

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WA.No. 68 of 2013 () IN WP(C).6461/2010

AGAINST THE JUDGMENT IN WP(C) 6461/2010 of HIGH COURT OF KERALA
DATED 3.12.2012

APPELLANT(S)/3RD RESPONDENT IN THE WPC:

G.MURALI, AGED 46 YEARS,
S/O.GOPALAN, SREEMANDIRAM
KIDANGAYAM VADAKKU, PATHRAM P.O.
SOORANADU SOUTH VILLAGE, KUNNATHUR TALUK
KOLLAM DISTRICT.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S)/APPELLANT & RESPONDENTS 1 & 2 IN WPC:

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1. SOORANADU GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, SOORANADU
KOLLAM DISTRICT -691 001.
 2. THE LAND REVENUE COMMISSIONER
OFFICE OF THE LAND REVENUE COMMISSIONER
PUBLIC OFFICE BUILDING, MUSEUM JUNCTION
THIRUVANANTHAPURAM-695 001.
 3. THE DISTRICT COLLECTOR
CIVIL STATION, KOLLAM-691 001.

R1 BY ADV. SRI.P.C.SASIDHARAN
R2,R3 BY GOVERNMENT PLEADER SRI.P.FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28-05-2015, ALONG
WITH WA. 1025/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.Nos.68 & 1025 of 2013

Dated this the 28th day of May, 2015

JUDGMENT

Antony Dominic, J.

1. These appeals are filed by the respondents in W.P(C). 6461/10. The writ petition was filed by Sooranadu South Grama Panchayat challenging Ext.P2 order passed by the Land Revenue Commissioner in an appeal filed by the appellant in W.A.68/13, under the provisions of the Kerala Land Assignment Rules, 1964. By this order, the Land Revenue Commissioner directed assignment of half cent of land to the appellant in W.A.68/13, out of the land entrusted to the Panchayat in terms of the Kerala Panchayats (Providing of house sites and houses to families of landless workers in the Rural Areas) Rules, 1972, hereinafter, 'the 1972 Rules', for short. It was challenging this order, the Panchayat filed the writ petition. By the judgment under appeal, learned single Judge of this Court allowed the writ petition on the premise that the order is passed by the Land Revenue Commissioner without jurisdiction. It is this judgment which is challenged in these appeals.

2. We heard learned counsel for the appellants and the learned counsel appearing for the respondent Grama Panchayat which filed the writ petition.

3. The short question that arises for consideration is whether the order passed by the Land Revenue Commissioner is without jurisdiction, as found by the learned single Judge. Reading of the judgment under appeal shows that the view taken by the learned single Judge is that the land requisitioned and purchased by the Panchayat in terms of the provisions contained in the 1972 Rules can no longer be termed as Government land available for assignment under the Land Assignment Act. It is the correctness of this finding of the learned single Judge which would determine the fate of these appeals.

4. The 1972 Rules is framed by the Government in exercise of its powers under section 58 of the Kerala Panchayats Act, 1960 which provided that subject to such rules as may be prescribed, the Government may transfer to the Panchayat the management and maintenance of any institution or the execution or

maintenance of any work or the exercise of any power or the discharge of any duty within the Panchayat area whether provided in the Act or not. Sub section (4) thereof also provided that it shall be lawful for the Government to contribute to the Panchayat funds or such amount as may, in their opinion, be necessary for meeting the expenditure involved. The 1972 Rules provided that the rules shall apply for providing house sites and houses to the families of landless workers in the rural areas in the State for whom house sites cannot be given under the provisions of any law relating to land reforms for the time being in force in the State or any other scheme regarding assignment of Government land. The Rules also provided for earmarking of house sites for Scheduled Castes and Scheduled Tribes, that the allotment of houses shall be made by the Panchayat on behalf of the Government, that land shall be purchased by the Panchayat by private negotiation, that the purchase of land shall be in the name of Government and that funds for the purchase of lands shall be made available by the Government at the disposal of the Panchayat.

5. Admittedly, in terms of the provisions of the 1972 Rules, the Panchayat had requisitioned for acquisition of about 3 Acres of land for distribution in the manner as provided in the Rules for putting up houses. Accordingly, 1 Acre and 3 cents of land was acquired, out of which, 3 cents each were allotted to 29 persons. The appellant in W.A.68/13 claims to be allottee of a plot, but according to the Panchayat, he is an assignee. In any case, he is now in possession of a plot, the extent of which is 2.5 cents.

6. It was subsequently that he made an application for assignment of 1.5 cents of land. That application was rejected by the District Collector on the ground that the land being that of the Panchayat, cannot be assigned as prayed for. However, this order was reversed by the Land Revenue Commissioner in the appeal filed by the appellant in W.A.68/13. It is this order of the Land Revenue Commissioner which was challenged before the learned single Judge.

7. As we have already stated, the view taken by the learned single Judge is that the land which was

requisitioned and purchased by the Panchayat can no longer be termed as Government land available for assignment. This finding of the learned single Judge is sought to be impugned by the learned counsel for the appellants in these appeals by referring us to the various provisions of the Kerala Panchayats Act, 1960, the Rules, 1972 and the Kerala Panchayat Raj Act, 1994, hereinafter, the 'KPR Act, 1994', for short.

8. According to the learned Government Pleader and the learned counsel appearing for the appellant in W.A.68/13, in terms of the 1972 Rules, the Panchayat is only an agent of the Government and therefore, Government still retains ownership and control over the land in question. Therefore, according to them, the Government is perfectly justified in issuing orders for assignment of the land. However, we find from the KPR Act, 1994 that unlike the Kerala Panchayats Act, 1960, the Act contains the Third schedule in which 'housing' has been included as item No.VII. In this item, identification of the homeless people and the puramboke dwellers and providing them with lands for house construction and with houses,

implementation of rural housing programmes and implementation of shelter upgradation programmes have been made as mandatory functions of the Village Panchayats as under section 166 (1) of the KPR Act, 1994. Section 166 (6) of the KPR Act, 1994 provides that the Government shall, as soon as may be, after the commencement of the Act, transfer all institutions, schemes, buildings and other properties, assets and liabilities connected with the matters referred to in the Third Schedule to the Village Panchayats and that every institution so transferred shall be in the name of the said Village Panchayat and shall be known accordingly. It is also provided in sub-section (8) that the Village Panchayat shall not have any power to sell, transfer, alienate or pledge the properties transferred to it. This, therefore, means that once, under the KPR Act, 1994, 'housing' has been entrusted to the Village Panchayat as its mandatory function, any property, even if it is under the control of the Government, is bound to be transferred to the Panchayat and on such transfer, it shall be known as the property of the Panchayat only. This means that even if it is assumed that until the KPR Act, 1994 came into force

the Government had retained control over the lands governed by the 1972 Rules, that control is lost and the absolute control of the land is vested in the village Panchayat. If that be so, the Government could not have assigned any such land in exercise of its powers under the provisions of the Kerala Land Assignment Act, 1960.

9. Apart from the above, we also find merit in the contention of the learned counsel for the Panchayat that even if it is assumed that the land could have been assigned under the provisions of the Kerala Land Assignment Act, the procedure specified in the Land Assignment Act for assignment of Government land should have been complied with and that in issuing Ext.P2, none of the procedure has been complied with. On that ground as well, Ext.P2 order issued by the Land Revenue Commissioner deserves to be interfered with.

10. It is true that the learned counsel for the appellant in W.A.68/13 invited our attention to section 52 of the Panchayats Act, 1960 and the corresponding provisions contained in section 166 of

the KPR Act, 1994. According to him, since section 167 has been incorporated in the KPR Act, 1994, the 1972 Rules should even now govern the field. We are unable to agree. As we have already stated, when specific provisions have been made in section 166 (6) of the KPR Act, 1994, the provisions contained in section 167 cannot, in any manner, affect any matter referred to in the Third Schedule. As we have already stated, 'housing' is one of the matters that are included in the third schedule.

11. For the aforesaid reasons, we are unable to find any illegality in the view taken by the learned single Judge. We, therefore, do not find any merit in the appeals.

Appeals fail. They are accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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PS to Judge