

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

CRP.No. 638 of 2009 ()

AGAINST THE ORDER/JUDGMENT IN AA 12/2005 of APPELLATE
AUTHORITY (LR), ALAPPUZHA DATED 24-06-2009

AGAINST THE ORDER/JUDGMENT IN OA 44/1991 of LAND TRIBUNAL,
CHERTHALA DATED 19-11-2004

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

THOMAS JOSEPH,
NEYYARAPPALLY, C.M.C.25, CHERTHALA.

BY ADV. SRI.V.L.SHENOY

RESPONDENT(S)/RESPONDENT/APPLICANT:

1. OUSEPH VARKEY,
THOTTUVAKKATH, C.M.C.25, CHERTHALA.
2. STATE OF KERALA,
REP. BY DISTRICT COLLECTOR, ALAPPUZHA.

R1 BY ADV. SRI.J.OM PRAKASH

R2 BY ADV.SRI.REJI JOSEPH, GOVERNMENT PLEADER

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 14-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J.

CRP No.638 of 2009

Dated this the 14th day of September, 2015

O R D E R

- 1.This revision is by the respondent in an application under Section 80B of the Kerala Land Reforms Act, 1963, “the Act”, for short.
- 2.Heard the learned counsel for the revision petitioner and the learned counsel for the first respondent and the learned Government Pleader.
- 3.The first respondent herein filed an application under Section 80B of the Act on the assertion that he was an entrustment of a parcel of land with authority to fill and level it and also to put up a hut. The case put up by him was that the entrustment was on a specific date and that PW2 was a witness to that transaction. The Land Tribunal had considered the evidence of PW1 & PW2 and also looked into different other documents produced by the applicant and the land owner, and held that

the applicant is entitled to purchase of kudikidappu. It, accordingly, granted an order of purchase in his favour.

4. While the Land Tribunal's order is subjected to appeal under Section 102 of the Act, it is the bounden duty of the appellate authority to look into the entire materials and arrive at a conclusion as to whether the findings and the conclusions of the Land Tribunal are sustainable or whether the materials on record do not justify the decision of the Land Tribunal. The scope of an appeal under Section 102 of the Act is that of a first appeal on facts and law and such declaration has to be made by making reference to all contentions raised. It is not out of contest to note here that the plea of the land owner was that the father of the applicant had earlier obtained a purchase certificate and, out of that parcel, the applicant's father had sold or gifted two portions and had kept for himself and his son the applicant, an extent of one cent. The land owner had, therefore, the plea that because of the availability of that parcel of one cent, it was not open to the applicant to file an independent application for purchase of kudikidappu. That is a

plea which ought to have been addressed and answered by the appellate authority. The decision of the appellate authority does not reflect any consideration of factual materials or any declaration on the basis of the materials on record, including the oral evidence. It has proceeded to decide the case on certain assumptions, and conclusions were attempted to be drawn on the basis of presumed situations, which could have been avoided if the material evidence on record and other materials were looked into. The authorised officers' report also had to be considered, particularly when the Land Tribunal had referred to it and had chosen to rely on it. On the whole, I am satisfied that the appellate authority has misdirected itself in the matter of adjudicating the appeal under Section 102 of the Act and, therefore, it has failed to decide the questions of law arising for decision in the case. By not addressing the material evidence on record and adjudicating the issues based on those materials by applying the relevant laws, it has also erroneously decided the questions of law. On these grounds, the decision of the appellate authority is liable to be set aside under the revisional jurisdiction in terms of Section 103 of the Act paving

way for reconsideration of the appeal by the appellate authority.

In the result, judgment dated 24.06.2009 in A.A.No.12 of 2005 of the Appellate Authority (LR), Alappuzha is set aside and that appeal is remitted for consideration of that authority, in accordance with law. Parties are directed to mark appearance before the appellate authority on 30.10.2015. The appellate authority will make an endeavor to expedite final disposal of the appeal, after affording an appropriate opportunity of hearing to the parties. This shall be done by bearing in mind that this Court has not expressed anything on the merits of the matter finally and all issues are left open for consideration by the appellate authority, in accordance with law.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

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