

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 29TH DAY OF JANUARY 2021 / 9TH MAGHA, 1942

W.P. (C) No.807 OF 2021(A)

PETITIONER:

RAJESH N.N. ,
AGED 45 YEARS, S/O.LATE NARAYANAN,
NEDUMANGATTU,
NARIYAMPARA P.O, KATTAPPANA,
IDUKKI DISTRICT.

BY ADVS.
SRI.VARGHESE C.KURIAKOSE
SHRI.SUSANTH SHAJI
SRI.P.J.JOSE

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY,
DEPT. OF REVENUE SECRETARIAT,
TRIVANDRUM, PIN-695 001.
- 2 THE DISTRICT COLLECTOR,
IDUKKI DISTRICT, CIVIL STATION,
KUYILIMALA, PAINAVU,
IDUKKI DISTRICT-685 603.
- 3 THE TAHSILDAR,
IDUKKI TALUK, TALUK OFFICE,
VANCHIKKAVALA, CHERUTHONI,
KERALA-685 602.
- 4 THE SPECIAL TAHSILDAR (LA) ,
O/O. THE SPECIAL TAHSILDAR (LA) ,
KATTAPPANA, IDUKKI DISTRICT-685 508.

SRI.SUNIL NATH N.B. , GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, who is the owner of the property having an extent of 30 cents comprised in Re.Sy.No.17 (Old Sy.No.1/1) in Block No.60 of Kattappana Village, which is lying as 'pulmedu', has filed this writ petition, seeking a writ of mandamus commanding the 4th respondent Special Tahsildar to forthwith take up Ext.P2 application and conclude the proceedings by disposing of the same on merits, after hearing the petitioner, within a time limit to be fixed by this Court. The petitioner has also sought for a writ of mandamus commanding respondents 2 to 4 or the concerned among them to take up Ext.P4 and make necessary arrangements for an early disposal of Ext.P2 application for assignment which proceedings are initiated through file No.1787/2017/KTPA/93 on the file of the 4th respondent.

2. On 12.01.2021, when this writ petition came up for admission, the learned Government Pleader was directed to get instructions as to whether Ext.P2 application is still pending consideration.

3. Heard the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

4. The Kerala Land Assignment Act, 1960 is enacted to

provide for the assignment of Government land. Section 3 of the Act deals with assignment of Government land and Section 4 deals with the procedure to be followed before Government lands are assigned. Section 5 deals with order of assignment.

5. In exercise of the powers under Section 7 of the Kerala Land Assignment Act and in supersession of Rules for assignment of Government lands, issued under notifications I and II G.O(P).No.1029/Rev. dated 18.10.1958 published in the Kerala Gazette Extra Ordinary No.107, the Government of Kerala made the Kerala Land Assignment Rules, 1964 for assignment of Government lands. As per Rule 4, which deals with purposes for which land may be assigned, the Government lands may be assigned on registry for the purpose of personal cultivation, house sites and beneficial enjoyment of adjoining registered holdings.

6. Rule 5 of the Rules deals with maximum limits to be assigned for cultivation; Rule 6 deals with assignment for house site and for beneficial enjoyment; Rule 7 deals with priority to be observed in assignment; Rule 7A deals with preference to kumkidars. Rule 8 deals with conditions of assignment on registry; and Rule 9 deals with collection of arrears of Government dues and issue of provisional patta.

7. In **Varghese Abraham v. State of Kerala, Revenue Department and others [2007 (3) KHC 365]**, a Division Bench of this Court held that various provisions in the Kerala Land Assignment Act and the Kerala Land Assignment Rules would unmistakably show that the Act and the Rules are made to protect the landless people by assigning them Government lands for cultivation and other purposes. The provisions under the Act and the Rules are not intended for enriching persons who hold extensive lands. Assignment on registry of Government lands to such persons would defeat the very purpose of the Act and the Rules. The Division Bench held further that, there is no vested right in any person to claim assignment on registry of Government land.

8. The learned Government Pleader, on instructions, would submit that the 4th respondent has already conducted a personal hearing on 13.01.2021, on Ext.P2 application, and that the said respondent shall pass appropriate orders thereon, within two weeks.

9. The learned counsel for the petitioner would submit that the petitioner was heard by the 4th respondent, on 13.01.2021.

10. Having considered the submissions made by the learned counsel on both sides, this writ petition is disposed of by directing the 4th respondent to pass appropriate orders on Ext.P2 application

made by the petitioner for assignment of land, within a period of two weeks from the date of receipt of a certified copy of this judgment.

11. In **State of U.P. v. Harish Chandra [(1996) 9 SCC 309]** the Apex Court held that no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. In **Bhaskara Rao A.B. v. CBI [(2011) 10 SCC 259]** the Apex Court reiterated that, generally, no Court has competence to issue a direction contrary to law nor can the Court direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law.

12. Therefore, in terms of the direction contained in this judgment, the 4th respondent shall take an appropriate decision in the matter, strictly in accordance with law, taking note of the relevant statutory provisions and also the law on the point.

No order as to costs.

Sd/-
ANIL K.NARENDRA
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

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| EXHIBIT P1 | TRUE COPY OF THE DOCUMENT OF TRANSFER
DATED 22.10.2010 EXECUTED BY SANTHOSH,
S/O.GOPINATHAN. |
| EXHIBIT P2 | TRUE PHOTOSTAT COPY OF THE APPLICATION
DATED 25.11.2017 FOR ASSIGNMENT OF LAND
SUBMITTED TO THE OFFICE OF THE 4TH
RESPONDENT. |
| EXHIBIT P3 | TRUE PHOTOSTAT COPY OF THE RECEIPT DATED
28.11.2017 ISSUED FROM THE OFFICE OF THE
4TH RESPONDENT. |
| EXHIBIT P4 | TRUE COPY OF THE APPLICATION DATED
15.12.2020 SUBMITTED TO RESPONDENTS NO.2
TO 4. |
| EXHIBIT P5 | TRUE PHOTOSTAT COPY OF THE
ACKNOWLEDGMENT CARD SIGNED BY THE 2ND
RESPONDENT. |
| EXHIBIT P6 | TRUE PHOTOSTAT COPY OF THE REGISTRATION
SLIP PERTAINING TO ISSUANCE OF EXT. P4
TO THE RESPONDENTS NO.2 TO 4. |

RESPONDENTS' EXHIBITS: NIL