

Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 2735-2736 OF 2005

MADHAVI AMMA & ORS. ...Appellants

VERSUS

S. PRASANNAKUMARI & ORS.
Respondents

...

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. These appeals are directed against the common judgment of the Division Bench of the High Court of Kerala at Ernakulam dated 18.12.2002 passed in CRP No.1411/1996 (C) and CRP No.833/1996(H). CRP No.1411/1996 (C) was preferred by one Appukuttan Nair along with the appellant (s) herein challenging the decision of the Rent Control Appellate Authority, Thiruvananthapuram dated 28.10.1995 in RCA No.133/1991 by which the eviction ordered by the Rent Control Court in its order dated 02.7.1991 in RCP No.140/1985 was confirmed. CRP. No.833 of 1996 (H) was

preferred by the respondents herein challenging the order of the Appellate Authority (LR), Attingal in AA No.37/91 dated 13.11.1995 by which the order of the Land Tribunal, Thiruvananthapuram dated 19.02.1991 in OA No.78/1988 filed by the predecessor of the appellant (s), namely, Appukkuttan Nair under Section 80B of the Kerala Land Reforms Act for the purchase of his Kudikidappu right in respect of survey No.1536/A of Vanchiyoor Village, Thiruvananthapuram Taluk was reversed.

2. By the common order of the Division Bench, the eviction ordered by the Authorities under the Kerala Rent Control Act, 1963 and Kerala Buildings (Lease and Rent Control) Act, 1965 was confirmed and the order of the appellate authority dated 13.11.1995 in AA 37/1991 was set aside.

3. To trace the brief facts, the respondents landlord filed RCP No. 140/85 for eviction of the tenant, sub-tenant and other occupants under the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965 hereinafter called 'the 1965 Act'. When that eviction petition was pending, at the

instance of one of the tenants, who was predecessor of the appellant (s) herein filed a petition under Section 125 (3) of the Kerala Land Reforms Act, 1963 hereinafter called 'the 1963 Act' by which the predecessor of the appellant (s) claimed rights as a Kudikidappukaran. The learned Rent Controller referred the issue as to whether such a claim made by the tenant was admissible, to the Land Tribunal, having jurisdiction over the area in which the land situated together with the relevant records for the decision on that question.

4. Be that as it may, the tenant also filed an application under Section 80B of the 1963 Act for purchase of Kudikidappu under his occupation of the lands before the Land Tribunal. By independent orders dated 19.2.1991, the Land Tribunal returned a finding in the Reference made by the learned Rent Control Authority to the effect that the predecessor-in-interest of the appellant (s) did not possess any Kudikidappu rights. In the application filed under Section 80B of the Act also such a claim came to the rejected. Having regard to the provisions contained in Section 125 (5)

of the 1963 Act, the Rent Control proceedings in RCP 140/85 was determined holding that the tenant's right as a Kudikidappukaran was not maintainable and thereafter the eviction petition was also ordered on merits in favour of the respondent-landlord herein.

5. On the side of the appellant (s), a separate appeal was preferred in AA 37/91 as against the rejection of the application under section 80B of the 1963 Act which came to be allowed by the Appellate Authority by its order dated 13.11.1995. As against the order of the Rent Control Authority in RCP No.140/85 dated 2.7.1991 on behalf of the appellant(s), an appeal was also preferred in RCA No.133/1991 before the Rent Control Appellate Authority. The said appeal was dismissed by order dated 28.10.1995.

6. It is in the above stated background, the Division Bench of the High Court passed the impugned order confirming the order of eviction as against the appellant (s) and also setting aside the order of the appellate authority dated 13.11.95 in AA 37 of 1991 passed under the provisions of 1963 Act.

7. We heard Mr. Romy Chacko, Advocate for the appellant(s) and Sri Balakrishnan, learned senior counsel for the respondents. The learned counsel for the appellant(s) vehemently contended that irrespective of the decision of the Land Tribunal in its order passed in the Reference Case being RC No.16/89 dated 19.2.1991 which was acknowledged, approved and accepted by the learned Rent Control Authority in its ultimate order of eviction dated 02.7.1991, the order which came to be passed by the appellate authority under the 1963 Act in AA 37 of 1991 would prevail which has ultimately concluded that the appellants' right as Kudikiddappukaran was well-founded. In other words, according to learned counsel as the claim of the appellant(s) as Kudikiddapkaran under the provision of 1963 Act was substantial innature which has been examined and held in their favour by the concerned authority under the provision of the 1963 Act, the same should prevail over the rent control proceedings which was contrary to the decision passed under the 1963 Act.

8. As against the above submission, Sri Balakrishnan, learned senior counsel for the respondent-landlord contended that the claim of the appellant(s) as the Kudikidappukaran having been rejected by the authority constituted under the 1963 Act, in a Reference made to it which issue was also subject matter of consideration in the appeal preferred against the order of the Rent Control Authority, namely, before the Rent Control Appellate Authority as provided under Section 125(6) of the Act, the said decision could alone determine the rights of the appellant(s) even as regards the status as Kudikidappukaran and any contrary finding made in an application under Section 80B of the 1963 Act cannot prevail over the proceedings under Section 125 of the 1963 Act.

9. The crucial question which arises for consideration in this appeal is as to what is the scheme of the Act in regard to the decision as to the status of a person as Kudikidappukaran, his rights and entitlements on the one hand and the effect of the decision of the Civil Court or any other authority in deciding an issue relating to the rights of a

landlord as against a tenant in which any question is raised by the tenant claiming rights as a Kudikidappukaran.

10. In order to decide the above question some of the relevant provisions of the 1963 Act require to be noted, namely, Section 2 (25) the definition of 'Kudikidappukaran', Section 79A which prescribes the customary and other rights of Kudikidappukaran, Section 80 which prescribes the procedure for the registration of a person as Kudikidappukaran, Sections 80A and 80B which prescribe the right of Kudikidappukaran, to purchase his Kudikidappu rights and the procedure to be followed for effecting such purchase. Under Section 102 of the Act the right of appeal against an order passed under Section 80B of the 1963 Act is provided. Provision for revision before the High Court is provided under Section 103 of the Act as against any Appellate Authority's decision. There is an in built provision under Section 125 for making a Reference to a Land Tribunal to decide the question about the status of a person as Kudikidappukaran and further appeal remedy against such a decision. The said provisions are as under:

“2.(25) "Kudikidappukaran" means a person who has neither a homestead nor any land exceeding in extent three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township, in possession either as owner or as tenant, on which he could erect a homestead and

(a) who has been permitted with or without an obligation to pay rent by a person in lawful possession of any land to have the use and occupation of a portion of such land for the purpose of erecting a homestead; or

(b) who has been permitted by a person in lawful possession of any land to occupy, with or without an obligation to pay rent, a hut belonging to such person and situate in the said land; and "Kudikidappu" means the land and the homestead or the hut so permitted to be erected or occupied together with the easements attached thereto:

[xxxx]

Explanation I. - In calculating the total extent of the land of a Kudikidappukaran for the purposes of this clause, three cents in a city or major municipality, shall be deemed to be equivalent to five cents in any other municipality, and three cents in a city or major municipality or five cents in any other municipality shall be deemed to be equivalent to ten cents in a panchayat area or township.

Explanation II. - For the purposes of this clause.

(a) "hut" means any dwelling house constructed by a person other than the person permitted to occupy it-

(i) at a cost, at the time of construction, not exceeding seven hundred and fifty rupees; or

(ii) which could have at the time of construction, yielded a monthly rent not exceeding five rupees,

and includes any such dwelling house reconstructed by the Kudikidappukaran in accordance with the provisions of section 79; and

(b) "homestead" means, unless the context otherwise requires, any dwelling house erected by the person permitted to have the use and occupation of any land for the purpose of such erection, and includes any such dwelling house reconstructed by the Kudikidappukaran in accordance with the provisions of section 79.

[Explanation IIA. - Notwithstanding any judgement, decree or order of any court, a person, who, on the 16th day of August, 1968, was in occupation of any land and the dwelling house thereon (whether constructed by him or by any of his predecessors-in-interest or belonging to any other person) and continued to be in such occupation till the 1st day of January, 1970, shall be deemed to be a Kudikidappukaran:

Provided that no such person shall be deemed to be a Kudikidappukaran-

(a) in cases where the dwelling house has not been constructed by such person or by any of his predecessors- in-interest, if-

(i) such dwelling house was constructed at a cost, at the time of construction, exceeding seven hundred and fifty rupees; or

(ii) such dwelling house could have, at the time of construction, yielded a monthly rent exceeding five rupees; or

(b) if he has a building or is in possession of any land exceeding in extent three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township, either as owner or as tenant, on which he could erect a building];

Explanation III. - Where any Kudikidappukaran secures any mortgage with possession of the land in which the Kudikidappu is situate, his Kudikidappu right shall revive on the redemption of the mortgage, provided that he has at the time of redemption no other homestead or any land exceeding three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township, in possession either as owner or as tenant, on which he could erect a homestead.

Explanation IV. - Where a mortgagee with possession erects for his residence a homestead, or resides in a hut already in existence, on the land to which the mortgage relates, he shall, notwithstanding the redemption of the mortgage, be deemed to be a

Kudikidappukaran in respect of such homestead or hut, provided that at the time of the redemption-

(a) he has no other Kudikidappu or residential building belonging to him, or any land exceeding three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township, in possession either as owner or as tenant, on which he could erect a homestead; and

(b) his annual income does not exceed two thousand rupees.

Explanation V. - Where a Kudikidappukaran transfers his right in the Kudikidappu to another person, such person shall be deemed to be a Kudikidappukaran, if-

(a) he has no other homestead or any land in possession, either as owner or as tenant, on which he could erect a homestead; and

(b) his annual income does not exceed two thousand rupees,

Explanation VI. - For the purposes of this clause, a person occupying any hut belonging to the owner of a plantation and situate in the plantation shall not be deemed to be a Kudikidappukaran if such person was permitted to occupy that hut in connection with his employment in the plantation, unless

(a) he was, immediately before the commencement of this Act, entitled to the rights

of a Kudikidappukaran or the holder of a protected ulkudi or Kudikidappu under any law then in force; or

(b) he would have been entitled to the rights of a Kudikidappukaran if the area in which that hut is situate had not been converted into a plantation subsequent to his occupation of that hut.

[Explanation VII. - For the removal of doubts it is hereby declared that a person occupying a homestead or hut situate on a land held or owned by the Government of Kerala or the Government of any other State in India or the Government of India shall not be deemed to be a Kudikidappukaran];

[79A. Customary and other rights of Kudikidappukaran. - (1) Notwithstanding anything contained in any law, or in any contract, or in any judgment, decree or order of court, the Kudikidappukaran shall be entitled to all rights accrued to him by custom, usage or agreement and which he was enjoying immediately before the commencement of this Act.

(2) Notwithstanding anything contained in any law, or in any judgment, decree or order of court, but without prejudice to any rights to which a Kudikidappukaran may be entitled under any other law for the time being in force or under any custom, usage or contract a Kudikidappukaran shall in respect of his Kudikidappu have all the rights and privileges conferred on the owner of a land under the Indian Easements Act, 1882, as if the Kudikidappukaran were the owner of his Kudikidappu from the date on which the hut or

homestead, as the case may be, was occupied or erected.

(3) Notwithstanding anything contained in any law, or in any judgment, decree or order of court, or in any contract it shall not be necessary to obtain the consent of the owner or occupier or both of the land in which a Kudikidappu is situate, to lay down or place any electric supply line or other work on, over or under such land for the purpose of supply of electrical energy to the Kudikidappu for domestic consumption and use.

(4) Notwithstanding anything contained in any law, or in any judgment, decree or order of court, or in any contract, it shall not be necessary to obtain the consent of the owner or occupier or both of the land in which a kudikidappu is situate to lay down any pipe or to carry out any other work on, over or under such land for the purpose of supply of water to the Kudikidappu for domestic consumption and use.

Explanation. - For the purpose of this section, enjoyment of any benefit or concession for a continuous period of three years immediately preceding the commencement of this Act shall be deemed to be enjoyment of a right accrued to the Kudikidappukaran by custom, usage or agreement.]

80. Register of Kudikidappukars. - (1) The Government shall cause a register of Kudikidappukars [within the limits of each local authority to be prepared and maintained.]

(2) The register shall show-

(a) the description of land in which the Kudikidappu is situate;

(b) the location of the Kudikidappu and its extent;

(c) the name of the landowner and of the person in possession of the land in which the Kudikidappu is situate;

(d) the name and address of the Kudikidappukaran; [xxxx]

[(dd) the rights referred to in section 79A; and

(e) such other particulars as may be prescribed.

[3] Subject to such rules as may be made by the Government in this behalf, the local authority shall prepare a register of Kudikidappukars within its jurisdiction.

(4) The register shall be maintained by the local authority in such manner as may be prescribed.

(5) Any person aggrieved by the registration of a Kudikidappukaran under sub-section (3) or the refusal to register a person claiming to be a Kudikidappukaran may, within ninety days from the date of registration or refusal, as the case may be, appeal-

(a) to the Revenue Divisional Officer having jurisdiction, where the decision appealed against is that of a municipal corporation or a municipal council;

(b) to the Tahsildar having jurisdiction, in other cases.

(6) On receipt of an appeal under sub-section (5), the Revenue Divisional Officer or the Tahsildar, as the case may be, may call for the record of any proceeding which has been taken by the local authority under this section and may make such enquiry or cause such enquiry to be made and may pass such orders thereon as he thinks fit:

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(7) For the purposes of this section, "local authority" shall not include a cantonment board.]

[80A. Right of Kudikidappukaran to purchase his Kudikidappu. - (1)

Notwithstanding anything to the contrary contained in any law for the time being in force, a Kudikidappukaran shall, subject to the provisions of this section, have the right to purchase the Kudikidappu occupied by him and lands adjoining thereto.

(2) xxx xxx

(3) The extent of land which the Kudikidappukaran is entitled to purchase under this section shall be three cents in city or major municipality or five cents in any other municipality or ten cents in a panchayat area or township: xxx xxx

(4) xxx xxx

(5) xxx xxx

(6) xxx xxx

(7) xxx xxx

(8) xxx xxx

(9) xxx xxx

(10) xxx xxx

(11) xxx xxx

(12) xxx xxx

80B. Procedure for purchase by Kudikidappukaran. - (1) A Kudikidappukaran entitled under section 80A to purchase the Kudikidappu occupied by him and lands adjoining thereto may apply to the Land Tribunal for such purchase.

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

(3) The Land Tribunal shall, after giving notice to the Kudikidappukars in the land in which the Kudikidappu is situate and other persons interested in the land and after such enquiry as may be prescribed, pass such orders on the application as it thinks fit;

Provided that where an application under sub-section (1) of section 77 in respect of the

Kudikidappu is pending, the Land Tribunal shall not pass any order under this sub-section before the disposal of that application.

(4) An order under sub-section (3) allowing an application shall specify.-

(i) the extent of land which the Kudikidappukaran is entitled to purchase;

(ii) the purchase price payable in respect of the land allowed to be purchased by the Kudikidappukaran;

(iii) the amounts due to the person in possession of the land in which the Kudikidappu is situate and other persons interested in the land;

(iv) the value of encumbrances subsisting or claims for maintenance or alimony charged on the land allowed to be purchased by the Kudikidappukaran;

(v) the amount payable to the holder of the encumbrance or the person entitled to the maintenance or alimony and the order of priority in which such amount is payable;

(vi) such other particulars as may be prescribed.

(5) If the person in possession of the land in which Kudikidappu is situate or the landowner or the intermediary, if any, of the land is liable to pay any amount to the Kudikidappukaran towards the price of the homestead or the cost of shifting the Kudikidappu, the Land Tribunal shall in passing orders on the application for

purchase set off such amount against the purchase price payable to such person.

(6) Where the right, title and interest of the person in possession of the land in which the Kudikidappu is situate or any other person interested in the land form part of the security for any encumbrance or charge for maintenance or alimony, the Land Tribunal shall, for the purpose of determining the value of the encumbrance or the charge for the maintenance or alimony relating to the portion in respect of which purchase is allowed, apportion the entire encumbrance or charge for the maintenance or alimony between the land in which the Kudikidappu is situate and the portion allowed to be purchased in proportion to the values of the two portions.

(7) Where the person in possession of the land in which the Kudikidappu is situate is a tenant, the purchase price payable in respect of the land to be purchased shall be apportioned among the landowner, the intermediaries, if any, and the tenant in possession of the land in proportion to the profits derivable by them from the holding.

Explanation. - "Profits derivable from the land" shall be deemed to be equal to,-

(i) in the case of a landowner, the rent which he was entitled to get from the tenant holding immediately under him;

(ii) in the case of an intermediary, the difference between the rent which he was entitled to get

from his tenant and the rent for which he was liable to his landlord; and

(iii) in the case of the tenant in possession, the difference between the net income and the rent payable by him; and the rent payable by such tenant and the intermediary for the purposes of this Explanation shall be as calculated under the provisions of this Act.

102 - Appeal to appellate authority. - (1)

The Government or any person aggrieved by any order of the Land Tribunal under sub-section (2) of section 12, sub-section (3) of section 13A, section 22, section 23, sub-section (2) of section 26 (where the amount of arrears of rent claimed exceeds five hundred rupees), section 31, section 47, sub-section (3) or sub-section (4) of section 48, sub-section (3) of section 49, sub-section (6) of section 52, section 57, sub-section (5) of section 66, section 72F, section 73, sub-section (2) of section 77, section 80B, sub-section (4) of section 90, section 106 or section 106A may appeal against such order within such time as may be prescribed to the appellate authority.

(2) JUDGMENT

(3)

(4)

103 - Revision by High Court (1) Any person aggrieved by -

(i) any final order passed in an appeal against the order of the Land Tribunal or;

(ii) xxx xxx

(iii) xxx xxx

may, within such time as may be prescribed, prefer a petition to the High Court against the order on the ground that the [appellate authority or the Land Board, or the Taluk Land Board], as the case may be, has either decided erroneously, or failed to decide, any question of law.

(1A)

(1B)

(2) The High Court may, after giving an opportunity to the parties to be heard, pass such orders as it deems fit and the orders of the appellate authority or the Land Board, ¹or the Taluk Land Board as the case may be, shall, wherever necessary, be modified accordingly.

(3) xxx xxx

(4) The power of the High Court under this section may be exercised by a Bench consisting of a Single Judge of the High Court.

125 - Bar of jurisdiction of civil courts. - (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the appellate authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government:

Provided that nothing contained in this subsection shall apply to proceedings pending in

any court at the commencement of the Kerala land Reforms Amendment Act, 1969.

(2) No order of the Land Tribunal or the appellate authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government made under this Act shall be questioned in any civil court, except as provided in this Act.

(3) If in any suit or other proceedings any question regarding rights of a tenant or of a Kudikidappakaran (including a question as to whether a person is a tenant or a Kudikidappakaran) arises, the civil court shall stay the suit or other proceeding and refer such question to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situate together with the relevant records for the decision of that question only.

(4) The Land Tribunal shall decide the question referred to it under subsection (3) and return the records together with its decision to the civil court.

(5) The civil court shall then proceed to decide the suit or other proceedings accepting the decision of the Land Tribunal on the question referred to it.

(6) The decision of the Land Tribunal on the question referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the civil court.

(7) No civil court shall have power to grant injunction in any suit or other proceedings

referred to in sub-section (3) restraining any person from entering into or occupying or cultivating any land or Kudikidappu or to appoint a receiver for any property in respect of which a question referred to in that sub-section has arisen, till such question is decided by the Land Tribunal, and any such injunction granted or appointment made before the commencement of the Kerala Land Reforms (Amendment) Act, 1969, or before such question has arisen, shall stand cancelled.]

[(8) In this section, "civil court" shall include a Rent Control Court as defined in the Kerala Buildings (Lease and Rent Control) Act, 1965.]”

11. When we refer to Section 2(25) which defines Kudikidappukaran, the main ingredients to be noted are that to fall within the said definition a person has to establish that he had neither a homestead nor any land existing in extent of three cents in any city or major municipality or five cents in any other municipality or ten cents in any Panchayat area or township either as an owner or as a tenant at which he could erect a homestead. Such person should have been permitted with or without an obligation to pay rent. The possession should be lawful possession of any land for the purpose of erecting a homestead. Such a person in lawful

possession should have erected his own hut or homestead which should have also been permitted by the owner of the land with whatever easementary rights attached thereto. Explanation II (a) and II (b) of Section 2(25) define what a hut and homestead mean respectively. The Explanation IIA prescribes a cut off date, namely, 16.8.1968 and those persons who were in occupation of any land and dwelling house thereon constructed on his own or by any of his predecessors-in-interest or even belonging to any other person, as deemed Kudikidappukaran, subject to certain exceptions. Explanation VII of Section 2(25) totally prohibits anyone to claim status as Kudikidappukaran even if such a person is occupying a homestead or hut situate in a land which is held or owned by the Government of Kerala or the Government of any other State in India or the Government of India itself.

12. Keeping the above relevant part of definition of Kudikidappukaran under Section 2(25) of the Act, when we examine Section 79A which starts with a non-obstante clause and provides that notwithstanding anything contained in any

law or contract or judgment or decree or order of the Court, the person falling within description of Kudikidappukaran would be entitled to all rights accrued to him by custom, usage or agreement which he was enjoying immediately before the commencement of the Act, namely, 1.4.1964 by which Sections 2 to 71, 73 to 82, 84, 99 to 108 and 110 to 132 were brought into force after receiving the assent of the President on 31.12.1963 which was published in Kerala Government Gazette Extraordinary No.7 dated 14.1.1964. In order to avail the benefits which are provided under Section 79A, the Act prescribes the mode by which the status of a person who claims himself to be a Kudikidappukaran to be entered as such in a register prescribed under the Act. The procedure for getting such a registration has been set out in Section 80 of the Act. While under sub-Section (1) of Section 80 the Government has been ordained to prepare and maintain a register by the local authority wherever such land situate, under sub-Section (2) of Section 80 the details as regards the description of the land, the location, the name of land owner and the person in possession, the name and

address of Kudikidappukaran, the nature of rights available to such Kudikidappukaran as prescribed under Section 79A and such other relevant particulars are to be noted in the said register as prescribed under Section 80 (2) of the Act. Sub-Section (3) and (4) of Section 80 enjoin upon the local authority to prepare a register of Kudikidappukars within its jurisdiction and continue to maintain in the manner prescribed therein. Sub-section (5) of Section 80 is more relevant for our purpose which specifically states that in the event of the local authority refusing to register a person claiming to be a Kudikidappukaran as prescribed under sub-Section (3) of Section 80, such a person would be entitled to file an appeal within 90 days from the date of such refusal, to the Revenue Divisional Officer having jurisdiction where the decision is that of an authority of Municipal Corporation or a Municipal Council or to the Tahsildar in all other cases. The appellate authority has been empowered under sub-Section (6) of Section 80 to call for the record of any proceeding where a decision has been taken by the local authority and after holding such enquiry pass orders in the appeal. The

proviso to sub-Section (6) of Section 80 specifically provides for an opportunity of personal hearing to the concerned appellant(s). Thereafter in the event of the registration of a person's claim having fructified in the prescribed register as a Kudikidappukaran, such person would gain a right to seek for purchase of Kudikidappu rights under Section 80A of the Act. An application has to be preferred by a registered Kudikidappukaran which is to be decided by the land Tribunal after giving an opportunity of hearing to a person interested in the land and after holding an enquiry. Under sub-Section (4) of Section 80B, the details to be specified in any order to be passed under sub-Section (3) of Section 80B has been prescribed.

13. Anyone aggrieved by the order passed under Section 80B has got a right of appeal under Section 102 of the Act within the prescribed time limit. Against any such order in appeal a further right of revision is provided under Section 103(1) (i) to the High Court wherever the decision of land Tribunal is erroneous or which failed to decide any question of law.

14. Section 125 stands apart from the above provisions which creates a bar of jurisdiction of Civil Court to settle, decide or deal with any question or to determine any matter which is by or under the 1963 Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the Appellate Authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government. Further the proviso to Section (1) to Section 125 excludes such a bar of civil Court jurisdiction in respect of proceedings pending in any Court at the commencement of the Kerala Land Reforms Amendment Act, 1969. Even while creating such a bar of jurisdiction of civil Courts, the law makers wanted to ensure that no person is allowed to abuse or misuse the benefits conferred under 1963 Act while claiming rights as a Kudikidappukaran and with that laudable object engraved sub-Section (3) in Section 125 itself by which any Civil Court or authority before whom any other proceedings regarding rights of a tenant or of a Kudikidappukaran arise for consideration, enjoins upon such civil Court or other authority to stay the proceedings

temporarily and also simultaneously make a reference to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situate along with the relevant records for the decision of the question as to whether a person is a tenant or a Kudikidappukaran. Sub-Section (8) of Section 125 which was introduced in the statute book w.e.f. 2.11.1972 made it clear that civil Court would include a Rent Control Court as defined in the 1965 Act. Sub -section (4) enjoins upon the Land Tribunal to decide the question referred to it under sub-Section (3) and return the records together with his decision back to the Civil Court/Rent Control Court. Under sub-Section(5) of Section 125 the civil Court/Rent Control Court should then proceed to decide the suit or other proceedings by accepting the decision of the Land Tribunal on the question referred to it. Sub-Section (6) of Section 125 makes the position clear that while the decision of the Land Tribunal on the question referred to it should be accepted by the concerned Civil Court/Rent Control Court which refers the question, the further determination as to the correctness or otherwise of such

decision by the Land Tribunal can be examined in the channel of appeal provided in the respective jurisdictional Appellate Court of the Civil Court/Rent Control Court. In other words, while under Section 125(3), having regard to the bar of jurisdiction of Civil Court/Rent Control Court to decide the question about the status of a Kudikidappukaran or a tenant which can be exclusively decided only by the land Tribunal, after such a decision is rendered pursuant to a reference made to it and the ultimate decision of the Civil Court/Rent Control Court is taken up by way of an appeal to the Appellate Court/appellate authority of a Civil Court or Rent Control Court while examining the merits of the decision of the concerned Civil Court or the original authority on the question of eviction can also examine the correctness of the decision rendered by the Land Tribunal as regards the status as a Kudikidappukaran.

15. Having analysed the scheme of the 1963 Act based on the above provisions, we are able to discern the scheme of the Act vis-à-vis the civil court jurisdiction including the Rent Control Court and the Rent Control Appellate Authority under

the provisions of the 1965 Act. Keeping the above scheme of the Act, in relation to the issue which has come up for consideration in these appeals, in our mind, when we examine the controversies raised in these appeals as noted by us earlier, when the respondent herein filed application for eviction before the Rent Control Court in RCP No.140/1985, since on behalf of the appellant(s), an objection was raised to the effect that the building was a hut and that the respondent in the RCP claimed himself to be a Kudikidappukaran entitled to get Kudikidappu right over the scheduled building and property, the Rent Control Court rightly referred the said issue, namely, whether the appellants' predecessor in interest was entitled to claim the status of Kudikidappukaran or merely a tenant to be decided by the Land Tribunal by way of Reference in RC No.16/89. As far as the eviction sought for by the respondent was on the ground of default in payment of rent, demolition and reconstruction, as well as for bonafide need for own occupation, the Rent Control Authority after making an initial reference in RC No.16/89 to the Land Tribunal and after

receipt of the decision of the land Tribunal in its order dated 19.2.1991 in RC No.16/89 held that the predecessor-in-interest of the appellant(s) was not a Kudikidappukaran over the petition scheduled building, accepted the said decision and thereafter proceeded to decide whether the ground of eviction as sought for by the respondent landlord was made out. By its order dated 02.7.1991 in RCP 140/85, the Rent Control Authority concluded that there was a landlord-tenant relationship between the respondent and the appellant(s), and that there was a sub-lease of the tenanted building, that there was bonafide need for demolition and re-construction as well as for own-occupation and consequently directed eviction of the appellant(s) to enable the respondent to go in for re-construction and occupation of the same on their own.

16. On behalf of the appellant(s), an appeal was preferred as against the decision of the Rent Control Authority dated 02.7.1991 by way of an appeal before the Rent Control Appellate Authority in RCA No.133/91. Before the Appellate Authority also, the question as to the decision of the Land Tribunal, namely, whether the appellant(s) were entitled for

status of Kudikidappukaran as well as the grounds of eviction were subject matter of consideration. The Appellate Authority under the Rent Control Act ultimately by its order dated 28.10.95 confirmed the order of the learned Rent Controller by dismissing the appeal preferred by the appellant(s). Be that as it may, as pointed out earlier on behalf of the appellant(s), an application was independently filed in OA 78/88 by invoking Section 80B of the 1963 Act before the Land Tribunal apparently, on the assumption that the appellants' status as a Kudikidappukaran existed. The said application was decided by the learned Tribunal in a detailed order passed on 19.2.1991 which incidentally was the date on which RC No.16/89 was also decided by the Land Tribunal which decision was forwarded to the Rent Control Court for passing further orders in the eviction proceedings.

17. It is relevant to note that the application preferred on behalf of the appellant(s) under Section 80B of the 1963 Act in OA 78/88 was rejected by the Land Tribunal, Thiruvananthapuram and some of the relevant findings were as under:-

“Ext.A1 (Property tax assessment) when examined it is found that Appukuttan Nair, the applicant is an occupant in a building TC No.6/482 and the owner of the building is B. Chembakakutty Amma. The revised annual tax of the said building is arrived at Rs.22.68 by calculating the annual rent of the building as Rs.168/- i.e. monthly rent for the year 1965-66 is Rs.14/-. A building for which a monthly rent of Rs.14/- is assessed by the assessing authority in the year 1965-66 will not in any account be a hut or a kudil. It must be a full fledged house. It is not prudent to believe that it is a hut. This building assessment leads to believe that the contention of the respondents are true and correct. The wife and witness of the applicant in the cross examination has stated that Kamalamma is in possession of a separate ration card and also she has admitted that the land lord has filed BRC for eviction of the tenants from the schedule building. The Revenue Inspector has also stated that Kamalamma who is the sister of the applicant also possess separate ration card in the address of the same building which shows that there are at least two sets of occupants in one building. Therefore it is reasonable to believe that the applicant is occupied only a portion of a big building occupation in a part of a building cannot be construed as Kudikidappu as decided in cases reported in 1968 KLT 888 and 1974 KLT 738. Another point to be noted is the tax assessment of the building which brought out in Ext.A1. According to this the monthly rent of the building is reckoned as Rs.14/-. This also is enough to believe that the schedule building is not a kudil. There is nothing in evidence to show that the applicant satisfy the requirements under explanation II of Section 2(25) of the

K.L.R. Act. Moreover it has been proved that the applicant is residing in a part of the building wherein some other occupants are also residing. On the above ground I enter into finding that the applicant is not entitled to the fixity of Kudikidappu in the property comprising in Sy.No.1536A of Vanchiyoor village. In the result in exercise of powers conferred upon me under section 80B(3) I do hereby dismiss the original application.”

18. On behalf of the appellant(s), a separate appeal was preferred before the Appellate Authority (LR) in AA 37/91 as against the decision dated 19.2.1991 in OA 78/88. The said Appellate Authority concluded as under in paras 9 and 15.

“9) The Revenue Inspector filed his report. He has reported that it is a thatched hut. The cost at the time of construction of the hut would be Rs.400/-. The rent which would have fetched is Rs.4/- per month. The respondents have no case that it is a full fledged house. They have not taken any step for the examination of the Revenue Inspector. No commission was taken out to disprove the report filed by the Revenue Inspector. No oral evidence was adduced by the respondents. Ext.A1 is the copy of the extract of the assessment register in respect of the said hut for the period 1965-66. The rental value which was existing at the time of assessment was Rs.60/-. The monthly rent would have been Rs.5/- which is within the ambit of the KLR Act. In the absence of any evidence from the side of the respondents, I can only accept the reports

filed by the Revenue Inspector and accordingly hold that it is a hut and not a full fledged house.

15) From the forgoing discussion I can only hold that the dwelling house is a hut and not a full fledged house. The findings of the LT that it is a full fledged house and the Kudikidappu is claimed over a part of the building is erroneous and unsustainable. The appellant is entitled to fixity of Kudikidappu. The appeal is liable to be allowed.”

19. After so holding, the Appellate Authority (LR) set aside the order dated 19.2.1991 passed in OA 78/88 by the Land Tribunal in the Section 80B application. It is relevant to point out the serious discrepancy which were explicit in the order of the Appellate Authority dated 13.11.1995 in AA 37/91. In the first place, as rightly held by the Division Bench of the High Court when a Reference was made under Section 125 (3) of the 1963 Act by the Rent Control Authority calling for a decision as to the status of the appellant(s) as a tenant or Kudikidappukaran for the purpose of deciding the eviction proceedings, and in that Reference the Land Tribunal returned a finding that the appellant(s) was not a Kudikidappukaran but was only a tenant occupying a building belonging to the respondent and not a hut or homestead,

thereafter the only scope to challenge the said conclusion of the Land Tribunal was only by way of an appeal under the provisions of 1965 Act by virtue of the specific stipulations contained in Section 125(6) of the 1963 Act. When we consider the scope and content of Section 125 on the whole, we are convinced that the conclusion arrived at by the Division Bench could have been the only conclusion and we do not find any good grounds to differ from the same.

20. Consequently, when a decision was reached by the Land Tribunal in a Reference made to it under Section 125 (3) of the 1963 Act, having regard to the scheme of the Act as from the definition of Kudikidappukaran under Section 2(25), the benefits that would accrue to a Kudikidappukaran as provided under Section 79A, the procedure prescribed under Section 80 by which a person claiming the rights of Kudikidappukaran has to ensure the recognition of such status as Kudikidappukaran in a proceeding before the concerned local authority and get his name registered in the prescribed register to be prepared by the local authority and to be maintained for that purpose, we fail to see how any

person claiming such status as Kudikidappukaran can seek for such status to be recognized by resorting to any other proceedings under the other provisions of the 1963 Act. To put it differently, it has to be held that in order for a person to claim the status of Kudikidappukaran for the purpose of availing the benefits available as a Kudikidappukaran as spelt out under Section 79A of the 1963 Act, he has to ensure that the status claimed by him as Kudikidappukaran is in the first instance accepted by the local authority in appropriate proceedings under Section 80 of the Act and more importantly in proof for such acceptance his name is entered as Kudikidappukaran in the register prepared and maintained for that purpose by the local authority. If any such person is not able to get such recognition in the first instance before the local authority, the statute prescribes a remedy of appeal under Section 80(5) before appropriate appellate authority. Only after establishing such a right in the prescribed manner as provided under Section 80 of the Act, there would be any scope for anyone to claim validly that he is entitled for all the benefits that would flow from his

status as a Kudikidappukaran. In other words, it can be validly stated that the claim of a status of a Kudikidappukaran can be determined only under Section 80 of the Act.

21. In contradistinction to Section 80, what is provided under Sections 80A or 80B were the consequential benefits such as the right to purchase the Kudikidappu and the procedure to be followed for effecting the purchase by approaching the concerned authorities and thereby ascertain his ownership rights after such purpose. By no stretch of imagination, the right to purchase provided under Section 80A and the procedure prescribed for purchase of such right under Section 80B can be invoked, by a person whose status as Kudikidappukaran was yet to be ascertained earlier. The approach made by the appellant(s) by invoking Section 80B of the Act in order to assert his right as Kudikidappukaran even without getting his status ascertained in the appropriate proceedings under Section 80 of the Act was wholly invalid and was rightly rejected by the original authority in its order dated 19.2.1991 in OA 78/88.

Unfortunately, the Appellate Authority that decided the appeal as against the said order in AA 37/91 failed to understand the scope, power and jurisdiction of Appellate power under Section 102 of the Act as against the order passed under Section 80B of the 1963 Act which unfortunately resulted in the passing of the order dated 13.11.1995 in AA 37/91.

22. It has to be stated in uncontroverted terms that the said order of the Appellate Authority (LR) Attingal, dated 13.11.1995 in AA 37/91 was, therefore, wholly without any jurisdiction and was not in tune with the powers vested with the said Appellate Authority under Section 102 of the 1963 Act while examining the order passed under Section 80B of the Act. It has to be stated that the said order was far in excess of the jurisdiction vested in the said authority and, therefore, the said order was rightly set aside by the Division Bench of the High Court.

23. Once, we steer clear of the correctness of the said order dated 13.11.1995 in AA 37/91, the only other aspect to be

examined is the correctness of the order passed by the Rent Control Authority in RCP No.140/85 dated 2.7.1991 on the merits of ground of eviction, namely, the alleged default in payment of rent, necessity for demolition and re-construction and the claim for own-occupation. In those aspects, as the conclusion was arrived at by the Rent Control Court based on a detailed consideration of the merits which are mainly based on facts and in the absence of any legal error in the said conclusion arrived at by the Rent Control Authority as well as the Rent Control Appellate Authority in the decision dated 28.10.1995 passed in RCA No.133/91, there is no scope to find fault with the ultimate decision of the Division Bench of the High Court in dismissing the revision preferred by the appellant(s). Having bestowed our detailed consideration on the impugned judgment, we hold that the decision of the Division Bench in allowing the revision preferred by the respondent as against the order of the appellate authority (LR) dated 13.11.1995 in AA 37/91 was also justified. These appeals, therefore, fail and the same are dismissed.

.....J.
[Dr. B.S.
Chauhan]

.....J.
[Fakkir Mohamed Ibrahim
Kalifulla]

**New Delhi;
March 22, 2013**



JUDGMENT