

(1961) 06 KL CK 0025

In the High Court Of Kerala

Case No : O.P. No's. 419 and 457 of 1957 and 119 of 1958

Parameswaran Pillai and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 13-06-1961

Acts Referred:

Constitution of India, 1950 — Article 14, 25

Citation : (1961) KLJ 1192

Hon'ble Judges : M.A. Ansari, C.J;T.C. Raghavan, J

Bench : Division Bench

Advocate : K. Velayudhan Nair in O. P. 419/57, S. Narayanan Potti, S.A. Nagendran, N.K. Varkey in O. P. 457/57 and T.N. Subramonia Iyer, S. Subramonia Iyer, K.S. Paripoornan and P.R. Balachandran in O. P. 119/58, A.G. Government Pleader For State, for the Appellant; C.K. Sivasankara Panicker for 2nd Respondent in O.P. 419/57, M.M. Abdulkadir, M.K. Abdulla for 3rd Respondent in O.P. 419/57 and T.K. Narayana Pillai (N) and D. Narayanan Potti for Respondents 2 and 3 in O.P. 457/57, for the Respondent

Final Decision : Allowed

Judgement

Ansari, C.J.—These three writ petitions having been consolidated, because one of the several legal issues raised in each is common. The petitioners claim that the Government's assignments of land are in contravention of what the Travancore-Cochin Government Land Assignment Act No. XXXIII of 1950, hereafter referred to as the Act provides, are illegal and violative of their rights thereby conferred. For the purpose of deciding the aforesaid issue it is necessary to narrate the averments in each petition, and thereafter adjudicate on the arguments urged before us. The two petitioners in O. P. 419 of 1957 complain against the assignment of 50 cents land to the Secretary, Martyrs' Committee, Alleppey, and aver its being without their getting any opportunity to object u/s 4 of the Act. The affidavit in support of the petition states that Sy. No. 592/1-B and C of the Alleppey Village is a burial ground within the Municipal town of Alleppey, and had been for two hundred years used as such by the citizens of Alleppey town. The

Municipal Council of Alleppey city is stated to have about 16 years ago allotted 50 cents of the area for Nairs, 17 cents for Vellalas, 8 cents for Reddiars, 22 cents for Ezhavas, 11/2 cents for Kammalas, and the remaining for others. The affidavit further states that what had been allotted for burying Nairs had been separated by boundary walls, and many of the petitioners' forefathers and relations had been buried or cremated there. The main complaint is that the Alleppey District Committee of the Communist Party having applied to then Government for 50 cents from the burial ground for the purpose of erecting memorial to martyrs of the Party, the Government having consulted the Municipality, the Council having by a majority resolution agreed to exchange it for other land, a telegram was sent on October 21, 1957 to the District Collector, directing the aforesaid area to be resumed and handed over to the Secretary, Martyrs' Committee, Alleppey. The concluding part of the complaint is that the Tahsildar had later handed over the area to the third respondent without the procedure u/s 4 of the Act having been followed. The Municipal resolution to exchange is said to be ultra vires and the Government's direction to be in contravention of the Act, and Article 25. This writ petition has impleaded the State of Kerala as the first, the Alleppey Municipality as the second, and the Secretary of the Martyrs' Committee, as the third respondents. The counter-affidavits do not deny 50 cents of lands belonging to the Municipality having been exchanged and assigned to the third respondent for purpose of the memorial, but deny the area being part of the burial ground for residents of Alleppey or the petitioners' ancestors being either buried or cremated there. The case set up is that the area allotted formed part of another land, where only those who had died in Vayalar Punnappa struggle had been buried or cremated. The exchange as well as the assignment is claimed to be according to law and not against provisions of the Act. We do not think it is necessary to adjudicate on whether the assignment area forms part of the general cremation ground, or whether the Municipality had legally exchanged the area, or whether Article 25 been contravened; for, should Section 4 of the Act be found to be mandatory and to cover all assignments of Government lands the failure to observe it would be fatal to the third respondent's title, and the petitioners would be justly feel aggrieved of not having any opportunity of urging their claims against it. The decisive issue, therefore, in this writ petition is whether the land could be assigned in disregard of the provisions of the Section.

2. The petitioner in O. P. 457/57 also raises a similar question, where the complaint is against assignments made on September 4, 1957; which consist of grants of 6 cents of Government land to the 2nd respondent and of another 6 cents in favor of the 3rd respondent, who are Warders in the Central Jail, Trivandrum; and the lands are from survey No. 1759 of Anchamada Village, Trivandrum. The petitioner's case is that he had objected, but grants been made without the objections being determined according to Section 4 of the Act; he is injuriously affected, because he owns registered holding in Survey No. 1767/1 of the same village; had access, over the disputed lands that lay between the

holding and the public road, to the road, which would now be not available. The petitioner claims the grants not to be bona fide, to be arbitrary and to be in contravention of the prevailing rules for assigning Government lands. The position taken by the State and the two grantees is that the Government is not bound to observe the procedure laid u/s 4 of the Act in making every grant. Rule 31 authorizes departures, the petitioner's access is to another road from another side, the access mentioned in the petition is still available through a lane, which is not covered by the grants, and the Warders being landless persons having been after due enquiry granted the areas to build houses without mala fide and in pursuance of the general policy to provide houses for such persons. There is thus the same issue in this petition, that can be adjudicated upon without facts disputed by the writ petitioners being investigated or determined.

3. Coming to the last petitioner, who has field O. P. 119/58, his claim is that he is the owner and occupier of Sy. No. 601/1 in Edava Desom, Edava Pakuthy, Varkala Sub-District, Chirayinkil Taluk, in which he has a house and a shop in front. A triangular piece of land lies in between this property and the public way, over which land the petitioner states to have a right of access to the public road, and which land is part of Sy. No. 581 of Edava Desom. The complaint is that the Government has given away part of the land on Kuthakapattom lease for a renewable term of 12 years, by order G/Dis. No. 18630/57-RD dated December 26, 1957, and that had been communicated to the District Collector, Trivandrum. The further averment is that the grant has been completed by the Taluk Office and steps were being taken to occupy the land, build upon it, and thereby defeat the petitioner's right over it. The lease is in favor of an association, that has been named as Yuvajana Samajom and the respondents to the petition are the State of Kerala, and the President of the Yuvajana Samajam. The legality of the lease is challenged on several grounds, some being that the lease defeats the petitioner's rights of easement, is mala fide, without any public purpose and is without conforming to the provisions of and the procedure established by law. The rejoinders dispute the correctness of the writ petitioner's claim to the right of way over the land leased and the grant being contrary to law. No useful purpose, however, would be served in narrating in detail the several averments in the rejoinders, as it is not disputed that the grant had been without compliance with the provisions of Section 4 of the Act, and the legal issue in the petition as well is whether the assignment in view of the provisions of the Section would be valid. It follows that the determination of the question would decide the petition without going into controverted facts.

4. The position therefore is that all these petitions challenge assignments by the then Government at different times and in different areas of lands, which are without complying with the provisions of Section 4 of the Act, and which the petitioners claim to be void due to their being not allowed the exercise of the statutory rights of objecting, which they have in each case. We, therefore, do not propose to depart in these cases from the settled rule of procedure followed in writ petitions of not adjudicating on controverted facts, and should the

petitioners fail on the legal issue such failure would result in petitions being dismissed. It follows that the several denials by the rejoinders of the averments in the writ petitions, are not being decided by us, and we proceed to dispose of these petitions on two admitted facts alone, which are that the Government have assigned lands without complying with certain statutory provision and the writ petitioners have claims against those assignments. These claims would be justiciable under the procedure laid by the Act, of which we now give a short summary.

5. Out of the total of 9 sections in the Act, section 1 gives the short title, extent and commencement, Section 2 contains the definitions, section 7 authorizes the Government to frame rules, section 8 says that assignment shall take effect with the restrictions according to their tenor, or any rule of law or statute or enactment to the contrary notwithstanding, and section 9 repeals the earlier enactments. The important provisions for purposes of our decision are Sections 3, 4 and 5 which read as follows:

3. Government land may be assigned by the Government or by any prescribed authority either absolutely or subject to such restrictions, limitations and conditions as may be prescribed.

Explanation.-Any restriction as to alienation, whether voluntary or otherwise, of the rights of the assignee is within the meaning of this Section.

4. (1) When any Government land is proposed to be assigned, the Tahsildar of the taluk in which the land is situate, or any officer empowered by the Government in this behalf, shall notify in the prescribed manner that such land will, by public auction or otherwise be assigned, and call upon those who have got any claim to such land to prefer to him their objections, if any.

(2) If any objection is preferred within the lime fixed in the notification, the Tahsildar, or such other officer shall enquire into such claims and pass an order in writing either accepting or rejecting the claim and intimate in writing the fact of such disposal to the claimant.

(3) For the purposes of enquiry under Sub-section (1) the Officer making the enquiry shall have all the powers conferred upon Collectors and Tahsildars by the law for the time being in force regarding summoning of persons for disposal of matters connected with revenue administration.

5. (a) When the time fixed in the notification u/s 4 has elapsed and no claim has been preferred, or

(b) when the claim is rejected-

(i) and the time for appealing from the order has elapsed and no appeal has been preferred; or

(ii) when an appeal has been preferred and the appeal is rejected by the appellate authority;

and land may, subject to such rules as may be framed by the Government in this behalf, be assigned by the prescribed authority.

6. It was urged on behalf of the respondent that there are really two forms of assignment under the Act one by the Government and the other under Sections 4 and 5, which apply only to assignments by the prescribed officer so that the authority of the Government to alienate land is not controlled by the aforesaid Sections. There are difficulties in accepting such residuary power being available to the Government after the Act. To begin with assignments under Sections 4 and 5 are after fair opportunity to persons having claims on the land, and the objections being after the rejection again adjudged by fresh appellate authority, which safeguards are not available in the form of the assignments claimed for the Government by the advocate. The latter form is thus discriminatory, particularly in absence of direction about when it should be adopted, and so violative of Article 14. A Legislature cannot disregard the guarantee, and the Act has been passed after the inauguration of the Constitution. There is, therefore, the presumption against the conferment of such discriminatory power under the Act, and further such conferment would be void, should the Act be construed as having done so. We do not say that the Government like any ordinary owner has not the absolute domain of alienating its property in any way it likes. But we do say that the Government being in certain cases bound to follow a procedure that gives adequate safeguards to persons having claim, cannot, without rational classification and having regard to the guarantee of equality before law, be authorized to follow at its will another procedure where such safeguard is not available. Were we to accept the argument urged by the respondents, of the Act having vested such power, it would be void on the ground of being discriminatory.

7. We feel, however, that the Act confers no other power of assignment on the Government, which is not controlled by Sections 4 and 5. Section 4 begins by saying that "where any Government land is proposed to be assigned" and therefore the procedure following would cover all assignments. But one of the respondent's learned advocate has tried to confine its operation to assignments by the prescribed authority, because of the words "be assigned by the prescribed authority" in Section 5, and has urged that the assignment by the Government mentioned in Section 3 is not intended and would not be covered by Sections 4 and 5. With respect we see no force in this argument. The assignments by all juristic personality, that is not natural, must be by natural, person, who would be authorized for the purpose, and such a person would then become prescribed authority. We, therefore, do not see how the Government can assign without the help of some natural person, and how that person would not be prescribed authority. It follows that all the three Sections contemplate only one procedure for making assignment, and Section 3 confers power of imposing limitation which under the general law would not be permissible, and which can be placed on the interest conveyed either where the Government or the assigning officer thinks necessary. After vesting such a power, Section 4 provides for the procedure to be observed for all assignments, which is clear by the opening words of the section.

Had the intention been to exclude any power of assignments that had been conferred on the Government from the operation of the Section, its opening words would not have been so framed. Section 5 then enacts the subsequent stages for the document being executed, and does not mention the Government, because all its conveyances must be by somebody, who is prescribed authority for the purpose. In any case, failure to observe the procedure is fatal in the writ petitions before us, because all the assignments are by the prescribed authority.

8. It was then argued that Sections 4 and 5 are directory. But it cannot be disputed that Section 4 partly enacts the procedure for a quasi-judicial Tribunal, and the rules of judicial procedure intended for safe-guarding claims of parties are held to be mandatory. Therefore, what Section 4 provides cannot be treated to be directory. The position then is that under the Act any assignment by the prescribed authority must be after the stages under Sections 4 and 5 been gone through, and there is no dispensing power in the Government. That is the inevitable consequence of the "rule of law", which position had been not adequately appreciated by those directing assignments in the cases before us. They are, therefore, without observance of the mandatory rules governing such assignments. The next question is, what writ the petitioners are entitled to. It is clear that the procedure is quasi-judicial, and any assignment in disregard of the statutory provisions would be without jurisdiction. Writ of certiorari would, in these circumstances, be proper writ, to which all the petitioners are entitled, because all aver claims over the lands, which have not been investigated. We, therefore, allow the writ petitions, and vacate the assignments, complained against by the petitioners, in all the three cases, due to the absence of the notification and adjudications on the petitioners' claims u/s 4. The petitioners would get costs in all the petitions, Advocate's fee being Rs. 100/- in each, and this order will govern all the three petitions. No order is necessary on C. M. P. 563 of 1959 in O. P. 457/57 in these circumstances.