

K.B.Rohini Vs. State of Kerala

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Court : Kerala

Decided On : Mar-10-2015

Judge : Honourable Smt. Justice P.V.Asha

Appellant : K.B.Rohini

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE SMT. JUSTICE P.V.ASHA TUESDAY, THE 10TH DAY OF MARCH 2015 19TH PHALGUNA, 1936 WP(C).No. 38012 of 2003 (A) ----- PETITIONER: ----- K.B.ROHINI, W/O.LATE K.KANNAN, AGED 77 YEARS, KANNAN NILAYAM, ANANGOOR, KASARAGOD DISTRICT. BY ADV. SRI.KODOTH SREEDHARAN RESPONDENT(S): ----- 1. STATE OF KERALA - REPRESENTED BY CHIEF SECRETARY, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, KASARAGOD.

3. THE SPECIAL TAHSILDAR (LA), KASARAGOD.

4. THE COMMISSIONER OF LAND REVENUE, THIRUVANANTHAPURAM. R,R BY GOVERNMENT PLEADER SMT.ROSE MICHAEL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-02-2015, THE COURT ON 10-03-2015 DELIVERED THE FOLLOWING: WP(C).No. 38012 of 2003 (A) A P P E N D

I X PETITIONER'S EXHIBITS EXT.P1: TRUE COPY OF THE APPLICATION
DT.8.9.1964. EXT.P2: TRUE COPY OF THE

JUDGMENT

DT.18.6.1965. EXT.P3: TRUE COPY OF THE

JUDGMENT

DT.11.10.1968. EXT.P4: TRUE COPY OF THE COMMUNICATION DT.2.11.1991.
EXT.P5: TRUE COPY OF THE

JUDGMENT

DT.30.07.1992. EXT.P6: TRUE COPY OF THE

ORDER

DT.26.2.1996. EXT.P7: TRUE COPY OF THE APPEAL DATED 17.04.1996.
EXT.P8: TRUE COPY OF THE

ORDER

DT.25.1.2002. RESPONDENTS' EXHIBITS NIL. /true copy/ P.S to Judge
P.V.ASHA, J.

----- W.P(c) No.38012 of 2003-A
----- Dated this the 10 day of March, 2015

JUDGMENT

The petitioner requested for assignment of 2.55 acres of land in R.S.170/1b of Kasaragode village, claiming Kumki right over the same. The District Collector and the Commissioner of Land Revenue rejected her petition and appeal respectively. This Writ Petition is filed challenging the rejection.

2. According to the petitioner, her husband late Kannan was the owner of properties in R.S. No. 171/2 and 171/3 in Kasaragod Town. He claimed Kumki right over 2.55 acres of land in R.S. No. 170/1b adjacent to his property. It is stated in the Writ Petition that he had submitted application for assignment of the said land in 1958 and it was followed by Ext P1 application dated 8.9.1964. It is further stated that during the pendency of his application for assignment,

proceedings were initiated against him under the Kerala Land Conservancy Act to evict W.P(c).No.38012 of 2003 -:2:- him from the property which he claimed as kumki land, and to assign the said land to others. At this stage he filed O.P.2509/64 before this Court, claiming kumki right over the said property.

3. This Court in Ext.P2 judgment dated 18.6.1965, along with a batch of connected Original Petitions, considered the issue regarding kumki right. One set of cases was claiming preferential rights in the matter of assignment of land. The other set was challenging proceedings for assignment to others after evicting them under Land Conservancy Act. All of them claimed privileges for kumki rights over the properties. In certain cases, the petitioners claimed that they had been in possession of the lands sought to be assigned and had been making improvements therein and therefore they have got preferential claim to get the land assigned to them. In both the batches of cases, the petitioners claimed preferential rights in the matter of assignment of Government land. This Court considered the issue in the light of the provisions contained in the Kerala Land Assignment Act, 1960 (hereinafter referred to as the W.P(c).No.38012 of 2003 -:3:- 'Assignment Act'). It was found that under the Rules framed by virtue of Section 7 of the Assignment Act namely the Kerala Land Assignment Rules, 1964 (hereinafter referred to as 'Assignment Rules'), first preference was given to those who had encroached onto the Government lands, subject to certain limitations specified therein regarding the extent of land which could be assigned. This Court further considered the nature of the privileges available in respect of the kumki lands. After referring to the Standing Orders of the Board of Revenue that, any registered holder or walawargdar or mulgenidar who is a kumakidar of the land applied for should be given preference over all other applicants to the extent of those privileges, this Court found that the rights of kumkidar was judicially recognised by the decisions of the Madras High Court and it was given statutory force under the provisions in Section 9(3) of the Land Assignment Act, 1960. It was further found that the priority conferred in the matter of assignment by virtue of the Rules have to be considered and their preferential right to assignment of lands sought to be assigned have to be considered first while W.P(c).No.38012 of 2003 -:4:- taking steps for assignment of land. This Court found that the procedure prescribed in the then existed Rules were not complied with for assignment of

lands and therefore the proceedings for assignment without giving the persons like the petitioners in those original petitions were violative of the principles of natural justice. Therefore it was directed that the petitioners therein will be given a reasonable opportunity of placing and proving their cases and urging their contentions that they have preferential right in the matter of assignment of land proposed to be assigned. Paragraph 14 of the judgment deals with the case filed by the petitioner's husband. The same was against the steps initiated under the Land Conservancy Act to evict him. Setting aside those proceedings, this court directed that steps shall be taken only after notice and enquiry, if it was found that the lands concerned cannot be assigned to him.

4. According to petitioner, whileso, her husband passed away and she received Ext P4 communication -Order No.L.A.3/79/Kasaragod dated 2.11.1991-from the Tahsildar informing that the land applied for was not W.P(c).No.38012 of 2003 -:5:- available for assignment under the Kerala Land Assignment Rules. Reference was to the application submitted by petitioner's husband on 1.1.1979. Petitioner thereupon approached this Court challenging the order passed by the Tahsildar in O.P. 13342/1991. By Ext.P5 judgment dated 30.07.1992 this court quashed that order, which was produced as Ext.P7 therein, on the ground that there was no application of mind behind that order as it was not made clear why the land was not available for assignment. The 1st respondent - Special Tahsildar (LA), Kasaragod, was therefore directed to pass fresh orders after giving a personal hearing to the petitioner.

5. Pursuant to the direction in the O.P No.13342/91, the Special Tahsildar Land Assignment, Kasaragode heard the petitioner and recorded her statement on 23.2.1996. At the time of hearing also, she claimed kumki right over 2.55 acres of land in R.S.No.170/1 of Kasaragod village and municipality. It was stated that the petitioner was not willing to accept the 0.10 acres of land which alone was assignable as per the 1995 rules. Based on this report, the W.P(c).No.38012 of 2003 -:6:- District Collector passed Ext P6 order dated 26.2.1996, informing the petitioner that her request for assigning 2.55 acres of Government land within the municipality cannot be considered on kumki right. The District Collector directed her to approach the Government at the earliest, with a new application for

assignment on payment of land value at the market rate. In this order, the District Collector had referred to the report of the Special Tahsildar that the petitioner's husband had encroached over the said 2.55 acres; this forms kunki to the patta land in R S No.171/2 & 171/3 of Kasaragod Village; proceedings were initiated against petitioner's husband, under the Kerala Land Conservancy Act for eviction; he challenged it in O.P. No. 2509/1964, which was disposed of by judgment dated 16.6.1995 (Ext P2) directing to consider the claim of the encroacher; thereafter Special Tahsildar had forwarded proposal for assignment of land in his favour as per L.A379 and the same was sent to Government for sanction; Government had in their letter No.15020/LR/88/RD dated 24.11.1988 rejected the proposal stating that the proposed W.P(c).No.38012 of 2003 -:7:- land was situated within the limit of Kasaragod Municipality and assigning such land in a municipal area to a private individual was not advisable and that the land should be reserved for public purpose; the assignment application filed by the encroacher was thereupon rejected by the Special Tahsildar in his proceedings L.A.3/79 dt.2.11.1991 (Ext.P4); petitioner challenged it in O.P. 13342/1991 and it was quashed by this Court by judgment dated 30.07.1992 (Ext.P5). The District Collector stated that the Government had restrained assignment in municipal area until new rules were framed by Government. Further the Government issued rules for assignment of Government land in municipal areas as per G.O(P) No.566/95/RD dt.13.11.1995. As per these rules the maximum extent of land that can be assigned including the land required for beneficial enjoyment of tenant is 0.10 acres in municipal area. It was further stated that the kumki right under Rule 7A of the Kerala Land Assignment Rules was not applicable to municipal area as per the aforesaid G.O.

6. Aggrieved by the order of the District Collector, W.P(c).No.38012 of 2003 -:8:- the petitioner filed an appeal before the Board of Revenue. There she claimed that her husband had submitted application for assignment of the land as early as in 1958. Thereafter another request was sent in 1964 and the Revenue Authorities had not raised any objection. The petitioner pointed out that the land in question was a kumki land which by this time became a pucca improved garden land. It is stated therein that since the Tahsildar did not pass any order on the request, the petitioner had moved the Government under Section 3 of the Assignment Act read with Rule 21(9) of the Assignment Rules, filing an application dated 21.11.1990.

She claimed that she had received only a printed order rejecting her claim, without advertent to the factual or legal circumstances involved in the case. According to the petitioner, the only reason stated for refusing assignment was G.O.(P)No.566/95/RD dt.13.11.1995, according to which, the maximum extent of land which can be assigned is only 0.10 acres in municipal area and Rule 7A of the Rules was not applicable. Asserting her claim over the 2.55 acres of land she approached this W.P(c).No.38012 of 2003 :-9:- Court in O.P.6467/1996, which was dismissed since the statutory remedy under Rule 21 of the Assignment Rules was not exhausted. Thereupon she approached the Board of Revenue in Ext.P7 under Rule 21 of the Rules.

7. The Commissioner of Land Revenue after hearing the petitioner rejected the appeal on the ground that assignment of land in municipal area can be made only to the extent of 0.10 acres, as per G.O(P) 566/95/RD dt.13.11.1995. However, the Commissioner for Land Revenue, pointed out that the applicant's husband had submitted the application for assignment as early as in 1958 and while rejecting the application, made it clear that the same was without prejudice to the right of the petitioner to approach the Government, as the application for assignment was filed as early as in 1958.

8. The petitioner has approached this Court as against this Ext.P8 order of Commissioner for Land Revenue, without approaching Govt. According to the petitioner she has got a vested right to get the assignment of the 2.55 acres of land and that the kumki right over the said property W.P(c).No.38012 of 2003 - :10:- cannot be taken away by virtue of rules issued in G.O. (P) No.566/95/RD dt.13.11.95. It was further stated that as far as the application was submitted in 1958 itself and the rules were issued only on 13.11.95, her application is liable to be considered in accordance with the rules which prevailed before 1995 and the 1995 rules cannot take away the kumki rights of the petitioner over the said property. It was further stated that the kumki rights vested in the petitioner's husband cannot be taken away by an executive order issued in 1995. The petitioner therefore seeks a declaration to get assignment of land in accordance with the application produced as Ext.P1 assigning 2.55 acres of land.

9. A counter affidavit is filed on behalf of 4th respondent-Commissioner, with following contentions. Petitioner's husband late Kannan had encroached the land comprised in R.S.170/1 having an extent of 2.55 acres of land in Kasaragod village and effected improvements therein. The said land does not form kumki to any walawarg land, because there is a width of more than 2 chains from the patta land. No kumki application filed by the husband W.P(c).No.38012 of 2003 -:11:- was pending for disposal. The application submitted by the petitioner's husband was rejected and proceedings were initiated for his eviction. Pursuant to the judgment in O.P.No.2509 of 1964 of this Court, proposal for assignment was sent to Government as per L.A No.3/79, Kasaragod. Govt rejected the proposal as per proceedings No.15020/L2/88/RD dt.24.11.1988 stating that proposed land was situated within Kasaragod municipality. The Special Tahsildar Kasaragode issued L.A.3/79 dt.2.11.1991 rejecting his application. It was challenged by the petitioner in O.P.No.13342/91, which was disposed of with a direction to pass fresh orders after hearing the petitioner. The rules for assigning Government land in municipal and corporation area were issued as per G.O(P) No.566/95/RD dated 13.11.1995 and in accordance with those rules, the request of the petitioner to assign 2.55 acres of land cannot be granted, as the same is situated within the municipal area. When the Commissioner had rejected the application with liberty to the petitioner to move the Government, she should have approached the Government. Petitioner's husband had W.P(c).No.38012 of 2003 -:12:- encroached over the land in question and kumki right cannot be claimed over the land encroached.

10. I heard the learned counsel appearing for the petitioner as well as the learned Government Pleader.

11. The right of the petitioner to get assignment of 2.55 acres of govt land is the question involved here. According to the petitioner, the said land forms kumki land to his property and she has therefore effected improvements therein. At the same time, respondents have rejected the claim on the ground that the assignment in municipal area is governed by the 1995 Rules. From the orders passed by the District Collector as well as the Board of Revenue it is seen that the application submitted by the petitioner's husband was rejected as early as in 1988. But the original petition is silent regarding this order. It appears that the said order issued

by the Government was never challenged. At the same time, it is seen that the petitioner had approached this Court against the consequential order passed by the Special Tahsildar informing that the land cannot be assigned.

12. The question to be considered is the applicability W.P(c).No.38012 of 2003 - :13:- of the Kerala Land Assignment Rules on this issue as claimed by the petitioner and the applicability of the rules for assignment of land in municipal areas, as claimed by the learned Government Pleader.

13. Section 7 of the Kerala Land Assignment Act regulates the assignment of Government lands and it was enacted to remove doubts as to the validity of the limits and restrictions in assignment of land by the Government or under their authority. As per Section 3, the Government land may be assigned by the Government or by any prescribed authority either absolutely or subject to such restrictions, limitations and conditions as may be prescribed. As per Section 7, the Government may make rules prescribing the manner in which assignment of land can be made. Section 7(2) provides that all rules made under this Act shall be published in the Gazette and it shall have force on law only thereupon. The Kerala Land Assignment Rules, 1964 were framed in exercise of powers conferred by Section 7 of the Act. The petitioner claims assignment of land under Rule 7A. As per Clause 3 of Rule 7A, the W.P(c).No.38012 of 2003 -:14:- assignment shall be subject to payment of land value as prescribed in these rules. As per this rule preference shall be given to the former kumkidar who had applied for assignment before 06.12.1968 in the matter of assignment of kumki land up to a limit of two chains from the warg land but subject to the ceiling prescribed in the Kerala Land Reforms Act, 1963. Clause 6 provides that persons who have purchased walawargdar land from kumkidar who had applied for assignment before 06.12.1968 will also be eligible for assignment under this rule subject to the condition that the land value at market rate prevailing at the time of assignment shall be payable by such assignees. The petitioner's claim is that by virtue of Rule 7A, the land in question ie. 2.55 acres has to be assigned to her. According to her, it forms the kumki lands in respect of her patta land.

14. The request of the petitioner is rejected applying the 1995 rules regarding the land within municipal areas. The Government has issued the Rules for Assignment of Land within Municipal and Corporation Areas Rules, 1995 in exercise of the powers conferred under Section 7 of the Act. W.P(c).No.38012 of 2003 -:15:- These Rules have been published in the Gazette dated 14.11.1995. As per these Rules, the maximum extent of land that can be assigned in municipal areas is 10 cents and the land value payable shall be at a concessional rate in respect of assignees whose annual family income does not exceed Rs.24,000/-.

15. The learned Government Pleader argues that the land cannot be assigned except in terms of the 1995 Rules, as the same is situated in Kasaragod Municipality.

16. In this context it is relevant to note that the Kerala Land Assignment Rules, 1964 are not applicable to lands in municipal areas, as per Rule 1A thereof, which reads as follows: "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 W.P(c).No.38012 of 2003 -:16:- 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 an vested in the Panchayats under the Kerala Panchayats Act, 1960 (32 of 1960)." Therefore it can be seen that the Assignment Rules, 1964 cannot be applied to the lands situated within the limits of a Corporation or Municipality. Admittedly the land in question is in Municipality. When there is a non obstante provision like Rule 1A, the preferential right provided to kumkidars under Rule 7A cannot be of no avail when the kumki land in question is situated in a Municipality. The learned counsel for the petitioner submitted that she has got a vested right over the kumki land and to get the land assigned in his favour by virtue of Rule 7A and as declared by this Court in the judgments Exts.P2 and P3.

17. The learned Counsel for the petitioner relied on the judgment of the Apex Court in *State of Mysore v. W.P(c).No.38012 of 2003* -:17:- K.C.Adiga [AIR1976S.C853, where, after considering the provisions contained in the rules framed under Section 26 of the Madras Forest Act, it was held that the owners of warg lands enjoy privileges in respect of kumki lands and these privileges are regulated by these rules. There the Apex Court was considering the validity of a condition attached to the order of assignment to a kumkidar. After considering the provisions contained in Rule 7A of those rules it was held that kumki rights are property rights notwithstanding the fact that their scope is restricted and their exercise is subject to these statutory rules. Therefore it was held that those rights could be curtailed, abridged or taken away only by law and not by an executive fiat. In the case considered by the Apex Court the Government had restricted the kumkidar's right to receive timber to the extent of 20% while granting assignment of land to a kumkidar. It was therefore held that such restriction was violative of Articles 19 and 31 of the Constitution of India.

18. But in this case the privilege under Rule 7A is restricted by Rule 1A, making it inapplicable to lands in *W.P(c).No.38012 of 2003* -:18:- Municipalities. As rightly pointed out by the learned Government Pleader, the land in question is admittedly situated in Kasaragod municipality and assignement of land therein is governed by separate rules-the 1995 Rules.

19. The learned counsel for the petitioner brought to my notice the judgment dated 11.10.1968 in *O.P.No.2424/1966(Ext.P2)*. There this Court interpreted the provisions contained in standing order No.15 issued by the Government of Madras. In the Board Order which was available then with the Revenue authorities, name of 6 towns were shown in the margin of the order. Therefore the revenue authorities took the view that there are no kumki lands in those 6 towns including Kasaragod town and therefore applications for kumki lands can be entertained except in those 6 places. After interpreting the standing order No.15, this Court held that it only meant that applications may be entertained for uncultivated kumki land with the expressed or implied consent of Pattadar or mulgenidar within the kumki limits of 6 towns - Mangalore, Udipi, Kasaragod, Bantwal, Kumki and Karkal. After *W.P(c).No.38012 of 2003* -:19:- interpreting the

standing order to mean that the applications were to be entertained in those 6 places mentioned therein, this Court directed to consider the claim of the petitioners therein. Petitioner or her husband are not seen in the party array in that O.P. At any rate the impact of Rule 1A of the Assignment Rules is not seen considered therein.

20. The petitioner claims assignment on the ground that her husband submitted an application in the year 1958. I am unable to find any provision in the Assignment Rules, which provide for any relaxation or exemption from Rule 1A , to those who submitted application on a particular day. It is seen that Rule 1A has been in existence much prior to 1967, if not along with the rules issued in 1964. Even though Rule 7A provides for preference to the kumkidar who had applied for assignment before 6.12.68, in the light of the non obstante provision contained in Rule 1A that preference cannot be invoked in respect of the land in the municipality. It is pertinent to note that the Government had as early as in 1988 rejected the proposal for assignment on the ground that the said land is not assignable. Even though the W.P(c).No.38012 of 2003 -:20:- subsequent orders issued by the Tahsildar and the Commissioner of Land Revenue refer to the order issued in 1988, none of these authorities refers to the specific provision contained in Rule 1A. It is pertinent to note that even the Government does not appear to have mentioned this specific provision while issuing the order in 1988 or in the subsequent orders (produced in this Writ Petition) or in the counter affidavit. It is not understood why the petitioner did not choose to challenge the proceedings issued in 1988 by the Government. In 1991 petitioner approached this Court challenging the consequential order passed by Tahsildar, saying that it did not contain any reasons/was without application of mind. No contention is seen raised on either side as to the communication of the decision which Govt took in 1988, to petitioner or her husband. However, the application was rejected saying that the land was not assignable under KLA Rules.

21. No provision of law is brought to my notice to show that Rule 1A of the KLA Rules,1964, is not applicable to cases where applications were made in 1958 or before W.P(c).No.38012 of 2003 -:21:- 1964, which will enable the petitioner to get the land claimed as kumki land assigned in her name. Now that the "Assignment

of land within Municipal and Corporation Areas Rules, 1995 are issued, in exercise of the powers conferred under Section 7A of the Act, published in Kerala Gazette Extraordinary No.1142 dated 14.11.1995 as SRO. No.1341/95, it is upto the petitioner to take steps to get the land assigned in respect of the permissible extent of land, ie. 0.10 acres in accordance with the rules as found by the Commissioner of Land Revenue in the impugned order. Under the above circumstances, it can be seen that assignment of Government land in Municipalities was not permissible under Kerala Land Assignment Rules 1964, by virtue of Rule 1A. As rules are issued in 1995 for assignment of land within municipal areas according to which the maximum extent of land which can be assigned is 0.10 acres, petitioner cannot have any right to get assignment over the land in municipal area in excess of 0.10 acres. Hence I do not find any ground to interfere with Ext.P8 order issued by the Commissioner of Land Revenue. W.P(c).No.38012 of 2003 -:22:- The Writ Petition is accordingly dismissed. Sd/- (P.V.ASHA, JUDGE) rtr/

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