

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 23732 of 2009 (J)

PETITIONER:

CHERIAKODE MODEMBIL VISHNU TEMPLE
COMMITTEE, REPRESENTED BY ITS PRESIDENT
T.M.KUNHAMBU NAIR, S/O.MUTHU @ RAMAN NAIR
R/AT THEKKEKKARA HOUSE, THEKKIL VILLAGE
POST THEKKIL FERRY, CHENGALA, KASARAGOD DISTRICT.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPLE SECRETARY,
REVENUE DEPARTMENT
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. A.ABDUL KHADER, S/O.LATE ABDULLA,
PADOOR HOUSE, THEKKIL VILLAGE, THEKKIL FERRY POST
CHENGALA, KASARAGOD.

3. ASHARAF,
S/O.ABOOBACKER, MOODAMBIL JUMA ATHE COMMITTEE
THEKKIL VILLAGE, THEKKIL FERRY POST, CHENGALA
KASARAGOD.

R,R3 BY ADV. SRI.K.P.MAJEED

R,R3 BY ADV. SRI.P.RAJEEV KUMAR

R,R2 BY ADV. SRI.T.H.ABDUL AZEEZ

R1, BY GOVERNMENT PLEADER SMT.ROSE MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER OF ASSIGNMENT SANCTIONED AS PER G.O (MS) NO.144/91 DT.8.5.1991 TO THE PETITIONER.

EXT.P1(a): TRUE COPY OF THE EYE SKETCH.

EXT.P2: TRUE COPY OF THE JUDGMENT IN O.P.6853/94 DT.12.10.1999 BY THIS COURT.

EXT.P3: TRUE COPY OF THE REPRESENTATION DT.25.10.1996 BEFORE THE GOVT. TO THE PETITIONER.

EXT.P4: TRUE COPY OF THE ORDER DT.9.7.2009 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS

EXT.R2(a): TRUE COPY OF THE REPORT OF THE REVENUE INSPECTOR DT.23.2.1987.

EXT.R2(b): TRUE COPY OF THE REPORT OF TAHSILDAR, KASARAGOD DT.18.05.1987 TO THE R.D.O.

EXT.R2(c): TRUE COPY OF THE GOVT.ORDER NO.G.O(MS)144/91/rd DT.2.4.1991.

EXT.R2(d): TRUE COPY OF THE PETITION DT.31.8.1992 BEFORE THE MINISTER FOR REVENUE TO SET ASIDE THE ORDER EXT.R2(c).

EXT.R2(e): TRUE COPY OF THE CANCELLATION ORDER G.O.(MS)NO.219/91/RD DT.3.5.1994.

EXT.R2(f): TRUE COPY OF THE JUDGMENT OF THIS COURT IN W.A.NO.644/2000 DT.22.2.2001.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.23732 of 2009-J

Dated this the 25th day of February, 2015

JUDGMENT

The Cheriakode Modembil Vishnu Temple Committee, has filed this Writ Petition challenging the cancellation of assignment of land in their favour. As per G.O(MS) 144/91/RD. dt.2.4.1991, which is produced as Ext.R2(c) as well as Ext.P1(in Kannada), Government had accorded sanction for the assignment on registry of an extent of 12 ½ cents of land in R.S. No. 14/2 of Thekkil Village, Kasaragod Taluk in favour of the President of Cherikode Moodambail Vishnu Temple Renovation Committee, Thekkil for Bhoothasthanam and Bhajana Kovil on realisation of land value @ 726/- per cent and other land assignment charges subject to the terms and conditions in the Kerala Land Assignment Rules, 1964.

2. This Government order was challenged by the 2nd respondent in Ext.R2(d) before the Government (addressed to the Minister for Revenue, Kerala) submitted on

31.08.1992. The assignment was sought to be cancelled under Rule 21 of the Kerala Land Assignment Rules on the following grounds: That the property covered by the assignment was being used as a public place for a number of years; on its south western side there is a Mosque; the temple committee wanted to grab the land under the guise that there were remnants of Vishnu Temple; there was law and order situation consequent to the move for assignment; Mosque authorities have also made an application for assignment in respect of the very same land; while the public wanted to preserve the land for public purposes; that the Tahsildar had not issued or published any notice of assignment as required under Rule 12 of the Land Assignment Rules, before granting the assignment; no special reason was recorded for assigning the land to the temple committee; the assigning authority ought to have found that the assignment would only raise law and order problem in the locality; proceedings were initiated earlier in respect of the very same land and after getting Annexures A1 and A2 inquiry reports (produced as Exts.R2(a) and (b) along with the counter affidavit of the 2nd respondent), it was

decided to preserve the land in question for public purposes in order to maintain communal harmony in the locality.

3. Thereafter Government, after hearing the petitioner, cancelled the assignment as per G.O(MS) No.219/91/RD dated 3.5.1994 which is produced as Ext.R2 (e) along with the counter affidavit of the 2nd respondent. In the said order in para.2, it was stated that the plot was registered as A.W. Dry land reserved for Bhoothasthanam as per the revenue records. It was further stated that there were remnants of a structure in the land, which was claimed by the Hindus as that of a Vishnu Temple which was destroyed during the Mappila struggle in 1920 as part of the Khilafath movement. The temple renovation committee applied for assignment of the land in those circumstances on account of which the Muslim community of the locality were provoked and protests were raised against the assignment. In 1988, based on inquiries conducted at departmental level, Government decided not to assign the land to anybody. It was further stated that the Government reviewed the above decision in 1989 and informed the District Collector that there was no harm in considering the request of the temple

committee, for assignment of the land and accordingly 12 ½ cents of land was assigned in the name of the President of the temple committee after setting apart 2 ½ cents of land as an asset to the Muslim mosque and development of the country road. It was at this stage that the General Secretary of Moodambail Jama-ath Committee filed a petition before the Government as against the assignment and the Government ordered to maintain status quo. The petitioner challenged that order directing to maintain status quo by filing O.P No.10670 of 1991 before this Court and that order was quashed by this Court. The 2nd respondent approached the Government at that stage challenging the assignment, pointing out the likelihood of communal disharmony arising on account of the assignment. It is stated that the issue was considered by the Government again and the Government decided to cancel the Pattayam, after giving personal hearing to the petitioner committee. The Deputy Secretary to Govt. conducted a personal hearing on 20.11.1993, in which the counsel for the temple committee was heard. It is thereafter that Govt. cancelled the assignment as per Ext.R2 (e) order dated 3.5.1994. The Government said that if

assignment was cancelled it would provoke the Hindu community and otherwise there will be Muslim tension. Therefore it was decided to cancel the assignment in order to keep the land for public purposes invoking Rule 8(3) of the Kerala Land Assignment Rules.

4. The petitioner approached this Court again as against Ext.R2(e) order in O.P.No.6853 of 1994, which was disposed of on 12.10.1999 by Ext.P2 judgment. Ext.P2 judgment shows that order was challenged on 3 grounds. The 1st ground regarding want of authority for Govt. to review or reconsider the order of assignment and the 2nd ground that the hearing granted was post decisional- were repelled by this court. The third ground that the notice calling for objections against the provisional decision to cancel the assignment, did not contain the reasons for the same, was found correct by this Court. Observing that the reasons for cancellation were known to petitioner, by that time, this Court directed that petitioner may file his detailed objections before Govt. and Govt. shall pass a fresh order in accordance with law, after hearing him and all affected parties. Petitioner, though filed W.A. 644/2000 against Ext

P2 judgment, the same was dismissed as withdrawn, as per Ext R2(f) judgment dated 22.2.2001. The objection filed, based on direction in the judgment Ext P2 is not produced in this Writ Petition. Ext.P4 is the order Govt. passed thereafter, which is impugned in this Writ Petition, which reads as follows:

“I am directed to invite your attention to the references cited. Government have examined the matter in detail and decided to keep the land in question as a public place for the use of general public. In the said circumstances your request in the petition cannot be considered and hence it is rejected.”

5. The learned counsel for the petitioner submits that the impugned order is non-speaking and it does not give any reasons much less which warranted a cancellation of assignment under Rule 8(3).

6. I heard Sri. Kodoth Sreedharan, the learned counsel for the petitioner, the learned counsel Sri T.H.Abdul Azeez appearing for the 2nd respondent as well as Smt. Rose Michael- the learned Government Pleader for the 1st respondent. Sri T.H.Abdul Azeez pointed out that the land in question was assigned without observing any procedural formalities provided in the Kerala Land Assignment Rules and it is cancelled in order to avoid friction in the society.

The learned Government Pleader submitted that the assignment was cancelled in order to see that there is peace and communal harmony in the locality.

7. At the same time the learned counsel for the petitioner pointed out that the land in question was in possession of the temple committee and as per the revenue entries it was reserved for Bhoothastanam. It is stated that the remnants of a Vishnu Temple are still there in the land in question. It is also stated that the Government did not follow any procedural formalities before cancelling the assignment in their favour and that when the land was one already reserved for the bhoothasthanam, the same should not have been varied without following the procedure under the rules before deciding to reserve the land for public purpose. It is argued that none of the grounds for cancellation was available so as to invoke Rule 8(3) of the Kerala Land Assignment Rules i.e there was no mistake of facts or misrepresentation which made the assignment liable to cancellation. It was also pointed out that despite the direction of this Court the Government did not explain the reasons for cancellation while passing the impugned order.

8. According to the 2nd respondent, the reservation of the land for the bhootastanam as well as order of assignment was made without following any procedure prescribed in the rules. Assignment was granted without looking into the inquiry reports.

9. In the light of the above rival contentions I have to examine whether the impugned order suffers from any illegality as alleged and whether interference under Article 226 is warranted.

10. The assignment made in favour of the petitioner was cancelled after receipt of petition from 2nd respondent and after being convinced of the friction which arose in the locality consequent to the assignment. The purpose behind cancellation is to prevent breach of peace and communal feud , when people belonging to different religion raised rival claims over the land in question.

11. The orders of cancellation issued in 1994 (Ext R2 (e)) as well as the counter affidavit of 1st respondent reveal that initially Govt. had decided not to assign the land to anybody, on the basis of the inquiry reports pointing out the chance for breach of peace and continued feud between

people belonging to Hindus and Muslims, in the event of assignment to petitioner. It also reveals that the assignment was made thereafter, after reviewing the earlier decision. It is not explained how the Govt. could arrive at a decision to the contrary, when the inquiry reports pointed out the chaos and confusion created in the locality, in the light of the rival claims raised by people belonging to different religion one for the development of temple and other for the mosque. The fact that the inquiries were made by the revenue officials and inquiry reports produced as Ext R2(a) and (b)) explaining the factual circumstances prevailed in the locality, were furnished in 1987-88, remain undisputed. The rival claims made by Hindus and Muslims over the land in question and the consequences that are likely to result on assignment of land are explained therein along with the recommendation to reserve the land for public purpose.

12. In the counter affidavit of the Govt.. it is stated as follows in para 7:

“It is a fact that if the land is assigned to a particular community either to Hindus or Muslims it will definitely create law and order problem and will affect the peaceful atmosphere in the locality.

Therefore Govt. felt that it is better to keep the land for public purpose by cancelling the assignment and to keep it for public purpose without assigning to anybody.”

Therefore the it is clear the the decision of Govt. to cancel the assignment is taken in public interest and for the welfare of the people at large.

13. It is true that the land was assigned in favour of the petitioner as per Ext.P1/R2(c) order in 1991. But it is also a fact that Govt. has got every authority to cancel the same when circumstances justify the same. Govt. have cancelled the assignment in order to maintain peace in the locality. According to the petitioner the cancellation can be made only on grounds mentioned in Rule 8(3) and none of those grounds mentioned therein were available to invoke the same.

14. Rule 8 (3)of the Kerala Land Assignment Rules reads as follows:

“8(3). The registry shall be liable to be cancelled for contravention of the provisions of sub-rule (1) or sub-rule (2). The registry may be cancelled also, if it is found that it was grossly inequitable or was made under a mistake of facts

or owing to misrepresentation of facts or in excess of the limits of the powers delegated to the assigning authority or that there was an irregularity in the procedure. In the event of cancellation of the registry, the assignee shall not be entitled to compensation for any improvements he may have made on the Land. The authority competent to order such cancellation shall be the authority which granted the registry, or one superior to it:

Provided that no registry of land shall be cancelled without giving the (party or parties affected thereby, a reasonable opportunity of being heard:

Provided further that no assignment of Land shall be cancelled if the annual family income of the transferee occupant does not exceed Rs. 10,000 (Rupees ten thousand only) and who does not own or possess any landed property, anywhere in the State:

Provided also that in the case of a transfer of Land covered by the above proviso the assignee shall not be eligible for further assignment of Land anywhere in the State.”

15. Therefore assignment can be cancelled if it is found to be grossly inequitable or when there is mistake of facts. According to me, both these conditions are available in this case. When breach of peace and communal disharmony

resulted on account of the assignment in the wake of rival claims made by 2 sets of people belonging to different religions, nothing else is required to find the assignment as inequitable.

16. Apart from that when the Govt. was convinced of the mistake it committed by assigning the land to petitioner on the face of inquiry reports indicating situations warranting action under Section 145 of Criminal Procedure Code, on account of assignment, it was perfectly within the power of Government to see that the mistake committed by it was corrected by cancelling the same.

17. An assignment resulting in breach of peace and communal violence, cannot in any circumstance be termed as one equitable. It is seen that Government has issued the impugned order cancelling the assignment in order to see that peace and harmony is maintained in the locality. It is also pertinent to note that in Ext.P2 judgment, this court did not quash Ext.R2(e) order while directing the Government to pass fresh orders after conducting a hearing. At the same time this court repelled all the objections raised by the petitioner as against the order, except in respect of the

furnishing the reasons for cancellation. As the reasons for cancellation were already explained in the impugned order, this court directed the petitioners to submit their explanation treating the order impugned therein as a show cause notice and directed the Govt. to pass fresh orders. In view of the fact that serious objections are raised against the assignment by the members of Muslim community as against the assignment granted to the temple committee and claim for assignment was raised by them also for the same land and that either parties do not have any right to get the land assigned, it is only just and proper to keep the property with Govt. itself. It is the duty of the Govt. to see that there are no law and order problems and to see that peace and communal harmony is maintained in the locality.

18. The learned Counsel for the petitioner relied on a judgment of this court in Youth Voice Arts & Social Cultural Orgn V State of Kerala (2001 KHC 223;2001(3) KLT 909). But it was a case where this court interfered with the assignment of Govt. land to a private party without following the procedure prescribed in rules, contrary to public interest. In this case assignment is cancelled in public

interest and it is to be reserved for public purposes alone. Even though petitioner refers to the procedure prescribed for assignment and cancellation, the petitioner or 1st respondent has not even mentioned the details of any of the procedure, if at all, followed before assigning land to petitioner, especially when contentions are raised by the 2nd respondent that the assignment was not made with publication of any notice under Rule 12. Therefore the decision cited does not have any application in this case, where cancellation is ordered in public interest.

19. When the Govt. on the basis of inquiries made, found that the assignment of land was likely to disturb the public peace and tranquility and to create communal disharmony, it has got every right to prevent the same in order to bring about a cordial and peaceful atmosphere in the locality. In our socialist secular democratic country, the State and its machineries are duty bound to protect and promote secularism and common brotherhood and uphold the constitutional values. In the larger interests of the society and for the welfare of the people, it has to clear the chaos and confusion already created in the locality on account of the assignment of land. The inquiry report Ext.R2(a) & (b) and the uncontroverted contentions in both the counter affidavits- of

respondents 1 and 2 also, point out the imminent danger of communal violence in the locality. The evil consequences, thereof can be avoided if the land in question is kept in tact and used for public purpose. These circumstances are sufficient to come to a finding that the assignment was granted on mistake of facts apart from being inequitable, so as to effect cancellation.

Therefore, I do not find any grounds to interfere with the impugned order under Article 226 of the Constitution of India.

Hence the Writ Petition is dismissed.

Sd/-
(P.V.ASHA, JUDGE)

rtr/