

(1986) 11 KL CK 0004
In the High Court Of Kerala
Case No : W.A. No. 615 of 1982

The District Collector and Another

APPELLANT

Vs

K. Bhaskara Kurup

RESPONDENT

Date of Decision : 20-11-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Land Reforms (Ceiling) Rules, 1970 — Rule 29(1), 29(8)
Kerala Land Reforms Act, 1963 — Section 101(2), 128A, 96, 96(1), 96(1A)

Citation : (1986) 11 KL CK 0004

Hon'ble Judges : V.S. Malimath, C.J.;Chettur Sankaran Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; M. Krishnan Nair and N.A. Augustine, for the Respondent

Final Decision : Allowed

Judgement

V.S. Malimath, C.J.—This appeal is by the District Collector, Quilon and Anr. challenging the judgment rendered by the learned Single Judge in O.P. No. 4433 of 1981. The relevant facts necessary for the disposal of this case may briefly be stated as follows: The Collector assigned the land in favour of Chandrasekharan Nair u/s 96 of the Kerala Land Reforms Act. The said assignment or alienation was subject to the condition prescribed by Rule 29(1) of the Land Reforms (Ceiling) Rules that such land shall be heritable but shall not, subject to the provisions of Sub-rules (2) to (5), be alienable for a period of 12 years from the date of assignment or for the period during which the charge created under Sub-section (3) of Section 97 subsists, whichever is later. The assignee however chose to transfer the property in favour of the Respondent within a short period the assignee got the land from the Collector. When that fact came to the notice of the Collector, Quilon he issued a show cause notice to the assignee and after considering the cause shown by him made an order as per Ext. P-1 on 24th May 1981 canceling the assignment. The said decision was challenged by the Respondent in O.P. No. 4433 of 1981. The learned Single Judge has allowed the

Original Petition and quashed Ext. P-1. Hence this appeal.

2. The learned Single Judge has allowed the Original Petition firstly on the ground that the District Collector who cancelled the assignment did not have the power to do so and secondly on the ground that the assignee was not given an opportunity of being heard by the Collector.

3. It was contended by the learned High Court Government Pleader for the Appellants that the learned Single Judge was not right in taking the view that the District Collector did not have the power to cancel the assignment. The power of cancellation is to be traced to Rule 29(8) of the Rules which reads:

The assignment of any land u/s 96 shall be liable to be cancelled for contravention of any of the conditions or restrictions laid down in this rule and the land assigned shall be liable to be resumed by or at the instance of the authority which assigned the land as if such land is a land belonging to Government and in the unauthorised occupation of the person then in possession or occupation, provided that no such cancellation shall be done without giving the party affected thereby a reasonable opportunity of being heard.

It is Sub-rule (1) of Rule 29 which has imposed a condition regarding assignment that the land assigned shall not be alienable for a period of 12 years from the date of assignment. It is not disputed that such a condition was in fact imposed in this case. The power under Rule 29(8), as the language of the Sub-rule makes it clear, of canceling the assignment has been conferred on the authority which assigned the land. Therefore it becomes necessary to ascertain the authority which assigned the land in this case. Whereas the learned High Court Government Pleader contends that the land having been assigned by the Collector in this case, he is clothed with the power of cancelling the assignment u/s 29(8) of the Rules, the learned Counsel appearing for the Respondent contends that the power of cancellation and assignment not having been expressly conferred on the Collector, he had no competence to cancel the assignment. Section 128A of the Kerala Land Reforms Act which came into force on the first of January 1970 provides for delegation of powers by the Land Board. It provides that the Land Board may, with the previous approval of the Government, delegate to any District Collector any of its power under the Act other than the power conferred by Sub-section (2) of Section 101 in respect of such areas as may be specified in the order, subject to such conditions and reservations that may be imposed. The learned High Court Government Pleader invited our attention to the order made by the Land Board, Trivandrum dated 27th December 1971 delegating its power u/s 96 of the Act, except the power under Sub-section (1A) of that section in favour of the District Collectors, to be exercised by them within their respective jurisdiction subject to the restrictions and reservations specified therein. It is unnecessary to refer to those restrictions and reservations as they are not relevant for the purpose of this case. Thus it becomes clear that the Collector was clothed with the power of assignment which power belongs to the Land Board under Sub-section (1) of Section 96. Though

the Collector became the authority to assign the land by virtue of the delegation of the power in his favour, it was contended by the learned Counsel for the Respondent that that will not automatically clothed the Collector with the power of cancelling the assignment under Sub-rule (8) of Rule 29. It is his contention that the delegation of power having been made for the restricted purpose of assigning the land we should not read into the delegation anything more than what was actually delegated. The contention so put forward cannot be found fault with, but the real question for consideration is as to what are the consequences that flow as a result of the delegation of the power of assignment in favour of the Collector. We shall proceed on the basis that there is no express delegation of power to cancel the assignment conferred on the Collector and that it is only the power of assignment that has been conferred on the Collector. But then Rule 29(8) says that the power of cancellation of the assignment can be exercised by the authority which assigned the land. Hence it becomes clear that it is the authority which actually assigned the land that can exercise the power of cancellation of such an assignment. It is also the principle enshrined in the General Clauses Act that the power to grant or power to make includes the power to undo or power to cancel. Sub-rule (8) to Rule 29 itself makes it clear that for the purpose of ascertaining as to who has the power to cancel the assignment, one has to find out as to who is the authority which assigned the particular land. It is not and it cannot be disputed that the authority which assigned the land in this case is the District Collector. The District Collector has acquired this power to assign the land by virtue of the delegation made by the Land Board is not relevant. What is relevant is as to which is the authority that actually assigned the land. It cannot be said in the circumstances of this case that the land was assigned by the Land Board. The land was actually assigned by the Collector as asserted in the counter-affidavit filed by the Appellants and not by the Land Board. As we are able to identify the Collector as the authority which assigned the land, we have no hesitation in taking the view that he had the competence to cancel the assignment under Sub-rule (8) of Rule 29.

4. The next question for consideration is as to whether the Respondent was required to be given an opportunity of showing cause in the matter before the Collector exercised the power to cancel the assignment. Sub-rule (8) to Rule 29 expressly provides that no such cancellation can be made without giving the party affected thereby a reasonable opportunity of being heard. The learned High Court Government Pleader contended that the assignment having been made in favour of Chandrasekharan Nair, it was enough if he was given a reasonable opportunity of being heard. It is not disputed that Chandrasekharan Nair was given such an opportunity and that the Respondent was not given any such opportunity. It appears to us that Rule 29(8) incorporates the well recognised principles of natural justice viz., that no person shall be deprived of the right or privilege that he enjoys without giving him an opportunity of having his say in the matter. The expression used in Sub-rule (8) of Rule 29 is "without giving the party affected thereby a reasonable opportunity of being heard". The question for

consideration therefore is as to who can be regarded as a party affected by the decision to cancel the assignment. Sri Chandrasekharan Nair, after having alienated the land in favour of the Respondent and having put the Respondent in possession had no more any subsisting interest in the land on the date on which the Collector issued notice to him. Hence giving an opportunity of showing cause to Chandrasekharan Nair would amount to an empty formality as he is not likely to be interested in showing cause in the matter at all, as he has already parted with the land. The person who would actually be affected by the action to be taken by the Collector is the Respondent himself as he has acquired the property by purchasing the same and obtaining possession of the property. Any order cancelling the assignment is therefore bound to affect the Respondent's interest directly. Hence it is not possible to take the view that the Respondent cannot be regarded as a party that is likely to be affected by the decision. Hence we have no hesitation in taking the view that the Respondent was entitled to have an opportunity of being heard in the matter.

5. But we must bear in mind that the Respondent has invoked the discretionary jurisdiction of this Court under Article 226 of the Constitution. It is not the law that in every case where it is made out that there has been an infraction of the principles of natural justice the Court is obliged to interfere under Article 226 of the Constitution. As to whether the Court should or should not interfere depends upon the circumstances of each case.

6. In this case even if an opportunity of being heard is to be given to the Respondent, there is nothing more than he can say which he has not said already. On the land being found excess under the ceiling rules, it stood vested in the State Government under the relevant rules. The land which had become the property of the Government came to be assigned in favour of Chandrasekharan Nair subject to certain conditions. The essential condition with which we are concerned is the one imposed under Rule 29(1) which precluded the assignee from alienating the land assigned to him for a period of 12 years. The moment it is established that there has been an unjustified alienation by the assignee within a period of 12 years, the liability for cancellation of assignment gets attracted. The Respondent himself has stated in his Original Petition that within a short period after the assignment Chandrasekharan Nair was persuaded to part with the alienated land to the Respondent. It is stated that the land was the family property on which there is a "sarppakkavu" and that there was a belief that the same should not go into the hands of strangers, in which event bad days would be in store for the family. It is for saving themselves from this calamity that the Respondent persuaded Chandrasekharan Nair to alienate the land to him and he rightly obliged him in that behalf. But the crux of the matter to be noticed is that it is admitted that the alienation was made by Chandrasekharan Nair in favour of the Respondent within a period of 12 years and in contravention of the conditions imposed by Rule 29(1). No other factor is pleaded by the Respondent to justify alienation in his favour and to prevent cancellation of the assignment. Hence no useful purpose would be served having regard to the facts of this case in

remitting the case back to the Collector for fresh disposal, as all the factors are before Court and they fully justify the action taken by the Collector. For the reasons already stated, we are of the opinion that this is a fit case in which the Court should decline to interfere.

We have therefore no hesitation in taking the view that the learned Single Judge, with respect, was not right in quashing the order Ext. P-1 and allowing the Original Petition. Hence this appeal is allowed, the judgment of the learned Single Judge is set aside and the O.P. No. 4433 of 1981 is dismissed. No costs.