
(1965) 06 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No"s. 331, 735, 886 etc. of 1965

Parameswara Bhat

APPELLANT

Vs

The Tahsildar, Kasargod and others

RESPONDENT

Date of Decision : 18-06-1965

Acts Referred:

Kerala Government Land Assignment Act, 1960 — Section 7, 9(3)
States Reorganisation Act, 1956 — Section 5

Citation : (1967) KLJ 308

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : K. Chandrasekharan, T Chandrasekhara Menon and C. Sankara Menon, P.K. Ammini, C.K. Viswanatha Iyer and V. Rama Shenoi, R. Raya Shenoi and Others, for the Appellant;

Judgement

P. Govindan Nair, J.—These writ applications raise a common question and pertain to either the assignment of Government lands or attempts to assign Government lands. The Petitioners are those who have claimed certain preferential rights in the matter of assignment of lands. The preferential claims have been based on one of two grounds. Some of the Petitioners claimed to have Kumki privileges over the lands sought to be assigned. There are others who claimed that they have been in possession bona fide of the lands sought to be assigned and have been making improvements thereon and have therefore a preferential claim to have the lands assigned to them. To make the picture complete, I may add that some at least of those who claimed Kumki privileges over the lands sought to be assigned have also claimed that they have been in possession and have made improvements thereon. I am not concerned with and I do not propose to deal with either the existence or the extent of these privileges claimed by the petitioners. Suffice it for me to say that if the claims put forward by the petitioners are correct or found to be correct they may have certain preferential rights in the matter, of assignment. I shall presently show how this is. But to state the contention of the petitioners, what is urged is that

ignoring the preferential rights of the petitioners, steps have been taken to assign the lands in favor of others and in certain cases, assignment orders, either provisional or otherwise have been made. It is prayed that these assignments where there have been assignments be set aside and it is also prayed that the authorities be restrained from assigning the lands without properly considering the claims of the petitioners.

2. This is a convenient place to group the cases where admittedly orders have been passed. These have been passed in O.P. No. 331 of 1964 (Ex. P4) in favor of respondent 3, in O.P. No. 735 of 1964 in favor of respondents 2 and 3, in O.P. No. 1522 of 1964 in favor of respondent 2 who is called "The Cashew Plantation Officer", in O.P. No. 1724 of 1964 in favor of the same Officer, the 2nd respondent, in O.P. No. 1871 of 1964 by Exs. P1 and P2 in favor of respondents 2 and 3, in O.P. No. 2106 of 1964, again in favor of the Cashew Plantation Officer, the 2nd respondent, in O.P. No. 2597 of 1964 by Exs. P3 to P6 in favor of respondents 4 to 7, in O.P. No. 2830 of 1964 by Ex. P1 in favor of respondents 2 to 12, in O.P. No. 2953 of 1964 in favor of the Cashew Plantation Officer, the 2nd respondent, in O.P. No. 3245 of 1964 by Exs. P1 and P2 provisional assignment orders in favor of respondents 2 and 3, in O.P. No. 311 of 1965 by Ex. P1 provisional assignment order in favor of respondents 2 to 5 and in O.P. No. 579 of 1965 by Ex. P1 provisional assignment order in favor of respondents 3 and 4.

3. In the other set of cases disposed of by this Judgment, as far as information made available to me shows, no orders of assignment either provisional or final have been passed.

4. The case of the petitioners is that in view of the fact that either the petitioners were having Kumki privileges over the land sought to be assigned or because they have been in bona fide possession of the properties effecting valuable improvements thereon or because of the cumulative effect of the Kumki privilege coupled with possession, they are entitled to certain preferential treatment in the matter of assignment of Government land. Whether this contention is well-founded has to be examined.

5. In support of their contention they have relied on the statutory provisions contained in the Kerala Government Land Assignment Act, 1960. It is admitted that all steps taken for the assignment of the lands concerned in these writ applications have been taken relying on the provisions of the Kerala Government Land Assignment Act, 1960. Section 7 is the section dealing with the rule making power. Clause (c) of sub-section (1) thereof has given the right to the Government to make rules prescribing the order of priority in the matter of assignment of Government Land. Two sets of rules have been framed u/s 7 of this Act. The first of these was in October 1963 by a notification dated 9th October 1963 published in the Kerala Gazette No. 42 dated 22nd October 1963. Rule 3 of those rules has given preference to what are termed, "landless rejected tenants" and a second preference to "Agricultural Workers." None of the petitioners claim to have any rights under these rules. So, for the purpose of

considering the question of privileges claimed by the petitioners it is unnecessary to refer to these rules. There is also provision made in Rule 7 of the Kerala Land Assignment Rules, 1964. By this rule, the first preference is given to those who had encroached on Government Land which encroachment is not considered objectionable, subject to limitations specified in the rule itself regarding the extent of the land that could be assigned. Those who have claimed Kumki privileges have invited my attention to section 9 (3) of the Kerala Government Land Assignment Act, 1960 and rules and orders that were in force immediately before the commencement of the Kerala Government Land Assignment Act, 1960 in the Malabar District. Section 9 (3) is in these terms :-

All rules and orders made or deemed to have been made under the Travancore Cochin Government Land Assignment Act, 1950, hereby repealed and all rules and orders in force immediately before the commencement of this Act relating to the assignment of Government lands in the Malabar district referred to in sub-section (2) of Section 5 of the States Reorganization Act, 1956 (Central Act 37 of 1956), so far as they are not inconsistent with this Act, shall be deemed to have been made under the corresponding provisions of this Act, and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this act.

6. Provision has been made in the Board's Standing Orders in relation to the assignment of what may for brevity be referred to as "Kumki lands" (lands over which Kumki rights have been claimed by others). This is seen from the Standing Orders of the Board of Revenue, Vol. 1, page 73, paragraph 10. Dealing with the claim of applicants for assignment of land it is stated therein

As a general rule, preference between two or more applicants should be given as follows:-

(1) Any registered holder or walawargdar or mulgenidar who is a kumkidar of the land applied for should be given preference over all other applicants to the extent of those privileges.

7. The Madras High Court has occasion to consider the privileges attributable to a Kumkidar and I may refer in this connection to two decisions of that court. The first of these is in *Vasteva Holla* and another v *P. Mahabala Rao* reported in AIR 1930 Madras 674.

Their Lordships observed:-

According to Government rules, the pattadar of the warg has a preferential right, which in practice is never denied, of getting the attached Kumki registered in his own name and thereby becoming its owner, and also to be exempted from payment of the value of the trees which should be charged to a stranger.

8. There is a similar observation in the decision in *Ramakrishna Bhatta* and another v *Subbanha Bhatta* and others, reported in (1964) II M.L.J. 665.

Every wargdar is entitled to the adjoining unassigned land up to 100 yards on either side as kumki, and it is not merely a theoretical right but has very valuable incidents like using the land for collecting manure leaves and raising trees, and having a recognised preference in the matter of darkhast or assignment, this right being rendered stronger by improvements, like planting of trees.

9. The rights of a kumkidar having been conferred by the standing orders, judicially recognised by the decisions referred to and by other pronouncements, have now been given statutory force in view of the provision in Section 9 (3) of the Kerala Government Land Assignment Act, 1960 which I have extracted earlier in this judgment.

10. I must refer to the rules that have been framed by the Government in 1958 and seen in the Statutory Rules and Notifications of Kerala, 1958 at page 941 to which my attention was invited by the learned Government pleader. These are prefaced by the remark :-

"Instructions regulating the assignment of Government lands under the Land Assignment Scheme of Government issued under the Board's Standing Orders 15 (Madras)."

The rules then proceed to lay down the procedure to be adopted in the assignment of Government lands. But kumki lands in the Taluks of Hosdurg and Kasaragod in the District of Cannanore upto a width of two chains adjoining assessed land included in a holding formed prior to fasle 12 A, have been specifically exempted from the purview of the Rules. The provisions in the rules therefore will not apply to Kumki lands, extending to two chains from the assessed lands. These rules may perhaps apply to lands extending beyond the two chains though these lands are kumki lands. But as to which of the rules must prevail in the matter of assignment of Kumki lands, whether the earlier Board's Standing Orders giving preference to a larger extent, or the 1958 Rules referred to, it is not for me to decide in these writ applications for the first time and I express no opinion on the matter. Suffice it to say that Kumki rights have been statutorily recognized and the priority conferred in the matter of assignment has been left untouched by any specific provision to the contra. It is therefore clear from what is stated above that in the matter of assignment, the petitioners in these writ applications will get a preferential right to the assignment of land sought to be assigned provided the lands sought to be assigned are lands over which the petitioners have either Kumki privileges and or have been in possession bona fide making improvements. This being so, it is clear that the petitioners are those who claim to have vital interests in the matter of assignment of these lands.

11. Their complaint is that they were denied an opportunity to place and prove their case and to have their preferential rights considered. It is asserted that they had no notice regarding the proposal to assign. In other words, a lack of reasonable opportunity for urging their contention. In this connection I may refer

to the provision in Section 4 of the Kerala Government Land Assignment Act, 1950. This section enjoins that before Government land is assigned, notice in the prescribed manner should be given. The 1958 rules that I referred to, the 1963 rules, the directions issued by the Standing Orders of the Board of Revenue and the 1964 Rules, all provide for notice being published in the manner provided by those rules. It is thus clear that the legislature has considered it important that notice should be given. In this batch of cases, it has been urged that there has been no attempt at publishing any notice. And I have not been able to see from the files made available to me of any notice having been published. This has resulted not only in the violation of a statutory provision but of the principles of natural justice. The result might be that valuable rights have been negated without any opportunity being given to the petitioners. On this short ground, I set at naught all steps that have so far been taken for the assignment of the lands concerned in these writ applications and direct that fresh steps will be taken after publication of notice in the prescribed manner indicating clearly the land proposed to be assigned. Thereafter the petitioners will be given a reasonable opportunity of placing and proving their cases and urging their contentions that they have a preferential right in the matter of the assignment of the lands proposed to be assigned.

12. I must also make it clear that the orders in cases which I have indicated in paragraph 3 above whether provisional or otherwise, are set aside by this judgment. The matter will be investigated afresh and appropriate orders passed in accordance with the provisions of the statute and the rules applicable and in the light of what is stated in this judgment.

13. In O.P. Nos. 2509 of 1964 and 182 of 1965 steps have been taken under the Land Conservancy Act to evict the petitioners. There is of course a proposal to assign the land but the action that has been impugned in these cases relate to those taken under the Land Conservancy Act. The proceedings under the Land Conservancy Act are set aside and such steps will again be taken only if after notice and enquiry it is found that the lands concerned cannot be assigned to the petitioners in those O. Ps. These writ applications are disposed of as above. There will be no order as to costs in these petitions.