
(2023) 06 KL CK 0334

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26716 Of 2017

Pullipadam Metal And Metal Sand Pvt. Ltd

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Constitution of India, 1950 — Article 300A

Kerala Private Forest (Vesting and Assignment) Rules, 1974 — Rule 6, 12, 25

Citation : (2023) 06 KL CK 0334

Hon'ble Judges : Viju Abraham, J

Bench : Single Bench

Advocate : Renjith Thampan, V.M.Krishnakumar, T.P.Sajan

Final Decision : Disposed Of

Judgement

Viju Abraham, J.

1. The above writ petition is filed seeking a direction to the 2nd respondent to remove the temporary junda put in Ext.P1 property forthwith.

2. Petitioner purchased 4.20 acres of property in Sy.No.1 of Mampad/Pullipadam Village as per Ext.P1 sale deed executed on 02.04.2013. Petitioner purchased the said property from one Abdulla and before purchase of the same, petitioner made all possible enquiries with regard to the title of property covered by Ext.P1. The 2nd respondent Divisional Forest Officer has issued Ext.P2 certificate to the assignor of Ext.P1 property certifying that on verification, it is found that Ext.P1 property is not included in any reserved forest. The original holder of Ext.P1 property got the assignment of the same by Ext.P3 proceedings dated 07.08.1978 of the Special Tahsildar, Vested Forest Land Assignment, Nilambur. After purchase, the petitioner has effected mutation of the property and basic tax has been paid as per Ext.P4 basic tax receipt dated 27.01.2017. A perusal of the schedule to Ext.P1 sale deed would make it clear that the four boundaries of Ext.P1 property are private properties and not sharing common boundary with

any vested/reserved forest. While this being the position, the forest personnel under the 2nd respondent without the knowledge or notice to the petitioner had put temporary junda in the petitioner's property. Petitioner approached the 2nd respondent several times and brought to his notice the illegality perpetuated by the forest authorities. Since no positive action was taken by any of the authorities to rectify the said mistake, the petitioner preferred a representation before the Minister for Forest and Environment, the District Collector, Malappuram and the 2nd respondent as is evident from Exts. P5 and P6. Pursuant to the said representations, the Divisional Surveyor, Nilambur North Division along with the Taluk Surveyor has conducted a joint verification of the property on 18.07.2016 in the presence of the petitioner. Petitioner was not issued with the copy of the joint verification report and the petitioner later on obtained Ext.P7 copy of the joint verification report under the Right to Information Act along with the location sketch dated 19.07.2016. The case of the petitioner is that the junda has now been erected on the land handed over to the Revenue Department for assignment and not a forest land. The land is admittedly assigned under Ext.P3 and hence not a forest land.

3. Petitioner submits that what has now been done in the present case is encroachment upon his property without there being any order or decision to that effect by any of the competent authorities as provided in the Kerala Private Forest (Vesting and Assignment) Rules, 1974 (hereinafter referred to as "Rules 1974"). Petitioner relies on the judgments in *S.R.Ejaz v. T.N.Handloom Weavers Co-operative Society Ltd*, 2002 KHC 1174; *Vidya Devi v. State of Himachal Pradesh and others*, 2020 KHC 6015; *Soorya Narayana Bhat and others v. State of Kerala and others*, 2017(2) KHC 647 and *State of Kerala v. P.Rajan*, 2021 (4) KHC 619 to contend for the position that any dispossession from the property can only be in accordance with the procedure established by law and a citizen cannot be forcefully dispossessed from his property as was done in the present case.

4. A detailed statement has been filed on behalf of the 2nd respondent in which it is contended that demarcation of the vested forest was completed during 1974-1976 and a notification was made during 1977 and thereafter as per Government Order G.O.(Ms) 326/AD dated 14.12.1978, 1917.484 hectors of land, which also include Karukamanna Malavaram area vested forests, were handed over to the Revenue Department for assignment. Out of the total extent of 1917.484 hectors of land handed over, the Revenue Department had assigned an extent of 1194.38 hectors of land before the enactment of Forest Conservation Act, 1980 (hereinafter referred to as "Act 1980") leaving an extent of 723.104 hectors of land as unassigned vested forests. It is also stated that large scale illicit felling and encroachment of forest area was reported during 2007. In view of the said situation a Public Interest Litigation was filed before this Court as W.P(C) No.16309 of 2007 to take immediate action to evict all encroachers from the vested forest land and resume and protect the lands in accordance with law and to survey and demarcate the land assigned to landless

persons and make jundas to prevent further encroachment. This Court as per judgment dated 15.06.2009 has directed that within a period of six months time the Government and the concerned Department should complete the survey and fix boundaries of the encroached portions by the unauthorised occupants and take steps to evict the encroachers. It is further submitted that in 2014 extensive mining from the above assigned and unassigned forest area invited public protest and it was found that 12 quarrying units were functioning in and around these forest areas. In the meanwhile another Public Interest Litigation was filed as W.P. (C) No.32113 of 2014 seeking a direction to implement the directions issued in the earlier judgment in W.P.(C) No.16309 of 2007. In the said writ petition this Court as per judgment dated 04.03.2015 issued a direction to the Survey Director to appoint surveyors for survey works related to the unassigned vested forest in the division under the 2nd respondent. Accordingly a survey team was constituted for the purpose of survey works. During the course of the above survey, land involved in the present writ petition was also jointly identified and surveyed by the Forest Department and the Revenue Department. It is submitted that the Departments identified only those portions which were left uncultivated or remain as rocky and which is not suitable for cultivation. The land in question is a portion of assigned land in plot Nos.102 and 103. Some portion of the above plots was left uncultivated by the assignee and during the survey work the survey team demarcated the uncultivated portion of the above plots as vested forest. The extent of the above area is 1.981 hectars which is marked as 'G' in the sketch attached to Ext.P7. The demarcated portion of the plots are having the nature of forest and is remaining uncultivated and the major portion of the demarcated area is rocky in nature. On 03.03.2016, the petitioner submitted a petition before the 2nd respondent enclosing the documents and claiming title and ownership over the said land. On enquiry it is revealed that the above land was assigned by the Special Tahsildar, Vested Forest Land Assignment, Nilambur by way of pattayam and the petitioner is in possession at present.

5. The learned Special Government Pleader contended that it is well within their power to demarcate and take possession of +uncultivated portion of the land which is assigned to the petitioner. The learned Special Government Pleader on the basis of the provisions in the Rules 1974 submitted that going by Rule 6 the land can be assigned either on registry or on lease to individuals for personal cultivation only or for personal cultivation and house sites. Rule 12 of the said Rules specifies that the assignee or a member of his family or his successor-in-interest shall personally cultivate the land assigned to the assignee if it has been assigned for personal cultivation or shall personally cultivate and reside in the land assigned to him if it has been assigned for personal cultivation and as house site and such cultivation or residence, as the case may be, shall commence effectively within a period of six months from the date of receipt of the patta. The proviso to the said Rule mandates that if the Government is satisfied that the assignee experiences difficulty to reside in or cultivate the land within the period of six months, may extend the period further, for six months at a time and

not exceeding two years in the aggregate. The learned Special Government Pleader referring to Rule 25 submits that the assignment granted as per the said Rules could be cancelled for contravention of the provisions of these Rules or if it was found that it was inequitable or was made under a mistake of fact or owing to misrepresentation of facts or in excess of the limits of the powers of the District Collector under these Rules or there was gross irregularity in the procedure for assignment or in case the assignee does not turn up to take possession of the land assigned within three months.

6. The learned senior counsel appearing for the petitioner would submit that he is not questioning the power of the authorities under Rule 25 of the Rules 1974 for cancellation of the assignment on valid grounds stated therein, but what has been done in this case is that without any proceedings as contemplated under the Act and the Rules, temporary junda has been put up in the property of the petitioner and the same has been done without any lawful authority.

I have considered the rival contentions of both parties. Ext.P7 joint verification report does not reveal that in the inspection it was found that there is any violation of the conditions in Ext.P3 patta. It is pertinent to note that junda has been put even prior to the joint inspection report. But without a finding to that effect in Ext.P7 joint verification report, they have come to a conclusion that property shown as 'G' in the annexure to Ext.P7 is demarcated as one to be resumed to Government. It is also to be noted that in the statement filed by the 2nd respondent it is admitted that the property is covered by a valid patta assigned by the Special Tahsildar, Vested Forest Land Assignment, Nilambur and the petitioner is in possession of the property at present. The patta issued to the petitioner gives valid right to the petitioner to own and possess and use the said property, of course in accordance with the terms and conditions of the patta. The property of the petitioner does not share boundary with any forest land and there is no case for the Department that the petitioner has encroached upon any forest land. Even if the Department in joint verification found that there is violation of any of the provisions of the Rules 1974 entitling them to take proceedings under Rule 25 for cancellation of the assignment, the action on the part of the respondents in putting up temporary junda in the property without taking any such proceedings as per law is absolutely arbitrary and unjust. It is also pertinent to note that even in Ext.P7 joint verification report there is no mention as to whether the petitioner has violated any of the conditions in the patta. The judgments relied on by the petitioner, in my opinion are squarely applicable to the facts and circumstances of the present case inasmuch as the petitioner has accrued a right to the property covered by Ext.P1 for which a valid patta has been issued by the authority authorised to issue the same, and though Article 300A of the Constitution of India is not a fundamental right, the right to property can be deprived only on the basis of a procedure which is established by law. Here in this case without even proceeding under the provisions of the Rules 1974 for cancellation of the patta for any alleged violation, the respondents have put up a temporary junda in the property of the petitioner which is an illegal and

high-handed action on the part of the respondents. Therefore there will be a direction to the 2nd respondent to remove the temporary junda put in Ext.P1 property within a period of one month from the date of receipt of a copy of this judgment. It is made clear that if there is any violation of the conditions of Ext.P3 patta dated 07.08.1978, the authorities are free to proceed in accordance with law.

The writ petition is disposed as above.