

K.B. Augustine and Another Vs. State of Kerala, to be represented by The Secretary, Revenue Department Secretariat and Others

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Court : Kerala

Decided On : Jan-21-2016

Judge : Alexander Thomas

Appeal No. : WP(C) No. 33280 of 2009 (D)

Appellant : K.B. Augustine and Another

Respondent : State of Kerala, to be represented by The Secretary, Revenue Department Secretariat and Others

Judgement :

1. The grievance projected in this Writ Petition is relating to regularisation of the title acquired by them by way of assignment proceedings pertaining to their ancestral property which is said to have a total extent of 43 cents comprised in Sy.No.212 of Kannan Devan Hills (KDH) Village. The possessory right in respect of the said property is stated to have been acquired by the maternal grandfather of the petitioner in the year 1930. The said maternal grandfather, by Ext.P-1 registered Will of SRO, Devikulam, executed on 6th Dhanu 1124 (ME) i.e., some time in the year 1949, had bequeathed the said possessory rights pertaining to that property to his daughter, Smt.K.B.Cicily, who is the mother of the petitioners. It is made clear in the recitals of Ext.P-1 registered Will that the possessors were enjoying a 'kuthakappattom lease'. Later, it appears that, the mother of the

petitioners had made requisite application for assignment of the land. It is pointed out that, assignment was granted by the 3rd respondent initially in respect of 15 cents of land out of the said 43 cents and pursuant to this, Ext.P-2 patta was issued by the Additional Tahsildar, Devikulam, on 16.11.1999 in respect of the said 15 cents of land (6.07 ares). It is also pointed out that mutation was effected in the name of Smt.K.B.Cicily by allotting her Thandaper No.482 and land tax was accepted up to years 2003-04 as is discernible from Ext.P-3 land tax receipt dated 4.4.2003. It is further pointed out that later, the 3rd respondent-Tahsildar granted assignment in respect of another 15 cents of land, out of the aforestated total extent of 43 cents of land, as per Ext.P-4 order of assignment dated 23.5.2001. Ext.P-4 assignment order would show the boundaries of the said 15 cents of land in Sy.No.212 of KDH Village in Devikulam Taluk. The northern boundary in Ext.P-4 is shown as the land in possession of the applicant and another applicant, etc., and the southern boundary is shown as the property of one Sri.Nazeer and as well as the patta land of Smt.K.B.Cicily. It is urged by the petitioners that the land in possession of the applicant, Smt.K.B.Cicily, shown as northern boundary in Ext.P-4, is the balance unassigned land of 13 cents out of the 43 cents and that the patta land of Smt.K.B.Cicily shown as southern boundary in Ext.P-4 is the 15 cents of land for which patta has been granted as per Ext.P-2. It is pointed out that no further action was taken by the competent authorities to grant assignment of the balance 13 cents out of the 43 cents of land to the petitioners' mother. It is the case of the petitioners that their maternal grandfather had built a residential dwelling in the property covered by Ext.P-2, which forms part of the 43 cents of land, in 1930s and that Ext.P-5 building tax receipt dated 12.2.1964 issued by the Munnar Panchayat would clearly evidence that the building was in existence long ago in that property. Ext.P-6 is yet another building tax receipt issued by the Munnar Panchayat on 5.1.1983 evidencing door number and other details. Exts.P-5 and P-6 show the building number and other details of the said residential building. Smt.K.B.Cicily, the mother of the petitioners, had executed Ext.P-8 registered will dated 1.3.2006 before the Sub Registrar's Office, Devikulam, bequeathing the proprietary rights in respect of the said 43 cents of land in favour of the petitioners herein, who are her sons.

2. The land tax in respect of the land covered by Ext.P-2 patta was not being received by the Revenue officials concerned since 2004-05 and the formal patta was also not issued in respect of the land covered by Ext.P-4 assignment order and that no steps were taken by the authorities concerned for issuing assignment proceedings in respect of the balance 13 cents of land out of the 43 cents of land. Aggrieved by this, the petitioners have preferred Exts.P-7 and P-10 representations. The petitioners were intimated by Ext.P-11(1) dated 20.10.2009 that as per Ext.P-11(2) dated 10.9.2009 issued by the Sub Collector, Devikulam, it has been informed that, on enquiry through the Tahsildar concerned it has been revealed that patta was already granted to Smt.K.B.Cicily, as per Land Assignment Proceedings LA No.101/99 (presumably this refers to Ext.P-2 as that also bears the Land Assignment Proceedings as LA No.101/1999) and that balance extent of 23.5 cents of land has been granted to Smt.CiCily, by way of kuthakapattom lease and that as the assignment proceedings initiated since the year 1999 have been made the subject matter of vigilance enquiry and other pending judicial proceedings, further steps including reception of land tax can be taken only after reconsideration of the matter after finalisation of such enquiry proceedings, etc. It is pointed out that the petitioners' mother, Smt.K.B.Cicily had died on 31.7.2007 and that the petitioners have now inherited the said rights of Smt.K.B.Cicily pertaining to the said 43 cents of land. It is in these facts and circumstances that the petitioners have preferred the instant Writ Petition (Civil) with the following reliefs:

I). Call for the records leading to the Exhibits produced and issue raised in the W.P.(C). from the respondents.

II) Issue a Writ of Mandamus directing the 1st respondent to consider Exts.P7 and P10 applications submitted by the petitioners before the Government for regularization of title and completion of proceedings for assignment after notice and hearing, within a time frame.

III) issue a writ of mandamus directing the respondents to split the case of the petitioners from the enquiry mentioned in Ext.P11 as the ancient continuing possession of the petitioners is not at all in dispute.

3. The 1st respondent Government has filed a counter affidavit dated 28.5.2012 in this matter. It is stated therein that the property in question is comprised in Sy.No. 212 part of KDH Village in Devikulam Taluk with an extent of about 40 cents of property and that this 40 cents of property includes 23.5 cents of land, granted as kuthakappattom land in terms of the Kuthakappattom Proceedings, KP No.1053/1954 of KDH Village, for which lease amount was remitted till the year 1994-95 and 15 cents of assigned land as per LA No.101/99 of KDH Village. That both these kuthakappattom land and assigned land were sanctioned in the name of Smt.Cicily, the mother of the petitioners. That during 2001, 15 cents of land was got assigned in the name of Smt.Cicily for the land involved in kuthakappattom and the land was assigned, thandapper No.482 and land tax was remitted upto 2004. In order to deal with this averment in para 2 of the counter affidavit, it would be pertinent to note that the total extent of land mentioned in the Writ Petition as also in the recitals in Ext.P-1 registered will and Ext.P-8 registered will is 43 cents of land. The reference to the assignment of 15 cents of land in the name of Smt.Cicily and assignment of Thandapper No.482 has been allotted and permission to receive tax, etc. upto 2003-2004 could only be for the 15 cents of land covered by Ext.P-2 patta dated 16.11.1999, as reinforced by Ext.P-3 land tax receipt, wherein it clearly shows that Thandapper No.482 and land tax has been received upto 2003-04. This may not be in relation to the land covered by Ext.P-4, which is the order of assignment issued on 23.5.2001, for which patta was not issued. So the reference to the year 2001 in para 2 of the counter affidavit, presumably, appears to be a mistake, if the documents produced in the Writ Petition are reckoned. This is more so, in view of the clear admission in para 11 of the counter affidavit regarding the issuance of the assignment order dated 23.5.2001 for 15 cents of land, which could only be in relation to Ext.P-4). It is further pointed out that the assignments during 1999 done by a Deputy Tahsildar, while discharging the duties of the Additional Tahsildar, are questionable and are pending consideration of various courts and the Government and that the patta in this case (presumably Ext.P-2 dated 16.11.1999), is also seen issued by the same incumbent Additional Tahsildar, Devikulam. It is stated in para 4 of the counter affidavit that the assignment order issued to the mother of the petitioners for 15 cents of land in kuthakappattom land as per KP 1053/54 of KDH Village was

against the Kerala Land Assignment Rules, 1964 and against the relevant provisions of the Kuthakappattom Rules, etc. It is further stated that as per the decision taken in the Regional Lease Conference held in the Collectorate, Ernakulam, on 10.8.2010, strict directions had been given to the Village Officers to renew the kuthakappattom cases. It is further pointed out that as per Anx.R1 (a) interim order dated 12.12.2005 issued by the Division Bench of this Court in W.P.(C).No.32000/2005, assignment of lands and renewal of cases pertaining to the lands taken over by the Government under the Kannan Devan (Resumption of Lands) Act, 1971, have also been stayed until further orders. It is further pointed out that as the land in question claimed by the petitioners for assignment is kuthakappattom land, the same cannot be listed for assignment, etc. It is further pointed out in para 8 of the counter affidavit that all cases of assignments sanctioned during 1999 by the then incumbent Deputy Tahsildar, who was discharging the duties of Addl. Tahsildar, are under consideration of various courts and the State Government and hence a decision regarding the pattas issued in 1999, can be made possible only on the basis of a Government decision. It is also averred that at the time of granting kuthakappattom, the mother of the petitioners was in possession of about 40 cents of land comprised in Sy.No. 212 Part of KDH village and out of this, an extent of 15 cents was assigned to her as per LA No.101/99 and the assignment order was issued to her on 23.5.2001 for the 15 cents of land. It is also reiterated that since the assignment of kuthakappattom land was against the Kerala Land Assignment Rules, 1964 and it is also against the relevant provisions of Kuthakappattom Rules, 1947, building tax receipt, Ext.P-5, etc. is not relevant to prove the possession and right over the land in question, etc. References are made also in para 10 of the counter affidavit regarding the communications in Ext.P-11 series issued by the Addl. Secretary to Government as well as the Sub Collector, Devikulam. Para 11 of the counter affidavit clearly admits about the assignment order issued on 23.5.2001 in favour of the petitioners' mother for the 15 cents of land involved in kuthakappattom proceedings as per KP 1053/54 of KDH Village, etc. It is again contended therein that assignment of kuthakappattom land is against the provisions of the Kerala Land Assignment Rules, 1964. It is further stated in paras 7 and 12 of the counter affidavit that the Land Board Award concerned does not include the name of the

petitioners' mother in that award, etc.

4. Heard Sri.N.M.Varghese, learned counsel appearing for the petitioners and Smt.Susheela.R.Bhat, learned Special Government Pleader (Revenue) appearing for the respondents.

5. As referred to earlier hereinabove, the averments in para 2 of the counter affidavit appear to be based on a confused understanding regarding the patta issued to the petitioners' mother in respect of the 15 cents of land in the year 1999, pertaining to 15 cents of land and the assignment order issued in 2001 pertaining to another 15 cents of land. Whether the total extent of land is 43 cents as averred by the petitioners or 40 cents as averred in the counter affidavit, is a matter, which could be decided only after proper examination and measurement of the land in question. References to 2001 assignment proceedings in the counter affidavit, more particularly para 2 thereof, could only be in relation to Ext.P-4 dated 23.5.2001. Prior to the issuance of Ext.P-4, it appears that assignment was granted to the petitioners' mother in respect of another 15 cents of land, which forms part of the 43 cents of land and this culminated in the issuance of Ext.P-2 dated 16.11.1999. The allotment of Thandapper account 482 and reception of land tax upto 2003-2004 could only be in relation to the said land covered by Ext.P-2 patta dated 16.11.1999 and not to Ext.P-4 assignment order dated 23.5.2001. From a perusal of Ext.P-4 order and on reference to the boundaries explicitly mentioned in Ext.P-4, as referred to earlier hereinabove, it can be seen that the land covered by Ext.P-2 patta dated 16.11.1999, prima facie appears to be distinct and separate from the 15 cents of land covered by Ext.P-4 assignment order dated 23.5.2001. It is the claim of the petitioners that these two pieces of land coming to 15 cents each, form part of the total 43 cents of land possessed by the petitioners' mother and earlier by their maternal grandfather. Therefore, going by the documents produced by the petitioner, the balance unassigned land, out of the 43 cents of land, comes to 13 cents of land. No materials are produced in the counter affidavit of the respondents to controvert this aspect of the matter. The discrepancy in the total extent of land could only be resolved in the manner referred to earlier hereinabove. From a reading of the counter affidavit, it is not very clear whether both the lands covered by Exts.P-2 and P-4 were the subject

matter of kuthakappattom lease. This is because, the counter affidavit explicitly makes mention only about 15 cents of land as being involved in kuthakappattom lease. But the thrust of the submissions and contentions in the counter affidavit is that the entire extent of land in possession of the petitioners' mother is kuthakappattom land and therefore, the same cannot be the subject matter of assignment because of the provisions contained in the Kerala Land Assignment Rules and that such assignment would also be against the provisions contained in the kuthakappattom rules, etc. The recitals in Ext.P-1 registered will, said to have been registered and executed in 1949 before the Sub Registrar's office, Devikulam, also disclose that the entire extent of land was then enjoyed on the basis of a kuthakappattom lease or arrangement. So one of the matters to be examined for consideration is as to whether there are any rules in the Kerala Land Assignment Rules and in the kuthakappattom rules, by which the lands covered by kuthakappattom rules have been made ineligible for grant of assignment.

6. The learned Government Pleader has made extensive reference to the provisions contained in the Kannan Devan Hills (Resumption of Lands) Act, 1971 and Kannan Devan Hills (Reservation and Assignment of Vested Lands) Rules, 1977 framed thereunder. The aforesaid Act (referred to as KDH Act) provides that the same has been deemed to have come into force on 21.1.1971.

7. The Preamble of the KDH Act reads as follows:-

The Kannan Devan Hills (Resumption of Lands) Act, 1971 (Act 5 OF 1971)

An Act to provide for the resumption of lands other than Plantations in the Kannan Devan Hills village in the Devicolam taluk of the Kottayam district and for the Distribution of such lands for cultivation and purposes ancillary thereto Preamble.- WHEREAS the lands comprising the entire revenue village of Kannan Devan Hills in the Devicolam taluk of the Kottayam district had been given on lease by the then Poonjar Chief to late Mr. John Daniel Munroe of London and Peermade on the 11th day of July, 1877, for coffee cultivation;

AND WHEREAS the right, title and interest of the lessor had been assumed by the former Government of Travancore;

AND WHEREAS by such assumption the lands have become the property of the former Government of Travancore;

AND WHEREAS the Government of Kerala have become the successor to the former Government of Travancore;

AND WHEREAS large extent of agricultural lands in that village has not been converted into plantations utilised purposes of plantation and such lands are not required, for purposes of the existing plantation;

AND WHEREAS the Government consider that such agricultural lands should be resumed for the distribution thereof for cultivation and purposes ancillary thereto; Be it enacted in the Twenty-second Year of the Republic of India as follows: -

The Statement of objects and Reasons of the KDH Act provided as follows:-

Statement of objects and Reasons

Act 5 of 1971

By a document dated 11/07/1877, the Chief of the Poonjar Edavagai granted a lease without limit of time to late Mr.J.D.Munroe of a tract of land known as Anchanad and Kannan Devan Hills, later carved out as the revenue village of Kannan Devan Hills in Devicolum Taluk, for coffee cultivation on an annual rent of Rs.3,000. The said tract has an extent of 214.74 square miles, that is 1,37,424 acres, out of which 1,27,905 acres are now in the possession of Kannan Devan Hills Produce Company Limited. The remaining area of 9,519 acres, excluding the extent in the possession of Government and the Kerala State Electricity Board, is now with the Anglo American Direct Tea Trading Company Limited, a sister Tea Planting Concern of Kannan Devan Hills Produce Company Limited, the Thalayar Tea Company Limited, the Thalayar Coffee Estate Limited, the Malayalam Plantations Limited, another foreign owned Tea Planting Company and three other individuals.

2. By the Royal Proclamation dated 24/09/1899, which kept in tact the obligation of the lessee to pay the rent to the Poonjar Edavagai, the rights of the Poonjar

Edavagai, in or over the said tract were vested in the Government of Travancore. Therefore, the lands are Government owned lands and persons in possession are only lessee under the Government. But the K.D.H.P.Co.Ltd., which is the principal land holder in that village, seems to be of the view that what its predecessor in interest late Mr.J.D.Munroe, obtained from the Poonjar Chief was not a perpetual lease but an outright sale of the said tract of land. Certain litigations are pending in Civil Courts between the K.D.H.P.Co.Ltd., and the Government about the nature and extent of the rights of the company over the said tract of land.

3. Though the lands are Government owned lands and hence exempt under Section 81(1)(a) of the Kerala Land Reforms Act, 1963, from the provisions relating to ceiling, the K.D.H.P. Co.Ltd., on the basis that the lands are its absolute property, has filed a ceiling return under the provisions of the said Act before the Land Board offering for surrender 6,157.49 acres of land and another block of 21,353.60 acres if the Government refuse their request to grant exemption to that block of land from the provisions of the said Act under Section 81(3)(a) thereof on account of the special use to which such land is put, namely, wildlife preservation.

4. The Government are satisfied that large extent of agricultural lands in the Kannan Devan Hills village has not been converted into plantations or are utilised for purposes of plantations and that such lands are not required for the purposes of the existing plantations. The Government consider that such agricultural lands should be resumed for the distribution thereof for cultivation and purposes ancillary thereto. For instance, in the case of the K.D.H.P.Co. itself, the actual extent planted with tea is only 23,570.95 acres and building sites, etc., will come only to 2,605.35 acres. Perhaps the Company may require certain more extent of land for purposes ancillary to the cultivation of tea and preparation of the same for the market.

5. In view of the contending claims between the Government and the K.D.H.P.Co. Ltd., it is not practicable or expedient to resume such lands by proceedings before Civil Court or by resort to the provisions of the Kerala Land Conservancy Act, because such proceedings would lead only to long drawn out and costly litigations. The lands being Government owned lands, it is not proposed to pay any

compensation for the lands resumed. Therefore, a special legislation for resumption of such lands seems to be best measure to speedily achieve with minimum cost the object of the Government.

6. As the Legislative Assembly was not in session, the Kannan Devan Hills (Resumption of Lands) Ordinance, 1971 (3 of 1971) was promulgated by the Governor on the 21st day of January, 1971 to achieve the above object. The Bill seeks to replace that Ordinance by an Act of the Legislature.

Sec.3 of the Act reads as follows:-

Sec.3:Vesting of possession of certain lands.- (1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections (2) and (3), with effect on and from the appointed day, the possession of all lands situate in the Kannan Devan Hills village in the Devicolam taluk of the Kottayam district shall stand transferred to and vest in the Government free from all encumbrances, and the right, title and interest of the lessees and all other persons, including rights of mortgagees and holders of encumbrances, in respect of such lands, shall stand extinguished.

(2) Nothing contained in sub-section (1) shall apply in respect of -

- a) plantations, other than plantations belonging to trespassers;
- b) buildings, other than buildings belonging to trespassers, and lands appurtenant to, and necessary for the convenient enjoyment or use of, such buildings;
- c) play-grounds and burial and burning grounds; and d) lands in the possession of the Central Government or any State Government or the Kerala State Electricity Board.

(3) Nothing contained in sub-section (1) shall apply in respect of so much extent of land held by a lessee under his personal cultivation as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto.

Sec.4 of the Act provides as follows:-

Sec.4:Restoration of possession of lands in certain cases.- (1) Where the person in possession of a plantation considers that any land, the possession of which has vested in the Government under sub-section (1) of section 3, --

a) is necessary for any purpose ancillary to the cultivation of plantation crops in such plantation or for the preparation of the same for the market; or

b) being agricultural land interspersed within the boundaries of the area cultivated with plantation crops, is necessary for the protection and efficient management of such cultivation; or

c) is necessary for the preservation of an existing plantation, he may, within sixty days from the date of publication of this Act in the Gazette, apply to the Land Board for the restoration of possession of such land.

(2) An application under sub-section (1) shall be in such form as may be prescribed.

(3) On receipt of an application under sub-section (1), the Land Board shall, after giving the applicant an opportunity of being heard and after such inquiry as it deems necessary, by order determine the extent of land necessary for the purpose or purposes specified in the application, and such order shall be final.

(4) As soon as may be after determining the extent of land necessary for the purpose or purposes specified in the application under sub-section (1), the Land Board shall cause such land to be demarcated and put the applicant in possession of such land.

(5) Any person put in possession of any land under sub-section (4) shall be entitled to possess that land on the same terms and subject to the same conditions on or subject to which he was holding such land immediately before the appointed day.

Sec.9 of the Act reads as follows:-

Sec.9:Assignment of lands.- (1) The Government shall, after reserving such extent of the lands, the possession of which has vested in the Government under sub-section (1) of section 3 (other than lands, the possession of which has been restored under section 4), may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population to be settled on such lands, assign on registry the remaining lands to agriculturists and agricultural labourers in such manner, on such terms and subject to such conditions and restrictions, as may be prescribed.

(2) The Government may, by notification in the Gazette, delegate their power of assignment under sub-section (1) to the Collector, subject to such restrictions and control as may be specified in the notification.

8. Sec.3(1) of the KDH Act provides that notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections (2) and (3), with effect on and from the appointed day, the possession of all lands situate in the KDH village in the Devikulam Taluk of Kottayam district shall stand transferred to and vest in the Government free from all encumbrances and right, title and interest of the lessees and all other persons including rights of mortgagees and holders of encumbrances, in respect of such lands, shall stand extinguished. However, Clause (b) of sub-section (2) of Sec.3 provides that nothing contained in Sec.3(1) shall apply in respect of buildings, other than buildings belonging to trespassers and lands appurtenant to and necessary for the convenient enjoyment or use of such buildings. Further, sub-section (3) of Sec.3 clearly mandates that nothing contained in Sec.3(1) shall apply in respect of so much extent of land held by a lessee under his personal cultivation as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto. Sec.4 deals with reservation of possession of land in certain cases. Subsection (1) of Sec.9 of the Act provides that the Government shall, after reserving such extent of the lands, the possession of which has vested with the Government under Sec. (1) (other than lands, the possession of which has been restored under Sec.4) may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population to be

settled on such lands, assign on registry the remaining lands to agriculturalists and agricultural labourers in such manner, on such terms and subject to such conditions and restrictions, as may be prescribed. Sec.9(2) provides that the Government may, by notification in the gazette, delegate their power of assignment under Sec.9(1) to the Collector, subject to such restrictions and control as may be specified in the notification. Incidentally, Sec.2(c) defines, Collector to mean the District Collector, Kottayam or any other officer not below the rank of a District Collector appointed by the Government by notification in the Gazette, to exercise the powers and perform the functions of the Collector under the above Act. The KDH (Reservation and Assignment of Vested Lands) Rules, 1977, has been promulgated with effect from 21.2.1977, by virtue of the enabling powers conferred under Sec. 9 of the KDH Act. Rule 5(1) of the said KDH Rules mandates that the extent of land that may be assigned to a person under those rules shall not ordinarily exceed one hectare. Sub-rule (2) of Rule 5 further provides that only one member of the family shall be eligible for assignment of land under those rules. The eligibility condition is prescribed in Rule 6. The order of preference is envisaged in Rule 7 thereof. Rule 7(2) reads as follows:

Rule 7. Order of preference.- (1).....

(2) In assigning the remaining extent of oland, the following order of preference shall, as far as practicable, be observed namely:-

(a) First preference shall be given to persons who ordinarily reside in the village where the land proposed to be assigned is situated.

(b) Second preference shall be given to persons who ordinarily reside in villages adjacent to the village in which the land is situated.

(c) Third preference shall be given to persons who ordinarily reside in the Taluk in which the land is situated.

(d) The remaining extent, if any, shall be assigned to the applicants from the other Taluks of Idukki District or other Districts.

9. The preparation of list of assignable lands and application for assignment is envisaged in Rule 10. The further procedure for enquiry into claims and objections is provided in Rule 11 of the KDH Rules. The procedure for assignment is referred to in Rule 12. The form of order of assignment and land value to be paid are dealt with in Rules 13 and 14 respectively. Survey and demarcation charges and formal issue of patta are dealt with in Rules 15 and 16 of the KDH Rules respectively.

10. From a scanning of the provisions contained in the KDH Act, 1971, more particularly, Secs.3, 4 and 9 thereof, it can be seen that though some of the recitals in the Preamble of the Act are in very broad and sweeping terms that the Act is to provide resumptions of lands other than plantations in the KDH Village in Devikulam Taluk, the non-obstante clause in Sec.3(1) is to the effect that it is only subject to the provisions in Sec.3(2) and Sec.3(3) that on and with effect from the appointed day, the possession of all lands situated in the KDH Village shall stand transferred to and vested in Government free from all encumbrances and the right title and interest of the lessees and all other persons including rights of mortgagees and holders of encumbrances in respect of such land, shall stand extinguished. Therefore in other words, the Legislature has unequivocally mandated that such vesting process from the appointed day as per Sec.3(1) of the 1971 Act will be subject to the provisions in Secs.3(2) and 3(3) thereof. Sec.3(2) mandates that nothing in Sec.3(1) shall apply in respect of the four categories mentioned in Clauses (a) to (d) thereof, viz., (a) plantations, other than plantations belonging to trespassers; (b) buildings, other than buildings belonging to trespassers, and lands appurtenant to, and necessary for the convenient enjoyment or use of, such buildings; (c) play-grounds and burial and burning grounds; and (d) lands in the possession of the Central Government or any State Government or the Kerala State Electricity Board. So also, it is further mandated in Sec.3(3) that nothing in Sec.3(1) shall apply in respect of so much extent of land covered by a lessee under his personal cultivation as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto. So if the land in question fulfills any of the categories expressly enumerated in Sec.3(2) or Sec.3(3) as on the appointed day of the Act, then such land will not come under the width of the vesting process mandated in Sec.3(1) as on the appointed day. Further, a reading

of Sec.4 which deals with restoration of possession of lands in certain cases, would make it clear that a land which may even otherwise come within the sweep of the vesting process under Sec.3(1) as on the appointed day, the same could be restored to possession, if the person in possession of a plantation considers that any such land fulfills any of the following conditions, viz., (a) that the land is necessary for any purpose ancillary to the cultivation of plantation crops in such plantation or for the preparation of the same for the market; or (b) the land being agricultural land interspersed within the boundaries of the area cultivated with plantation crops, is necessary for the protection and efficient management of such cultivation; or (c) the land is necessary for the preservation of an existing plantation, then such person shall apply to the Land Board for restoration of possession of such land forming part of Sec.3(1) lands, within the period stipulated in Sec.4(1). The further procedures in that regard are laid down in Sub sections (2) to (5) of Sec.4. A scanning of Sec.9(1), which deals with assignment of lands could make it clear that the Government shall after reserving such extent of Sec.3(1) lands the possession of which has become vested in the land [other than Sec.4 restored lands], as may be necessary for purposes directed towards promotion of agriculture or the welfare of agricultural population to be settled on such land assign on registry the remaining lands to agriculturists and agricultural labourers in such manner on such prescribed conditions and restrictions. So, the subject matter of lands that can be assigned under Sec. 9 are Sec.3 (1) vested lands, other than Sec.4 restored lands. So the essential condition required for the land to come within the permissible zone of assignment under Sec.9(1) is that it should be Sec.3(1) vested lands other than Sec.4 restored lands. If the land in question comes within the zone of any of the categories envisaged in Sec.3(2) or Sec.3(3) as on the appointed day, then such land would not fulfill the basic requirement of the lands vested under Sec.3(1) as on the appointed day and in such a case, such a land coming within Sec.3 (2) or Sec.3(3) as on the appointed day, cannot be the subject matter of the land that can be assigned under Sec.9 and therefore the assignment of such Sec.3(2) or Sec.3(3) lands, will not be governed and regulated by the provisions of Sec.9 of the KDH Act, 1971 and the provisions of the aforesaid KDH Assignment of Vested lands Rules, 1977. In other words, the assignment of such Sec.3(2) or Sec.3(3) lands will be regulated

by the provisions of other enactments like the Kerala Land Assignment Act, 1963 and the rules framed thereunder, etc. subject to fulfillment of necessary conditions prescribed in such statutory provisions. On the other hand, if the land in question is Sec.3(1) land other than Sec.4 restored land, which comes within the zone of assignable land in Sec.9(1), then the assignment of such a land will be fully regulated by the provisions of Sec.9(2) of the KDH Act, 1971 and the KDH Vested Lands Assignment Rules, 1977 framed thereunder.

11. The major thrust of the objections raised by the respondents is that the aforestated land in question is the subject matter of kuthakappattom lease and that the petitioners' mother was enjoying possession of those lands based on such kuthakappattom lease. The kuthakappattom proceedings referred to is KP 1053/1954, which is obviously in the year 1949. Though Ext.P-1 registered will refers to a kuthakappattom lease even as in the year 1959, this Court need not detain its attention regarding that, as it is admitted in the counter affidavit of the respondents that the kuthakappattom lease was in existence at least in the year 1954, which is long prior to the coming into force of the aforestated KDH Act, 1971.

12. Sub-sec. (3) of Sec.3 of KDH Act reads as follows:

Sec.3. Vesting of possession of certain lands.-

(1)

(2)

(3) Nothing contained in sub-section (1) shall apply in respect of so much extent of land held by a lessee under his personal cultivation as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto.

The crucial aspect of the matter is that not all lessees whose lands would come within the protective umbrella of sub-sec.(3) of Sec.3. Lessee , as understood in the KDH Act, is defined in Sec.2(e) thereof which provides as follows:

'Sec.2. Definitions.- In this Act, unless the context otherwise requires,-

(a)

x x x x x

(e) lessee means a person in possession of any land situate in the Kannan Devan Hills village in the Devicolam taluk of the Kottayam district, who has derived the right to such possession by means of a document executed by late Mr. John Daniel Munroe of London and Peermade or any person claiming through him or any person claiming under or through any of the successors-in-interest of the said Mr. John Daniel Munroe.'

Therefore, it is only those lessees, who have derived their right to possession by means of a document executed by late John Daniel Munroe or any person claiming through him or any person claiming under or through any of the successors-in-interest, alone would come within the meaning of lessee and therefore, unless the claim satisfies the definition of lessee as defined under Sec.2(e), there is no question of invoking exclusionary clause contained in sub-sec. (3) of Sec.3. In the instant case, though the petitioners have made generalised and vague averments in para 2 of the Writ Petition, it is averred in para 3 of the Writ Petition that the petitioners' maternal grandfather had come into possession of the above said 43 cents of property in the year 1930 from the Engineering Department of the KDH Company which is Government land in tenure and it is in the possession of the Company, etc. Ext.P-1 registered Will said to be executed by the petitioners' maternal grandfather in the year 1949, clearly recites that the possession of the 43 cents of land in question was acquired on the basis of 'pandaravaka kuthakappattom' in respect of the Government land granted by the Engineering Department. Ordinarily, the terminology 'pandaravaka kuthakappattom' conveys the meaning that it is the kuthakappattom lease granted by the Government. Moreover, the 1st respondent has clearly and cogently pleaded in paras 2 and 4 of his counter affidavit dated 28.5.2012 that 23.5 cents of land out of 40 cents of property is kuthakappattom land as per K.P.1053/54 of KDH Village for which lease amount was remitted till the year 1994-95 and further that 15 cents of land involved in the assignment is also kuthakappattom land as

per K.P.1053/54 of KDH Village. The petitioners have not controverted this specific and cogent averments in the counter affidavit by filing reply affidavit. Moreover, the petitioners do not have a case that the recitals in Ext.P-1 registered Will regarding pandaravaka kuthakappattam are factually wrong. Therefore, this Court can proceed only on the basis that the predecessor-in-interest of the petitioners had acquired possession of the land in question only on the basis of kuthakappattom lease granted by the Governmental authorities concerned. Kuthakappattom leases were regulated by various Government Orders earlier issued by the Government of the Travancore from time to time. From a recital of the Kuthakappattom Rules of the year 1947 framed under the Travancore Land Assignment Act (Act III of 1097 ME) it can be seen that it has been issued to supersede the earlier rules for the grant of the leases of Government lands for cultivation contained in G.O.R.O.C.No.4848/42/Rev. dated 28.11.1944 and it is thereafter that the Kuthakappattam Rules, 1947 were framed under the aforementioned enactment made in the year 1097 (ME) which were brought into force with effect from 6.5.1947. Therefore, the lease arrangement enjoyed by the predecessor-in-interest of the petitioners being a kuthakappattom lease cannot be said to come within the ambit of Sec.2(e) of the KDH Act and therefore, the land in question will not come within the exclusionary zone of sub-sec.(3) of Sec.3 of the KDH Act. May be, at best, even if the petitioners' contentions are accepted, the building covered by Ext.P-5 building tax receipt dated 12.2.1964 and Ext.P-6 building tax receipt dated 5.1.1983 and the land appurtenant thereto could possibly come within the ambit of Sec.3 (2)(b) of the KDH Act. But, that may not be of any avail as far as the question regarding the assignment of the entire extent of 43 cents/40 cents of land is concerned. The petitioners do not have a case that the aforestated entire extent of 40 cents of land would come within the ambit of sub-sec.2 of Sec.3. The petitioners do not have a case that their land would come within the ambit of Sec.4(1) of the Act dealing with reservation. Moreover, it is specifically and cogently averred in paras 7 and 12 of the counter affidavit of the 1st respondent that the aforestated land in question is not included in the list of land alienated by the Company to the beneficiaries covered by Land Board Award concerned said to have been passed under Sec.4 of the Act. Sec.9 of the KDH Act reads as follows:

Sec.9. Assignment of lands.-(1) The Government shall, after reserving such extent of the lands, the possession of which has vested in the Government under Sub-section (1) of Section 3 (other than lands, the possession of which has been restored under Section 4), may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population to be settled on such lands, assign on registry the remaining lands to agriculturists and agricultural labourers in such manner, on such terms and subject to such conditions and restrictions, as may be prescribed.

(2) The Government may, by notification in the Gazette, delegate their power of assignment under sub-section (1) to the Collector, subject to such restrictions and control as may be specified in the notification.

Therefore, from a reading of Sec.9, it can be seen that if all lands which come within the ambit of Sec.3(1) of the Act other than the lands, possession of which has been restored under Sec.4 could be the subject matter of reservation of assignment of land to eligible persons as per Sec.9 for promotion of agriculture or welfare of the agricultural population, etc. The upshot of the discussion is that going by the pleadings and materials on record, the land in question will not come within the exclusionary clause of sub-secs.(2) and (3) of Sec.3 and would come within the ambit of Sec.3(1). As the land in question also does not come within the ambit of Sec.4(1), it would then come within the scope and ambit of assignment of lands as dealt within Sec.9 of the Act. Therefore, the mandatory procedure contemplated under Sec.9(2) of the KDH Act should have to be strictly adhered to. In that situation, the assigning authority under Sec.9(2) of the KDH Act and aforesaid KDH Rules would either be the District Collector concerned or an officer of the rank of the District Collector appointed for the purpose by the Government. In the instant case, Ext.P-2 patta is seen issued by the Additional Tahsildar and Ext.P-4 assignment order is seen issued by the Tahsildar. The specific averment in the counter affidavit that the incumbent officer, who issued pattas like the one in Ext.P-2, was actually an officer in the rank of Deputy Tahsildar, who was only discharging his duties as Additional Tahsildar. The fact that he had no competence at all to issue such assignment proceedings has not been controverted or rebutted by the petitioners by filing reply affidavit or by

placing specific and concrete materials in that regard. Moreover, a mere perusal of the materials, it can be seen that the assignment has to be made by the Government or officer of the rank of District Collector as may be specified by the Government. Therefore, the contention in the counter affidavit that the assignment proceedings in this case has been made by an incompetent officer stands clearly established.

13. The respondents have also raised a specific contention in their counter affidavit that the land in question, is ineligible for the subject matter of the assignment as it is covered by kuthakappattom lease has to be considered. It has been repeatedly averred and contended in the pleadings in the counter affidavit that the land in question is covered by kuthakappattom lease and reference has been made to proceedings No.K.P.1053/54 of KDH Village and on this basis, it is contended that the land cannot be the subject matter of assignment either under the Kerala Assignment Rules, 1964 or Kuthakappattam Rules, 1947, etc. It is specifically contended in para 4 of the counter affidavit that such assignment of kuthakappattam land is against the provisions of the Kerala Land Assignment Rules and the provisions of the Kuthakappattam Rules. On a perusal of the Kerala Land Assignment Act, 1960, it can be seen that there are no provisions made thereunder by which the land covered by kuthakappattam lease has been made ineligible for assignment of land. The specific contention is that Kerala Land Assignment Rules, 1964 provides for such bar and ineligibility. From a reading of Kerala Land Assignment Rules, it can be seen that Rule 1A deals with exemptions, which reads as follows:

Rule 1A. Exemptions.-Nothing contained in these rules shall apply to or affect,-

- (i) lands situated within the limits of a corporation, Municipality or Cantonment or within such other areas as Government may, by order specify;
- (ii) assignment of Government lands made for the specific purpose of cultivating Tea, Coffee, Rubber, Cinchona and Cardamom;
- (iii) assignment of Government lands under any special rules other than Kuthakapattom Rules of 1947 whether already made or to be made in respect of

lands reserved for allotment under such rules;

(iv) Government lands held under special tenures like Kandukrishi, Viruthi, etc;

(v) Government land held under any special agreement with the Government;

(vi) Government lands which stand transferred to and vested in the Panchayats under the Kerala Panchayats Act, 1960 (32 of 1960).

From a mere reading of clause (iii) of Rule 1A it is clear that assignment of Government lands under any special rules other than Kuthakappattam Rules of 1947 whether already made or to be made in respect of lands reserved under such rules, has been exempted from the purview of Kerala Land Assignment Rules. Therefore, what is exempted is only those assignment of Government lands under any special rules other than the Kuthakappattam Rules, 1947. Therefore, the proposed assignment is in respect of a lease granted by Kuthakapattam Rules, 1947, then it would not come within the ambit of exemption of clause (iii) of Rule 1A of the above Kerala Land Assignment Rules. So such lands covered by a lease granted under the Kuthakappattam lease granted under the Kuthakappattam Rules 1947 would certainly come within the broad sweep of inclusion and applicability under the Kerala Land Assignment Rules, 1964. The respondents do not have a case that the case in hand would fall within any exemption as envisaged under Rule 1A. Therefore, the aforestated contention raised by the respondents and reiterated by the learned Special Government Pleader (Revenue) has absolutely no legs to stand. Since it is the admitted case of the Government that the land is covered under the Kuthakappattam Rules, 1947, it is only to be held that a land covered by a Kuthakapattam lease will not come under the exclusion under Rule 1A of the Kerala Land Assignment Rules. The respondents have not been able to point out any provision in the Kuthakappattam Rules, 1947, whereunder such land cannot be the subject matter of assignment either under the Kerala Assignment Rules, 1964 or any other statutory provisions. Therefore, the aforesaid contention raised by the respondent is only to be held as untenable and unsustainable. Accordingly, as the petitioners' land is covered by kuthakappattam lease as specifically admitted repeatedly in the pleadings in the counter affidavit of the Government, it is only to be held that the land in question could validly be the

subject matter of assignment as already held herein above. So, as discussed earlier hereinabove, the applicable Rule and Act for grant of assignment of land in the instant case is only the KDH Act and the KDH Rules framed thereunder and not the Kerala Land Assignment Act, 1960 and the Kerala Land Assignment Rules, 1964 framed thereunder. Therefore, the provisions in the KDH Act, 1971, more particularly, Sec.9 thereof and the KDH Vested Lands Assignment Rules, 1977 framed thereunder, will be the Special Law as far as the subject of assignment of lands as in the instant case coming within the zone of Sec.9(1) of the KDH Act, is concerned. So, the provisions in such Special Law will prevail over general provisions as in Kerala Land Assignment Act and such other Rules in the subject of assignment, as far as Sec.9(1) land is concerned. Therefore, even if there are any restrictive conditions in such provisions as in the Kuthakappatam Rules, the same cannot whittle down or fetter the assignment of such lands as in the instant case covered by Sec.9(1) of the KDH Act and its assignment will be fully regulated by the provisions of the KDH Act and the Rules thereunder, which constitute the Special Law as far as that subject matter of assignment is concerned. So, the provisions in Kuthakappatam Rules, Kerala Land Assignment Act and Rules thereunder, will not be hurdles as far as assignment of Sec.9(1) land is concerned.

14. The respondents in the counter affidavit has also raised a plea that in view of Anx.R-1(a) interim order dated 12.12.2005 issued by the Division Bench in W.P.(C).No.32000/2005, now there is bar for consideration of assignment of lands taken over by the Government under the KDH Act, 1971. Anx.R-1(a) interim order was granted by the Division Bench on 12.12.2005. On verification it is seen that the said Writ Petition, W.P.(C).No.32000/2005 (in which Anx.R-1(a) interim order has been granted) has already been finally disposed of by the Division Bench as per judgment dated 25.5.2012 in that Writ Petition. A reading of the said judgment would show that the following are the prayers in that Writ Petition:

1. Issue a writ of mandamus directing the respondents 2 to 5 to desist from assigning nearly thousand hectares of forest area at Mankulam in Idukki District to plantation owners.

2. Issue a writ of mandamus directing the respondents 2 to 5 not to extend and renew the forest land leases comprising nearly 10,000 hectars in Cardamom Hill Reserve (CHR) in Idukki District and Nelliampathy.

3. Issue a writ of mandamus directing the respondents 2 to 5 to refrain from undertaking any deforestation activities in the forest area at Mankulam, Cardamom Hill Reserve, (CHR) in Idukki District and Nelliampathy without the prior approval of the Government of India, Ministry of Environment and forests as provided under Section 2 of the Forest Conservation Act, 1980.

4. Issue a writ of mandamus directing the respondents to ensure that the protection of wild life in the forest area especially the endangered species of wild animals mainly elephants, Neelgiri tarhs, tigers and leopards and to prevent the destruction of their habitats lying in the forest area earmarked for assignment and extension of lease.

5. Issue a writ of mandamus directing the respondents 2 to 5 to declare the forest area earmarked for assignment and extension of lease to Mankulam Cardamom Hill Reserve (CHR) in Idukki District and Nelliampathy and to take over possession of it as they are ecologically fragile land as defined under S.4 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act 2003 (Act 21 of 2005). 6. Such other reliefs that this Hon'ble Court deems fit and proper.

A perusal of the said prayers would make it clear that almost all the prayers are directed in respect of various areas of Mankulam, Cardamom Hill Reserve (CHR) in Idukki District and Nelliampathy and various areas, etc., and that main prayers therein are not in any way seen relatable to the assignment of lands under the KDH Act, 1971. However, from the factual discussion in that judgment, it can be seen that there are some references regarding the lands in KDH Village, etc., and the subsequent developments thereto including the constitution of Munnar Special Tribunal Act, 2010, etc. On a reading of the said judgment it is clear that no specific directions have been given in that judgment as regards the assignment of lands as covered under Sec.9(2) of the KDH Act and the KDH Rules framed thereunder. The learned Special Government Pleader (Revenue) has also fairly submitted that the said judgment of the Division Bench will not in any way stand in

the way of consideration of petitioners' case for assignment of land in terms of Sec.9(2) of the KDH Act and the KDH Rules framed thereunder. The said submission made on behalf of the respondents is also recorded.

15. The next issue to be considered is as to whether the petitioners have to be relegated to any alternative remedy as provided in Munnar Special Tribunal Act, 2010. The bar of jurisdiction in Sec.10 of the Act deals only with civil court. Sec.4 thereof deals with transfer of disputes to the Tribunal which reads as follows:

Sec.4. Transfer of disputes to the Tribunal.-Notwithstanding anything contained in any other law for the time being in force or order, decree or judgment, all disputes in respect of Munnar area pending before any Court or any other authority except the High Court and the Supreme Court shall stand transferred to the Tribunal immediately on the constitution of the Tribunal under this Act.

Therefore, the matters pending in the High Court and the Supreme Court are expressly excluded from the purview of Sec.4. It is also pointed out that there are some pending litigations before this Court regarding the constitutionality of the aforesaid Munnar Special Tribunal and also regarding the alleged lack of clarity regarding interpretation of the word disputes and also regarding the jurisdiction of the Tribunal as per that Act and that stay has been granted in the individual pending cases concerned. Learned Special Government Pleader (Revenue) would fairly submit that in view of the nature of the facts and circumstances of the case, there is no necessity for this Court to relegate the petitioner to the alternate remedy provided under the Munnar Special Tribunal Act, 2010. It is also clearly stated in para 5 of the counter affidavit of the 1st respondent that as per the decision taken in the Regional Lease Conference held on 10.8.2010, strict directions are given by the Government to all Village Officers in Devikulam Taluk to renew the kuthakappattam cases.

16. In view of the aforesaid discussion made herein above, it is only to be held that Ext.P-2 dated 16.11.1999 and Ext.P-4 assignment order dated 23.5.2001 have been issued by incompetent officer. There are no materials now on record to show that the procedural formalities prescribed in the KDH Act, 1971 and the KDH Rules framed thereunder have been followed in the instant case. Therefore, the matter

requires reconsideration at the hands of the competent authority envisaged under Sec.9(2) of the KDH Act 1971. True that, the aforestated proceedings have been issued by an incompetent officer. But there are no cogent averments or pleadings or materials on record furnished by the respondents to show that the predecessor of the petitioners are in any way responsible for any illegality or that she had played fraud or misrepresentation in the land assignment proceedings. The petitioners' mother, Smt.Cicily, who obviously belonged to previous generation, is said to have died on 31.7.2007, at the ripe old age of 90 years. Obviously, she belonged to a generation to yesteryears. Ext.P-1 registered Will executed by the petitioners' maternal grandfather is of the year 1949. Therefore, the predecessor of the petitioners cannot be in any way be blamed for the procedural violation that may have been committed by the officials concerned. Therefore, the claims of the predecessor of the petitioners certainly require reconsideration at the hands of the competent authority. Accordingly, the matter in relation to the assignment claim of predecessors of the petitioners would stand remitted to the competent authority concerned, namely, the 2nd respondent-District Collector, Idukki, for such purpose. It is pointed out in Ext.P-11(2) and in the counter affidavit that enquiry proceedings/vigilance proceedings are pending generally in respect of cases of this nature. But, it appears that such enquiry proceedings have been pending for the last more than 9 years, at least since 2007 onwards. Therefore, such enquiry proceedings cannot be prolonged indefinitely at least in the case of the petitioners are concerned. Accordingly, the following directions are issued:

(i) The authorities concerned, who are now seized of the matters relating to the enquiry proceedings referred to by the respondents, should conclude such proceedings at least to the limited extent it affects the individual case of the petitioners' predecessor as covered by Exts.P-2 and P-4, within a period of 6 months from the date of receipt of a certified copy of this judgment by the 1st respondent. Such enquiry authority should be forthwith informed about the directions in this judgment.

(ii) It will be open to the aforestated enquiry authority to forward their report regarding enquiry proceedings, to the extent it affects the petitioners' case, to the 2nd respondent-District Collector, Idukki District immediately after the conclusion

of such enquiry proceedings.

(iii) After expiry of the aforestated 6 months time limit, the 2nd respondent- District Collector, Idukki, shall take up the case of the petitioners' predecessor for assignment of the claimed 43 cents of land. The 2nd respondent should ensure that the entire proceedings including conduct of enquiry, survey of measurement of the land, etc., as regards the tenability of such claims should be concluded within 4 months thereafter and after affording a reasonable opportunity of being heard to the petitioners through their authorised representative or counsel, if any, should take a decision as regards the request for assignment made by the petitioners' predecessor. Since petitioners' predecessor (mother) is no more, the petitioners will produce certified copy of Ext.P-8 registered will and Ext.P-9 death certificate to substantiate their claims as the legatees of their mother before the 2nd respondent. If the 2nd respondent decides to grant such assignment, it will be open to the petitioners to seek apportionment of land in the appropriate manner in terms of Ext.P-8 registered will, which may be pointed out before the 2nd respondent for his due consideration. Those aspects of the matter may be appropriately considered by the 2nd respondent. Final decision taken by the 2nd respondent on the assignment request shall be taken within a period of 3 months thereafter.

(iv) The authorities concerned including all the respondents and the authorities acting under them should strictly adhere to the aforestated time frame stipulated hereinabove to the limited extent it affects the case of the petitioners.

(v) The undertaking given in para 5 of the counter affidavit dated 28.5.2015 filed by the Government that a decision has been already taken in the Regional Lease Conference held on 10.8.2010, whereby strict directions have been given by the Government to all the Village Officers in Devikulam Taluk to renew the kuthakappattam cases is recorded. Accordingly, the kuthakappattam enjoyed in the petitioners' case will also stands renewed in terms of the above said undertaking. With these observations and directions, the aforecaptioned

Writ Petition (Civil) stands finally disposed of.