
(2002) 06 KL CK 0039
In the High Court Of Kerala
Case No : W.A. No. 223 of 1996

State of Kerala

APPELLANT

Vs

Dominic Cyriac

RESPONDENT

Date of Decision : 25-06-2002

Acts Referred:

Kerala Panchayat (Acquisition and Transfer of Immovable Properties) Rules, 1963 — Rule 5

Citation : (2002) 2 KLJ 153

Hon'ble Judges : B.N. Srikrishna, C.J;G. Sivarajan, J

Bench : Division Bench

Advocate : Lal George, Government Pleader, for the Appellant; Mathai M. Paikeday, for the Respondent

Judgement

B.N. Srikrishna, C.J.—This appeal is directed against the judgment of the learned Single Judge in O.P. No. 17509/1995 directing the second respondent Director of Panchayat to act upon and implement the resolution (Ext. P3) dated 20.4.1993 and thereby grant release of the land which is the subject matter of the petition after charging the amount as per rules by way of transfer of assignment, keeping in mind the recommendations of the District Panchayat Officer (Ext. P4) dated 24.5.1993.

2. The facts necessary for deciding this appeal are as follows:-

3. The first respondent owns 20 cents of land in survey No. 2250/2 and was in possession of 11.5 cents of land adjacent thereto in survey No. 721/1 of Moonnilavu Village for more than 40 years as in the year 1993. The said 11.5 cents of land of which he was in possession lies on the bank of a river called Kadavupuzha. The said 11.5 cents of land has been under the uninterrupted possession of the first respondent and his predecessors in title for more than a century. The Melukavu Panchayat made an attempt to take possession of this property. The first respondent filed a petition before the Deputy Director of Panchayat which was allowed on 26.3.1993. The first respondent filed a

representation dated 19.3.1993 (Ext. P2) and requested the second respondent Panchayat to take steps to assign the said 11.5 cents of land to the first respondent. The first respondent pointed out that the said 11.5 cents of land was always under the adverse possession and occupation of the first respondent for almost half a century and, before him, under the adverse possession and control of his predecessor in interest. Thus, he has entitled to claim title to the said land by adverse possession. He also pointed out that it was essential for him to take steps on this land so that his other land could be protected against soil erosion due to flow of the river Kadavupuzha. It was also pointed out that the Kadavupuzha river takes a very sharp bend at the point of the first respondent's property, causing damage to the property of the first respondent, which might also cause danger to the Moonnilavu - Vakakkad bridge. So, for reasons of better enjoyment of his property, and also to ensure that he would be able to take steps on the said land, the first respondent made representation to the Panchayat.

4. This representation of the first respondent was considered by the Panchayat and the Panchayat passed a unanimous resolution on 20.4.1993 (Ext. P3). By this resolution, the Panchayat noted all facts including the fact that the land in question was in continued adverse possession of the first respondent, that the Panchayat did not have much benefit by getting the land from the persons who were in possession, that it would be difficult to evict the person who had been in adverse possession for more than 40 years, that the river flows down a bend at the said land which might destroy the poramboke land by soil erosion and it might also affect the nearby buildings and also the Moonilavu - Vakakkad bridge some time in future. Considering all these facts, the Panchayat took a conscious decision that, as it was not in a position to construct protective walls to avoid danger, the Panchayat should assign the said 11.5 cents of land to the first respondent keeping the way for lorry passage to the river along the said land, upon payment of charges in accordance with rules and after receiving permission of the Director of Panchayat, the second appellant. The Panchayat also resolved that the Director of Panchayat be requested through Kottayam District Panchayat Officer to accord sanction for release of the said land.

5. The District Panchayat Officer made detailed investigations and by his recommendation-cum-report dated 24.5.1993 (Ext. P4) found that all the facts narrated in the resolution of the Panchayat were true. He also noted that the Committee of the Panchayat had resolved that the land would be given away only after receiving the amount as per the rules. He therefore recommended favourable action to the Director of Panchayat. The Director of Panchayat after considering the matter, passed an order dated 25.8.1993 (Ext. P5), which neither gave sanction to the proposal of the Panchayat nor rejected it. It merely stated that the Panchayat should act in accordance with the directions given in a Government letter dated 17.8.1992. The said letter dated 17.8.1992 is at Ext. P6 and merely states that the Government cannot assign puramboke land under the Kerala Land Assignment Rules or give full title of such land to the occupiers. Hence, it records that action was being taken to cancel the earlier notification

issued on 8.1.1991 and advises that the said legal position may be borne in mind while dealing with the request for assignment of puramboke lands falling within the purview of Section 82 of the Kerala Panchayats Act, 1960.

6. Being aggrieved by the order dated 25.8.1993, the first respondent filed a petition before the Minister, Local Administration Department, on 13.9.1993 complaining against the refusal of the Director of Panchayat to exercise the discretionary power vested under Rule 5 of the Kerala Panchayats (Acquisition and Transfer of Immovable Properties) Rules (hereinafter referred to as the Rules). On 10.1.1994, the State Government made an order disposing of the petition Ext. P9 filed by the first respondent by its order at Ext. P10. The only reason given for refusing the request is that there was no provision for assigning river puramboke land vested in the Panchayat to those in possession.

7. The first respondent challenged the Government's order Ext. P10 by OP No. 2302/1994 before this Court. By a judgment dated 5.7.1994 the order of the State Government (Ext. P10) was set aside and the State Government was directed to dispose of fresh the first respondent's representation dated 13.1993. This time, the Government passed a fresh order dated 19.9.1994 (Ext. P12) again rejecting the request. The first respondent challenged the last order Ext. P12 by OP No. 17509/1995. The learned Single Judge by judgment dated 14.12.1995 allowed the Original Petition and directed the Director of Panchayat to make an order in favour of the first respondent. Being aggrieved, the State has come up in appeal.

8. Section 82 of the Kerala Panchayat Act, 1960 provides for vesting, inter alia, the land adjacent to public water course, in the Panchayat, subject to exception as provided in Sub-section (1) of Section 82. Originally, the Act of 1960 provided such land vests in the Panchayat and shall be subject to its control. By an amendment made with effect from 1.11.1967 by Act 22 of 1987, it was provided that such lands shall be transferred and vest in the Panchayat. Sub-section (1A) of Section 82 provides that, upon such vesting, the rights and liabilities of the State Government would be the rights and liabilities of the Panchayat. Sub-section (2) provides that, notwithstanding anything contained in Sub-section (1) or Sub-section (1A), the Government may, by notification in the Gazette, assume the administration of any public source of water supply and public land adjacent and appurtenant thereto after consulting the Panchayat and giving due regard to its objection, if any. Rule 4 of the Rules provides that immovable property vested in, but not belonging to a Panchayat, shall not be transferred nor changed in contravention of the conditions subject to which such property became vested in the Panchayat. R.5 deals with a transfer except by way of lease of any immovable property belonging to the Panchayat and requires that it shall only be done with the previous sanction of the Director.

9. The learned Government Pleader contends on behalf of the State that the judgment of the learned Single Judge is erroneous and that the order of the State Government (Ext. P12) should be upheld. The learned Government Pleader

urges that, as far as the river puramboke land is concerned, it is vested in the Government by reason of Section 3 of the Kerala Land Conservancy Act 1957 and, notwithstanding the provisions of Section 82 of the Kerala Panchayat Act, 1960, there is no absolute power of disposal which the Panchayath gets over such land. The contention is that even if the land has become vested in the Panchayat u/s 82(1), it shall always be subject to the control of the State Government. Rules 3, 4 and 5 makes it clear that such lands are always be subject to the contol of the State Government and also subject to such conditions that the State Government may deem fit to impose, in the submission of the learned Government Pleader.

10. Sri. Mathai M. Paikcday, learned Sr. counsel for the first respondent, however, brought to our attention the amendment carried out by Act 22 with effect from 1.11.1967. In view of the amendment, Panchayat is the absolute owner of such vested immovable property. This was not the situation which obtained before 1.11.1967. Whatever be the historical reasons, the amendment as it stands suggests that the land has become the absolute property of the Panchayat. Mr. Paikaday is, therefore, justified in his contention that once the land has become absolutely vested in the Panchayat, the Panchayat has a right of disposal over it. He also pointed out that Rule 4 was brought on the Statute book in the year 1963 along with the parent Act but has remained unamended despite amendment of the parent Act. This contention is perfectly justified, in our view. The result, therefore, would be that, with regard to the land vested in the Panchayat, the distinction made earlier between immovable property acquired by the Panchayat and the immovable property vested in the Panchayat is removed. Rule 5 merely requires the Panchayat to obtain previous sanction of the Director before making any transfer except by way of lease of any immovable property belonging to the Panchayat.

11. It is trite law that the statutory discretion vested in a public authority has to be exercised for good reasons which are relevant and germane to the issue being considered. The Director of Panchayat cannot refuse to grant sanction to an application made by the Panchayat under R.5 for capricious or irrelevant reasons. The Government Pleader is right in contending that immovable property vested in a public body, even absolutely, cannot be disposed of for a purpose other than the purpose for which a public body has been established. This contention may be correct, but it is the public body which has to be satisfied that the disposal of the immovable land is in furtherance of its objectives. Ultimately, such public body would be the best judge of its own interest, unless the facts and circumstances show that the disposal is vitiated on account of any extraneous factors.

12. In the present case, it is the Panchayat which was the owner of the land in issue. The land was in adverse possession of the first respondent and his predecessor in interest for almost a century. The Panchayat also is under an obligation to ensure that the river banks are suitably protected so that the

properties of the adjacent owners are not prejudicially affected by the force of the water flow in the river. Protection of the Moonnilave Vakakkad bridge was also the primary responsibility of the Panchayat. If the Panchayat bona fide came to the conclusion that all these objectives could be met, and that it would be in the over all interest of the Panchayat to assign 11.5 cents of land to the first respondent upon payment of a proper price, we do not think that the Panchayat acted in any arbitrary manner or for irrelevant reasons or that the decision taken by the Panchayat is vitiated by any extraneous considerations.

13. We notice that the order Ext. P12 has actually been passed by the Government. We assume that the Government was actually exercising the powers of the Director of Panchayat. The State Government can refuse sanction only on strong, material grounds. The reasons given in Ext. P12 for rejecting the request can be summarised as follows:-

1. It is the responsibility of the Panchayat to protect the river banks from soil erosion by planting Bamboo and similar vegetation on the puramboke land
2. The assignment of land to the first respondent is only for better enjoyment of the puramboke land.
3. If the request is allowed, there is a possibility of similar request from the other land owners.
4. There is no provision for assigning river puramboke land to an encroacher under the Panchayat Raj Act, 1994.

14. We find the Government has acted wholly on irrelevant and extraneous considerations. In the first place, there is no consideration as to how the land which was already under adverse possession could have been resumed by the Panchayat. Secondly, for the protection of the river banks from soil erosion it was the offer of the first respondent that he would construct protective walls and take necessary measures which would benefit the land occupied by him. The next ground is that if such assignment was allowed there would be similar request from other land owners, which is irrelevant. Finally, the ground that there is no provision under the Panchayat Raj Act, 1994, for assignment of river puramboke land to encroachers, which is unnecessary. Thus, we are not satisfied that reasons given in the order (Ext. P12) for refusing to assign 11.5 cents of land to the first respondent are germane or based on any relevant considerations. In the circumstances, the learned Single Judge was justified in directing the Director of Panchayat to implement the resolution unanimously passed by the Panchayat. We see no reason to interfere with the judgment of the learned Single Judge. This appeal is dismissed. No order as to costs.

15. The appellants shall implement the judgment of the learned Single Judge, within three months from today.