
(2013) 11 KL CK 0010
In the High Court Of Kerala
Case No : W.A. No. 2090 of 2004

Vincy Cherian and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 15-11-2013

Acts Referred:

Kerala Government Land Assignment Act, 1960 — Section 9(3)
Travancore-Cochin Interpretation and General Clauses Act, 1125 — Section 4

Citation : (2014) 1 ILR (Ker) 9 : (2014) 1 KHC 41 : (2014) 1 KLJ 11 : (2014) 1 KLT 372

Hon'ble Judges : Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : Johnson Manayani, Benhur Joseph Manayani and S. Raj Mohan, for the Appellant; Suseela R. Bhat, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—The writ petition is filed challenging Exts. P11 and P13, for a direction to the respondents to assign an extent of 99.61 acres of Government land in Sy. Nos. 229/1, 2 and 3 of Anaviratty Village in Devikulam Taluk, Idukki District in favour of the petitioners, to declare that the Cardamom Rules (Travancore) 1935, (hereinafter referred as "1935 Rules") is still in force and they are entitled for assignment of land as per the said Rules. Ext. P11 is a Government Order informing the first petitioner/appellant that her request for assigning Government land cannot be granted as per the Cardamom Rules. Ext. P13 is another Government Order dated 20/06/2000 issued after considering the claim for assignment of land in the light of the judgment in OP No. 6736 of 1998, declining to grant assignment on the ground that the 1935 Rules is no longer in force. It is also opined that lease of land for cardamom cultivation is made only as per Rules for Lease of Government Lands for Cardamom Cultivation, 1961 (hereinafter referred as the "1961, Cardamom Lease Rules") and since the said Rules does not apply for assignment of land for cardamom cultivation, request for assignment of land cannot be granted. The learned Single Judge by judgment

dated 28/07/2004 dismissed the writ petition reserving liberty to the petitioners to move for assignment of land on lease for cardamom cultivation under the "1961, Cardamom Lease Rules". While dismissing the writ petition, the learned Single Judge opined that "1935 Rules" were repealed by virtue of Section 9(3) of the KLA Act 1960. The learned Single Judge also found that though by virtue of Section 4 of the Interpretation and General Clauses Act, the rights if any accrued and surviving will not be affected by the repeal of the Rules, it was found that the original applicant Mr. Ouseph Varkey did not pursue or enforce his right and no concluded contract came into existence, which enabled his legal heirs to seek the assignment on registry.

2. The petitioners preferred an appeal before the Division Bench of this Court. This Court allowed the appeal setting aside Ext. P13 and directed the Government to pass fresh orders as per the Rules existed on the date of the original application filed by the predecessor in interest of the petitioners. The State preferred a SLP before the Supreme Court, which was converted as Civil Appeal No. 4131 of 2008. By order dated 13/05/2008 the Supreme Court set aside the judgment of the Division Bench and remitted the matter for fresh consideration keeping open all the contentions of the parties. The Supreme Court having considered the rival contentions urged by the parties formed an opinion that the following questions are required to be considered:

(i) Whether, despite coming into force of the Kerala Land Assignment Act, 1960, (hereinafter referred as "the KLA Act") and the Rules framed thereunder, the 1935 Rules survive and the effect of Section 9(3) of the KLA Act 1960?

(ii) Whether any steps had been taken in terms of the 1935 rules and if so whether it resulted in an enforceable right in favour of Ouseph Varkey and the effect of the order passed by the Tahsildar as well as the Appellate Authority on Ouseph Varkey's application for assignment of 50 acres of land and subsequently for assignment of 46 acres of land?

(iii) The applicability of the 1935 Rules in regard to the claim made by the petitioners.

3. Before proceeding further, we would state in brief the factual situation in the case.

(i) Petitioners are the legal heirs of Sri. Ouseph Varkey who occupied Government land and started cardamom cultivation. He applied for assignment of registry in Form A of the 1935 Rules. The application is Ext. P2 dated 3/8/1112 (ME) (corresponding to the year 1937). The extent of land sought for assignment is 50 acres. Subsequently, another application is filed for assigning 46 acres in Sy. No. 19/1. Ext. P3 is the said application. Ouseph Varkey remitted Rs. 250/- and Rs. 230/- along with the application. The claim for additional extent of land was rejected by the Commissioner, Devikulam and Sri. Ouseph Varkey filed an appeal before the Land Revenue Commissioner. The said appeal was allowed as per order dated 09/06/1939 holding that the applicant is entitled for 49 acres of

additional land besides 50 acres of land in his possession. Ext. P4 is the said order. In the meantime, the Travancore-Cochin State came into existence. By virtue of the Government Order dated 12/10/1940 it was held that a single applicant was eligible to get only 60 acres on registry. Since Ouseph Varkey's application was prior to the said Government Order, according to the petitioners, he was entitled to claim the entire extent of land as assignments were made to similarly placed persons as per Exts. P5 and P6.

(ii) Sri. Ouseph Varkey expired in the year 1956. When the application submitted by Sri. Ouseph Varkey was pursued by the petitioners, the District Collector, by Exts. P7 and P8 reported and recommended to grant assignment on registry in favour of the petitioners. Subsequently, the Secretary to Board of Revenue conducted an enquiry and by Ext. P9 report it stated that the appeal decision of the Land Revenue Commissioner could have been implemented long before the date of the Government Orders prohibiting registry of lands, if the revenue officers have been more prompt in dealing with the case.

(iii) According to the petitioners, they are entitled for assignment of 99.61 acres of land and since nothing happened in the matter over a period of time, this writ petition is filed which resulted in Exts. P11 and P13 orders.

4. The respondents filed counter-affidavit inter alia contending that though some enquiry was conducted based on the applications submitted by Sri. Ouseph Varkey, assignment order was not issued. Finally it reached a stage where the KLA Act and the Kerala Land Assignment Rules, 1961 (hereinafter referred as the "KLA Rules") came into force and thereafter the entire scenario changed and the revenue authorities were not in a position to apply the "1935 Rules" for granting any benefit to the petitioners. That apart, it is contended that even as per the KLA Rules or the "1961, Cardamom Lease Rules" there is no provision enabling assignment of cardamom land. The "1935 Rules" stood repealed and cannot be invoked for the purpose of assignment.

5. Heard the learned counsel for the appellants and the learned Special Government Pleader appearing on behalf of the Government.

6. Having regard to the nature of contentions urged and the order passed by the Supreme Court in the matter, the first question to be considered is whether the "1935 Rules" would survive despite coming into force of the KLA Act, 1960 and the Rules framed thereunder. It is not in dispute that the "1935 Rules" were framed u/s 7 of the Government Land Assignment Regulations III of 1097 (ME) (corresponding to the year 1921). The 1097 Regulation was repealed by virtue of Section 9 of the Travancore-Cochin Government Land Assignment Act, 1950 (hereinafter referred as the "1950 Act"). But the "1950 Act" did not provide for repeal of the Rules framed under the 1097 Regulation. By virtue of Section 7 of the 1950 Act the Government was empowered to frame rules for assignment of lands. Section 8 of the "1950 Act" saved all provisions contained in any Pattah or other document evidencing assignment of Government land.

7. Rules for Lease of Government Lands for Cardamom Cultivation, 1959 (hereinafter referred as the "1959 Cardamom Rules") was framed by the Travancore-Cochin Government exercising its power u/s 7 of the "1950 Act". Rule 1(b) of the "1959 Cardamom Rules" clearly stipulates that the applicability of the Rules is confined to lease of land for cultivation of cardamom in the Cardamom Hill Reserve, which reads as under:

1(b): They shall apply to the lease of land for cultivation of cardamom in the area known as the Cardamom Hill Reserve situated in the Taluks of Devicolum, Peermade and Udumbanchola, in the Kottayam District and shall supersede the existing rules on the subject insofar as they pertain to that area.

8. Apparently no provision is made in the 1959 Rules for assignment on registry and what was permitted was only grant of lease subject to such conditions as specified under the rules. No proceedings were taken by the petitioners pursuant to the "1959 Cardamom Rules".

9. The KLA Act came into force with effect from 15/06/1960. Section 9(1) of the KLA Act repealed the Travancore-Cochin Government Land Assignment Act, 1950. Further as per sub-section (3) of Section 9 all rules and orders made or deemed to have been made under the Travancore-Cochin Government Land Assignment Act, 1950 stood repealed. Therefore, by virtue of Section 9(3) of the KLA Act, any rules which were in force under the 1950 Act or which were deemed to have been made under the 1950 Act stood repealed. Section 9 of the KLA Act reads as under:

9. Repeals.-

(1) The Travancore-Cochin Government Land Assignment Act, 1950 (XXXII of 1950), is hereby repealed.

(2) The Government Grants Act, 1895 (Central Act 15 of 1895), insofar as it relates to any grant or other transfer of land or of any interest therein by or on behalf of the Government of Kerala, shall cease to apply to the Malabar District referred to in sub-clause (2) of Section 5 of the State Reorganisation Act, 1956 (central Act 37 of 1956).

(3) All rules and orders made or deemed to have been made under the Travancore-Cochin Government Land Assignment Act, 1950, hereby repealed, and all rules and orders in force immediately before the commencement of this Act relating to the assignment of Government lands in the Malabar District referred to in sub-section (2) of Section 5 of the State Reorganisation Act, 1956 (Central Act 37 of 1956), so far as they are not inconsistent with this Act, shall be deemed to have been made under the corresponding provisions of this Act, and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

10. The "1961 Cardamom Lease Rules" was framed in exercise of power vested in the Government u/s 7 of the "1960 Act", which again provides only for lease

of land on such terms and conditions as provided under the rules.

11. Viewed in the light of the above statutory provisions, we have to consider whether the "1935 Rules" still survives to enable the petitioners to make a claim for assignment under the said Rules. The "1935 Rules" were framed under Land Assignment Regulation, III of 1097. The Regulation was repealed when the "1950 Act" came into force. There is no express repeal of the "1935 Rules". Therefore by virtue of Section 23 of the Kerala Interpretation and General Clauses Act, 1125 (ME) (corresponding to the year 1950) the 1935 Rules continued in force. Section 23 reads as under:

23. Continuation of orders, etc., issued under enactments repealed and re-enacted.--Where any Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted:

But when KLA Act came into force, by virtue of Section 9(3), all rules made or deemed to have been made under the 1950 Act, stood repealed. A Full Bench of this Court had occasion to interpret Section 23 of the Kerala Interpretation and General Clauses Act, 1125 in *The Special Tahsildar for Land Acquisition, Kozhikode-I and Others Vs. F. Shamsudin and Bros.*, It is held that:

But where the repeal is accompanied by a re-enactment, Section 23 also applies, and, by providing that certain things done under the repealed Act shall be deemed to be done under the corresponding re-enacted provisions enables pending proceedings to be continued under the re-enacting Act.

The "1935 Rules" though not made under the 1950 Act, it is deemed to made under the 1950 Act, by virtue of Section 23 of the Kerala Interpretation and General Clauses Act, 1125 (ME). Hence we have no hesitation to hold that "1935 Rules" is repealed by virtue of Section 9(3) of KLA Act.

12. Now coming to the second question regarding the steps taken by Sri. Ouseph Varkey and the orders passed by the Tahsildar and the Appellate Authority, to find out whether any such order has fructified into an enforceable right in favour of Sri. Ouseph Varkey, we have to consider the factual situation in the case with reference to the 1935 Rules. Ext. P2 is the first application submitted by Sri. Ouseph Varkey for assignment of an extent of 50 acres on 03/08/1112 ME corresponding to the year 1937. Ext. P3 is another application submitted on 25/06/1113 ME for assignment of 46 acres. Ext. P4 is the order passed by the Land Revenue Commissioner in Appeal No. 77 of 1114 ME. The appeal has been preferred against the order rejecting Sri. Ouseph Varkey's application for assignment. The order further reads that as there is no other applicant for the

excess land, the excess 49 acres over and above the 50 acres may be given to the applicant and steps may be taken towards the disposal of the application accordingly. It is not in dispute that all these proceedings had taken place at the time when the 1935 Rules was in force.

13. Ext. P8 is a communication dated 16/01/1961 sent by the Collector, Kottayam to the Secretary Board of Revenue, Thiruvananthapuram. Reference is made in Ext. P8 to GPDD is. No. 1275/50/DD dated 19/05/1950, wherein it is directed that an application for registry, its acceptance by Government and the communication of acceptance to the party concerned are enough to constitute a binding contract between the Government and the applicant so far as registry of Government lands are concerned. It is opined that since the conditions are satisfied a completed contract is in existence. It is further indicated that the party was evicted from 39.42 acres, but they are in uninterrupted possession and in view of their long and continued possession and the valuable improvements being effected the prayer for assignment deserves consideration. Ext. P9 is the communication dated 05/03/1961 issued by the Secretary, Board of Revenue to the Revenue Secretary. It is inter alia indicated that the appeal decision of the Land Revenue Commissioner could have been implemented long before the date of the Government Orders prohibiting registry of lands, if the revenue subordinates have been more prompt in dealing with the case. Hence a request was made to consider the claims favourably. Ext. P10 is the report by the Special Deputy Tahsildar, Devikulam dated 17/12/1996 to the Assistant Settlement Officer, Kumili. The report indicates that the petitioners are in possession of the said property. The opinion was to consider the request of the petitioner favourably taking into consideration the order passed by the Land Revenue Commissioner on 19/06/1939. It is thereafter the Government considered the matter and Ext. P11 came to be issued. Subsequently, by judgment dated 11/11/1999 the matter was reconsidered and Ext. P13 was issued.

14. On a perusal of Exts. P2 and P3 applications, it is clear that Sri. Ouseph Varkey remitted only an amount of Rs. 250/- along with Ext. P2 application and Rs. 230/- along with Ext. P3 application.

Rules 4 to 10 and 25 of the 1935 Rules reads as under:

4. All applications for the assignment of new lands for cardamom cultivation shall be made to the Commissioner, Devicolam. Every such application shall be presented in Form A appended to these Rules furnishing the full particulars therein specified, together with a sketch of the land showing its situation and boundaries and shall be accompanied by a deposit of Bh. Rs. 5 per acre.

5. On receipt of the application, the Commissioner, Devicolam, shall himself inspect the site or cause it to be inspected by the Tahsildar and he shall also enquire into the financial position of the applicant. He shall satisfy himself that the application is bona fide, that it comes from a person of competence, that it is

not made for purposes of speculation and that the land applied for is one which can be granted for such cultivation without detriment to Government or public interests. He shall then record the results of his enquiry and pass orders admitting or rejecting the application. If the application is rejected, the fact shall be communicated to the applicant with the reasons for the same.

6. If as a result of the enquiry, the Commissioner, Devicolam, is satisfied that the land applied for is assignable, he shall publish a notice over his signature in accordance with the provisions contained in Rule 10 of the Revised Puduval Rules, dated 19th April, 1935, and also direct the issue by the Tahsildars concerned of notices as laid down in Rule 11 to the adjoining land holders. The claims and objections, if any, received as per the notices shall be enquired into and disposed of by the Commissioner.

7. (i) After the disposal of the objection and claim petitions referred to in Rule 6, if the land is deemed assignable without auction, the list of royal and reserved trees standing thereon shall be got prepared by the Proverthicar or Revenue Inspector and verified by the Tahsildar, if the land applied for is surveyed land.

(ii) (a) If the land applied for is unsurveyed waste, it shall first be demarcated and surveyed by the survey Department and its survey connected with that of adjoining surveyed area, if possible.

(b) In the course of such survey, lists showing the number and particulars of the royal and reserved trees on the plot applied for shall be prepared by the surveyor and the list verified on the spot by the Superintendent of Survey or his Assistant.

(c) Convenient paths or cart-tracks shall be provided for each block in the course of the survey.

NOTE.--A list showing the names of the reserved trees for purposes of this Rule is given in Schedule I under the Revised Puduval Rules.

8. On receipt of the plotted sketch in respect of the land, the commissioner, Devicolam, may, if necessary, inspect of the land and verify the tree lists. The tree lists shall be got signed by the applicant before orders are passed sanctioning the assignment in his favour. The Commissioner, Devicolam shall pass the preliminary order of registry if the area applied for is 25 acres or below or forward the records to the Land Revenue and Income Tax Commissioner in other cases with his recommendation. The Land Revenue and Income Tax Commissioner shall pass the order in case the land applied for is 50 acres or below and submit the records for the orders of Government in respect of all other applications.

9. (a) The minimum rate of Tharavila of lands assigned for cardamom cultivation from the Cardamom Hills and the Periyar Reserves shall be Bh. Rs. 85 per acre and it shall be recovered as follows:

Bh. Rs. 5 with the application, Bh.Rh. Rs. 10 per acre within 30 days from the

date of receipt of the notice sanctioning the assignment, and the balance in seven annual installments of Bh. Rs. 10 each.

(b) The minimum rate of Tharavila for the lands round about Chinnakkanal Thavalam and the lands in the Pallivasal Pakuthi assignable under these Rules shall be Bh. Rs. 60 per acre and the same shall be recovered as follows:

Bh. Rs. 5 with the application, Bh. Rs. 5 within 30 days of the date of receipt of the notice of assignment and the balance in five annual installments of Bh. Rs. 10 each.

NOTE.--Tharavila specified above includes survey and demarcation charges.

10. When the preliminary order of registry in favour of the applicant is passed by the Commissioner, Devicolam, or when orders passed by the higher authorities are received by him, he shall issue a notice to the applicant directing him to pay the first installment of Tharavila as per Rule within 30 days of the receipt of the notice, and execute an agreement for the payment of the remaining installments subject to the conditions laid down in Rule 49 of the Revised Puduval Rules. The Commissioner may also sanction the extension of the period for the payment of the first installment and the execution of the agreement by 15 days on the application of the party. When all the installments are paid, the commissioner shall pass the final order of registry directing the Tahsildar to issue a patta to the assignee. If the amount is not paid or the agreement is not executed within the time specified above, the Commissioner shall cancel the preliminary order for registry if it was passed by him, or recommend the cancellation of the same if it was passed by a higher authority. If the preliminary order for registry is cancelled, the deposit made with the application shall be forfeited to Government.

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25. When the assignment has been completed as per Rule 10 or Rule 19, the Tahsildar of the Taluk concerned shall issue a Patta in Form B appended and obtain the signature of the assignee in the duplicate Patta. The assignment shall be subject to the general conditions specified in the Patta.

NOTE.--Patta issued under these Rules are not chargeable with stamp duty under Regulation IV of 1080.

As per Rule 4 an applicant has to file an application in Form A accompanied by a deposit of Rs. 5 per acre. Rule 5 provided a detailed procedure for considering the said application and to pass orders admitting or rejecting the application. As per Rule 6 claims and objections in relation to the land in question is to be called for and disposed. Rule 7 indicates the procedure to be complied when the land is assigned without auction. The authorities have to prepare a list of royal trees to be reserved and if the land is not surveyed a survey sketch has to be prepared. The Commissioner will have to verify the list of trees as provided under Rule 8 and the tree list has to be signed by the assignee. Thereafter the Commissioner has to forward the records to the Land Revenue and Income Tax commissioner,

who in turn will have to forward the same to the Government, as the land involved is more than 50 acres. What is contemplated under Rule 8 is to enable the Government to pass a preliminary order of registry. As per Rule 9 the minimum rate of "Tharavila" which is the consideration for assignment is Rs. 95/- per acre and the rule provides for the procedure for remitting the said amount. In respect of certain other area, the rate fixed was Rs. 60/- per acre. Rule 10 further provides that after issuing a preliminary order of registry an agreement is to be executed on payment of the first installment with reference to payment of the remaining installments. The final order of registry is to be passed only after all the installments are paid by the applicant. If the amount is not paid or the agreement is not executed within the specified time, the Commissioner could recommend cancellation of the preliminary order of the registry. After this process, as per Rule 25, the Tahsildar shall issue a patta in Form B.

15. The main contention urged by the petitioner is based on Ext. P4 the proceedings of the Land Revenue Commissioner in an appeal. On a perusal of the above order by itself would indicate that the application for assignment was rejected, apparently under Rule 4 of "1935 Rules". But, by Ext. P4 order, the Land Revenue Commissioner who is the Appellate Authority opined that as there is no other opposition the entire 99 acres could be given to the applicant. But, it was stated that "steps may be taken towards the disposal of his application accordingly." Therefore, this order is only directing the Commissioner to issue orders of assignment in accordance with the procedure prescribed. Thereafter the Commissioner has to follow the procedure under Rules 6, 7 and 8 of "1935 Rules". Ext. P4 order was passed on 19/06/1939. Thereafter, nothing seems to have happened until Exts. P7, P8, P9 and P10 reports were communicated between the revenue authorities. These reports came to be issued after the repeal of the "1935 Rules".

16. The learned counsel for the appellant relied upon the judgment of the Division Bench of the Travancore Cochin High Court in Mathai Geevarghese Kathanar v. State of Travancore Cochin 1954 (9) DLR T.C 513. That was a case in which the issue considered was whether a concluded contract came into existence even though the Tharavila is not paid. The Division Bench found that non-payment of the "Tharavila" will not make the contract unenforceable. In that case, a final order was passed by the Government on 19/04/1935 granting registry in the name of the plaintiff with respect to the property and "ozhugu" was prepared. The Government took a contention that since the Tharavila is not paid as per the Government Order, there is no enforceable contract. Division Bench held that there is no dispute regarding the existence of a final order dated 19/04/1935 by which registry was sanctioned and once the same is accepted failure to execute the ozhugu or to pay the Tharavila which was not demanded by itself cannot be treated as an unenforceable contract. The present facts of the case are totally different from the aforesaid judgment and hence the same has no application.

17. Another judgment relied upon is Thuppan Namboodirippadu v. The Diwan of Travancore Vol. LVII TLR 1065. This is a Full Bench judgment of the Travancore High Court. This is relied upon to contend that issuance of patta is not a mandate for claiming title to the properties. It is held that, it is a well known maxim of equity that equity looks on that as done which ought to have been done, in other words, equity regards and treats that as done which in good conscience ought to be done and that the facts of that case called for the application of the doctrine of equity as to part performance of parol contracts. This judgment also has no application to the case on hand in view of our finding that apart from submitting an application which was originally rejected and the appeal came to be allowed, no other procedure as contemplated under the Rules were complied with. Merely for the reason that the petitioners are in possession of the property by itself will not confer on them any right nor can they claim any accrued right based on repealed rules.

18. Yet another judgment relied upon is Kannan Krishnan v. Divan of Travancore Vol. 2 The TLJ 502 that is also a case in which a similar proposition as stated above has been held which has no application to the facts of the case.

19. The Learned Senior Government Pleader relied upon the judgment of the Division Bench of this Court in Varkey Mathew and Others Vs. The Tahsildar and Others in order to contend that the Government cannot grant lease under Rule 34 of "1961, Cardamom Lease Rules", ignoring the provisions therein. Paragraph 35 is relevant which reads as under:

35. The learned counsel for the Appellants raised a contention that the Government could invoke the power under Rule 34 of the Cardamom Rules Rule 34 is as follows:

The Government shall, for sufficient reasons, be competent to dispense with any provision of these rules and grant leases, in any manner they choose, imposing any terms or conditions whether contemplated by these rules or not.

We are of the view this power vested in the Government would not empower the Government to do away with the provisions of the Cardamom Rules and grant lease as they like. By invoking Rule 34, the Government cannot grant lease to a person who is disentitled to get a lease under the Cardamom Rules. Government can grant lease to a person, by invoking Rule 34, only in favour of a person who is entitled to be granted a lease under the Cardamom Rules. Government could only alter the terms and conditions in granting lease. There must be sufficient reasons to invoke Rule 34. The expression "in any manner they choose" in Rule 34 can have relation only with the manner of granting leases. The expression "dispense with any provision of these Rules" occurring in Rule 34, could only relate to the manner in which a lease could be granted and in respect of the terms and conditions thereof. The Government shall have no power to grant a lease, invoking Rule 34, contrary to the basic structure and the essential conditions of the Cardamom Rules.

20. Going by the "1935 Rules", apparently no steps as envisaged under the Rules had been taken in the matter other than the submission of an application along with the initial fee. In the present case, since the total extent of land involved was more than 50 acres, necessarily the Government ought to have passed a preliminary order which is not available in the case. The assignment could have been treated as confirmed or a concluded contract for assignment would have come into existence only if the Government had passed a preliminary order and the first installment was paid in terms of Rule 10. The Government did not pass any such order and no agreement had been executed after receiving the first installment. It is true that certain steps were taken for assignment of land, but before an assignment order was passed in terms with the "1935 Rules" the said rules were repealed. Therefore, it is evident that until the repeal of "1935 Rules" by virtue of Section 9(3) of the KLA Act, 1960, no orders were passed in terms of the "1935 Rules" for assignment on registry.

21. Section 4 of the Kerala Interpretation and General Clauses Act, 1125 (ME) reads as under:

4. Effect of repeal.--Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or

(d) xxx xxx xxx

The facts as narrated above would clearly confirm that the petitioners or their predecessor did not acquire any right under the "1935 Rules" to claim a legal right, capable of enforcement.

22. Therefore, we are of the opinion that though two applications for assignment of land were given by Sri. Ouseph Varkey, no orders were passed by the competent authority under the "1935 Rules" enabling him to treat the said order as a concluded contract between the parties and therefore, the petitioners are not entitled to rely upon such documents for claiming any right under the "1935 Rules". Having regard to the aforesaid factual situation and the arguments raised by the learned counsel on either side, we are of the view that no grounds have been made out to set aside the judgment of the learned Single Judge and accordingly we dismiss the appeal.