

(2024) 03 KL CK 0168

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17227 Of 2023

M/s Bruvs Minerals Pvt. Ltd

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 20-03-2024

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 81

Citation : (2024) 03 KL CK 0168

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : Philip J.Vettickattu, Neenu Bernath, K.Ammunikutty

Final Decision : Disposed Of

Judgement

Murali Purushothaman, J

1. The petitioner, a Private Limited Company, engaged in mining, crushing and allied business, states that, by Exts. P1 to P6 consent deeds, the owners of properties referred to therein have permitted the petitioner to conduct quarrying operations in their respective properties, each lying adjacent, and accordingly, the petitioner applied for demarcation certificate, non assignment certificate and attested sketch, before the 2nd respondent Village Officer, for the purpose of applying for mineral concession. The Village Officer issued Ext. P7 demarcation certificate stating that the land is surveyed and separated by fixing concrete pillars and iron fencing. However, it is endorsed therein that the issuance of certificate will be subject to the legal proceedings proposed to be taken by the Special Officer vide G.O. (MS) 703/2015/RD dated 30.12.2015 and also the BTR reference of the land as Periyar Rubber Plantation. The Village Officer also issued Exts. P8 to P13 non-assignment certificates in respect of the land covered by the consent deeds, but with similar endorsement. As regards Ext. P14 application for attested sketch, the same was rejected by the Tahsildar, the 1st respondent by Ext. P15 communication stating that the land in respect of which the application has been submitted forms part of a land once exempted under the provisions of

Section 81 of the Kerala Land Reforms Act, 1963 (hereinafter referred to as the 'Act') and therefore in view of the circular issued by the Land Board Secretary and the judgment in W.P(C) No. 17884/2017, quarrying operations are not permitted in plantations exempted under the provisions of Section 81 of the Act. The petitioner submits that non-issuance of attested sketch and adverse endorsements on the demarcation certificate and non-assignment certificates as above, on the premise that the applied land forms part of a land once exempted under the provisions of Section 81 of the Act, are illegal and arbitrary.

2. A counter affidavit is filed by the 1st respondent reiterating their stand in the impugned order. It is also stated that the land was part of Periyar Rubber Plantations and to establish ownership of the Government over the properties, it has been decided to file suit before competent Court for declaration of ownership and possession of land.

3. Heard Sri. Philip J. Vettikattu, the learned counsel for the petitioner and Smt. Deepa Narayanan, the learned Senior Government Pleader for the respondents.

4. The learned counsel for the petitioner contends that there is no prohibition in using an exempted land for a different purpose under the KLR Act. The learned Senior Government Pleader argued in support of the impugned orders.

5. The Full Bench of this Court in Mathew K. Jacob and Another v. District Environmental Impact Assessment Authority [2018 (5) KHC 487: 2018 (4) KLT 913: ILR 2018 (4) Ker. 868: 2019 (1) KLJ 49: AIR 2019 Ker. 67] held that there is no prohibition in using an exempted land for a different purpose under the Kerala Land Reforms Act. The said judgment has been affirmed by the Hon'ble Supreme Court in K.H. Nazar v. Mathew K. Jacob [(2020) 14 SCC 126; 2019 (4) KHC 919]. In Kinallur Rock Sand v. State of Kerala and others (2021(2) KLT 351), a Single Bench of this Court, following the decision of the Full Bench in Mathew K. Jacob (supra), held that there is no prohibition in using an exempted land under the Kerala Land Reforms Act for a different purpose and if the exempted land is utilised for any other purpose, it may fall within one's ceiling area and the authorities may be able to initiate ceiling proceedings. However, that cannot be a reason to decline permission for using the land for another purpose. In District Collector v. Sajith Lal (2023 KLT OnLine 1225), a Division Bench of this Court held as follows:

"5. There is no embargo under law in using any exempted land for non-exempted purposes as well. If the land is used for non-exempted purposes, the holder of the land will lose the qualification for exemption, thus giving authority to the Land Board to initiate ceiling proceedings. The judgments cited at the Bar fortify the above legal proposition. The KLR Act provides no answer against conversion of the exempted land. Had it not been for the exemption, the land would have been included in the ceiling proceedings of the declarant for surrender. The only plausible conclusion in this situation is that the Land Board

will be in a position to initiate ceiling proceedings.”

6. In *Village Officer v. Karnataka Fransalian Society* [2017 (2) KLT OnLine 2198], a Division Bench of this Court held that whether the property is an exempted property or its user is restricted which cannot be changed, would be a matter that would separately come up for consideration as the occasion may arise by its user, by the purchaser or by any other person and those proceedings cannot be pre-empted by any adverse entry in the possession certificate. In *Wayanad Granites v. District Collector* [2023 (4) KLT 874], this Court held that revenue certificates need not be denied for the reason that the land is part of exempted land under the Kerala Land Reforms Act or on the ground that no permission has been obtained to convert land under the provisions of the Kerala Land Utilisation Order, 1967.

7. In the light of the aforesaid decisions, I am of the view that, the reason stated in Ext.P15 for rejecting the attested survey sketch cannot be sustained. Accordingly, Ext.P15 is set aside. There will be a direction to the respondents to issue counter signed survey sketch, demarcation certificate and non assignment certificate to the petitioner, without making any adverse endorsement, within one month from the date of receipt of a certified copy of this judgment. It is made clear that, this Court has only considered the question of issuance of survey sketch, demarcation certificate and non assignment certificate and has not expressed any opinion on the question whether mining lease can be issued in respect of the land in question. The issuance of these certificates shall not be treated as no-objection from the revenue authorities to start quarrying operations in the land in question. It is also made clear that the right of the Government in taking any action, in case of violation of law, is also reserved. Besides, this judgment will not impede the right of the State to question the title, ownership and possession of the subject lands in any civil proceedings.

The writ petition is disposed of. There will be no order as to costs.