

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WA.No. 1744 of 2014 () IN WP(C).86/2008

AGAINST THE JUDGMENT IN WP(C) 86/2008 of HIGH COURT OF KERALA
DATED 24-07-2014

APPELLANT(S)/PETITIONER :-

BISHI MATHEW, AGED 46 YEARS, D/O. MATHEW,
RESIDING AT SHONE NIVAS
PERUMPUZHA A WARD, AMBIPOIKA, KUNDARA, KOLLAM.

BY ADVS.SRI.R.NIKHIL
SRI.BINU PAUL (NETTOOR)

RESPONDENT(S)/RESPONDENTS :-

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM - 695 001
2. LAND REVENUE COMMISSIONER (KERALA), OFFICE OF THE
LAND REVEUE COMMISSIONER, THIRUVANANTHAPURAM - 695 001.
3. THE ADDITIONAL TAHSILDAR, KOLLAM.

BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27-
01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

WA.No. 1744 of 2014 () IN WP(C).86/2008

APPENDIX

PETITIONER(S) ' EXHIBITS :-

ANNEXURE 1:-A TRUE COPY OF THE RELEVANT PAGE OF G.O. (P) NO
425/2014/RD.

RESPONDENT(S) ' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.A. No.1744 of 2014

Dated this the 27th day of January 2015

J U D G M E N T

Shaffique, J.

This appeal has been filed by the petitioner challenging the judgment dated 24.7.2014 in W.P.(C) No.86 of 2008.

2. The writ petition was filed challenging Ext.P7 by which the Additional Tahsildar, Kollam rejected the application of the petitioner seeking assignment of 20 cents of land in Survey No.134/21 of Elamballur Village in Kollam District. The petitioner claims that she had purchased the property by virtue of separate sale deed and when it is found that the property was government land, application was filed for assignment under Rule 5 of the Kerala Land Assignment Rules. By Ext.P7, the authority formed an opinion that since the petitioner was already holding an extent of 1.54 Acres of land, she is not entitled for assignment of 20 cents as claimed by her. Based on the said finding, direction was issued to the authorities to take back the land by initiating appropriate proceedings.

3. A counter affidavit has been filed by the Government inter alia stating that as per Rule 5 of the Kerala Land Assignment Rules, the petitioner was not eligible to get the land assigned even if it is for cultivation. It was further indicated that at the time of application, the petitioner and her family owned 62.35 Ares of land, which was beyond the ceiling limit and hence, she was not eligible to get the land assigned. Further encroachment of puramboke land can be considered objectionable under Rule 2(CC) of the Rules. It is also stated that steps have been recommended to evict the petitioner and therefore, notice under Rule 9 of the Kerala Land Conservancy Rules, 1958 has been issued to the petitioner.

4. Learned Single Judge after evaluating the respective contentions dismissed the writ petition finding that there is no illegality in the order passed by the competent authority.

5. Learned counsel for the appellant submits that an amendment has been brought to Rule 5 of the Kerala Land Assignment Rules, which is produced as Annexure I. As per the amendment the maximum extent of land that can be

assigned, where there are valuable improvements effected on the land by the occupant, is two acres. By virtue of the said amendment it is contended that the petitioner is entitled for assignment.

6. Having regard to the fact that the amendment came only with effect from 24.12.2013 and the application submitted by the petitioner seeking assignment was much prior to the aforesaid date and the application was considered by the competent authority and orders were passed by way of Ext.P7 as early as on 27.7.2007 applying unamended rules, there is no illegality in the order passed by the authority concerned.

7. Admittedly, the petitioner was in possession of 1.54 Acres of land at the relevant time and therefore, the claim for assignment of 20 cents was not maintainable at all. In the said premise, we do not think that there is any illegality in Ext.P7 order warranting interference by this Court.

8. Learned counsel for the appellant however submits that land conservancy proceedings were initiated against her as per Ext.P5 dated 11.12.2007. Apparently, on the basis of

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Ext.P7 recommendation has been issued to initiate land conservancy proceedings against her, which is in accordance with law.

9. As far as the amendment to Rule 5 of the Kerala Land Assignment Rules is concerned, apparently, the amendment will apply only to future applications. However, if the petitioner is of the view that she is entitled to the benefit of the amended Rule, it is always open for her to approach the competent authority.

With this observation, this Writ Appeal is dismissed.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//True Copy//

P.A. To Judge

Jvt