
(1996) 06 KL CK 0085

In the High Court Of Kerala

Case No : W.A. No's. 49 of 1995 B and 143 of 1995 C

Pushpavally, M.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 13-06-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Government Land Assignment Rules, 1964 — Rule 24, 6, 7

Citation : (1996) 2 KLJ 1

Hon'ble Judges : K. Sreedharan, Acting C.J.; C.S. Rajan, J

Bench : Division Bench

Advocate : Govindh K. Bharathan, for the Appellant; P.K. Behanan, Government Pleader for 1st Respondent, K.P.G. Menon, for 3rd Respondent and Thomas Antony, for 4th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, Actg. C.J.

1. Petitioners in O.P. Nos. 4274/1990 and 6346/1990 are the Appellants in these appeals. They challenge Exhibit P-5 order, G.O. (Ms) 245/90/RD, dated 28th March 1990, whereby the Government assigned three cents of land in R.S. No. 93 of Chevayoor Village, Kozhikode Taluk to the 4th Respondent, a freedom fighter. Petitioner in O.P. 4274/1990 owns and possesses a shop building adjacent to the land assigned to the 4th Respondent, while Petitioner in O.P. 6346/1990 is the owner of a cinema theatre situated adjacent to the said land. Main argument advanced by the Petitioners in the Original Petitions was that the provisions contained in Rules 6 and 7 of the Kerala Land Assignment Rules, hereinafter referred to as "the Rules", have not been complied with while passing Ext. P-5 order. It is the further case of the Petitioners that this land, which is now assigned to the 4th Respondent, is required by them for the beneficial enjoyment of their properties.

2. 4th Respondent, it is not disputed before us, is a freedom fighter. He wanted

to construct a memorial in the name of the heroes of the freedom fighters. He also represented to the Government that he is not possessed of any asset other than the Freedom Fighter's Pension, which is granted by the Central Government, and so requested the Government to reduce the land value. Government got the value of the land assessed by the Collector of the district. The Collector fixed the value at Rs. 3,500 per cent. It was also recommended that the price may be reduced from Rs. 3,500 to Rs. 1,000. Government by Ext. P-5 order dated 28th March 1990 ordered to assign the three cents of land under the Rules to the 4th Respondent on realising the value at the rate of Rs. 1000 per cent.

3. Ext. P-5 order marked in O.P. 6346/1990 is the order by which Government assigned the land in favour of the 4th Respondent. That order narrates the circumstances under which the Government decided to assign the land to the 4th Respondent. Even though the Government's power to assign the land is not traced to any provision of the Act and the Rules, Rule 24 of the Rules in unmistakable terms confers power on the Government to assign the land. That Rule begins with non obstante clause; notwithstanding anything contained in the rules Government may assign land dispensing any of the provisions contained in the Rules and subject to such conditions as they may impose. The only restriction that is imposed on the Government in this regard is that the assignment should be in public interest. If the Government consider that it is necessary to assign the land in public interest, the order of the Government assigning the land is not open to challenge. In *C.K. Kochitiathi v. State of Kerala* 1967 KLT 186, a Division Bench of this Court took the view that Government is like any private party free to take such steps as it pleases in accordance with law for disposing of its property and for evicting trespassers thereon, subject to statutory limitations. The statutory limitation that has been incorporated in Rule 24 is that the assignment should be in public interest. If that public interest is established, then the assignment will not be open to challenge, as held in the above case, under Article 226 of the Constitution. In the instant case, Ext. P-5 makes mention of the circumstances which led to the assignment of land to the 4th Respondent, who is a freedom fighter. 4th Respondent in his counter-affidavit has asserted that the land is meant for erecting a memorial in memory of the heroes who lost their lives in the freedom struggle. According to us, a step to honour the heroes who became martyrs in the freedom struggle is one in public interest. Citizens of India have to remember those heroes with reverence. When the Government assigned the land for the said purpose, it has to be held that Government considered the assignment necessary in public interest.

4. In *Bharaninal Amma Thampuran v. State of Kerala* 1979 KLT S.N. 69 (Case No. 150), Anr. Division Bench of this Court took the view that Rule 24 of the Rules gives an overriding power to the Government to assign land dispensing with any of the provisions of the Rules. According to Their Lordships, Petitioner who has no interest on that land, cannot complain of the violation of any right and question the assignment effected by the Government.

5. The main argument advanced by the Appellant in W.A. 143/1995 is that the land now assigned to the 4th Respondent is situated very close to the site where his cinema theatre is situated and that it is required for the beneficial enjoyment of his property. On the ground that the Government land is required for the beneficial enjoyment of his property, where the theatre is situated, he seems to have applied for assignment. But, as per Rule 7 of the Rules, Appellants herein cannot be considered to have any preferential claim to the land assigned. That Rule takes in five categories of persons who are to be preferred for assignment of Government land. The Appellants do not fall within any of those categories. Further, the preference, as per that Rule, can apply only if the property is assigned by any authority other than the Government. On the ground that the land which is assigned to the 4th Respondent was required for the Appellants for their beneficial enjoyment of their land he cannot put forth any claim for getting that land assigned in preference to the 4th Respondent.

6. Another argument that was advanced by the learned Counsel representing the Appellants was that the Government did not invoke the rights under Rule 24 while passing Ext. P-5 order assigning the land in favour of the 4th Respondent. True, the Government has not made mention of Rule 24 in Ext. P-5. The fact that Government are having the powers under Rule 24 to assign its land in public interest is beyond dispute. When the Government's power is traceable to Rule 24, the absence of mention of that Rule in Ext. P-5 will not in any way invalidate Ext. P-5 order. So, we are not in a position to accept the argument advanced by the learned Counsel that Exhibit P-5 is to be set at naught on the ground that Government did not trace its power under Rule 24.

7. Lastly it was contended by the learned Counsel that Government while exercising power under Rule 24 should give cogent reasons in support of its conclusions.

Such reasoning is absent in Ext. P-5 and so the order is invalid. We do not find our way to accept this argument. Government have given reasons that are warranted for the assignment of the land in Exhibit P-5. We do not find any vice in Ext. P-5 for our interference.

8. In view of what has been stated above, we do not find any merit in these appeals. They are accordingly dismissed.