

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

WA.No. 972 of 2010 () IN WP(C).22495/2007

**AGAINST THE ORDER/JUDGMENT IN WP(C) 22495/2007 of HIGH COURT OF KERALA
DATED 15-09-2009**

APPELLANT(S)/RESPONDENTS IN THE WPC:

- 1. THE DISTRICT COLLECTOR, ERNAKULAM**
- 2. THE REVENUE DIVISIONAL OFFICER, KOCHI.**
- 3. THE VILLAGE OFFICER, PUTHUVAIPPU.**

BY ADV. SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

RESPONDENT(S)/PETITIONER IN THE WPC:

**P.U.PADMANABHAN, S/O UTHAMAN P.K.
PERUMPALATH HOUSE, NARAKKAL.**

**Addl.2. OMANA C.V
W/O.P.U.LATE PADMANABHAN, PERUMBALATHU HOUSE
HOSPITAL ROAD, NJARAKKAL.**

**Addl.3. BIJOY P
PERUMBALATHU HOUSE, 2B, AMRUT RETREAT
K.P.VALLAM ROAD, VIVEK NAGAR, KADAVANTHRA PO.
ERNAKULAM, PIN - 682 020.**

**Addl.4. BINOY 11 SURGEYS LANE, ARNOLD, NGS
8EP, NOTTINGAM, ENGLAND U.K.**

**(ADDL.R2 TO R4 WHO ARE LEGAL HEIRS OF DECEASED R1 ARE IMPEADED AS PER
ORDER DATED 05.01.2015 IN IA 1297/14.**

BY ADV. SRI.M.S.UNNIKRISHNAN

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23-11-2015, THE
COURT ON 23-12-2015 DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 972 of 2010

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Dated this, the 23rd day of December, 2015

J U D G M E N T

Shaffique, J.

The respondents in the writ petition are the appellants. They challenge judgment dated 15/9/2009 by which the learned Single Judge allowed the writ petition filed by the respondent herein. He died during the pendency of the appeal and his legal heirs are impleaded as additional respondents 2 to 4.

2. The short facts involved in the writ petition are: The petitioner, an Ex-serviceman applied for assignment of government land. He was allotted 36.22 Ares of land in Sy.No. 1687/2 as per order in LA/72/76. He was put in possession of the said land and he had effected substantial improvements in the property. However necessary pattayam was not issued to him. When further steps were taken in the matter, he was asked to give consent letter stating his willingness to remit the market value of the property. He submitted his willingness. The market

value was fixed at ₹7, 286/- per Are in February 2001. Petitioner again gave consent to pay the market value. Since there was delay in obtaining assignment, he approached District Legal Services Authority by filing P.L.P. No. 70/2003. In the said proceedings, a statement was filed by the revenue officers offering to assign the land on payment of market value at ₹8,399/- per Are. Pursuant to the said statement, the District Legal Services Authority closed the case as per order dated 14/9/2004.

3. Thereafter also, no steps were taken to finalise the proceedings and the petitioner filed WP(c) No. 31224 of 2006. The writ petition was disposed of with a direction to the Tahsildar to take a decision in the matter in the light of the earlier documents within two months. However, the third respondent issued Ext.P12 proceedings dated 8/2/2007, in favour of the petitioner, offering assignment only for an extent of 50 cents. Petitioner contended that the action of the third respondent in rejecting the claim of the petitioner for the entire land is bad in law. Reference is made in Ext.P12 to an amendment made to the Kerala Land Assignment Rules, 1964 (hereinafter referred as the KLA Rules) by which it was indicated that the maximum land that would be assigned will

be not more than 50 cents and the land held in excess of the said area shall be surrendered to the Government for which no compensation is payable. According to the petitioner, the said provision incorporated as per notification dated 3/3/2005 has no application to the petitioner as the petitioner was granted assignment even prior to the said amendment coming into effect.

4. The learned Single judge after evaluating the factual aspects involved in the matter observed that by Exhibits P8 and P9, the right of the petitioner for assignment of the land as mentioned in Exhibit P8 stands recognised. In such an event, entitlement should have been reckoned as on the date of Exhibit P9 proceedings dated 14/9/2004 and any amendment effected to KLA Rules subsequent to the said date cannot have application to the petitioner's entitlement. Hence the writ petition was disposed of directing the respondent to implement Exhibits P8 and P9 in the light of the observations made in the judgment and to pass appropriate orders.

5. While impugning the aforesaid judgement, it is contended on behalf of the appellants that the revenue authorities are not entitled to pass any order ignoring the

statutory provision. When the KLA Rules underwent an amendment with effect from 3/3/2005, it was incumbent on the part of the revenue authorities to issue orders only on the basis of the said amended provision. That apart, Exhibit P8 and P9 did not confer any right on the part of the writ petitioner to get assignment of land under the Kerala Land Assignment Act and the Rules framed thereunder.

6. Heard the learned special Government Pleader Smt. Girija Gopal appearing on behalf of the appellants and Sri. M.S.Unnikrishnan, learned counsel appearing on behalf of the respondents.

7. The short question involved in this appeal is whether Exhibits P8 and P9 confer any right on the part of the respondents to demand that the land has to be assigned as per the rules prior to 3/3/2005.

8. It is not in dispute that as per Exhibit P1, an extent of 36.22 Ares of property was assigned in favour of the petitioner. At the time of assignment, the maximum limit for assignment for cultivation was limited to 1 acre in terms of Rule 5 of the KLA Rules.

9. In the counter affidavit filed by the appellants it is stated that the revenue authorities noticing the irregularity in assignment of land in favour of the petitioner took steps under Section 8(3) of the KLA Rules, and Ext.P1 order of assignment was cancelled. Exhibit R3(a) is the cancellation order. However he offered to pay the market value. The matter was placed before the Taluk Land Assignment Committee and the Committee decided to assign 90 cents of land in favour of the petitioner at concessional rate by charging ₹8,379/- per Are. It is submitted that even before the approval of assignment order, the rules underwent amendment and restrictions had been imposed to assign land more than 50 cents. The matter was again taken before the District Collector who revised the order of assignment to 50 cents. It is in the said circumstances that a final decision was taken as per proceedings dated 8/2/2007.

10. As already indicated, the facts are not in dispute except the fact as to whether Exhibits P8 and P9 confer an absolute right on the respondents herein to seek assignment. Exhibit P8 apparently is not an order passed by the Tahsildar in terms with the KLA Rules. Exhibit P8 is only a statement prepared

on behalf of the District Collector to be filed before the DLSA. It is stated that since the family of the applicant has income in excess of the limit prescribed for free assignment, market value can be recovered from him, which is fixed at ₹8379/- per Are. It is further observed that in view of the pendency of PLP No. 70/2003, further steps shall be taken on an urgent basis. Exhibit P9 is the proceedings of the Adalath wherein it is recorded as under:

"Petitioner present. District collector has issued a proceedings directing the RDO Fort Kochi to dispose of the matter. In view of the proceedings of the District Collector the petition is closed."

11. This proceeding is dated 14/9/2004. It is apparent that nothing has been done in the matter though proceedings were closed as early as on 14/9/2004. The Tahsildar issued a notice to the petitioner on 24/1/2007 for hearing on the question on the assignment of land to be held on 6/2/2007 and thereafter proceedings dated 8/2/2007 had been issued.

12. The learned Single Judge proceeded on the basis that Exhibits P8 and P9 concluded the entitlement of the petitioner for assignment of land. We do not think so. Land assignment has to be completed based on the procedure prescribed under the Land

Assignment Act and the Rules.

13. The learned counsel for respondents submitted that the procedure for assignment has been completed and Exhibit P8 order had been issued. Exhibit P8 is not an order in terms of Rule 9(1) of the KLA Rules, which provides that assignment on registry shall be issued in the form in Appendix 1 to the Rules. Unless an order is passed as per Appendix 1, there cannot be any assignment.

14. Exhibit P8 is not in the form in Appendix 1 issued under Rule 9(1) of the KLA rules. Once an order granting registry has been issued, it has to be followed by the issuance of Patta in terms of Appendix II. Unless the above statutory provisions are complied, it cannot be stated that there is a valid assignment order in favour of any person. It is true that steps were taken for assignment of 90 cents of land in favour of the petitioner and such a view has been expressed in Ext.P8. But the said proceedings did not culminate into an order of assignment. Therefore, the provision that can be made applicable for assignment on registry is the provision that is effective as on the date of assignment and not that applied earlier.

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15. In the said circumstances, we are of the view that the learned Single judge was not justified in directing assignment based on Exhibits P8 and P9. Exhibit P12 does not suffer from any infirmity warranting interference by this Court. The respondents herein are entitled for getting assignment of land pursuant to Exhibit P12 and necessary orders in that regard has to be passed by the appellants, which shall be done within a period of two months from the date of receipt of a copy of this judgment.

Accordingly, we set aside the judgment of the learned Single judge and allow the writ appeal with the above observation.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge