mineral Transit Passes, the Geologist instead of considering the applications on merits, has sought opinion of Range Forest Officer on the permissibility of issuing passes, for the reason that in the Possession Certificates produced by the petitioners, there is an endorsement that the pieces of land in question are 'assigned'. It is aggrieved by the refusal on the part of the Geologist that the petitioners have approached this Court filing the writ petitions.

13. The Range Forest Officer is resisting the writ petitions and submits that since the land was originally assigned under the Special Rules, 1993, the petitioners are bound by the conditions on which the land was originally assigned. The soil excavated at the site has the inherent biological properties of the Forest ecosystem with high levels of humus. It can be removed from the site only with the prior permission of the Forest Department. It is not justifiable to remove forest soil seemingly to a place without proper monitoring and environmental benefits.

14. The Range Forest Officer contends that the petitioners have not submitted any application to the Forest Department seeking permission to remove soil from the assigned forest land. The Range Forest Officer would further state that even if application is submitted, permission cannot be granted. Only soil levelling is permitted on the site for erecting the house, soil removal is not permitted.

15. The Range Forest Officer would further urge that the status of land assigned under the Special Rules, 1993 remains as Forest Land and the provisions of Section 2 of the Forest Conservation Act, 1980 is applicable to the said land. Any clearing of land for non-forestry purpose will be treated as violation of Section 2 of the Forest Conservation Act, 1980. The removal of soil from the land for building construction would entail removal of trees also, which would clearly go against the conditions of assignment.

16. As regards the petitioners in W.P.(C) Nos.34257 and 35502 of 2022, the Range Forest Officer submitted that as per the land tax receipts produced by them, they are holding land in excess of what was originally assigned and hence it is to be assumed that they are in illegal possession of land.

17. The applicability of Forest Conservation Act, 1980 to the forest lands occupied by private individuals prior to 01.01.1997 came up for consideration before a Full Bench of this Court in *Nature Lovers Movement v. State of Kerala and others* [AIR 2000 Ker 131]. The constitutional validity of the Special Rules, 1993 was also considered by the Full Bench. The Full Bench of this Court, after

an elaborate consideration of the history of the Special Rules, 1993 and other legal materials, held that the provisions contained in the Forest Conservation Act, 1980 have no retrospective operation and they operate only prospectively. This Court further held that the Special Rules, 1993 are legal and valid. Therefore, the Range Forest Officer cannot be heard to contend that the Forest Conservation Act, 1980 would come in the way of petitioners constructing residential homes in their properties which were originally assigned under the Special Rules, 1993.

18. The further reason extended by the Range Forest Officer for objecting to the excavation and removal of ordinary earth for house construction is that such excavation and removal would violate conditions of assignment of forest land. Rule 3 of the Special Rules, 1993 provides that lands under the Rules may be assigned on Registry for purpose of personal cultivation or for house sites or for shop sites as the case may be.

19. Ext.P6 Pattayam/assignment contains ten conditions of assignment. English translation of those conditions as contained in paragraph 30 of the Division Bench judgment of this Court in *One Earth One Life v. Ministry of Environment and Forests and Others* [2018 (3) KLT 683] is as follows:

1. The full right overall the trees within the grant and specified in the schedule vests in the W.P.(C) No.34257/2022 & connected cases :17: Government Forest Dept. and the assignee is bound to take care of all trees standing on the land at the time of assignment or that may come into existence subsequent to it.
2. The assignee is bound to afford all facilities to the officers of Govt. in the matter of inspecting the land periodically for checking the trees referred to in condition (1) above and removing them if necessary.
3. Alienation of the assigned land is strictly forbidden unless under the conditions of Rule 15 sub-rule (2) in the event of alienation in contravention of the provision of this sub-rule it shall be open to the Government for resume the land without payment of any compensation.
4. In the case of an assignee allowed to pay the cost in instalments, if the assignee fails to pay any instalment in time the grant shall be cancelled.
5. No fees shall be levied (collected) related to survey and demarcation.
6. No previous arrears (dues) of patta on the land shall be levied.
7. The existing and customary rights of the Government and the public in roads and paths, rivers, streams and channels running through or bounding the land and the right of Government to a share in the mines and quarries adjacent to the said land are reserved and are in no way affected by the grant. *(Clause 7 incorrectly translated as indicated below in Note A)
8. All established rights of way and benefits with respect to road/path/other easement rights shall be respected by the assignee.

9. The land revenue or any tax or fee levied in lieu thereof on the land will be liable to revision.

10. In the event of any violation of any rules or conditions on grant, the Govt. has the right to resume the land without any compensation.

*NOTE A:- The translation of the above clause 7 of the Malayalam document does not appear to be correct and the actual clause as contained in the Malayalam version reads as follows:

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The English version does not appear to be the verbatim translation of clause 7 in Malayalam version. The Malayalam version does not refer to any right of the Government to a share in the quarries and mines, but refers to the 'right of access' referred by the Government to have access to the nearby mines or quarries through the assigned land.

The conditions of Patta do not in any manner prohibit excavation or removal of ordinary earth by the assignee.

20. When Rule 3 of the Special Rules, 1993 categorically states that the assignment can be for personal cultivation or for house sites and when the conditions of Pattayam do not expressly or by implication prohibits excavation and/or transportation of ordinary earth / red earth for construction of houses, the respondents cannot contend that the assignees under the Special Rules, 1993 have no right to excavate and transport ordinary earth / red earth to facilitate house construction in the assigned land.

21. The further defence of the respondents is that the soil excavated at the site has the inherent biological properties of the Forest ecosystem with high levels of humus and hence soil can be removed only with the permission of the Forest Department. High levels of humus quality cannot by itself affect the right of a land owner to utilise his land according to his requirements permissible under law and under the terms of assignment. In the absence of any statutory prohibition, restriction or regulation and in the absence of any executive instruction having the force of Article 162, Officers of the Forest Department cannot prevent an assignee of the land under the Special Rules, 1993 from constructing house and for that purpose excavate and transport ordinary earth.

22. The respondents have a further argument that some of the petitioners hold excess land than the extent assigned under the Special Rules, 1993. The respondents' assumption appears to be based on the extent of land assigned under the Special Rules, 1993 and the extent shown in the Possession Certificate. Based on the pleadings in the writ petition, holding of excess land by any of the petitioners, if at all they hold, cannot be concluded to be illegal. And

furthermore, that is not the reason based on which the District Geologist has sought advice of the Forest Department.

23. In the facts and circumstances of the case, it has to be concluded that the omission on the part of the District Geologist in considering the applications of the petitioners for issuance of Mineral Transit Passes for transportation of ordinary earth is illegal and arbitrary. The District Geologist is duty bound to consider the statutory applications for issuance of Mineral Transit Passes submitted by the petitioners without awaiting for any permission or approval from the Range Forest Officer.

The writ petitions are therefore disposed of directing the District Geologist concerned to consider the applications submitted by the petitioners for Mineral Transit Passes and issue passes to the petitioners if they are otherwise eligible, within a period of one month. It is made clear that this judgment will not restrain competent authorities to proceed against the petitioners, if any of the petitioners are holding excess forest land without the authority of law.