A MAMMU

v.

HARI MOHAN AND ANR.

JANUARY 7, 2000

B [K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

Kerala Land Reforms Act, 1963 : Sections 80A, 80B and 103—Application for purchase of kudikidappu rights filed by the appellant/tenant dismissed by the Land Tribunal—Appeal before the Appellate Authority allowed—In revision, High Court remanded matter back to the Appellate Authority for reconsideration—Appellate Authority passed order in favour of the appellant tenant—Order of the Land Tribunal set aside—Case remanded back to Land Tribunal—Land Tribunal held appellant entitled to a part of land—Subsequent order of the Land Tribunal challenged in appeal—Appeal dismissed by Appellate Authority on the ground that its previous order was conclusive as it was not challenged in revision—Revision against subsequent order of the Appellate Authority allowed—On appeal, Held : Section 103(1)(i) of the Act conveys that a revision cannot be filed against an interlocutory order passed in appeal—Order not disposing of an appeal is not a final order—Order of remand is not on interlocutory order—Revision petition maintainable against an order of remand by the Appellate Authority.

The respondent had let out a room to the appellant which was originally constructed as shop room. The appellant filed applications for purchase of *kudikidappu* rights, under Section 80-B of the Kerala Land Reforms Act, 1963, before the Land Tribunal, which was dismissed. Appellant's appeal before the Appellate Authority was allowed holding that the appellant was a *kudikidappukaran* entitled to purchase the *kudikidappu*. The respondent's challenge to the said order in revision was allowed by the High Court. The order of the Appellate Authority was set aside and the matter was remanded back to the Appellate Authority for fresh disposal on consideration of different factors like difference between the building and the structure, object for which and the circumstance under which the structure was allowed to be constructed etc. After the remand, the Appellate Authority passed an order in favour of the appellant as a result of which the appeal was allowed and order of Land Tribunal was set aside and the case was remanded back to the Land Tribunal for

granting of *kudikidappu* right to the appellant. The Land Tribunal found the appellant entitled to 10 cents of land as *kudikidappu*. Said order of the Land Tribunal was challenged in appeal by the respondent before the Appellate Authority which was dismissed on the finding that since the previous order of the Appellate Authority was a final order and since that order was not challenged in revision it became final and conclusive. Challenge to this order of the Appellate Authority was allowed by the High Court in revision. The High Court, overruling the objection raised by the appellant against maintainability of the revision, held that order of the Appellate Authority cannot be a final order deciding upon the rights and liabilities of the parties or their mutual obligations. On merits, the High Court held that the structure in question was not an independent structure and it was only an adjunct or appurtenance to the shop room let out to the appellant with respect to which, the claim of *kudikidappu* would not lie. Hence the present appeal.

The issues involved in this appeal were whether the order of the Appellate Authority remanding the matter to the Land Tribunal with a direction to pass order in the light of the observations/directions in the order is a 'final order' within the meaning of Section 103(1) of the Act and whether the finding of the High Court that the appellant cannot claim *kudikidappu* in respect of the structure in question is sustainable in law.

Dismissing the appeal, this Court

HELD : 1.1. Clause (i) of sub-Section (1) of Section 103 of the Kerala Land Reforms Act, 1963 provides that any final order passed in an appeal is available to be challenged in revision by any person aggrieved by such order. The clear and unambiguous language in which the section is couched conveys the meaning that a revision petition cannot be filed against an interlocutory order passed in an appeal. An order which does not dispose of the appeal is not a 'final order'. An order of remand in which the matter is remanded to the Land Tribunal for disposal in accordance with law cannot be said to be an interlocutory order for the simple reason that the appeal filed before the Appellate Authority stands disposed by such order. In a case where the Appellate Authority keeps the proceeding pending and calls for a finding on a specific issue or point formulated by it from the Land Tribunal or any other Authority, then such an order cannot be said to be a final order against which a revision could be filed

A before the High Court. The reasoning that a 'final order' is one which disposes of the proceeding before the Land Tribunal is clearly erroneous and therefore, the finding of the High Court in the impugned order that no revision petition could be filed against the order of remand passed by the Appellate Authority is erroneous. [91-E-H, 92-F]

B

Mahadevan Iyer v. *Bhagwati Ammal,* (1979) Kerala Law Times 910, affirmed.

Joseph v. *Velayudhan Pillai,* (1976) Kerala Law Times 870 and *Bhas-*
C *kara Menon* v. *Gangadharan,* (1983) Kerala Law Times 435, overruled.

2.1. In the present case, High Court has taken note of exception to the order of the Land Tribunal on the ground that it failed to take note of relevant factors like the facts and circumstances under which the structure
D was allowed to be constructed, whether it was free or subject to payment of rent, the existence of similar structures erected by the other tenant in the building and whether the structure with respect to which *kudikidappu* was claimed was really a part of the building which was let out to the appellant or it was an independent or separate structure. The High Court
E further observed that the Land Tribunal decided the case in favour of the appellant taking note of only one factor, that there is a distance of about 3/4 *kole* between the two structures. The High Court has also found that, even though the building was referred to as a shop building (originally), the appellant was residing in that while running his motor pump repair
F business in a portion, even before constructing the lean-to or *charthu* in question. On the basis of such facts and circumstances appearing from evidence on record, the High Court came to the finding that the structure with respect to which *kudikidappu* is claimed is not an independent structure; it is only an adjunct or appurtenant to the shop room previously let out to the appellant. The facts and circumstances noted in the impugned
G judgment are relevant and germane for the purpose of determining the question whether the appellant's claim that he is a *kudikidappukaran* with respect to the structure in question and as such entitled to purchase the property. The High Court cannot be faulted either in fact or in law for having held that the appellant is not a *kudikidappukaran* with respect to
H the structure in question. [95-C-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2560 of 1997. A

From the Judgment and Order dated 29.11.96 of the Kerala High Court in C.R.P. No. 2495 of 1989-D.

B.V. Deepak for Ajit Pudussery for the Appellant. B

T.L.V. Iyer, (Ramesh Babu, M.R.) for N. Sudhakaran for the Respondent No. 1.

Ms. Malini Poduval, Lan Singh Rongmir for Respondent No. 2.

C

The Judgment of the Court was delivered by

MOHAPATRA, J. This appeal is directed against the Judgment and Order of the High Court of Kerala dated 29th November, 1996 in CRP No. 2495 of 1989. The said revision petition was filed by the respondent herein under Section 103 of the Kerala Land Reforms Act 1963 (hereinafter D referred to as 'the Act') challenging the Judgment dated 31.1.1989 of the Land Reforms Appellate Authority, Thrissur in AA No. 93/88. The High Court having allowed the revision petition on the finding that the respondent therein is not a Kudikidappukaran with respect to the structure in question. The respondent in the revision petition has filed this appeal. E

The relevant facts necessary for appreciating the controversy may be stated thus :

The respondent Hari Mohan owns an extent of 28.5 cents of property in Survey No. 683/3 of Lakamaleswaram Village. In that property there F is a building with four sets of rooms originally constructed as shop rooms. The said four rooms were separately let out to four persons including the appellant. All the four tenants filed original applications before the Land Tribunal for purchase of kudikidappu right under Section 80-B of the Act. The application filed by the appellant was registered as O.A. No. 580 of 1973. All the applications were dismissed by the Land Tribunal, Kodum- G galloor. Excepting the appellant the other tenants did not pursue the matter further. The appellant filed A.A. No. 715/76 before the Appellate Authority (Land Reforms), Trichur which was allowed holding that the appellant is a kudikidappukaran entitled to purchase the kudikidappu. The said order was challenged by the respondent in C.R.P. 2718/77 which was H

A allowed by the High Court by Order dated 25.4.1980; the order of the Appellate Authority was set aside and the matter was remanded to the Appellate Authority for fresh disposal with the following observations :

> "For determining this question several factors will have to be taken into account - the distance between the building and the structure, the object for which and the circumstances under which the structure was allowed to be constructed, whether it was free or subject to the payment of rent, the existence of similar structures executed by the other tenants in the building, and other relevant circumstances. The Appellate Authority has not considered these various factors but has gone only by the distance of about 3/4 kole which separates the structure from the building. After hearing both sides I am of the view that this omission has vitiated the order. The Appellate Authority has therefore to be required to consider the matter again."

D After the remand, the Appellate Authority passed an order in favour of the appellant. The relevant portion of the order reads.

> "It is seen that it is a separate building which has no connection with the main building, as observed by the Appellate Authority earlier that there is about 3/4 kole distance between the structure and the building. It has also been stated that the applicant was permitted to reside with family when his wife had to undergo treatment. It has been pointed out that rent was paid for the structure and that the rent paid for the main building included that of the charthu also. It is an admitted fact that the charthu has been constructed by the appellant. Therefore I do not find any reason to believe that it is not an independent hut. It was argued that the property in question lies within the local limits of Kodungallur Municipality. The Land Tribunal will consider this question also when the area of kudikidappu is fixed.
>
> In the result, the appeal is allowed, the order of the Land Tribunal is set aside and the case is remanded to the lower court for granting kudikidappu right to the appellant in the light of the directions given above."

H The above order was not challenged in revision. The Land Tribunal

found that the appellant was entitled to 10 cents of land as kudikidappu and the certificate of purchase with respect to 7.73 cents which was the only available area was in order. That order was challenged in appeal by the respondent before the Appellate Authority. The appeal was dismissed on the finding, *inter alia*, that the previous order of the Appellate Authority was a final order and since that order was not challenged in revision it has become final and conclusive. The order of the Appellate Authority was challenged in revision before the High Court which was allowed by the impugned order.

From the discussion in the impugned order, it appears that the main issue raised before the High Court was whether the order of the Appellate Authority remanding the matter to the Land Tribunal was a final order and therefore was available to be challenged in revision, or it was merely an interlocutory order against which no revision could be filed. Reliance appears to have been placed on certain previous decisions of the Kerala High Court in 1976 Kerala Law Times 870 *Joseph* v. *Velayudhan Pillai,* (1979) Kerala Law Times 910 *Mahadevan Iyer* v. *Bhagavaty Ammal* and (1983) Kerala Law Times 435 *Bhaskara Menon* v. *Gangadharan*. In the light of the decisions noted above particularly in *Bhaskara Menon* v. *Gangadharan* (supra), the view was taken that the 'final order' within the meaning of Section 103 of the Act must be an order which puts an end to the litigation between the parties, and an order of remand in which direction is issued to the concerned authority for doing certain things in relation to the liability or obligation of the parties is not a final order. The High Court in the impugned order held that the order of the Appellate Authority cannot be a final order deciding upon the rights and liability of the parties or their mutual obligations. Therefore the objection against maintainability of the Civil Revision Petition raised by appellant was overruled.

On merits of the case the High Court considered the question whether the structure with respect to which kudikidappu was claimed was really a part of the building which was let out to the appellant or it was an independent and separate structure. Analysing the point the High Court observed that in case it was held that the structure in question was a part of the building which was let out to the appellant the claim of kudikidappu is to fail. The High Court quoted the relevant observations/directions made by the court in the remand order in C.R.P. 2718 of 1977 which have been quoted earlier.

A Analysing in detail the evidence on record in the light of the relevant factors noted in the previous remand order the High Court came to the conclusion that the structure in question is not an independent structure and it is only an adjunct or appurtenance to the shop room let out to the appellant. On the basis of the said finding the High Court held that with respect to such an appurtenant structure, the claim of kudikidappu will B not lie. The High Court faulted the order of the Appellate Authority under challenge on the ground that the authority did not pay attention to different relevant factors noted in the previous remand order of the High Court and passed its order on consideration of only one factor, that is, the distance of 3/4 kole between the structure which was let out to the appellant and C the structure in respect of which the claim of kudikidappu was made is noted above. The revision petition was allowed and the order of the Appellate Authority upholding the kudikidappu right was set aside.

On the case pleaded by the parties and the findings recorded by the Land Tribunal, the Appellate Authority and the High Court in the orders D passed in the proceedings, two questions emerge for consideration (1) whether the High Court was right in holding that th order passed by the Appellate Authority remanding the matter to the Land Tribunal was not a final order and therefore, not challengeable in revision before the High Court and (2) whether the finding of the High Court that the appellant E cannot claim kudikidappu right in respect of the structure in question is sustainable in law.

Section 103 of the Act, so far as it is material for the present proceeding, is quoted hereunder :

F "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) any final order passed by the Land Board under this Act or;

G

(iii) any final order of the Taluk Land Board under this Act,

xxx xxx xxx

may, within such time as may be prescribed, prefer a petition to H 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. A

(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, or the Taluk Land Board, as the case may be shall, wherever necessary, be modified accordingly". B

The question that arises for consideration in this case is whether the order of the Appellate Authority remanding the matter to the Land Tribunal with a direction to pass order in the light of the observations/directions in the order is a 'final order' within the meaning of Section 103(1) of the Act? The Kerala High Court in certain decisions has taken the view that only an order which disposes of a proceeding before the Land Tribunal can be said to be a 'final order' and against such an order, a revision petition shall lie; any other order of the appellate authority which does not dispose of the proceeding before the Land Tribunal cannot be said to be a 'final order' and no other revision petition shall lie against such an order. This interpretation, in our considered view, does not flow from the language of the statutory provision. Clause (i) of sub-section (1) of Section 103 provides that any final order passed in an appeal is available to be challenged in revision by any person aggrieved by such order. The clear and unambiguous language in which the section is couched conveys the meaning that a revision petition cannot be filed against an interlocutory order passed in an appeal. To put it differently, an order which does not dispose of the appeal is not a 'final order'. An order of remand in which the matter is remanded to the Land Tribunal for disposal in accordance with law cannot be said to be an interlocutory order for the simple reason that the appeal filed before the Appellate Authority stand disposed of by such order. In a case where the Appellate Authority keeps the proceeding pending and calls for a finding on a specific issue or point formulated by it from the Land Tribunal or any other Authority, then such an order cannot be said to be a final order against which a revision can be filed before the High Court. The reasoning in some of the Judgments of the Kerala High Court, particularly in *Bhaskara Menon* v. *Gungadharan*, (supra) and in *Joseph* v. *Velayudhan Pillai*, (supra) that a 'final order' is one which disposes of the proceeding before Land Tribunal, in our view, C D E F G H

A is clearly erroneous. The view taken by the High Court in 1979 Kerala Law Times 910, *Mahadevan Iyer* v. *Bhagavaty Ammal* is extracted :

> "a literal understanding of sub-section (i) of S. 103 only ..... means that there must be an appeal from an order of the land Tribunal and the appellate order should be a final one as distinguished from
B an interlocutory order. The final order must dispose of the appeal. The words "final order in an appeal" mean only that and this is all that is contemplated by the Legislature will be clear from the nature of the appeals provided for under S. 102 of the Act to the Appellate Authority. An appeal will lie from any order passed by
C the Land Tribunal under the various sections enumerated is S. 102. Such orders may be either orders of final disposal of the proceeding taken before the Land Tribunal or may be only preliminary orders which conclusively determine the status of the parties and direct incidental enquiries leading to a final order by the Land Tribunal closing the proceedings. Such being the character of the
D orders against which appeals can be filed before the Appellate Authority 'final order' passed in an appeal against the order of the Land Tribunal" S. 103(1)(i) can only an order finally disposing of the proceedings initiated before the Land Tribunal. Finality must relate to the appeal only and not to the Land Tribunal proceedings.
E To understand or to interpret the section to mean final order disposing of the Land Reform proceedings on appeal will be recasting the section which is not allowed",

That view has our approval. Therefore, the finding of the High Court in the impugned order that no revision petition could be filed against the
F order of remand passed by the Appellate Authority is erroneous. The first question is answered in the negative .

Coming to the second question, which relates to the merits of the case, the High Court has discussed in detail, the facts and circumstances
G emerging from the evidence on record, which go to show that the structure in respect of which the kudikidappu right is claimed is not a separate and independent structure, but only an appurtenant or adjunct of the shop room which was previously let out to the appellant. In this connection it is relevant to note a few relevant provisions of the Act.

H 'Section 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

(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

(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". C D

Section 80A, which is the provision regarding right of 'Kudikidappukaran' to purchase the 'kudikidappu' rights reads as under:

"Right of kudikidappukaran to purchase his kudikidappu : (1) Notwithstanding anything to the contrary contained in any law for the time in force, a kudikidappukaran shall, subject to the provisions of this section, have the rights to purchase the kudikidappu occupied by him and lands adjoining thereto. E

(2) Notwithstanding anything contained in sub-section (1), where the total extent of land held by the person in possession of the land in which the kudikidappu is situate, either as owner or as tenant is less than one acre, the kudikidappu and lands adjoining thereto only in cases where the person in possession of the land in which the kudikidappu is situate does not apply to the Government under sub-section (3) of Section 75 for the acquisition of the land to which the kudikidappu may be shifted, within a period of two years from the commencement of the Kerala F G H

A Land Reforms (Amendment) Act, 1969 :

Provided that in a case where the person in possession has applied under sub-section (3) of Section 75, the kudikidappukaran shall be entitled to purchase his kudikidappu and lands adjoining thereto if such application by the person in possession of the land is
B rejected or if such person fails to pay the expenses for shifting the kudikidappu as required by sub-section (3C) of Section 75.

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

Provided that where the land available for purchase in the land in which the kudikidappu is situate, is less than the extent specified in this sub-section, the kudikidappukaran shall be entitled to pur-
D chase only the land available for purchase or, as the case may be, the land in which the kudikidappu is situate.

(4) xxx xxx xxx

(5) where any person holds five acres or more of land, either as
E owner or as tenant, and there are more kudikidappukars than one in the lands held by him, each of the kudikidappukars shall be entitled to purchase the extent of land specified in sub-section (3).

(6) No kudikidappukaran shall be entitled to purchase any land
F which is not in the lawful possession of the person who holds the land in which the kudikidappu is situate or which is not within the boundaries of such land."

Section 80B lays down the procedure or purchase by a kudikidappukaran. Section 103, which provides for revision by High Court, lays down
G in sub-section (2) that 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, or the Taluk Land Board as the case may be, shall, wherever necessary, be modified accordingly. In sub-section (3), *suo motu* power is vested in the High Court for the purpose
H of satisfying itself that an order made by the Land Tribunal under Section

26 in cases where the amount of arrears of rent claimed does not exceed five hundred rupees was according to law, call for the records and pass such order with respect thereto as it thinks fit. From the aforenoted statutory provisions, it is manifest that the power of revision vested in the High Court is wide and it is not limited only to question of law or jurisdiction. It hardly needs to be emphasized that the revisional power to disturb findings of fact or law recorded by the Land Tribunal or Land Board or Taluk land Board as the case may be, only in appropriate cases in which the Court is satisfied that such interference is necessary in the interest of justice and for proper adjudication of the dispute raised by the parties. In the case on hand, the High Court, as the impugned order shows, has taken note of exception to the order of the Land Tribunal on the ground that it failed to take note of relevant factors like the facts and circumstances under which the structure was allowed to be constructed; whether it was free or subject to payment of rent, the existence of similar structures erected by the other tenant in the building and whether the structure with respect to which kudikidappu was claimed was really a part of the building which was let out to the appellant or it was an independent or separate structure. The High Court has further observed that the Land Tribunal decided the case in favour of the appellant taking note of only one factor, that there is a distance of about 3/4 kole between the two structures. The High Court has also found that, even though the building was referred to as a shop building (originally), the appellant herein was residing in that while running his motor pump repair business in a portion, even before constructing the lean - to or *charthu* in question. On the basis of such facts and circumstances appearing from the evidence on record, the High Court came to the finding that the structure with respect to which kudikidappu is claimed is not an independent structure; it is only an adjunct or appurtenant to the shop room previously let out to the appellant. The facts and circumstances noted in the impugned judgment are relevant and germane for the purpose of determining the question whether the appellant's claim that he is a kudikidappukaran with respect to the structure in question and as such entitled to purchase the property. The High Court cannot be faulted either in fact or in law for having held that the appellant is not a kudikidappukaran with respect to the structure in question.

In conclusion, while vacating the finding of the High Court that no revision would lie against the order of the Appellate Authority remanding

A the matter to the Land Tribunal for fresh disposal, we are not satisfied that the impugned order dismissing the proceeding before the Tribunal in O.A. No. 50/1984 warrants interference. We make it clear that our decision to reverse the finding on the maintainability of the revision petition and overruling the contra view taken by the Kerala High Court, for the reasons set forth in this judgment, will have only prospective effect. Any proceeding B under the Act which has been concluded and finally disposed of by the land Tribunal, High Court or any other competent authority relying on the decisions of the Kerala High Court on the point will not be re-opened on the basis of the decision rendered by us. Accordingly the appeal is dismissed, but in the circumstances of the case, without any order for costs.

C

R.C.K. Appeal dismissed.