
(2023) 05 KL CK 0135

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5108 Of 2021

Rajendra Kumar

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 23-05-2023

Acts Referred:

Arable Forest Land Assignment Rules,1970 — Rule 21

Citation : (2023) 05 KL CK 0135

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : B.Mohanlal, Shri.Shine N.S, Shri.Karthik J Sekhar, Aswin Sethumadhavan

Final Decision : Allowed

Judgement

T.R. Ravi, J

1. Petitioners are the legal heirs of the late Sreedharan and Nalinikutty. Ext.P1 is the legal heirship certificate issued by the Tahsildar, Kollam. Late Sreedharan was a freedom fighter. As per Ext.P2 order dated 18/11/1975, issued under Rule 21 of the Arable Forest Land Assignment Rules,1970 (hereinafter referred to as the '1970 Rules'), sanction was accorded for the assignment of 1 Acre of Arable Forest Land in Airanalloor Reserve of Quilon District to Late Sreedharan. By Ext.P3, the 6th respondent assigned 40 Ares of Arable Forest Land in Sy.No.822/948A,B to Late Sreedharan and he effected mutation of the property in Thandaper No.12502. Ext.P4 is the receipt for payment of tax in 1985, issued by the Village officer. It is submitted the properties were not identified and located by the Department, in spite of the order of assignment and payment of tax. Late Sreedharan filed O.P.No.4281/1986 before this Court, which was disposed of directing the 4th respondent to consider the representation to put him in possession. On 25.9.1991, the 4th respondent directed the 6th respondent to survey land, locate the property and hand over possession. The 6th respondent failed to comply with the direction. Ext.P5 dated 19.3.1992 is a

subsequent communication issued by the 4th respondent to 6th respondent directing to take appropriate action. The 6th respondent did not take any initiative on the letter. Late Sreedharan became sick and was bedridden for several years and later died on 12.07.1996. Late Sreedharan's widow Smt.Nalinikutty submitted several representations, but the 6th respondent did not take any steps. A representation was filed before the Minister for Revenue, which was forwarded to the 4th respondent as per communication No.50/12/M(Rev.C) on 30.04.2012. The initial stand of the respondents was that the assigned property was encroached upon by landless people and the Government had revoked the assignment in favor of the petitioners' father and assigned the lands to the encroachers. Ext.P6 communication sent by the 4th respondent to Smt.Nalinikutty is to that effect.

2. Smt.Nalinikutty filed W.P.(C)No.21844/2012 challenging Ext.P6. The respondents filed counter affidavits. It was submitted that the earlier stand taken by the respondents in Ext.P6 was not correct and that the assignment in favour of Late Sreedharan was still in force and had not been cancelled. This Court disposed of the writ petition by Ext.P8 judgment, recording its view that the petitioner shall be assigned suitable alternative land elsewhere and directing the District Collector to take a decision in the matter within three months and forward the recommendation to the Secretary to Government. This Court also directed the Secretary to Government to take a decision after adverting to the recommendation of the District Collector within a further period of 3 months. The judgment is dated 17.2.2016. Smt.Nalinikutty died on 10.10.2016. The 4th respondent on 21.10.2017 sent Ext.P9 recommendation to the 2nd respondent, pointing out that 1.200 Hectares of land in Re-Sy.No.242/1 in Block No.28 of Edamulakkal Village is available for the purpose of assignment to the petitioners. It was recommended that land equivalent to the market value of the land originally assigned to the petitioners' father, can be assigned to the petitioners. However, the 2nd respondent issued Ext.P10 order assigning 15 cents of land to the 4th petitioner who alone is stated to be landless among the petitioners. The writ petition has been filed challenging Exts.P6 and P10.

3. The 4th respondent has filed a counter affidavit. It is contended that since the assignee did not occupy the land and cultivate it, nearby landless families encroached into the land and started cultivation in the late seventies. It is stated that when steps were taken to re-assign the land to occupants, the petitioners' father had filed O.P.No.4281/1986 before this Court. It is admitted that the original assignment was not cancelled and that there was no re-assignment. It is however stated that eviction of the occupants of the said lands was not possible. Ext.P10 is stated to be the order issued in compliance with the directions in Ext.P8 judgment. It is contended that as per the Kerala Land Assignment Act and Rules, the landless people can be given a maximum extent of 15 cents of land in Panchayat area and that land assignment on patta will be only to landless. It is submitted that the request for 1 Acre of land cannot be accepted in view of the Rules. The counter affidavit filed by the 2nd respondent is also in the same line.

4. Heard the counsel for the petitioner and the respondents. Facts are not in dispute. The father of the petitioner was granted an assignment under the 1970 Rules. The extent assigned was 1 Acre of land in Airanalloor Reserve of Quilon District. The land assigned is heritable under the Rules. The assignment was on 11.11.1976. It can be seen from Ext.P4 that the father of the petitioners had paid land tax till 1985. It is also admitted that the land assigned to the father of the petitioners had been encroached upon by others and late Sreedharan had approached this Court by filing O.P.No.4281/1986 for putting him in possession of the property. The original assignee died on 12.7.1996 without being able to enjoy the assignment. The issue was taken up by the widow of the assignee Smt.Nalinikutty, who also died on 10.10.2016 without being able to get the benefit of the assignment. Admittedly, the assignment has not been cancelled and being heritable, the petitioners are entitled to the benefits of the assignment. By Ext.P8 judgment, this Court had specifically found that in the peculiar facts and circumstances, the Court is of the view that the petitioner shall be assigned with a suitable alternative land elsewhere. It was after expressing such a view that the District Collector was directed to identify the land. Ext.P8 judgment has become final and the respondents also acted upon it. It is evident from Ext.P9 that lands had been identified. However, while issuing Ext.P10 order, the 2nd respondent has restricted the assignment to one of the legal heirs and also restricted the extent of land to 15 cents. A reading of Ext.P10 would show that the respondents have proceeded to grant assignment under the Kerala Land Assignment Rules, 1964. The direction issued by this Court was for assignment of alternative lands in the place of land already assigned under the 1970 Rules. The purposes for assignment under the 1970 Rules, the maximum extent that can be assigned to a family, etc. are entirely different from the provisions of the Kerala Land Assignment Rules. The 2nd respondent was not hence justified in interpreting the directions issued by this Court as permitting the respondent to grant the assignment under the Land Assignment Rules to one of the legal heirs of the original assignee. What was intended by this Court was to make good the loss suffered by the original assignee and his legal representatives due to the encroachment and non-availability of the lands assigned. This Court did not direct eviction of the trespassers and instead found an alternate method to safeguard the rights. The direction to give alternate suitable land does not also mean that what was to be assigned was only an extent equivalent to the market value of the original assigned land. Ext.P10 is not in accordance with the directions issued by this Court in Ext.P8.

5. In the above circumstances, the writ petition is allowed. Ext.P10 is quashed. Ext.P6 cannot also be sustained, since even according to the respondents, the assignment in favour of late Sreedharan continues to be in force and the land had not been re-assigned to anybody else. There will be a direction to the 2nd respondent to pass fresh orders assigning suitable alternate land to the petitioners. The restrictions regarding landless persons under the Kerala Land Assignment Rules shall not be applicable in the case on hand owing to the

peculiar facts and circumstances as already observed in Ext.P8 judgment. Necessary orders shall be issued within three months from the date of receipt of a certified copy of this judgment.