
(2014) 07 KL CK 0007
In the High Court Of Kerala
Case No : WA. No. 831 of 2014

State of Kerala

APPELLANT

Vs

Sahya Haritha Sangham

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Kerala Forest Act, 1961 — Section 4

Citation : (2014) 3 ILR 963 : (2014) 3 KHC 485 : (2014) 4 KLT 137

Hon'ble Judges : Ashok Bhushan, J;A.M. Shaffique, J

Bench : Division Bench

Advocate : Susheela R. Bhatt, Spl. Govt. Pleader, Advocate for the Appellant; D. Sree Kumar, Advocate for the Respondent

Judgement

Ashok Bhushan, J.—This Writ Appeal has been filed by the State of Kerala against the judgment dated 23.5.2013 of the learned Single Judge passed in W.P.(C) No. 1080 of 2013. The Writ Petition was filed by two petitioners, who are respondents 1 and 2 in this Writ Appeal.

2. Brief facts of the case, which emerged from pleadings of the parties are: The State of Kerala, under the Kannan Devan Hills (Resumption of Lands) Act, 1971 (hereinafter referred to as "1971 Act,"), resumed and took possession of 70452.61 acres of land. Out of the aforesaid land, it was decided that land measuring 43452.80 acres be left as it is, and land measuring 17922 acres be earmarked for afforestation and an area of 5189 acres of land was decided to be utilised for assignment. By Government Order dated 18.4.1980, the Government decided to transfer an extent of 43452.80 acres of land earmarked as "to be left as it is" and the extent of 17922 acres set apart for afforestation to the Forest Department. The assignment of the land was to be undertaken in accordance with the Kannan Devan Hills Reservation and Assignment of Vested Land Rules, 1977 (hereinafter referred to as "1977 Rules"). The State Government decided to assign the land in favour of those persons, who were in occupation of land before 1.1.1977. The District Collector, vide his order dated 17.9.1998, finalised

list of 1016 persons, who were to be assigned plots of 1 acre each. The petitioners had filed the Writ Petition claiming that the members of first petitioner, numbering 150, were also included in the list of persons, who were to be assigned plots. The second petitioner claims assignment of plot No. 950/99 by letter dated 21.12.2000. W.P.(C). No. 32000/2005 was filed praying for restraining the assignment of forest area at Mankulam Village in Idukki district and with certain other prayers. An interim order was passed by this Court on 12.12.2005 staying the process of assignment. The writ petitioners represented to the District Collector as well as to the State requesting for assignment, which representation was forwarded to the District Collector. The District Collector, on 25.1.2012 informed the Secretary of first respondent that this Court had already stayed distribution of excess land in Mankulam Village in W.P.(C). No. 32000 of 2005 and until final decision in the said case, the request for distribution of excess land in Mankulam Village cannot be considered. W.P.(C). No. 32000 of 2005 was finally decided on 25.5.2012. Thereafter the petitioners again prayed for assignment of land. In the meantime, the State Government issued a notification dated 16.5.2007 under Section 4 of the Kerala Forest Act, 1961 notifying an area of 9005.72 hectares (22253.37 acres) of land in Sy. Nos. 75 (part) and 77(part) proposing to constitute a reserved forest. The District Collector sent a report dated 15.11.2012 to the State Government observing that in view of the directions contained in the judgment of this Court in W.P.(C).No. 32000 of 2005 there are no more obstacles for completing the resurvey proceedings, allotting plot numbers to the landless agricultural workers in accordance with Rules, 1977. The District Collector also noticed issuance of notification dated 16.5.2007 under Section 4 of the Kerala Forest Act.

3. The petitioner at that stage filed the W.P.(C). 1080/2013 with the following prayers:

"i) To issue a writ of mandamus or any other writ order or direction commanding the respondents to expedite the assignment of patta with respect to land in their possession of petitioners within a time frame.

ii) To declare that members of 1st petitioner society and 2nd petitioner are eligible and entitled to get assignment of patta under Exhibit P7 rules.

iii) To pass such other orders deems fit on the facts and circumstances of the case on the principle of justice equity and good conscience."

4. Learned Single Judge, after hearing learned counsel for the parties, issued a direction to the first respondent District Collector, Idukki to finalise the application preferred by the parties concerned and pass final order within four months. Against the said direction of the learned Single Judge, this Writ Appeal has been filed by the State.

5. Learned Special Government Pleader Smt. Susheela Bhat, appearing for the appellants has made various submissions. It is submitted that by notification dated 16.5.2007 issued under Section 4 of the Kerala Forest Act old Survey Nos.

75/part and 77/part of Mankulam Village has been notified to be declared as reserved forest and all claims within the forest area are to be adjudicated by the Forest Settlement Officer and the District Collector has no authority or jurisdiction to proceed with any assignment. It is submitted that petitioners are also claiming assignment in the same survey number, i.e., 75/part and 77/part, hence, learned Single Judge, without advertent to the said aspect, committed error in issuing direction to the District Collector to proceed with the same. It is submitted that the learned Single Judge did not afford an opportunity to the State to file a counter affidavit, hence all facts could not be brought into the notice of the Court. It is submitted that the claim put forward by the writ petitioners in respect of 150 applications did not find a place in the allotment of plots earlier undertaken by the District Collector as per proceeding dated 17.9.1998. The entire claim of the petitioners is bogus and not genuine. The appellants also brought on record notification dated 16.5.2007 issued under Section 4 of the Kerala Forest Act as well as the judgment of this Court dated 25.5.2012 in W.P.(C). No. 32000 of 2005.

6. Learned counsel for the respondents/writ petitioners refuting the submission of learned Special Government Pleader appearing for the appellants submitted that there is no error in the direction of learned Single Judge directing the District Collector to proceed with the assignment. It is submitted that the land, which has been notified to be declared as reserved forest by notification dated 16.5.2007 is entirely different from the land, which was earmarked for assignment, i.e., 5189 acres. It is submitted that the land, which was earmarked for assignment has already been surveyed and plots of one acre and half acre have already been earmarked. There is no impediment in proceeding with the assignment, which is clear from Exhibit P5 report of the District Collector dated 15.11.2012. It is submitted that although names of 150 members of the first petitioner were not in the list of 1016 beneficiaries issued by the District Collector on 17.1.1998, but actually a list of 1116 families have been held to be eligible for assignment in which names of 150 members of the first petitioner are also included. It is submitted that without there being any valid reason, the District Collector has abdicated his jurisdiction in not proceeding with the assignment, which led the petitioners to approach this Court by filing the Writ Petition.

7. We have considered the submissions of learned counsel for parties and perused the records. The first submission raised by learned Special Government Pleader appearing for the appellants is on the strength of notification issued under Section 4 of the Kerala Forest Act dated 16.5.2007. Whether after issuance of notification process of assignment cannot be proceeded with or whether all claims regarding assignment are to be submitted before the Forest Settlement Officer is the main question to be considered. The schedule to the notification issued under Section 4 of the Kerala Forest Act describes the details of extent of the land, which has been notified as reserved forest. It is useful to quote the schedule, which is to the following effect:

"SCHEDULE

Description of the land:

District: Idukki

Taluk: Devikulam

Name of the Forest Division: Mankulam Special Division

Range: Mankulam & Anakulam Ranges

Village: Mankulam

Panchayat: Mankulam

Locality: Mankulam Resumed Land

Survey No.: 75 Part and 77 part

Extent of land: 9005.72 ha. (22253.37 acres)

(excluding the assigned lands)"

As noted above, the State, under 1971 Act, resumed 70450.61 acres of land by Government Order dated 19.2.1977, details of which has been given in paragraph 3 of the counter affidavit. As noted above, an area of 5189 acres of land was earmarked for assignment, 43452.80 acres of and was earmarked to be left as it is and an area of 17922 acres of land was earmarked for afforestation. The notification, which has been issued under Section 4 of the Kerala Forest Act has an explanatory note. It is useful to refer to the explanatory note to the notification issued under Section 4 of the Kerala Forest Act, which is as follows:

"As per letter No. C4-37166/77 dated 11.4.1980 of the District Collector, Idukki addressed to Divisional Forest Officer, Munnar Division an area of 9005.72 ha. (22253.37 acres) comprised in survey No. 75/Part and 77/Part of Kannan Devan Tea Village was handed over to the Forest Department for protection. This area is part of the resumed land as per the Kannan Devan Hills (Resumption of Lands) Act, 1971. The area supports evergreen and semi evergreen forests and is a repository of rich bio-diversity. Though the area is being protected by the Forest Department from 11.4.1980 constituting the same as Mankulam Forest Division, the status of the land continued to be revenue land. Therefore, the forest laws are not applicable to the area at present and the department is finding it difficult to protect the area from encroachment and smuggling. To properly protect and manage the area, it is absolutely necessary to bring the area under the status of a reserved forest. Government therefore decided to declare the area as a reserved forest as per section 4 of the Kerala Forest Act 1961 (Act 4 of 1962)."

8. A perusal of the explanatory note makes it clear that total area of 22253.37 acres, which was handed over to the Forest Department by letter dated 11.4.1980 of the District Collector has been notified to be declared as reserved

forest which area consisted of the area, which was earmarked "to be left as it is" and for "afforestation". The area, which was to be assigned, i.e., 5189 acres was not included in the aforesaid area. Thus, it is clear that the notification under Section 4 of the Kerala Forest Act did not intend to cover the land, which was earmarked for assignment. We have to mention at this stage that in the Government Order of 1977 the apportionment of the area which was mentioned were only the measurement of area which was to be earmarked for different purposes. The said area has not been claimed to be earmarked although survey is said to be in progress. In accordance with the provisions of the Kerala Forest Act, after issuance of notification under Section 4 of the Kerala Forest Act, all the rights in the notified area have to be determined by the Forest Settlement Officer. The extent of area, which is proposed to be declared as reserved forest has been meticulously given in the notification under Section 4. Thus, no rights can accrue to anyone in the said area including the right of assignment under 1977 Rules and all claims, if any, within the said area have to be laid before the Forest Settlement Officer. Thus, a direction is necessary to the District Collector to ensure that no claim of assignment is considered or allowed by the District Collector in the area, which has been notified under Section 4 vide notification dated 16.5.2007. All claims in the said area have to be preferred before the Forest Settlement Officer.

9. Now coming to the submission of learned Special Government Pleader appearing for the appellants that the claim of the petitioners for allotment of land to 150 members of the first petitioner was never accepted and it is bogus claim, it is not necessary for us to enter into the genuineness or correctness of the claim. The writ petitioners although admitted that the names of 150 members of the first petitioner do not find a place in the list of 1016 persons, which was finalised on 19.7.1998, but the case of the writ petitioners is that their names are included in the list of beneficiaries of 1166 families. In this context, reference to Exhibit R1(d) Government letter dated 23.5.1985 is also made. It is for the District Collector to examine as to whether the names of 150 members of the first petitioner were included in the list of persons, who were held entitled for assignment or not. We observe that the said issue be gone into by the District Collector before taking decision to proceed further with assignment. We further observe that the District Collector shall also ensure that assignment takes place in accordance with 1977 Rules. At this stage, it is also to be noted that in the notification issued under Section 4 of the Kerala Forest Act there is an exclusionary clause, i.e., area of 9005.72 hectares is excluding the "assigned lands". In so far as petitioners' case is concerned, admittedly, no assignment has been completed in their favour. Sub-rule (c) of Rule 2 of the Kerala Land Assignment Rules, 1964, the word "assignment" has been defined as follows:

"(c) "assignment" means transfer of land by way of registry and includes a lease and a grant of licence for the use of the land."

Thus, from the facts of the petitioners' case, it is clear that no assignment has

been made in their favour.

10. As observed above, the District Collector shall not proceed to consider any claim of assignment in the area, which has been notified under Section 4 as detailed in the schedule.

11. The natural resources of the State have to be protected by all State authorities. In this context, the observations by the Apex Court in State of Tamil Nadu Vs. Hind Stone and Others, are necessary to be recalled. The Apex Court in paragraph 6 of the said decision has observed as follows:

"6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the Nation...."

12. In view of the aforesaid discussion, we are of the view that there is no impediment for the District Collector in proceeding with consideration of the claims of assignment in accordance with 1977 Rules, however, subject to not considering any claim within the area, which has been notified for constituting reserved forest in accordance with the notification dated 16.5.2007.

In the result, this Writ Appeal is disposed of modifying the directions of the learned Single Judge in the following manner:

1. The District Collector shall proceed to consider the claim of the writ petitioners for assignment in accordance with the Kannan Devan Hills Reservation and Assignment of Vested Land Rules, 1977 after verifying their claim of inclusion of 150 members in the eligibility list and take consequential steps thereafter.
2. The District Collector shall not consider any claim or proceed to grant any assignment in the land, which is notified under Section 4 of the Kerala Forest Act as detailed in the notification dated 16.5.2007, which has been clearly identified by boundaries as given in the notification.
3. The District Collector shall consider the claim of petitioners for entitlement of assignment and take a final decision within four months from the date of production of a copy of this judgment before the District Collector.