

(1989) 12 SC CK 0016
In the Supreme Court Of India
Case No : Civil Appeal No. 1445 of 1987

N. Viswanatha Iyer

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-12-1989

Acts Referred:

Kerala Government Land Assignment Act, 1960 — Section 7
Rules for Lease of Government Lands for Cardamom Cultivation, 1961 — Rule 3

Citation : (1989) JT 412 Supp : (1989) 2 SCALE 1393 : (1990) SCC 120 Supp :
(1990) 1 SCC 120 Supp : (1990) 1 UJ 507

Hon'ble Judges : N. M. Kasliwal, J; K. N. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Singh, J.—This appeal by special leave is directed against the judgment and order of the High Court of Kerala dated 3.10.1985 dismissing the appellant's writ petition under Article 226 of the Constitution.

2. The appellant had encroached upon Government land to the extent of 30.87 acres. He applied for the grant of lease of the said Government land under Rule 3 of the Rules framed under the Cardamom Cultivation Act 1961 read with Section 7 of the Kerala Land Assignment Act, 1960. The Special Officer Cardamom Settlement Devicolum rejected the appellant's application on the findings that since the appellant was holding 67.87 acres of land, he was not entitled to any lease under Rule 3 of the aforesaid Rules. The appellant filed an appeal against the order of the Special Officer before the Board of Revenue, Trivandrum. The Board of Revenue dismissed the appeal on the findings that the appellant was not entitled to any lease of the Government land encroached upon by him. The appellant thereafter filed a Revision Petition before the State Government but that was too dismissed on the findings recorded by the Board of Revenue. Thereafter the appellant filed a writ petition under Article 226 of the Constitution before the High Court challenging the orders of the State Government and other

authorities. The High Court dismissed the petition, hence this appeal.

3. After hearing learned Counsel for the parties, we do not find any ground to interfere with the order of the High Court. Rule 3 provides for the grant of lease to a person who may have encroached upon the Government land to the extent of 25 acres. The Rule further provides that the maximum area that may be leased to a person shall be 25 acres and it further provides that no such lease shall be granted to a person if he has other land with him and on the grant of lease the area of land available to him will be more than 60 acres. Thus the Rule provides that a maximum area of 25 acres can be leased out to a person provided the land already held by him together with the lease land of 25 acres does not exceed 60 acres. All the authorities including the Board of Revenue and the Government have recorded findings of fact that the appellant was already holding land to the extent of 67.87 acres, as such he was not entitled to any lease of the Government land encroached upon by him. The appellant raised a plea that 67.87 acres of land was not held by him in his individual capacity instead it was joint family property, this plea rejected as the appellant failed to prove it.

4 We have gone through the records placed before us by the learned Counsel of the appellant but we do not find any error in the view taken by the High Court. The appeal fails and is accordingly dismissed. Interim order stands discharged. There will be no order as to costs.