SUPREME COURT OF INDIA

State of Kerala

Vs.

Vincy Cherian

C.A.No.4131 of 2008

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

13.05.2008

ORDER

1. Leave granted. This appeal is directed against the judgment and order dated 3.3.2006 passed by a Division bench of the Kerala High Court in W.A. No.2090 of 2004 whereby and whereunder the application filed by the respondents herein for 'Registry of land' in terms of the provisions of Cardamom Rules(Travancore), 1935 was directed to be considered afresh by the competent authority under the said rules. We may notice only the basic fact of the matter. One Mr.Quseph Varkey was the grandfather of the respondents herein. He allegedly came in possession of 99 acres of land in village Devikulam Taluk of Kerala State. Indisputably, the lands in question were within the jurisdiction of the Travancore State. The then Travancore State in exercise of its power conferred upon it under Section 7 of the *Travancore Land Assignment Regulation III of 1097*(Malayalam Era) framed Rules known as Cardamom Rules (Travancore), 1935 in terms whereof the Rules framed earlier in the year 1905 were superceded. Quseph Varkey applied for assignment on registry in respect of 50 acres of land in the year 1935. He filed another application in the year 1936 for 'assignment on registry' additional area of 46 acres of land as the total area was found to be 99 acres. However, there is dispute as to whether the total area is 96 acres or 99.42 acres. The second application was rejected by an order dated 16.1.38. He preferred an appeal thereagainst in terms of Rule 38 of Cardamom Rules (Travancore), 1935. By an order dated 19.6.1939 the appellate authority directed as under: " I have heard the vakil. The main contentions are that his original application for the land within certain boundaries and estimated at 50 acres and when in actual survey it was found that there was more land than that applied for, he put in a second application for 46 acres with the deposit and that as these are all the land he had applied for, the land may be given to him. As there has been no other applicant for the excess land, I am of opinion that the excess 49 acres over and above the 50 acres may be given to the applicant steps may be taken towards the disposal of his application accordingly. The appeal is allowed." It, however, appears that so far as his applications for grant of consignment on registry in respect of 50 acres of lands are concerned, the Tehsildar by an order dated 3.11.1114(1947 A.D.) directed as under:

> "Since the land is available for registry without auction and since he has expressed willingness to take up land on registry and has put in formal application for the same, the L.C. Case is struck off the file and steps will be taken to bring the area under registry."

2. Allegedly, in the year 1946 the said Ouseph Varkey was granted lease for a period of 12 years of 20 acres of land. He was furthermore granted lease for one year in respect of 39.46 acres of land. We may, however, notice that the said contetions have been raised before us by the parties hereto. Ouseph Varkey died in the year 1956. The Kerala Land Assignment Act, 1960(1960 Act) was enacted by the Legislature of the State. The said Act came into force with effect from 13.11.1960. Indisputably, by reason of the provisions thereof no absolute assignment was permitted. Our attention, however, has been drawn to Section 9(3) of the 1960 Act whereby the Travancore Act and the corresponding Cochin Act stood repealed as also the Rules frame thereunder. Mr.Krishnamoorthy, learned senior counsel appearing on behalf of the appellants would submit that having regard to the provisions of the 1960 Act and the Rules framed thereunder vis-a-vis the 1945 Rules , the High Court must be held to have committed a serious error in issuing the impugned directions. Elaborating his submissions,learned counsel would urge that even in terms of the order passed by the appellate authority as also the Tehsildar as contained in Annexure R-6 and Annexure R-7, steps were required to be taken for disposal of Ouseph Varkay's applications for assignment which were filed in the years 1935 and 1936. It was submitted that the said applications abated with the death of Ouseph Varkay and in any event no step having taken in terms of the said order(s) resulting in crystallisation of any right in his favour, the question of applicability of 1935 Rules at this stage would not arise. Mr.B.V.Deepak, learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgment. Having considered the rival contentions raised before us, we are of the opinion that the Division Bench of the High Court unfortunately had no occasion to go into the contentions raised before us. The question as to whether, despite coming into force of the 1960 Act and the Rules framed thereunder, the 1935 Rules survived and/or in any event the effect thereof appears to have not been raised before the High Court. The effect of the orders passed by the Tehsildar as also the Appellate Authority on Ouseph Varkay's applications for assignment of 50 acres of land and subsequently for 46 acres of land have not been considered by the Division Bench. Our attention has been drawn to the provisions of 1935 Rules. Several steps in terms thereof are required to be taken in furtherance of the orders of the statutory authority. The question as to whether steps in terms of the Rules have been taken or not fructifying into an enforceable right in favour of Ouseph Varkay have not been considered by the Division Bench. It is in the aforementioned situation, in our opinion, the Division Bench should consider the said contentions of the parties as regards the applicability of 1935 Rules afresh. It would be open to the parties to file additional documents before the Division Bench for showing that steps had been taken by the respondents in terms of 1935 Rules for grant of assignment or not. The Division Bench would also consider as to the effect of the provisions of Sub-section 3 of Section 9 of the Kerala Land Assignment Act, 1960. We, therefore, set aside the impugned judgment and remit the matter back to the Division Bench of the High Court for consideration of the matter afresh. We make it clear that all contentions of the

parties shall remain open. We expect that the State shall produce the records before the High Court. The appeal is allowed. No costs.