



2025:KER:16245

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

FRIDAY, THE 14TH DAY OF FEBRUARY 2025 / 25TH MAGHA, 1946

WP(C) NO. 26327 OF 2021

PETITIONERS:

- 1 VINCY CHERIAN,
AGED 73 YEARS
S/O. LATE CHERIAN, ELENJICKAL HOUSE, VENKAYIPARA
ESTATE, ANAVERATTY P.O., ADIMALY VIA, DEVIKULAM
TALUK, PIN-685561.
- 2 TOMY CHERIAN,
AGED 75 YEARS
S/O. LATE CHERIAN, ELENJICKAL HOUSE, VENKAYIPARA
ESTATE, ANAVERATTY P.O., ADIMALY VIA, DEVIKULAM
TALUK, PIN-685561.
- 3 GEORGE CHERIAN,
AGED 69 YEARS
S/O. LATE CHERIAN, ELENJICKAL HOUSE, VENKAYIPARA
ESTATE, ANAVERATTY P.O., ADIMALY VIA, DEVIKULAM
TALUK, PIN-685561.
- 4 VIANNEY CHERIAN,
AGED 67 YEARS
S/O. LATE CHERIAN, ELENJICKAL HOUSE, VENKAYIPARA
ESTATE, ANAVERATTY P.O., ADIMALY VIA, DEVIKULAM
TALUK, PIN-685561.
- 5 JOSEPH CHERIAN,
AGED 65 YEARS
S/O. LATE CHERIAN, ELENJICKAL HOUSE, VENKAYIPARA
ESTATE, ANAVERATTY P.O., ADIMALY VIA, DEVIKULAM
TALUK, PIN-685561.



- 6 THOMAS CHERIAN,
AGED 63 YEARS
S/O. LATE CHERIAN, ELENJICKAL HOUSE, VENKAYIPARA
ESTATE, ANAVERATTY P.O., ADIMALY VIA, DEVIKULAM
TALUK, PIN-685561.
- 7 MERINA CHERIAN,
AGED 61 YEARS
D/O. LATE CHERIAN, ELENJICKAL HOUSE, VENKAYIPARA
ESTATE, ANAVERATTY P.O., ADIMALY VIA, DEVIKULAM
TALUK, PIN-685561.
- 8 KOCHURANI CHERIAN,
AGED 59 YEARS
D/O. LATE CHERIAN, ELENJICKAL HOUSE, VENKAYIPARA
ESTATE, ANAVERATTY P.O., ADIMALY VIA, DEVIKULAM
TALUK, PIN-685561.

BY ADV JOHN NELLIMALA SARAI

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR,
(THE CARDAMOM SETTLEMENT OFFICER), COLLECTORATE,
PAINAVU, IDUKKI-685603.
- 2 THE TAHSILDAR,
TALUK OFFICE, DEVIKULAM-685613.
- 3 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 4 THE ADDITIONAL CHIEF SECRETARY,
REVENUE (R) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- *5 AJI GOPALAN
AGED 34 YEARS
VENKAYAPPARA TRIBAL SETTLEMENT, KALLAR,
VATTAYAR.P.O. , IDUKKI, PIN - 685565
- **6 SUMITHRA SIJU
W/O SIJU, VENKAYAPPARA TRIBAL SETTLEMENT, KALLAR,
VATTAYAR.P.O , IDUKKI, PIN - 685565



W.P.(C)No.26327 of 2021

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2025:KER:16245

#7 LAKSHMI RAJU
W/O RAJU, VENKAYAPPARA TRIBAL SETTLEMENT, KALLAR,
VATTAYAR.P.O , IDUKKI, PIN - 685565

##8 KAVERI PRADEEP
W/O PRADEEP, VENKAYAPPARA TRIBAL SETTLEMENT,
KALLAR, VATTAYAR.P.O. , IDUKKI, PIN - 685565
(*#ADDITIONAL RESPONDENTS 5 TO 8 ARE IMPEADED
VIDE ORDER DATED 20.03.2024 IN I.A 1 OF 2024 IN
W.P. (C)NO.26327 OF 2021.

BY ADVS.
A.V.JOJO
A.X.VARGHESE

OTHER PRESENT:

SRI. M. H.HANIL KUMAR , SPL. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**JUDGMENT****Anil K. Narendran, J.**

The petitioners have filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari to quash Ext.P7 order dated 07.11.2018 of the 4th respondent Additional Chief Secretary to Government, Revenue (R) Department, whereby Ext.P4 representation dated 14.09.2017 made by the petitioners for assignment of 99.61 Acres of Government land in Survey Nos.229/1, 2 and 3 of Anaviratty Village in Devikulam Taluk in Idukki District stands rejected for the reasons stated therein. The said representation is one filed by the petitioners after Ext.P1 judgment dated 15.11.2013 of the Division Bench of this Court in W.A.No.2090 of 2004, which was followed by Ext.P2 order dated 29.01.2014 in R.P.No.50 of 2014, arising out of that judgment. Ext.P4 representation was directed to be considered by Ext.P5 judgment dated 27.03.2018 of the learned Single Judge in W.P.(C)No.39322 of 2017. The further relief sought for in this writ petition is a writ of mandamus commanding the respondents not to allot/assign the land in question to third parties; and a declaration that the petitioners are entitled to be allotted and assigned the land as claimed in Ext.P4 representation, in view of Ext.P2 order of this Court dated 29.01.2014 in R.P.No.50 of 2014.



2. This writ petition along with the connected matters were ordered to be posted before the Division Bench dealing with matters relating to land in Munnar region, by the order dated 13.11.2024 of the learned Single Judge.

3. By the order dated 20.03.2024 in I.A.No.1 of 2024, additional respondents 5 to 8 were impleaded. The said respondents have filed a counter affidavit dated 24.05.2024, opposing the reliefs sought for in this writ petition, producing therewith Exts.R5(a) to R5(d) documents.

4. Heard the arguments of the learned counsel for the petitioners, the learned Special Government Pleader for respondents 1 to 4 and the learned counsel for additional respondents 5 to 8.

5. The issue that requires consideration in this writ petition is as to whether any interference is warranted on Ext.P7 order dated 07.11.2018 of the 4th respondent, whereby the request made by the petitioners in Ext.P4 representation dated 14.09.2017 for assignment of 99.61 Acres of land in Survey Nos.229/1, 2 and 3 of Anaviratty Village stands rejected for the reasons stated therein.

6. During the course of arguments, the learned counsel



for the petitioners placed reliance on the provisions contained in the Cardamom Rules of 1935, which deals with assignment of Government lands for cultivation of cardamom, which was passed by the Government of Travancore on 30.09.1935.

7. On the arguments raised by the learned counsel for the petitioners, placing reliance on the provisions contained in the Cardamom Rules of 1935, the learned Special Government Pleader for respondents 1 to 4 and also the learned counsel for additional respondents 5 to 8 would point out the findings in Ext.P1 judgment of the Division Bench of this Court dated 15.11.2013 in W.A.No.2090 of 2004. They would also point out the dismissal of Civil Appeal Nos.6465-66 of 2016 filed by the petitioners herein against Ext.P1 judgment of the Division Bench and Ext.P2 order in R.P.No.50 of 2014, by Ext.R5(c) order dated 31.08.2017 of the Apex Court.

8. On the aforesaid contentions advanced by the learned counsel for the petitioners, the learned Special Government Pleader for respondents 1 to 4 and also the learned counsel for additional respondents 5 to 8, we notice that the issues raised before the Division Bench and considered in Ext.P1 judgment dated 15.11.2013 in W.A.No.2090 of 2004 are as follows;



"(i) Whether, despite coming into force of the Kerala Land Assignment Act, 1960 and the Rules framed thereunder, the Cardamom Rules of 1935 will survive and the effect of Section 9(3) of the Kerala Land Assignment Act, 1960.

(ii) Whether any steps had been taken in terms of the Cardamom Rules of 1935 and if so, whether it resulted in an enforceable right in favour of Ouseph Varkey and the effect of the order passed by the Tahsildar as well as the appellate authority on Ouseph Varkey's application for assignment of 50 Acres of land and subsequently for assignment of 46 Acres of land.

(iii) The applicability of the Cardamom Rules of 1935 in regard to the claim made by the petitioners."

9. Before proceedings further the Division Bench stated in brief the factual situation in the case in clauses (i) to (iii) of paragraph 4 of Ext.P1 judgment in W.A.No.2090 of 2004, which read thus;

"(i) Petitioners are the legal heirs of Sri.Ouseph Varkey who occupied government land and started cardamom cultivation. He applied for assignment of registry in Form A of the 1935 Rules. The application is Ext.P2 dated 378/1112 (M.E) (corresponding to the year 1937). The extent of land sought for assignment is 50 acres. Subsequently, another application is filed for assigning 46 acres in Sy.No.19/1. Ext.P3 is the said application. Ouseph Varkey remitted Rs.250/- and Rs.230/- along with the application. The claim for additional extent of land was rejected by the Commissioner, Devikulam and Sri.Ouseph Varkey filed an appeal before the Land Revenue Commissioner. The said



appeal was allowed as per order dated 09.06.1939 holding that the applicant is entitled for 49 acres of additional land besides 50 acres of land in his possession. Ext.P4 is the said order. In the meantime, the Travancore-Cochin State came into existence. By virtue of the Government order dated 12.10.1940 it was held that a single applicant was eligible to get only 60 acres on registry. Since Ouseph Varkey's application was prior to the said Government order, according to the petitioners, he was entitled to claim the entire extent of land as assignments were made to similarly placed persons as per Exts.P5 and P6.

(ii) Sri.Ouseph Varkey expired in the year 1956. When the application submitted by Sri.Ouseph Varkey was pursued by the petitioners, the District Collector, by Exts.P7 and P8 reported and recommended to grant assignment on registry in favour of the petitioners. Subsequently, the Secretary to Board of Revenue conducted an enquiry and by Ext.P9 report it stated that the appeal decision of the Land Revenue Commissioner could have been implemented long before the date of the Government Orders prohibiting registry of lands, if the revenue officers have been more prompt in dealing with the case.

(iii) According to the petitioners, they are entitled for assignment of 99.61 acres of land and since nothing happened in the matter over a period of time, this writ petition is filed which resulted in Exts.P11 and P13 orders."

10. In Ext.P1 judgment in W.A.No.2090 of 2004, after considering the rival contentions with reference to the relevant statutory provisions, the Division Bench arrived at a conclusion



that the Cardamom Rules of 1935, though not made under the Travancore-Cochin Government Land Assignment Act, 1950, it is deemed to be made under the 1950 Act, by virtue of Section 23 of the Kerala Interpretation and General Clauses Act, 1125 (ME). Hence the Division Bench held that the Cardamom Rules of 1935 is repealed by virtue of Section 9(3) of the Land Assignment Act of 1950. The Division Bench found that the petitioners herein or their predecessor did not acquire any right under the Cardamom Rules of 1935 to claim a legal right capable of enforcement. Before arriving at such a conclusion, the Division Bench found that until the repeal of the Cardamom Rules of 1935, by virtue of Section 9(3) of the Kerala Land Assignment Act of 1960, no orders were passed in terms of the Cardamom Rules of 1935, for assignment of registry. Therefore, the Division Bench concluded that the petitioners herein or their predecessor did not acquire any right under the Cardamom Rules of 1935 to claim a legal right, capable of enforcement. The conclusion made by the Division Bench in paragraph 23 of Ext.P1 judgment in W.A.No.2090 of 2004, reads thus;

"23. Therefore, we are of the opinion that though two applications for assignment of land were given by Sri.Ouseph Varkey, no orders were passed by the competent



authority under the '1935 Rules' enabling him to treat the said order as a concluded contract between the parties and therefore, the petitioners are not entitled to rely upon such documents for claiming any right under the '1935 Rules'."

11. Ext.P1 judgment of the Division Bench was sought to be reviewed by filing R.P.No.50 of 2014. That review petition filed by the petitioners herein ended in dismissal by Ext.P2 order dated 29.01.2014. Paragraphs 3, 4 and also the last paragraph of that order read thus;

"3. Having gone through the averments in the writ petition as well as the judgment of the Supreme Court with reference to the matter by which the case had been remanded back to this Court, we find that all the issues, which were germane for consideration in the appeal, have been considered and no grounds are made out warranting interference in the form of a review.

4. Learned counsel for the appellants submits that since they were in possession of the property for a substantially long period, though not under 1935 Rules, they are entitled for assignment of land under the law applicable under the present law. In fact, the learned Single Judge, while dismissing the original petition, has observed that the dismissal of the original petition will not stand in the way of the petitioners in moving for assignment of land on lease for cardamom cultivation under the 1961 Rules or for assignment of land on registry under the Kerala Land Assignment (Regulation of Occupations of Forest Lands Prior to 1.1.1997) Special Rules, 1993. While confirming the



judgment of the learned Single Judge, we expressed the opinion that no grounds are made out to set aside the judgment of the learned Single Judge and we had only dismissed the appeal. In that event, it cannot be said that the petitioners are not entitled for the directions issued by the learned Single Judge in the original petition. In the result, the review petition is disposed of clarifying that despite the dismissal of the writ appeal, the appellants will be entitled to seek assignment of land under any other law in force, if they are legally entitled for the same, including the rules specified in the judgment of the learned Single Judge.”

12. In view of the categoric finding in Ext.P1 judgment of the Division Bench in W.A.No.2090 of 2004, the petitioners herein or their predecessors cannot claim a legal right, capable of enforcement, under the Cardamom Rules of 1935, as they did not acquire any right under the said Rules of 1935. While disposing of R.P.No.50 of 2014 by Ext.P2 order dated 29.01.2014, the Division Bench only clarified that despite the dismissal of W.A.No.2090 of 2004, the petitioners herein will be entitled to seek assignment of land under any other law in force, if they are legally entitled for the same, including the Rules specified in the judgment of the learned Single Judge.

13. It is after Ext.P2 order dated 29.01.2014 of the Division Bench in R.P.No.50 of 2014, that the petitioners moved Ext.P4



representation dated 14.09.2017 before the 3rd respondent State of Kerala seeking assignment of 99.61 Acres of land in Survey Nos.229/1, 2 and 3 of Anaviratty Village in Devikulam Taluk. That representation was directed to be considered, within a time frame, by Ext.P5 judgment of the learned Single Judge dated 27.03.2018 in W.P.(C)No.39322 of 2017. A perusal of Ext.P4 representation dated 14.09.2017 would make it explicitly clear that the petitioners have not even mentioned any statutory provisions in support of their claim for assignment of 99.61 Acres of land in Survey Nos.229/1, 2 and 3 of Anaviratty Village in Devikulam Taluk.

14. In **Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh [(1977) 4 SCC 145]**, a Three-Judge Bench of the Apex Court held that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction.



15. In **Oriental Bank of Commerce v. Sunder Lal Jain [(2008) 2 SCC 280]** the Apex Court held that in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. In the said decision, the Apex Court noticed that the principles on which a writ of mandamus can be issued have been stated in 'The Law of Extraordinary Legal Remedies' by F. G. Ferris and F. G. Ferris, Jr. that, mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice.

16. In **State of U.P. v. Harish Chandra [(1996) 9 SCC 309]** the Apex Court held that under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution



or a Statute or by Rules or orders having the force of law. But 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.

17. 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.

18. Viewed in the light of the laid down in the decisions referred to supra, conclusion is irresistible that the direction contained in Ext.P5 judgment of the learned Single Judge dated 27.03.2018 in W.P.(C)No.39322 of 2017 is one directing the State Government to take a decision on Ext.P4 representation dated 14.09.2017 made by the petitioners herein, strictly in accordance with the law, i.e., strictly in accordance with the statutory provisions governing the field. Therefore, the direction contained in Ext.P5 judgment would not enable the petitioners herein to seek assignment of 99.61 Acres of land in Survey Nos.229/1, 2 and 3



of Anaviratty Village in Devikulam Taluk, contrary to the statutory provisions contained in the Kerala Land Assignment Act, 1960, since this Court has no competence to issue a direction contrary to law nor can this Court direct an authority to act in contravention of the statutory provisions. As already noticed hereinbefore, in view of the categoric finding by the Division Bench in Ext.P1 judgment dated 15.11.2013 in W.A.No.2090 of 2004, the petitioners herein cannot claim a legal right capable of enforcement under the Cardamom Rules of 1935.

19. Ext.P4 representation made by the petitioners herein can only be considered under the provisions of the Kerala Land Assignment Act, 1960 and the Rules made thereunder, i.e., Kerala Land Assignment Rules, 1964. The learned Special Government Pleader has pointed out the exemptions provided in clause (ii) of Rule 1A of the Kerala Land Assignment Rules, as per which nothing contained in the said rules shall apply to or affect the assignment of the Government lands made for the specific purpose of cultivating Tea, Coffee, Rubber, Cinchona and Cardamom. The learned Special Government Pleader has also pointed out the maximum extent of land that shall be assigned for cultivation, as provided under Rule 5 of the said Rules.



20. The learned Special Government Pleader has also placed reliance on the judgment of a Division Bench of this Court in **Varkey Abraham v. Secretary to Government and others [2007 (3) KHC 365]** and the judgment of one among us [Anil K. Narendran, J.], in **Hidayathulla v. State of Kerala and others [2021 (6) KHC 129]**.

21. In **Hidayathulla [2021 (6) KHC 129]** this Court followed the law laid down by the Division Bench in **Varkey Abraham [2007 (3) KHC 365]** that various provisions in the Kerala Government Land Assignment Act and the Kerala Land Assignment Rules would unmistakably show that the Act and the Rules are intended to protect landless people by assigning to them government lands for cultivation and other purposes. The Act provides for assignment of Government land absolutely or subject to such restrictions, limitations and conditions as may be prescribed. The Rules provides for assignment of lands on registry for purposes of personal cultivation. The Rules also provides for granting assignment of small extents of land for constructing houses and for the beneficial enjoyment of adjoining registered holdings. The Rules contain provisions for extending priority to landless people, members of Scheduled Caste and Scheduled



Tribes, Ex-servicemen, persons disabled in active military service, persons who are dependents of those who are killed or disabled while in active military service, small holders whose family income is less than Rs.10,000/-, certain category of kumkidars, etc. The procedure for assignment is also provided in the Rules. Provision is made for preparing the lists of lands to be reserved for Government or public purposes and the lands to be set apart for assignment on registry. The lists are to be approved by the Government or an authorized authority. The authority to approve the list of lands available for lease or license shall be District Collector. Various authorities are also provided to whom the applications under the different categories are to be submitted. We are of the view that the Act and 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 Rules. There is no vested right in any person to claim assignment on registry of Government land.

22. In the instant case, a reading of Ext.P7 order dated 07.11.2018 would show that during the course of arguments the request made by the petitioners herein, who are siblings, is that they should be assigned 99.61 Acres of land in Survey Nos.229/1,



2 and 3 of Anaviratty Village in Devikulam Taluk, invoking the provisions under the Kerala Land Assignment Rules, 1964. After considering Ext.P4 representation with reference to the provisions under the said Rules, the 4th respondent arrived at a conclusion that they are not legally entitled for assignment of the aforesaid extent of land and accordingly rejected the said representation by Ext.P7 order.

23. In the light of the law laid down by the Division Bench of this Court in Ext.P1 judgment dated 15.11.2013 in W.A.No.2090 of 2004, the statutory provisions referred to hereinbefore and the law laid down in the decisions referred to supra, we find no reason to interfere with the said order passed by the 4th respondent.

In the result, the petitioners are not entitled to any of the reliefs sought for in this writ petition. The writ petition fails and the same is accordingly dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

APPENDIX OF WP(C) 26327/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE JUDGMENT IN WA
NO.2090/2004 DATED 15/11/2013 OF THE
HON'BLE HIGH COURT.
- Exhibit P2 TRUE COPY OF THE JUDGMENT IN RP
NO.50/2014.
- Exhibit P3 TRUE COPY OF THE JUDGMENT IN WPC
NO.16920/2001 DATED 28/07/2004 OF THE
HONOURABLE HIGH COURT OF KERALA.
- Exhibit P4 TRUE COPY OF THE PETITION FILED BY THE
PETITIONERS BEFORE THE 3RD RESPONDENT
DATED 14/09/2017.
- Exhibit P5 TRUE COPY OF THE JUDGMENT IN WPC
NO.39322/2017 DATED 27/03/2018 OF THE
HON'BLE HIGH COURT OF KERALA.
- Exhibit P6 TRUE COPY OF THE NOTES OF ARGUMENT FILED
BY THE PETITIONERS COUNSEL BEFORE THE
DEPUTY SECRETARY-I, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
- Exhibit P7 TRUE COPY OF THE ORDER OF THE 4TH
RESPONDENT DATED 07/11/2018 ISSUED TO
THE PETITIONERS.
- Exhibit P-8 A true copy of the RTI Reply dated
18.02.2022 together with its enclosures
issued by the Public Information Officer
of the Taluk Office Devikulam, being the
Deputy Tahsildar (B Section)

RESPONDENT EXHIBITS

- Exhibit R-5(a) True copy of the G.O(P) No.41/2002/SCST
DD dated 20/7/2002.
- Exhibit R-5(b) True copy of the common judgment in
W.P(C) 2026 and 20292/2014 dated
17/12/2015 .



- Exhibit R-5(c)** True copy of the Order of the Hon'ble Supreme Court dated 31/8/2017 in civil appeals 6465 and 6466/2016 .
- Exhibit R-5(d)** True copy of the Order dated 27/5/2025 in Complaint No.76/A3/2013/ IDK/KSCSCST of the Kerala State Commission for Scheduled Castes and Scheduled Tribe, Thiruvananthapuram.