

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

OP.NO. 13433 OF 1997 (Y)

PETITIONER(S) :

T.K.SHAHUL HASSAN MUSALIYAR,
S/O.THANGAL KUNJU MUSALIYAR,
BELAIRE, KILIKOLLOOR, KOLLAM.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.B.SUBRAMANYAN

RESPONDENT(S) :

1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DISTRICT COLLECTOR, KOLLAM.
3. THE TAHSILDAR, PATHANAPURAM, KOLLAM
DISTRICT.

ADDITIONAL RESPONDENT IMPLEADED:

4. POWER GRID CORPORATION OF INDIA LIMITED,
CONSTRUCTION AREA OFFICE, PONGUMMOODU,
THIRUVANANTHAPURAM - 11,

OP.NO. 13433 OF 1997 (Y)

REPRESENTED BY ITS DEPUTY MANAGER

ADDITIONAL 4TH RESPONDENT IS IMPEADED
VIDE ORDER DATED 24.10.2002 IN C.M.P.NO.4395 OF 2002.

BY SPECIAL GOVERNMENT PLEADER SMT.SUSHEELA BHAT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12.08.2015,
THE COURT ON 21-08-2015 DELIVERED THE FOLLOWING:

OP.NO. 13433 OF 1997 (Y)

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT P1 TRUE COPY OF JUDGMENT DATED 5.12.1980 IN
C.R.P. NO.2180 OF 1978 BY THE HONOURABLE HIGH COURT OF KERALA.

EXHIBIT P2 TRUE PHOTOCOPY OF JUDGMENT DATED 17.12.1996
IN O.P. NO.18948 OF 1996 BY THE HONOURABLE HIGH COURT OF KERALA.

EXHIBIT P3 TRUE PHOTOCOPY OF MINUTES OF THE CONFERENCE
HELD BY THE HONOURABLE MINISTER FOR IRRIGATION AND CULTURAL
AFFAIRS DATED 1.3.1996.

EXHIBIT P4 TRUE PHOTOCOPY OF THE REPORT OF THE
TAHSILDAR, PATHANAPURAM DATED 3.4.1996.

EXHIBIT P5 TRUE PHOTOCOPY OF REPORT DATED 11.4.1997 OF
THE TAHSILDASR, PATHANAMPURAM.

EXHIBIT P6 TRUE PHOTOCOPY OF NOTICE DATED 1.8.1997
SERVED ON THE ACCOUNTANT BY THE TALUK OFFICE, PATHANAPURAM.

EXHIBIT P7 TRUE COPY OF AUCTION NOTICE DATED 1.11.1948
APPEARED IN THE TRAVANCORE GOVERNMENT GAZETTE.

EXHIBIT P8 TRUE PHOTOCOPY OF LATEST RECEIPT DATED
19.2.1997 FOR PAYMENT OF PROHIBITORY ASSESSMENT BY THE
PETITIONER.

EXHIBIT P9 TRUE PHOTOCOPY OF ORDER NO.26277/IR3/94/IRD
DATED 27.5.1995 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P10 TRUE PHOTOCOPY OF THE RECEIPT DATED
16.2.1996 FOR PAYMENT OF PLANTATION TAX BY THE PETITIONER.

EXHIBIT P10(A) TRUE PHOTOCOPY OF THE RECEIPT DATED
19.2.1997 FOR PAYMENT OF PLANTATION TAX BY THE PETITIONER.

EXHIBIT P11 TRUE PHOTOCOPY OF THE PROCEEDINGS
NO.L4-6311/1992 DATED 24.10.1994.

EXHIBIT P12 TRUE PHOTOCOPY OF THE ORDER DATED
28.7.1997 BY THE 1ST RESPONDENT.

EXHIBIT P13 TRUE PHOTOCOPY OF THE MAHAZAR DATED
4.8.1997 PREPARED BY THE 3RD RESPONDENT.

EXHIBIT P13(A) TRUE PHOTOCOPY OF THE MAHAZAR DATED
4.8.1997 PREPARED BY THE 3RD RESPONDENT.

RESPONDENT(S) ' EXHIBITS:

EXHIBIT R3(A) A TRUE COPY THE DOCUMENT NO.279/23
DATED 23.05.1123 (ME)

EXHIBIT R3(B) A TRUE COPY OF THE LEGIBLE COPY OF
THE DOCUMENT NO.279/23 DATED 23.05.1123 M.E.

EXHIBIT R3(C) A TRUE COPY OF THE ENGLISH
TRANSLATION OF DOCUMENT NO.279/23 DATED 23.5.1123 M.E.

EXHIBIT R3(D) A TRUE COPY OF THE RECEIPT ISSUED
ON 29.05.1123 BY THE TRAVANCORE FOREST DEPARTMENT.

EXHIBIT R3(E) A TRUE COPY OF THE LEGIBLE COPY OF THE
RECEIPT ISSUED ON 29.5.112

EXHIBIT R3(F) A TRUE COPY OF THE TRAVANCORE
GOVERNMENT GAZETTE NOTIFICATION DATED 19TH KANNI 1124

EXHIBIT R3(G) A TRUE COPY OF THE JUDGMENT DATED 4.6.1990
IN O.P. NO.4214 OF 1990 OF THIS HONOURABLE COURT.

EXHIBIT R3(H) A TRUE COPY OF A PETITION FILED BY THE
PETITIONER ALAONG WITH COVERING LETTER NO.L4.63311/1992 DATED
30.09.1992 ISSUED FROM THE DEPUTY COLLECTOR (LR) TO THE
TAHSILDAR, PATHANAPURAM.

EXHIBIT R3(I) A TRUE COPY OF THE D.O. LETTER
NO.L4.63311/1991 DATED 03.07.1997 SUBMITTED BY THE DISTRICT
COLLECTOR, KOLLAM.

EXHIBIT R3(J) A TRUE COPY OF THE MAHAZAR
INCLUDING VALUATION OF TREES DATED 27.01.1993 PREPARED BY THE
VILLAGE OFFICER AND VERIFIED BY THE FIRKA REVENUE INSPECTOR.

C.R.

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

O.P. No. 13433 OF 1997

Dated this the 21st day of August, 2015

JUDGMENT

Ashok Bhushan, C.J.

The only question to be decided in this Original Petition is as to whether the petitioner is entitled for compensation for the improvements made on the land, given as Kuthakapattom lease to his late father, which land has been resumed by the State Government on 04.08.1997. Against the judgment dated 06.12.2007 passed by this Court in Review Petitions and Original Petition, the State Government filed a Special Leave Petition. The Supreme Court vide its judgment and order dated 06.08.2014 disposed the Civil Appeal Nos.5355 - 5357 of 2009 by setting aside the order of the High Court and remitting the matter to the High Court for reconsideration of the issue whether the 1st respondent (the petitioner in this O.P.) is entitled for compensation on account of the improvements made on the land.

2. Before we proceed to consider the issues it is necessary to note the relevant facts which emerge from the

pleadings of the parties. Reference of various earlier proceedings undertaken in respect of the land also need to be noted. Kuthakapattom lease of 94 Acres of land in Survey No.745/1 of Thingal Karikkakom village and 3.32 Acres in Survey No.86/1 of Chithara Village was granted to petitioner's father Thangalkunju Musaliyar in the year 1944 under the scheme "Grow More Food". The trees which were standing on the land were cut on 01.01.1948 by the Government Authorities from the leased area and the trees and firewood were collected and put to auction by notice dated 04.10.1948 on 01.11.1948. The Lessee made considerable improvements in the property including planting of rubber trees during the period 1962-'63. The father of the petitioner died in the year 1966 and thereafter the petitioner came into possession and enjoyment of the property as the legal heir. Under the Kerala Land Reforms Act, 1963 proceedings were undertaken against the petitioner to the effect that the petitioner had to surrender 101.88 Acres, including the 94 Acres held as Kuthakappattam lease treating it as excess land. The petitioner resisted it and contended that the property has to be exempted

being rubber plantation prior to 01.04.1964. The Taluk Land Board upheld the plea of the petitioner holding that there is no excess land. The State filed CRP No.2180/1978 in the High Court against the decision of the Taluk Land Board, which CRP was dismissed by the High Court on 05.12.1980. SLP(C) No.2833 of 1981 filed by the State before the Supreme Court was also dismissed on 09.08.1982.

3. In the mean time in the year 1971 the Village Officer booked Land Conservancy Case No.35/1971 alleging illegal occupation by the petitioner. Notice under Rule 9 of the Kerala Land Conservancy Rules was served on the petitioner. The petitioner appeared and filed written objection. The Tahsildar imposed a fine of Rs.25/- and Prohibitory assessment amounting to Rs.470/-. It was stated that since the Pattam has been received up to 1971-72, the prohibitory assessment for the relevant period alone would be realised. The petitioner filed Land Conservancy Appeal No.2222/1973 which was dismissed by the Revenue Divisional Officer by order dated 30.04.1973.

4. Petitioner filed revision before the Board of Revenue. The Board of Revenue stayed the eviction proceedings vide its order dated 07.05.1973. Subsequently the Board of Revenue by order dated 24.09.1973 intimated the petitioner that the revision is to be filed before the District Collector, Kollam. Petitioner submitted a revision petition on 03.11.1973 before the District Collector. The revision petition was heard by the District Collector who vide order dated 26.02.1974 confirmed the position declared by Revenue Divisional Officer. Petitioner approached the Government and obtained stay on 06.05.1974. The Stay order granted by the State Government was vacated on 31.08.1989. After the State Government vacated the Stay order, petitioner submitted a representation to the State Government for assignment of 94 Acres of land in Survey No.745/1. The District Collector vide order dated 24.10.1994 recommended assignment of 94 Acres of land in Survey No.745/1.

5. During the year 1994-95 the State Government proposed a Scheme for rehabilitation of 75 'Kani' families (Adivasi) who were evicted from Vamanapuram Irrigation

Project. The State Government decided to acquire altogether about 124 Acres of land from the petitioner which includes the land in Survey No.745/1(94 Acres). Order dated 27.05.1995 was issued by the Government of Kerala to the concerned District Collectors, directing to take necessary action for procurement of land after detailed valuation by the Revenue Authorities. Pursuant to the said Government Order, a High Power Meeting was convened chaired by the Minister of Irrigation and Cultural Affairs which included Secretaries of Irrigation, Revenue and Forest Departments and other officials. In the meeting the Joint Secretary (Revenue) told that 94 Acres of Government Land now under the custody of petitioner is only an unauthorised occupation by the petitioner, as the lease of the property has not so far been extended. After considering all aspects Government decided to resume the land after paying the value of improvements in the 94 Acres and the Tahsildar, Pathanapuram was directed to take urgent steps for valuation of the improvements in the 94 Acres. Tahsildar submitted a report dated 30.04.1996 valuing the improvements effected in 94 Acres

as Rs.1,70,94,000/-. The valuation was objected by the petitioner. On 11.04.1997 the Tahsildar prepared a second valuation report confirming the earlier valuation. The petitioner bonafide believed that in view of the representation made before the Government to pay the value of improvements, proceedings are under way and he shall be paid the value of improvements before taking any decision regarding the resumption of land. The State Government without giving any reason, vide its order dated 28.07.1997, intimated that the petitioner's request for assignment of 94 Acres of land in Survey No.745/1 is rejected.

6. A notice dated 01.08.97 was issued by the Tahsildar, Pathanapuram to the petitioner stating that since the Kuthakapattom for about 94 Acres of land was not renewed after the death of petitioner's father and there was violation of the terms of the agreement and the Land Conservancy Case was decided against the petitioner, the petitioner should handover possession. Petitioner was directed to be present on 04.08.1997 to handover the possession. The notice dated 01.08.1997 was served on one of the staff of the petitioner on 02.08.1997.

Aggrieved by the decision of Government, petitioner filed this Original Petition No.13433 of 1997 on 04.08.1997 itself praying for the following reliefs:

"i) to call for and examine the records leading to Ext.P6 notice and to quash the same by the issuance of a writ of certiorari or other appropriate writ, direction or order;

ii) to declare that the respondents have no manner of right to resume the 94 Acres of land in Sy. No.745/1 of Thingal Karikkakam Village, 3.32 Acres in Sy. No.86/1 of Chithara Village from the possession of the petitioner and direct the respondents to reconvey the land assumed possession.

lii) alternative declare that the respondents shall have no right to take forcible possession of 94 Acres of land in Sy. No.745/1 of Thingalkarikkakam Village without payment of adequate and reasonable compensation."

7. Petitioner filed two applications for interim relief which were rejected by the learned Single Judge against which W.A. No.1497 of 1997 was filed which appeal was dismissed with the observation that the Original Petition itself is being posted for hearing. The Original Petition was disposed of by a Division Bench vide its judgment dated 28.01.2005. The Division Bench held that the right of the Government to resume the land cannot

be questioned and the only remedy available to the petitioner is with regard to the compensation. Since the report of the Tahsildar and other documents were before the Government, this Court observed that the Government may take a final decision with regard to value of improvements effected by the petitioner.

8. The petitioner filed a Review Petition No.289 of 2005. The Division Bench on 06.02.2006 directed the Revenue Secretary to make available the records of land conservancy cases passed by different authorities. Again on 07.03.2006 when the records were not produced, the Division Bench directed the responsible officer of the Revenue Department to be present before the Court on 13.03.2006. The officers appeared and informed the Court that files relating to land conservancy case are not traceable. On 13.03.2006 the Court directed the Secretary to take a decision on the valuation of improvements within one month. R.P. No.1115 of 2006 was also filed by the State of Kerala. Both the Review Petitions as well as Original Petition were decided by the Division Bench vide the judgment dated 06.12.2007. The Division Bench during the pendency of

the Review Petitions has also appointed an expert commissioner to value the improvements in the land. The expert commissioner has submitted a report regarding the value of the improvements. The Division Bench after considering the earlier report of Tahsildar on the valuation who suggested Rs.1,70,94,000/- and by subsequent report of the expert commissioner who assessed the value as Rs.1,34,44,340/- disposed of the Original Petition and Review Petitions as follows:

"In the result, the review petitions and the original petition are disposed of as follows : (1) We find that the petitioner is not entitled to get back the property from the Government, (2) We hold that the petitioner is entitled to the value of improvements of Rs.1,34,44,340/- (rupees one crore, thirty four lakhs, forty four thousand, three hundred and forty only) and that the Government is directed to pay the same, (3) It is also held that the Government shall not distribute the land without making the payment for the value of improvements and (4) We direct the Government to pay the amount within 3 months from today, failing which the petitioner will be entitled to 6% interest on the said sum from the date of default (i.e.after the period of 3 months)."

9. Against that judgment dated 06.12.2007 the State filed Special Leave Petitions in the Supreme Court which were decided on 06.08.2014 and the Civil Appeal numbers are 5355 - 5357 of 2005. The State Government, in compliance of the Division Bench judgment dated 06.12.2007, has deposited the amount of compensation before the Registrar (General), High Court of Kerala. The Apex Court passed directions in the Civil Appeals permitting the petitioner to withdraw the amount by submitting a bank guarantee before the Registrar (General), High Court. The Apex Court set aside the order of the High Court. It shall be useful to quote the entire judgment of the Apex Court which is to the following effect:

"We have heard learned counsel for the rival parties for some time.

A perusal of the impugned order reveals, that the High Court, while adjudicating upon the controversy, determined the monetary value of the improvements made by respondent No.1, and thereupon directed the appellant before this Court, to pay the determined amount, to respondent No.1.

The appellant before this Court had clearly and effectively raised a plea, that respondent No.1 was not entitled

to any compensation for the improvements made on the land under reference. In the above view of the matter, it was imperative for the High Court, in the first instance, to determine, whether respondent no.1 was entitled to compensation on account of the improvements made by respondent no.1. If the answer to the above proposition had been rendered in the affirmative, then and only then, respondent no.1 would have been entitled to the payment determined in his favour. The first question having not been adjudicated upon, we are satisfied that the impugned order passed by the High Court is liable to be set aside, and the matter remitted to the High Court for re-consideration of the issue, whether respondent no.1 was entitled to compensation on account of improvements made on the land. Ordered accordingly. All contentions on the instant issue are left open. Parties are accordingly directed to appear before the High Court on 25.08.2014.

In case, the High Court arrives at the conclusion that respondent no.1 was entitled to compensation on account of the improvements made on the land, the determination already rendered by the High Court, in the impugned order, shall be given effect to.

During the course of hearing, learned counsel for the respondent no.1 made a statement to this Court, that he had withdrawn the amount determined by the High Court and furnished a bank guarantee in lieu thereof. He desires to re-

deposit the aforesaid amount in the Registry of the High Court, so as to be placed in a fixed deposit in a scheduled bank. Leave and liberty is granted to respondent no.1 to do so.

The appeals are disposed of in the aforesaid terms."

10. After the order of Apex Court this Original Petition was taken up for hearing. The petitioner deposited the amount of compensation which was withdrawn by him. During the course of hearing State Government filed I.A. No.9506 of 2015 dated 27.06.2015 praying for accepting certain documents. In the affidavit filed in support of the petition for accepting documents, it is stated that the basic document, on which the entire claim is based, is of the year 1948 issued by the Kollam Divisional Forest Officer in favour of the father of the petitioner which is of a total extent of 50 Acres of land for a period of 4 years. Certain other documents have been annexed and it was pleaded that the petitioner's case that he was granted 99 years lease for an area of 94 Acres is falsified on the strength of the documents. It was further contended that the petitioner is not entitled to any value of improvements. The petitioner has also filed a counter affidavit

opposing the acceptance of documents. We have permitted the learned Special Government Pleader of the State to refer to and rely on the additional documents produced.

11. We have heard Sri.P.B. Krishnan, learned counsel for the petitioner and Smt.Suseela R. Bhatt, learned Special Government Pleader(Revenue) for the State. Learned counsel for the petitioner submits that the only issue which is required to be considered in this case is with regard to the valuation of the improvements existing on the land. This Court may not permit the State to raise issues of facts including the Kuthakappattam lease of 99 years granted to the petitioner's father which lease was clearly admitted by the respondents and the whole case proceeded on the basis of the said lease.

12. It is submitted that the District Collector had filed a counter affidavit in the Original Petition where grant of lease in favour of petitioner's father in the year 1944 for 99 years consisting of 94 Acres of land in Survey No.745/1 has been clearly admitted. The State Government has also clearly admitted the grant of lease. Even if additional documents filed by

the State during the hearing of this Original Petition, be looked into, they in no manner support the argument now raised by the learned Special Government Pleader that the lease granted to the petitioner's father was not 99 years but was a lease for 50 Acres only for 4 years. It is submitted that the document pertaining to 50 Acres of land is of 4 years lease which is not concerned with the lease granted to the petitioner's father and may be a different grant of lease in different Survey number.

13. Learned counsel for the petitioner submitted that petitioner was clearly entitled for compensation for the improvements made. It is submitted by learned counsel for the petitioner that the Kuthakapattom lease granted to the petitioner's father was an heritable lease and after the death of the father of petitioner the petitioner and other legal heirs came into lawful possession of the leased land and continued to enjoy the same. It is submitted that the stand taken by the respondent that the lease having not been renewed after the death of the petitioner's father, the petitioner's possession became unlawful, is wholly unsustainable. It is submitted that petitioner's possession

after the death of his father was a lawful possession and Kuthakapattom lease given to his father was never terminated in accordance with the Kuthakapattom Rules, 1947. It is submitted that the proceedings under the Kerala Land Conservancy Act, 1957 were wholly without jurisdiction. Petitioner being never in unauthorised occupation of the land, in fact the proceedings under 1957 Act should have been dropped. In the objection filed by the petitioner he clearly pleaded that the petitioner's possession is not unauthorised and hence proceedings are without jurisdiction. He submits that the respondents have no jurisdiction to resume the land without cancelling the lease in accordance with the Kuthakapattom Rules and the petitioner was never served with a notice for cancellation of the lease. The entire action of resuming the land and refusing payment of compensation for the improvements are without jurisdiction. It is submitted that the petitioner was not in unauthorised possession and cannot be termed as a trespasser and hence he cannot be denied the value of improvements.

14. It is further submitted that according to the Kuthakappattam Rules a lessee is entitled to remove his improvements before the possession is taken back. Petitioner was not even given an opportunity to remove the improvements. He is clearly entitled for payment of compensation. It is submitted that in spite of three different orders passed by Division Bench directing the State, Collector and Tahsildar to produce the files pertaining to the Land Conservancy Act, 1957, no records of the proceedings including any of the orders passed have been submitted before the Court. This Court has to draw an adverse inference against the respondent with regard to the Land Conservancy proceedings and on the said proceedings no reliance can be held in so far as the alleged unauthorised occupation of the petitioner. It is submitted that the Land Conservancy proceedings or any decision taken therein imposing fine, prohibitory assessment or treating the petitioner as unauthorised occupant cannot affect the petitioner's right which flow from the Kuthakapattom lease and the said proceedings have to be declared as null and void not affecting any of the right of the

petitioner. Learned counsel for the petitioner further submits that the State has represented to the petitioner that it will be paying the value of improvements as is clear from the proceedings dated 01.03.1996 and the order passed by the State Government dated 27.05.1995, the State Government cannot go back from its promise to pay the value of improvements. The principle of promissory estoppel is fully attracted in the present case under which petitioner cannot be denied the compensation for value of improvements. It is further submitted that the aforesaid proceedings dated 01.03.1996 and the order of the State Government dated 27.05.1995 clearly indicate the intention of the Government to resume the leased land with all its improvements, since the object of the Government was to rehabilitate the 75 'Kani' families(Aadivasi) who could have been rehabilitated only when the improvements are there in the land. The State thus never wanted the petitioner to take away the improvements made in the land under the Kuthakapattom lease due to which reason now the State cannot deny the payment of compensation for improvements.

15. Smt.Susheela R. Bhatt, learned Special Government Pleader refuting the submission of the petitioner, at the very outset, submitted that in view of the additional documents filed by the State through the Interlocutory Application, No.9506 of 2015 it is clear that the lease which was granted to the petitioner's father was a lease dated 08.01.1948 for 50 Acres of land for a period of 4 years. There is no other documents available, hence the petitioner having not filed the copy of the lease document, petitioner has no right to claim any compensation for the improvements he has made. It is submitted that the petitioner having failed to prove the Kuthakapattom lease (Survey No.745/1) for 99 years given in the year 1944 the entire case of the petitioner falls to on the ground. It is submitted that in the Land Conservancy proceedings, fine as well as prohibitory assessment were imposed by the Tahsildar, and the petitioner was declared as unauthorised occupant. Lease having not been renewed and further there was violation of the terms and conditions of lease agreement; since the lease was granted for cashew plantation and petitioner has planted rubber

trees; the Land Conservancy proceedings and adverse orders were rightly passed. It is submitted that the petitioner had filed the appeal against the order of Tahsildar, which was dismissed and Revision Petition was also dismissed, the Land Conservancy proceedings having been finalised against the petitioner, his possession is unauthorised and no person being in unauthorised possession of the Government Land can claim any compensation for improvements made by him.

16. It is also submitted by learned Special Government Pleader that the Kuthakapattom lease was not heritable. It is submitted that there is clear prohibition of the alienation of Kuthakapattom lease hence the Statute indicate that lease could not have been inherited by the petitioner or other legal heirs. It is submitted that the petitioner had not paid lease rent after the death of his father, hence he cannot claim any compensation for improvements. It is further submitted that, according to the Kuthakapattom Rules 1947, a lessee is not entitled for compensation for improvements which has been already held by this Court by a Division Bench reported in **Rev. Fr. K.C.**

Alexander v. State of Kerala [1965 KLT 666] which judgment having been affirmed by the Apex Court reported in **Rev. Fr. K.C. Alexander v. State of Kerala** [AIR 1973 SC 2498]. Hence petitioner cannot be held to be entitled for any compensation for improvements. It is submitted that even after the dismissal of the Revision of the petitioner filed against the land Conservancy proceedings, he obtained an interim stay from the State Government in the year 1974 and continued to be in possession without there being any right. The State Government has vacated the interim stay in the year 1989. It is submitted that the petitioner being unauthorised occupant, he has no right to inherit the lease and there being violation of the condition of Kuthakapattom lease, the land has rightly been resumed by the State. It is submitted that in the facts and circumstances of the present case the Original Petition deserves to be dismissed. It is further submitted by learned Special Government pleader that though the petitioner has re-deposited the amount of compensation withdrawn by him from this Court, he should also

be asked to deposit the interest on the amount which was enjoyed by him through out this period.

17. Learned counsel for both the parties have placed reliance on the judgments of this Court and Supreme Court which shall be referred to while considering the submissions in detail. From the pleading of the parties and the submission made by learned counsel for the parties, following are the issues which arise for consideration in this Original Petition:

I. Whether the petitioner was entitled to compensation on account of improvements made on the land ?

II. Whether on the basis of additional documents filed by the State in I.A. No.9506 of 2015 dated 27.06.2015 filed during the hearing of the Original Petition it can be held that no Kuthakapattom lease was granted to the petitioner's father - Thangal Kunju Musaliyar for 99 years in the year 1944 in Survey No.745/1 (94 Acres) and Survey No.86/1 (3.32 Acres) ?

III. Whether Kuthakapattom lease granted to the petitioner was not heritable after the death of the petitioner's father in the year 1966 ?

IV. Whether the possession and occupation of the lease land by the petitioner i.e. 94 Acres in Survey No.745/1 became unauthorised after the death of his father in 1966 since no renewal of the lease was obtained by the petitioner and there was violation of conditions of lease since Rubber Plantation was made in the year 1962 ?

V. Whether the proceedings under the Land Conservancy Act, 1957 were without jurisdiction since petitioner's possession after the death of his father was not unauthorised and lease being heritable he continued to be in lawful possession ?

VI. Whether on the strength of Land Conservancy proceedings held against the petitioner in which fine as well as prohibitory

assessment was imposed it can be held that petitioner's possession of Kuthakapattom lease was that of a trespasser ?

VII. Whether the petitioner having not been given any opportunity to remove the improvements of the land, he is entitled for the compensation of value of improvements ?

VIII. Whether the State on the basis of the order dated 27.05.1995 and the proceedings dated 01.03.1996 is now estopped from denying the value of improvements to the petitioner on the principle of promissory estoppel ?

Answer to Issue No.I depends on the answers to other issues, hence the other Issues need to be considered first.

ISSUE No.II

18. As noted above, an application I.A. No.9506 of 2015 dated 27.06.2015 has been filed on behalf of the State of Kerala and others during the course of hearing praying for receiving documents marked as Exts.R3(a) to R3(j). On the

basis of the aforesaid application it is contended by the learned Special Government Pleader that the lease granted to petitioner's father, Thangal Kunju Musaliar was not a lease for 99 years of 94 acres in 1944 but was a lease of only 50 acres of dry land for a period of 4 years as disclosed by Ext.R3(a). Exhibit R3(a) is dated January 08, 1948. Along with I.A. No.9506 of 2015 certain documents, i.e., receipt dated 29.5.1123ME showing deposit of Rs.178/- for right of cultivating 50 acres of dry land, Gazette Notification dated 19 Kanni, 1124ME (4.10.21948) by which notice was published by the Divisional Forest Officer for sale of firewood and timber collected from the leasehold of Thangal kunju Musaliar, (which was already filed by the petitioner as Ext.P7) judgment of learned Single Judge dated 04.06.1990 in O.P.No.4214 of 1990, letter dated 13.09.1992 of the Deputy Collector forwarding petition dated 05.08.1992 of the petitioner for assignment of the land in Sy.No.745/1 (filed as Ext.R3(h) and letter dated 03.07.1997 of the Collector filed as Ext.R3(i).

19. On the basis of the aforesaid documents, it is contended by the learned Special Government Pleader that there

is no existence of a lease for 99 years of 94 acres in favour of the petitioner's father claimed to be granted in 1944 in Sy.No.745/1.

20. Learned counsel for the petitioner strongly opposed the acceptance of the aforesaid documents. He submitted that existence of Kuthakapattom in favour of petitioner's father for 99 years in Sy.No.745/1 and 86/1 was never denied by the State. It is submitted that the categorical stand taken by the respondents throughout the litigation has been that the petitioner's father was granted Kuthakapattom for 99 years of the lands in the aforesaid survey numbers in which lease land rubber plantation was made in the year 1962-63 and after the death of petitioner's father in 1966 the lease was not renewed hence petitioner's possession became unauthorised. Learned counsel has referred to the counter affidavit filed by the District Collector and other materials on record, which will hereafter be referred, to prove his contention that the Kuthakapattom was never denied. It is useful to refer to the pleadings in the context of Kuthakapattom granted in favour of the petitioner's father.

21. In O.P. No.13433 of 1997, the District Collector, Kollam has filed a counter affidavit dated 05.11.1997. The District Collector in paragraph 3 has stated thus:

“3. An extent of 94 acres of forest land in Sy.No.745/1 of Kulathupuzha Taluk was given on Kuthakapattom under Grow More Food Scheme for Cashew cultivation to Shri Thangal Kunju Musaliyar, father of petitioner herein for 99 years in the year of 1944. These cashew trees were cut and the area was replanted with rubber during the period between 1966-68. The Kuthakapattom was not renewed after the demise of Sri. Thangal Kunju Musaliyar. The conversion of cashew plantation into rubber estate was clearly in violation of Kuthakapattom conditions.”

22. There is another counter affidavit filed by the Additional District Magistrate, Kollam on 08.08.1997 along with C.M.P. No.24083 of 1997 where the following was pleaded:

“An extent of 94 acres of forest land in Survey No.745/1 of Kulathupuzha Village (Present Thinakalkarikom Village in Pathanapuram Taluk) was given on kuthakapattom under 'Grow more Food' scheme for cashew cultivation to Sri.A.Thangalkunju Musaliyar, father of the petitioner herein for 99 years in the year 1944. The cashew trees planted originally in the land were cut and the area was replanted with rubber during the period between 1964 and 1968. The kuthakapattom was not renewed after the demise of Sri.Thangal Kunju

Musaliar. The conversion of the cashew plantation into rubber estate was clearly in violation of kuthakapattom conditions. The 3rd respondent has booked L.C. Case No.35/1971 against the petitioner herein for the violation of kuthakapattom conditions and illegal occupation. The Land Conservancy Case was disposed of on 30.11.1972 by the 3rd respondent. A fine of Rs.25/- was imposed and the petitioner was ordered to evict the area of encroachment. A further amount of Rs.470/- was imposed as prohibitory assessment. In view of the order dated 30.11.1972 the kuthakapattom was cancelled during Jamabandy of 1975-76.”

As noted above, a Division Bench of this Court by order dated 13.03.2006 directed the Secretary, Revenue to take decision regarding value of improvements within one month. In compliance with the order of this Court, the Secretary, Revenue has submitted a report in R.P. No.289 of 1997 in O.P. No.13437 of 1997. In paragraph 1 of the report, the following was stated:

“REPORT ON THE ACTION TAKEN IN COMPLIANCE
TO THE ORDER DATED 13.03.2006 OF THE HONOURABLE
HIGH COURT IN R.P. NO.289/2005 IN O.P. NO.13433/97
FILED BY SHRI SHAHUL HASSAN MUSSALIYAR

An extent of 94 acres of land comprised in Sy.No.745/1 of Thinkalkarikkom Village (formerly Kulathupuzha Village) in Pathanapuram Taluk in Kollam District was given to Sri.Thangal

Kunju Mussaliyar on kuthakapattom in the year 1944, by the Forest Department for cultivating cashew crops under Grow More Food Production Scheme. Later in 1956, the ownership of the above said land was transferred to the Revenue Department. During the period prior to 1.4.1964 the Lessee had cut down the cashew crops and planted rubber trees in the kuthakapattom land in violation of the conditions of the kuthakapattom rules. The Lessee expired during the year 19566 and the kuthakapattom land came into the unauthorised occupation of his son Sri.Shahul Hassan Mussaliyar.”

23. Apart from the above, the State Government has issued an order dated 22.05.2006 in reference to representations and orders of the Division Bench in O.P. No.13453 of 1997, letters sent by the District Collector, Kollam where the State Government clearly stated that an extent of 94 acres of land in Sy.No.745/1 was given to the petitioner's father in the year 1944. It was further stated that prior to 01.04.1964 the lessee cut down the cashew crops and planted rubber trees in the Kuthakapattom land and that the lessee expired during the year 1966 hence the petitioner's possession became unauthorised. It is useful to quote the 1st paragraph of the order which is to the following effect:

“An extent of 94 acres of land comprised in Sy.No.7845/1 of Thinkalkarikkom Village (formerly Kulathupuzha Village) in Pathanapuram Taluk in Kollam District was given to Sri Thangal Kunju Mussaliyar on kuthakapattom in the year 1944, by the Forest Department for cultivating the Cashew Crops under Grow More Food Production Scheme. Later in 1956, the ownership of the above said land was transferred to the Revenue Department. During the period prior to 1.4.1964 the Lessee had cut down the Cashew Crops and planted rubber trees in the kuthakapattom land in violation of the conditions of the kuthakapattom rules. The Lessee expired during the year 1966 and the kuthakapattom land came into the unauthorised occupation of his son Sri.Shakul Hassan Mussaliyar.”

24. More so, the impugned action which has been taken against the petitioner by notice dated 01.08.1997 clearly stated that the kuthakapattom lease of about 94 acres of land in Sy.No.745/1 was not renewed after the death of Thangal Kunju Musaliyar and there was violation of the terms of the kuthakapattom agreement. In the impugned action itself the State Government has referred to the kuthakapattom of 94 acres in Sy.No.745/1. There was no occasion for the State Authorities to come up now by filing I.A. No.9506 of 2015 at the time of hearing alleging that no kuthakapattom lease for 99

years of 94 acres in Sy.No.745/1 was granted to the petitioner's father. Petitioner has filed O.P. No.13433 of 1997 on 04.08.1997 and in the Original Petition counter affidavits were filed by the District Collector, Additional District Magistrate, orders were issued by the State Government, reports were filed by the State Government wherein grant of kuthakapattom lease in favour of the petitioner's father for 99 years of the land in Sy.No.745/1 was admitted. The State took up the matter in the Apex Court by filing a Special Leave Petition against the Division Bench judgment of this Court dated 06.12.2007. The Division Bench judgment had clearly referred to the lease for 99 years of 94 acres of land in Sy.No.745/1 to petitioner's father. But before the Apex Court grant of lease in favour of petitioner's father was never questioned. The Apex Court vide its judgment dated 16.08.2014 has remitted the matter back to the High Court for consideration of the only question as to whether the petitioner is entitled to compensation on account of the improvements made on the land. It is relevant to note that the matter was pending in Original Petition after judgment of this

Court on 28.01.2005. Review Petition was filed by the State. But in the Review Petition also the grant of lease for 99 years of 94 acres in Sy.No.745/1 was never questioned. The State having admitted the lease and based its impugned action only on the ground that after 1966 lease was not got renewed hence petitioner's occupation became unauthorised and liable for eviction, it is not permissible for the State at this stage to come up with the case that lease for 99 years of 94 acres in Sy.No.745/1 was not granted. The State cannot be allowed to go back from its decision in view of the facts and pleadings as noted above. However, since on the basis of the documents brought on record along with I.A. No.9506 of 2015, the learned Special Government Pleader has emphatically argued that the documents brought on record clearly established that lease granted to the petitioner's father was only 50 acres and that too for four years only, we proceeded to examine the documents on merits to avoid any prejudice to the State.

25. The basis of submissions of the learned Special Government Pleader is Ext.R3(a), the English translation of

which is Ext.R3(c). Exhibit R3(a) is a letter by the Divisional Forest Officer to the petitioner's father on 8th January, 1948 referring to application dated 26.12.1944 calling him to appear on 28.05.1123ME with evidence to prove that he has sufficient stock of seeds to cultivate the land allotted. The aforesaid letter does not refer or relate to Sy.No.745/1 (94 acres) which plot was leased out to the petitioner's father as kuthakapattom for 99 years. The said letter can in no manner be said to be related to the kuthakapattom granted to the petitioner's father for 99 years. Even if the said letter was issued and petitioner's father had deposited Rs.178/-, the price for cultivating 50 acres of dry land for a period of four years, that in no manner affect the claim of kuthakapattom for 99 years of 94 acres in Sy.No.745/1. Grant of 50 acres of land for cultivating for a period of four years is a transaction not affecting the kuthakapattom granted to the petitioner's father in Sy.No.745/1 of 94 acres. Grant of the said lease was never denied by the District Collector and the State in their pleadings in the Original Petition and rather in the pleadings they had admitted the grant of lease. Exhibit R3(f)

which is a Gazette Notification dated 19th Kanni 1124ME publishing the notice for sale of firewood and timber collected from the leasehold land relates to the kuthakapattom for 99 years granted to petitioner's father of 94 acres in Sy.No.745/1 which had already been filed by the petitioner as Ext.P7 and is not related to the 50 acres of land granted for four years for cultivation. It is on record that the trees which were planted on the land which was given to the petitioner's father on kuthakapattom were cut on 01.01.1948 and removed by the Government and auctioned. Thus the auction notice produced along with I.A. No.9506 of 2015 (Ext.R3(f)) relates to the trees which were cut and removed by the Government from the kuthakapattom granted to the petitioner's father for 99 years of 94 acres. Thus the documents brought on record along with I.A. No.9506 of 2015 in no manner support the contentions raised by the learned Government Pleader that kuthakapattom for 99 years of 94 acres in Sy.No.745/1 was never granted to the petitioner's father. Issue No.II is answered in the following manner:

Issue No.II. Kuthakapattom was granted to the petitioner's father for 99 years of 94 acres in Sy.No.745/1 and 3.32 acres in Sy.No.86/1.

ISSUE NOS.III & IV

26. Issue Nos.III & IV being interconnected are taken together. Before we proceed to answer issue Nos.III & IV, it is necessary to refer to the statutory provisions governing kuthakapattom.

27. Legislation, viz., Government Land Assignment Regulation, III of 1097 was enacted for assignment of land by the Government. Section 2 of Regulation III of 1097 contains the definition clause. Section 2(2) defines assignment and 2(3) defines assignee which are quoted below:

“2(2) 'assignment' includes a transfer of land by way of lease.

2(3) 'assignee' includes his heirs”

Section 7 empowers the Government to make Rules. In exercise of the powers conferred under Section 7 of Regulation III of 1097, the Travancore State has framed Kuthakapattom Rules

dated 28.03.1935. Rule 15 which is relevant for the present case is quoted below:

“15. (a) All leases, whether with limit of time or without limit of time, shall be subject to the conditions specified in the grant referred to in Rule 17 infra.

(b) (i) the lessee shall not alienate the lease without obtaining the previous sanction of the officer who granted the lease.

(ii) During the currency of the lease, the lessee shall not determine the lease of his own accord.

(iii) It shall be competent to the Tahsildar or other officer who granted the lease to cancel the lease either on the termination of the lease without notice or any any other time after three months' notice if the land or tree is required for Government or public purposes.”

Rule 15(b)(iii) clearly empowers the Tahsildar to cancel the lease either on the termination of the lease without notice or at any of the time after three months notice if the land or tree is required for Government or public purposes. Form C annexed to the Rules contains the conditions for grant of kuthakapattom. Condition No.9 of Form C contains the same provision as noted in Rule 15(b)(iii). Condition No.18 is to the following effect:

“18. That if any of the conditions laid down above are not fulfilled or are violated the property shall be liable to be resumed immediately, by the officer who sanctioned the lease irrespective of the period of the lease after a written notice to that effect served on the party. If the grant is resumed, the Proverthicar will enter on and take possession of the property from the lessee.”

In exercise of the powers under Section 7 of Regulation III of 1097, Kuthakapattom Rules, 1947 were framed by the State superseding all existing rules. Rule 26(b)(iii) of the 1947 Rules provides as follows:

“26(b)(iii) It shall be competent to the Tahsildar or other authority who granted the lease to cancel it without notice either on the termination of the lease or if the lessee violates any of the conditions of the grant. The lease or any portion thereof may also be cancelled at any other time after 3 months' notice, if the land or tree is required for Government or public purposes.”

Rule 28 provided that the grant shall be made in duplicate in Form D. Form D contains conditions of kuthakapattom. Condition No.9 of the kuthakapattom rules relates to the cancellation of lese which is to the following effect:

“9. That It shall be competent to the Tahsildar or other authority who granted the lease to cancel the lease or any portion thereof either on the termination of the lease without notice or at

any other time after 3 months' notice, if the land or tree is required for Government or public purposes.”

Condition No.18 provides that the lessee shall not be entitled to compensation for any tree planted or any improvement that he might have been made on the land and or for any structure thereof and not removed. It is useful to quote condition No.18 which is to the following effect:

“18. That on the expiry of the lease or in the event of the cancellation of the lease or in the event of resumption of the property, the lessee shall unless he has taken a further lease surrender the property intact to be Proverthicar. If he does not so surrender he will be considered a tenant holding over liable to be proceeded against and evicted under Act IV of 1091. He will not however, be entitled to compensation for any trees planted to for any improvements that he might have made on the land or for any structures raised by him thereon and not removed.”

28. Submission which has been pressed by the learned Government Pleader is that the kuthakapattom is not heritable on the pleas of the District Collector and the State and as noted above after the death of petitioner's father in 1966 the leased was not renewed hence petitioner's possession became

unauthorised. Respondents' case throughout is the that kuthakapattom granted to petitioner's father was not heritable.

29. As noted above, Section 2(2) of Regulation III of 1097 is the definition clause. As per Section 2(2) 'assignment' includes transfer of a land by way of lease. 'Assignee' contained in Section 2(3) includes his heirs. Thus the enactment clearly contemplated that Kuthakapattom is heritable. Learned Special Government Pleader submitted that in Kuthakapattom Rules 1935 as well as 1947 there is no provision which would indicate that the Kuthakapattom is heritable. But the provisions of the enactment under which rules have been framed clearly provides that assignee includes his heirs. When provision is specifically made in the enactment non-repetition of such provision in the rules has no consequence. Learned Special Government Pleader referring to the kuthakapattom rules submitted that the rules clearly prohibits alienation by a lessee. Rule 26(b)(i) provides that the lessee shall not alienate the lease without obtaining the previous sanction of the authority who granted the lease. The above provision in no manner indicate that the lease is not

heritable. Restrictions on alienation have a different purpose and object. In view of the clear provisions of the Kuthakapattom Rules under Regulation III of 1097, i.e., the parent enactment under which 1935 and 1947 Rules have been framed, kuthakapattom granted to the petitioner's father for 99 years of 94 acres in Sy.No.745/1 was clearly heritable after the death of the petitioner's father in 1966 and the lease was inherited by the petitioner and other legal heirs. Thus the submission of the learned Special Government Pleader that the lease is not heritable cannot be accepted.

30. It has further been pleaded on behalf of the respondents that the petitioner did not get the lease renewed after the death of his father in 1966 hence his possession became unauthorised. Thus the basis of the action taken by the respondents that the lease was not renewed after the death of petitioner's father hence the possession of the petitioner became unauthorised is unfounded. Kuthakapattom granted to the petitioner's father does not require any renewal after the death of petitioner's father in 1966.

31. Other submission which has been pressed by the learned Special Government Pleader is that there was violation of condition of lease since the lease was granted for cashew plantation whereas in the year 1962-63 the cashew plantation was replaced by rubber plantation. It is submitted that there being violation of the terms of the lease, possession of the petitioner became unauthorised. As noted above, violation of terms and conditions of lease empower the authority to cancel the lease. There is no pleading on behalf of the respondents that at any point of time proceedings were initiated under the 1947 Kuthakapattom Rules for cancellation of the lease for 99 years of 94 acres on the ground of violation of the terms and conditions of the lease. Learned counsel for the petitioner submitted that there was no violation of the terms and conditions of the lease. Rubber plantation was not beyond the scope of the lease and further there being no proceeding undertaken under the 1947 Rules, for cancellation of the lease on the ground of the alleged violation it is not open for the respondents to contend that there was violation of terms and conditions of the lease. We thus came

to the conclusion that after the death of petitioner's father in 1966 neither renewal of the lease was required nor petitioner's possession became unauthorised. Further no proceedings have been taken for cancellation of the lease on the ground of the alleged violation of the terms and conditions of the lease, hence it is not open for the respondents to contend that possession of the petitioner became unauthorised on the above ground.

32. Learned counsel for the petitioner relied on the judgment of the Apex Court in **Smt. Gian Devi Anand v. Jeevan Kumar** [AIR 1985 SC 796] in which case the Apex Court had occasion to consider the provisions of the Delhi Rent Control Act, 1958 as amended in 1976. The Apex Court in the context of heirs of the tenant laid down the following in paragraphs 36 and 37:

“36. Accordingly, we hold that if the, Rent Act in question defines a tenant in substance to mean a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed', the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises

are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfilment of the condition in the manner and to the extent stipulated in the Act. The Legislature which by the Rent Act seeks to confer the benefit on the tenants and to afford protection against eviction is perfectly competent to make appropriate provision regulating the nature of protection and the manner and extent of enjoyment of such tenancy rights after the termination of contractual tenancy of the tenant including the rights and the nature of protection of the heirs on the death of the tenant. Such appropriate provision may be made by the Legislature both with regard to the residential tenancy and commercial tenancy. It is, however, entirely for the Legislature to decide whether the Legislature will make such provision or not. In

the absence of any provision regulating the right of inheritance, and the manner and extent thereof and in the absence of any condition being stipulated with regard to the devolution of tenancy rights on the heirs on the death of the tenant, the devolution of tenancy rights must necessarily be in accordance with the ordinary law of succession.

37. xx xx xx As in the present Act, there is no provision regulating the rights of the heirs to inherit the tenancy rights of the tenant in respect of the tenanted premises which is commercial premises, the tenancy right which is heritable devolves on the heirs under the ordinary law of succession. The tenancy right of Wasti Ram. therefore, devolves on all the heirs of Wasti Ram on his death.”

33. In view of the above, we answer Issue Nos.III & IV in the following manner:

Issue No.III. Kuthakapattom granted to the petitioner's father for 99 years of 94 acres in Sy.No.745/1 was heritable by the petitioner and legal heirs on the death of petitioner's father in 1966.

Issue No.IV. Petitioner succeed to the lawful possession of kuthakapattom after the death of his father in 1966 and his possession did not become unauthorised after the death of his father. The lease being kuthakapattom for 99 years it was not renewable

before the expiry of the period, i.e, 2043, hence there was no occasion for renewal of the lease. No proceedings being taken under the 1947 Rules on the alleged violation of terms and conditions of the lease, it is not open for the respondents to term the petitioner's possession as unauthorised on the above ground.

34. **Issue Nos.V and VI** being interconnected are taken together. Proceedings under the Land Conservancy Act, 1957 were initiated against the petitioner by booking LC Case No.35/71. Notice dated 25.10.1971 was issued by the Tahsildar to which an objection was filed by the petitioner on 26.04.1972. The Tahsildar on 30.11.1972 held occupation to be illegal. Fine as well as prohibitory assessment was imposed. The District Collector, Kollam in his counter affidavit filed in the Original Petition has given details of Land Conservancy proceedings. Though in spite of three orders passed by Division Bench in the Original Petition directing the respondents to produce the relevant files of Land Conservancy proceedings, no files were produced by the State and it was submitted before the Court by the respondent that files are not traceable. But drawing of the

proceedings, passing of the order by Tahsildar, filing an appeal and revision are not denied. Thus we proceed on the footing that Land Conservancy proceedings were initiated against the petitioner wherein his possession was declared unauthorised. It is relevant to note that the petitioner objected to the Land Conservancy proceedings by filing an objection on 26.04.1972. In the Counter Affidavit of the 2nd respondent dated 05.11.1997 the details of Land Conservancy proceedings were pleaded. Petitioner filed a reply and in his affidavit dated 17.12.1997 it was pleaded that proceedings in LC Nos.35/71 and 50/88 were without jurisdiction and null and void. Copy of the petitioner's objection dated 26.04.1972 filed to the notice received under the Land Conservancy proceedings was brought by the petitioner in CMP No.4676/97 in WA No.1497/97 which writ appeal was filed against the order dated 12.08.97 passed in O.P. No.13433/97.

35. During the hearing of this Original Petition we have called the records of WA No.1497/97 wherein the petitioners have produced Annexures 1 to 9 documents relating to Land Conservancy proceedings. Written objection to the notice dated

26.04.1972 was filed as Annexure 6. Following objection was raised by the petitioner in his objection dated 26.04.1972:

"As per the terms of the lease the legal representatives of late Sri.Thangal Kunju Musaliyar are legally competent to possess, effect improvements and enjoy the property. We are tenants holding over the land which was already leased out by the State Government of Travancore. I have paid the lease amount up to the year 1971. The property which was given on lease to our father was the forest land under the forest department.

I am not liable to be evicted and our occupation of the land cannot be tested as unauthorised. Our right over the property cannot be challenged or terminated as per the provisions of the L.C. Act. As far as this property is concerned L.C. Act is not at all applicable.

Considering the nature of my possession and right over the property, I am entitled to enjoy the same till the expiry of the term of the lease, which is a contract between my late father and the then Government of the Travancore State.

Under the circumstances, it is prayed that this court be pleased to find that we are not liable to be evicted from the said property and to drop the proceedings against us."

36. The Kerala Land Conservancy Act, 1957 has been enacted to check the unauthorised occupation of Government

Land. The Kerala Land Conservancy Act, 1957 repeal the Travancore-Cochin Land Conservancy Act, 1951 and the Madras Land Encroachment Act, 1905. Prior to the Travancore-Cochin Land Conservancy Act, 1951, the enactment in force in the area was the Travancore-Cochin Land Conservancy Act, IV of 1091. Section 3 of 1957 Act defines property of the Government. Section 5 deals with the land which is property of Government not to be occupied without permission. Section 7 deals with punishment for unauthorisedly occupying land which is the property of Government. Section 8 deals with levy of assessment on lands which are the property of Government unauthorisedly occupied and Section 11 provides liability of unauthorised occupant to summary eviction forfeiture of crops etc. Section 7 (1), Section 8 and Section 11 which are relevant are quoted as below:

"7. Punishment for unauthorisedly occupying land which is the property of Government.- (1) Whoever occupies a land which is the property of Government, whether a poramboke or not, contrary to Section 5 shall be liable to pay -

(a) such fine not exceeding two hundred rupees: and

(b) in the case of a continuing contravention such additional fine not exceeding two hundred rupees for every day during which such contravention continues after fine has been imposed for the first such contravention as may be imposed by the Collector:

Provided that a person unauthorisedly occupying a land which is available for assignment under the Kerala Government Land Assignment Act, 1960, shall not be liable to pay any fine under sub-section (1) if -

(i) he is eligible under the rules made under that Act for assignment of such land without auction; and

(ii) he applies under those rules for the assignment of such land in his favour, either on registry or on lease.

8. Levy of assessment on lands which are the property of Government unauthorisedly occupied.- (1) Any person unauthorisedly occupying a land which is the property of Government other than a poramboke and liable to pay a fine under Section 7 shall, in addition, be liable to pay by way of assessment for the whole period of his occupation such amount as may be fixed by the Collector in accordance with the rate that may be prescribed by the Government from time to time in this behalf.

(2) Levy of prohibitory assessment on poramboke unauthorisedly occupied.- Any person unauthorisedly occupying a poramboke and liable to pay a fine under Section 7

shall, in addition, be liable to pay such prohibitory assessment for the whole period of occupation as may be imposed by the Collector.

Payment of assessment under sub-section (1) or prohibitory assessment under this sub-section shall not confer any right of occupancy.

Explanation.- For the purpose of this section, occupation for any period during a financial year shall be deemed to be occupation for the whole of the financial year.

11. Liability of unauthorised occupant to summary eviction, forfeiture of crops etc.- (1) Any person unauthorisedly occupying any land for which he is liable to pay a fine under Section 7 and an assessment or prohibitory assessment under Section 8 may be summarily evicted by the Collector, and any crop or other product raised on the land shall be liable to forfeiture, and any building or structure erected or anything deposited thereon shall also if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture. Forfeiture under this section shall be adjudged by the Collector and any property so forfeited shall be disposed of as the Collector may direct.

(2) Mode of eviction.- An eviction under this section shall be made in the following manner, namely:-.....”

37. A perusal of the above provisions, Sections 7, 8 and 11 and other provisions of the 1957 Act indicate that initiation of

proceedings under 1957 Act is based on unauthorised occupation of Government Land. Unauthorised occupation by a person invites proceedings under Land Conservancy Act, 1957. Thus the unauthorised occupation is a jurisdictional fact which give jurisdiction to the authorities to proceed under the Land Conservancy Act, impose fine, prohibitory assessment and eviction. In the present case the case of the respondent through out has been that after the death of the petitioner's father, the lease was not renewed and rubber plantation having been effected in the year 1962-63 thus the terms and conditions of lease were violated. The pleadings to the above effect were made in paragraphs 3 of the Counter Affidavit of the District Collector. It is useful to extract the pleading of the District Collector in the counter affidavit (relevant portion of paragraph 3) which was to the following effect:

"3. xx xx xx The Kuthakapattom was not renewed after the demise of Sri.Thangal Kunjuy Mussaliyar. The conversion of cashew plantation into rubber estate was clearly in violation of Kuthakappattom conditions."

Paragraph 4 of the counter affidavit further stated as follows:

"4. The Village Officer, Kulathupuzha has booked L.C. Case No.35/71 against the petitioner herein for the violation of Kuthakapattom conditions and illegal occupation. The Revenue Inspector, Kulathupuzha inspected the site and verified the mahazar on 18.09.71. The 3rd respondent, Tahsildar also inspected the site on 08.10.71 and found that the occupation is illegal. A notice under Rule 9 of Kerala Land Conservancy Rules was served on the petitioner on 25.10.71 with directions to appear before the 3rd respondent on 30.10.71. The petitioner appeared and sought time for production of documents. He had filed a written objection on 26.04.72. The counsel for the petitioner was heard on 30.09.72 and an order was passed by the 3rd respondent on 30.11.72. The 3rd respondent found that the conversion of the area into a rubber plantation is illegal and the occupation is therefore unauthorised. The petitioner has committed an offence under Section 5 of the Kerala Land Conservancy Act, 19576. Therefore he was convicted and sentenced to pay a fine of Rs.25/-. Prohibitory assessment at the ordinary rate would be realised from the petitioner. It was made clear that since the Pattom has been received up to the year 1971-72, prohibitory assessment at the ordinary rate for the remaining period alone would be realised. It was further ordered that the

encroachment will be evicted forthwith.”

38. Thus the Land Conservancy proceedings were initiated on the premise that the petitioner is an unauthorised occupant. We have already held while deciding issue Nos.III and IV that there was no requirement of renewal of the lease and the lease being heritable, petitioner continued to be in lawful possession of the Kuthakapattom lease after the death of his father in 1966 and further, no proceedings under Kuthakapattom Rules, 1947 were initiated on the ground of any alleged violation of conditions of lease, the said ground was also not available to term the possession of the petitioner as unauthorised occupant. Learned counsel for the petitioner has contended that the Land Conservancy proceedings were without jurisdiction since the jurisdiction was wrongly assumed by the authorities on the premise that petitioner's possession is unauthorised occupation of Government Land. Unauthorised occupation is a jurisdictional fact on which basis the land Conservancy proceedings can be initiated. In the event the possession by a person is not unauthorised, there is no occasion to draw proceedings under the Land Conservancy Act, 1957. When

the authority without existence of a jurisdictional fact assumes jurisdiction, assumption of such jurisdiction can be held without jurisdiction. In this context reference is made to the judgment of the Apex Court in **Arun Kumar and others v. Union of India and others** [2007 (1) SCC 732]. The Apex Court in the above decision has laid down that the jurisdictional fact is a fact which must exist before a court-tribunal or an authority assumes jurisdiction over a particular matter. Following was laid down in paragraphs 75, 76 and 84:

"75. In Halsbury's Laws of England, it has been stated;

"Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive".

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction.

84. From the above decisions, it is clear that existence of 'jurisdictional fact' is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with

law. Once the authority has jurisdiction in the matter on existence of 'jurisdictional fact', it can decide the 'fact in issue' or 'adjudicatory fact'. A wrong decision on 'fact in issue' or on 'adjudicatory fact' would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present."

39. Another judgment of the Apex Court which need reference is **Carona Ltd. v. Parvathy Swaminathan & Sons** [(2007) 8 SCC 559]. In the above case the Apex Court reiterated that if jurisdictional fact does not exist, a Court cannot act. Following was laid down in paragraphs 27 & 28 as follows:

"27. Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.

28. In Halsbury's Laws of England, (4th Edn.), Vol. 1, para 55, p.61; Reissue, Vol. 1(1), para 68, pp. 114-15, it has been stated:

"Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive".

The existence of a jurisdictional fact is thus a *sine qua non* or condition precedent to the assumption of jurisdiction by a Court or Tribunal."

40. Learned counsel for the petitioner has placed reliance on a judgment of learned Single Judge of this Court reported in **Harrisons Malayalam Ltd. v. State of Kerala** [2014 (4) KLT 371]. Learned Single Judge in the said case was considering the writ petition where the petitioners have challenged the Proceedings under the Kerala Land Conservancy Act, 1957. Learned Single Judge held that proceedings under the Land Conservancy Act can be initiated, if the persons are found in occupation of the Government Land unauthorisedly. As observed above, the existence of jurisdictional fact is thus *sine qua non* or

condition precedent for the exercise of power by a court of limited jurisdiction. Following was held by learned Single Judge in paragraph 11 of the judgment :

"11. The jurisdictional facts in the context of Land Conservancy Act, has to be decided with reference to two facts. Firstly, whether the land in question can be categorised as Government land in terms of S.3 of the Land Conservancy Act. Secondly, whether the Government is in legal possession of the land referred in S.3 of the Land Conservancy Act. It is to be noted that the proceedings under the Land Conservancy Act can be initiated if the persons are found in occupation of the Government land. There is a distinction between occupation and possession in law. The occupation denotes actual use and possession denotes control and interest in the land. If a person is in legal possession of a land, without determining the legal possession, proceedings under the Land Conservancy Act cannot be initiated. The determination of legal possession cannot be done invoking the provisions under the Land Conservancy Act. The Land Conservancy Act only provides summary procedure for evicting illegal or unauthorised occupation. Therefore, after categorising the property as a Government land, the Special Officer must address to the fact that whether the Government is in legal possession of the property. Thus the Special Officer has to bear in mind the distinction between occupation and

possession while deciding the preliminary issue raised by the petitioner.”

41. Another Division Bench relied on by counsel for the petitioner is **Autumn Wood Resorts (Cloud 9) v. State of Kerala** [2014 (3) KLT 526]. Petitioner in the above case has challenged the order of resumption passed by the District Collector in respect of the land in possession of the petitioner. Petitioners have claimed patta under the Cardamom Rules, 1935. Following was laid down in paragraphs 18 and 20 :

“18. Another argument raised by the respondent authority is that they are entitled to invoke land conservancy proceedings under the Land Conservancy Act. According to the petitioner, they have valid title and they have been paying tax in respect of the property in question. The property has been mutated in their names as evident from the basic tax register. Land Conservancy Act can be invoked only if the land belongs to the Government. Property of Government is described under Section 3 of the Land Conservancy Act, which reads as under :

“3. Property of Government defined.- (1) All public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same the bed of the sea and of harbours and creeks below high water mark, the beds and banks of rivers, streams, irrigation and drainage channels, canals, tanks, lakes, backwaters and water courses, and all standing and flowing water,

and all hands wheresoever situated, save in so far as the same are the property of -

- (a) Jenmies, Wargdars or holders of Inams; or
- (b) persons registered in the revenue records as holders of lands in any way subject to the payment of land revenue to the Government; or
- (c) any other registered holder of land in proprietary right; or
- (d) any person holding land under grant from the Government otherwise than by way of a lease or licence; or
- (e) any person claiming through or holding under any of the persons referred to in clauses (a), (b), (c) or (d), are, and are hereby declared to be, the property of Government, except as may be otherwise provided by any law for the time being in force, subject to all rights of way and other public rights and to the natural and easement rights of other land owners and to all customary rights legally subsisting."

In so far as the petitioner has been paying tax for the property in question, and claims to be the successor of a grantee from the Government, he comes within the exemption of S.3(1)(b) and (d) read with clause (e). Hence the said property cannot *prima facie* be termed as Government land. Under such circumstances, we do not think that the respondent can invoke land conservancy proceedings in respect of the property in question.

20. As far as cancellation of L.A. Pattas are concerned, the right to cancel lies with the person who is the competent authority to cancel the said pattas. The pattas at Exts.P20 and P21 have been issued by the Special Tahsildar under Kerala Land Assignment Act, 1960. If the pattas are wrongly issued, definitely it is possible for the

competent authority to take appropriate proceedings for cancellation of the said patta, by invoking R.8(3) of the Kerala Land Assignment Rules, 1964 and of course on compliance with the relevant statutory provisions. However, without cancelling the patta, no action can be taken to resume the land covered by the said pattas."

42. As noted above under the Kuthakapattom Rules, 1947 it is open for the competent authority to determine the Kuthakapattom lease. Even if there is violation of any condition of the lease, there has to be determination of the lease under Rule 26(d) (3) of the Kuthakapattom Rules, 1947. Clause 17 of Form D provides as follows:

"17. That if any of the conditions laid down above are not fulfilled or are violated the property shall be liable to be resumed immediately by the Officer or authority who sanctioned the lease irrespective of the period of the lease after a written notice to that effect served on the lessee. When the grant is resumed the Proverthicar will enter on and take possession of the property from the lessee."

43. There is no pleading on record that Kuthakapattom lease of the petitioner's father was determined at any point of time by the competent authority. In fact, the case of respondent throughout was that, after the death of the petitioner's father the

lease was not renewed, hence the possession of the petitioner became unauthorised. Thus the possession of Kuthakapattom lease by the petitioner was lawful possession even after the death of the father and Kuthakapattom having never been terminated in accordance with the Kuthakapattom Rules, 1947, petitioner's possession cannot be held to be unauthorised or unlawful. Land Conservancy proceedings under 1957 Act could not have been initiated, since the possession of the petitioner was not unauthorised. The jurisdiction invoked by the Tahsildar under the Land Conservancy Act, 1957 was without jurisdiction due to non-fulfillment of jurisdictional fact i.e. unauthorised possession of the Government land. The Kuthakapattom Rules, 1947 forms condition (18) and similar conditions in 1935 Rules fortifies our above view. For ready reference Clause 18 of Form D is extracted below:

“18. That on the expiry of the lease or in the event of the cancellation of the lease or in the event of resumption of the property, the lessee shall unless he has taken a further lease surrender the property intact to the Proverthicar. If he does not so surrender he will be considered a tenant holding over liable

to be proceeded against and evicted under Act IV of 1091. He will not however, be entitled to compensation for any trees planted to or any improvements that he might have made on the land or for any structures raised by him thereon and not removed."

44. The above Clause clearly indicate that in the event the lessee on expiry of the lease or cancellation of the lease does not surrender the property, he shall be considered to be a tenant holding over, liable to be proceeded against and evicted under Act IV of 1091. Act IV of 1091 was the Travancore-Cochin Land Conservancy Act. Thus the provisions of Land Conservancy Act could have been invoked only after 'cancellation of the lease' which is apparent from Clause (18) of Form D which is a statutory provision.

45. Learned Special Government Pleader appearing for the State relies on the proceedings under the Land Conservancy Act and submits that those proceedings having become final, appeal and revisions of the petitioner having been dismissed, proceedings having attained finality, no different view can be taken in the present proceedings.

46. Learned counsel for the petitioner has placed reliance on **Mathura Prasad Sarjoo Jaiswal and others v. Dossibai N. B. Jeejeebhoy** [AIR 1971 SC 2355]. In the above case the Court was considering the doctrine of *res judicata* in respect of two proceedings pertaining to Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Apex Court in the said case has laid down that earlier decision shall not be *res judicata* with a decision related to jurisdiction of the Court which could try the earlier proceedings and when a question is purely of question of law and jurisdiction of Court or decision of the Court, principle of *res judicata* is not attracted. It is useful to quote the following observations made in paragraphs 5, 6, 9 and 11:

"5. But the doctrine of *res judicata* belongs to the domain of procedure, it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be *res judicata* in another proceeding

between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be reopened between them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor

when the law had since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

6. The authorities on the question whether a decision on a question of law operates as res judicata disclose widely differing views. In some cases it was decided that a decision on a question of law can never be res judicata in a subsequent proceeding between the same parties: Parthasardi v. Chinnakrishna, (1863) ILR 5 Mad 304; Chamanlal v. Bapubhai, (1898)ILR 22 Bom 669; and Kanta Devi v. Kalawati, AIR 1946 Lah 419. On the other hand Aikman, J., in Chandi Prasad v. Maharaja Mahendra Mahendra Singh, (1901) ILR 23 All 5 held that a decision on a question of law is always res judicata. But as observed by Rankin, C. J., in Tarini Charan Bhattacharjee v. Kedar Nath Haldar, ILR 56 Cal 723 = (AIR1928 Cal 777) (FB).

"Questions of law are of all kinds and cannot be dealt with as though they were all the same. Questions of procedure, questions affecting jurisdiction, questions of limitation may all be questions of law. In such questions the rights of parties are not the only matter for consideration."

We may analyse the illustrative cases relating to questions of law, decisions on which may be deemed res judicata in subsequent proceeding.

9. A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit. Rankin.C. J., observed in Tarini Charan Bhattacharjee's case, ILR 53 Cal 723 = (AIR 1928 Cal 777).

"The object of the doctrine of res judicata is not to fasten upon parties special principles of law as applicable to them inter se, but to ascertain their rights and the facts upon which these rights directly and substantially depend; and to prevent this ascertainment from becoming nugatory by precluding the parties from reopening or recontesting that which has been finally decided."

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment operate as res judicata, Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.

11. In the present case the decision of the Civil Judge, Junior Division, Borivli that he had no jurisdiction to entertain the application for determination of standard rent, is, in view of the judgment of this Court, plainly erroneous, see (1962) 3 SCR 928 = (AIR 1966 SC 1939). If the decision in the previous proceeding be regarded as conclusive it will assume

the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court in derogation of the rule declared by the Legislature.”

47. In view of the foregoing discussion we are of the view that the proceedings under the Land Conservancy Act, 1957 having been initiated on the premise that the petitioner is in unauthorised possession of the leased land, the lease having not been renewed and he having violated the conditions of lease by planting rubber trees, were without jurisdiction. The petitioner's possession did not become unauthorised after the death of his father and he continued to be in lawful possession and there was no requirement of renewal of lease and no proceedings were initiated for cancellation of the lease, issue Nos.V and VI are answered as follows:

Issue No. V : Proceedings under the Land Conservancy Act, 1957 were without jurisdiction since the petitioner's possession after the death of his father was not unauthorised possession and the lease is of heritable nature, he continued to be in lawful possession.

Issue No. VI : The petitioner's possession cannot be held to be unlawful or unauthorised on the strength of Land

Conservancy proceedings since the petitioner continued to be in lawful possession on the basis of Kuthakapattom lease which lease having heritable and never determined according to 1947 Rules, he continued to be in lawful possession of the leased land.

Issue Nos.VII and VIII:

48. We have already extracted the relevant provisions of the Kuthakapattom Rules, 1947. Form D contains various conditions of Kuthakappattam grant in which condition No.18 of Form D provides as follows:

“18. That on the expiry of the lease or in the event of the cancellation of the lease or in the event of resumption of the property, the lessee shall unless he has taken a further lease surrender the property intact to the Proverthicar. If he does not so surrender he will be considered a tenant holding over liable to be proceeded against and evicted under Act IV of 1091. He will not however, be entitled to compensation for any trees planted to or any improvements that he might have made on the land or for any structures raised by him thereon and not removed.”

49. The above condition indicates that on the expiry of the lease or in the event of cancellation of lease or in the event

of resumption of the property, if the lessee does not surrender the property, he will not however be entitled to compensation for any trees planted to or any improvements that he might have made on the land or for any structures raised by him thereon and not removed.

50. As noted above, the Tahsildar is fully empowered to determine the lease after three months' notice as provided in Rule 26 (b)(iii) of the Kuthakappattom Rules, 1947. The purpose of notice for termination of the lease is clearly with the intention to give opportunity to the lessee to remove his improvements. The condition No.18 of Form D as quoted above clearly indicates that the lessee is entitled to remove his improvements. The removal of the improvements by the lessee is thus a statutory right granted to him. Present is a case where the lease was not terminated by giving three months notice nor petitioner could get any opportunity to remove the improvements. As has been noted above, the State Government had issued a Government Order dated 27.05.1995 providing that the possession of private lands including the land in Survey No.745/1 for resettlement of

'Kani' families who became oustees from the reservoir area of Vamanapuram Irrigation Project, shall be resumed by the Government by personal negotiation and valuation fixed by the Revenue Authorities. In pursuance of the above Government Order, a High Power meeting was held on 01.03.1996 wherein it was decided to resume the land (Survey No.745/1) after paying the value of improvements in the 94 Acres.

51. The Government have agreed to pay the value of improvements with the object of resettlement of 'Kani' families. The Government thus wanted to take the land after paying the value of improvements as was decided on 01.03.1996. The Government clearly intended not to give an opportunity to the petitioner to remove the improvements. As noted above even after the proceedings under the Land Conservancy Act, the possession was never taken from the petitioner and the State Government itself has granted an interim order staying the eviction of the petitioner which interim order continued from 1974 till 1989 and after 1989, petitioner's application for assignment of land was recommended by the Collector vide its

letter dated 24.10.1994 which was brought as Exhibit P11. The land of the petitioner was resumed by giving a notice dated 01.08.1997(Ext.P6). It is claimed to be served on the staff of the petitioner on 02.08.1997 at 9 p.m., wherein the petitioner was directed to appear on 04.08.1997 to handover the possession. The aforesaid clearly indicate that the petitioner was never given any opportunity to remove his improvements.

52. One of the judgments on which reliance has been placed by the learned counsel for both the parties is **Kolencherry Grama Panchayat v. Mariamma Chacko** [2001 [1] KLT 880]. In the above case occupants of the lands were governed on the basis of the Kuthakapattom Rules. Proceedings were initiated in the High Court where the High Court directed that the proceedings can be continued against the occupants only after giving opportunity to them. The District Collector directed the petitioners to vacate the land. The matter was taken to the Board of Revenue. The Board of Revenue upheld the order of the District Collector and directed eviction of the occupants. Against the order of the Board of Revenue the

respondent approached the High Court by filing Original Petition. The Original Petition was disposed of directing the authority to issue notice to the petitioners if the Kuthakappatom has to be cancelled, secondly, the petitioners have to vacate the land and thirdly, the authorities shall pass orders with regard to compensation. Writ Appeal was filed against the judgment. After disposal of the Original Petition, the Tahsildar issued notice to the petitioners and rejected their objection. Original Petition was again filed in the High Court which was dismissed against which Writ Appeals were filed and decided. In the above case the Division Bench had occasion to consider as to whether the occupants were entitled to value of improvements. In paragraph 4 the Division Bench noted the issues. The Division Bench in the said case considered Kuthakapattom Rules 1935 and 1947 and held that although the lessee is not entitled to value of improvements, he can remove the improvements before he is evicted. The following was laid down in paragraphs 7 and 8:

“ 7. Thus substantially, there is no difference in Form C of the Rules of 1935 and Form D of Rules of 1947. It means that, the

lessee is not entitled for value of improvements at the time of eviction. But he can remove those improvements before he is evicted. Thus we are of the view that the learned Single Judge was not correct in holding that the occupants are entitled to value of improvements.

8. Hence, we modify the judgment of the learned Single Judge by deleting the direction to pay compensation to the petitioners for value of improvements. But, we make it clear that even though the respondents are not entitled to value of improvements they will be free to demolish the structures put up by them and to carry away the materials used for the construction. Hence, we dispose of the W. As. by entitling the respondents to demolish the structures put up by them in the land in question before they are evicted, and the judgment of the learned Single Judge is modified to the above extent.”

The Division Bench judgment thus clearly establishes that the lessee is entitled to remove the improvements.

53. One more submission which has been pressed by the learned Special Government Pleader is with regard to O.P. No.4214 of 1990 decided on 04.06.1990. Petitioner filed the Original Petition when he was directed to stop the constructions. In the Original Petition learned Single Judge held that petitioner can make the constructions but he will not be entitled to

compensation. Learned counsel for the petitioner submitted that the said order pertains to certain renovation in the building and in paragraph 2 of the judgment, following is stated.

“In the circumstances, petitioner is permitted to do such work. But, I make it clear that petitioner will be doing it entirely at his risk, and that he will not be compensated in the event of the Government finding in appropriate proceedings, that the land is liable to the resumed. I also make it clear that this judgment will have no bearing on the rights of the petitioner.”

The above judgment cannot be read against the petitioner to claim improvements on the land. The learned Single Judge himself has observed that the judgment will have no bearing on the rights of the petitioner. The said judgment was passed on the particular facts of the case where the petitioner was permitted to carry out certain renovation in the building. That judgment does not also help the learned Special Government Pleader.

54. Learned Special Government Pleader has placed reliance on a judgment of this Court reported in **Rev. Fr. K.C. Alexandar v. State of Kerala** [1965 KLT 666] as well as judgment of the Apex Court reported in **Rev. Fr. K.C. Alexandar**

v. State of Kerala [AIR 1973 SC 2498] by which judgment the judgment of High Court was affirmed. It is useful to refer to the aforesaid two judgments in detail.

55. In 1965 KLT 666, an appeal was filed by the Plaintiff arising out of a Suit for recovery of Rs.2 lakhs with interest from State of Kerala for the damages for the value of improvements said to have been lost to the plaintiff when he was evicted from 160 acres of land. The petitioner claims to have taken possession of the land belonging to the State. Plaintiff's case was that he effected improvements bonafide on the property and he was entitled to the value thereof. The plaintiff did not claim any permission or lease from the State who was the owner of the property. The defendant pleaded that the plaintiff was a mere trespasser and he was not entitled for any value of improvements. The Division Bench of the High Court found that the plaintiff could not prove that he has any bonafide claim. The Division Bench thus proceeded to discuss the question as to whether a mere trespasser has any right after dispossession in respect of the improvements he had effected, during the currency

of his trespass is noticed in paragraph 10 of the judgment. After noticing various cases High Court held that there is no principle of law or equity which requires the payment of compensation in respect of trees, the ownership of which was all along, or at any rate from the date of the trespasser's dispossession, vested in the State. The relevant portion in paragraph 10 is quoted below:

"The position of a trespasser - whether he be a mere trespasser or a trespasser under a *bona fide* claim of title - cannot be better than that of a tenant. If what is stated above is correct, then the appeal has to be dismissed on the short ground that there is no principle of law or equity which requires the payment of compensation in respect of trees, the ownership of which was all along, or at any rate from the date of the trespasser's dispossession vested in the State."

The plaintiff- Rev. Fr. K.C. Alexander has filed an appeal before the Apex Court challenging the judgment of High Court. The Apex Court in paragraphs 1 & 2 noted the facts of the case and in paragraph 9 it is held that the claim of plaintiff that his possession was bonafide and he was a bonafide trespasser has no legs to stand. The Apex Court in the said judgment had held by quoting a maxim of English Law, the relevant portion of paragraph 13 of AIR 1973 SC 2498 reads as under:

"It is true that the maxim of the English law "quicquid plantatur solo solo cedit", i.e. whatever is affixed to the soil belongs to the soil, is not applicable in India but that is not to say that a wrongful trespasser can plant trees on some one else's land and claim a right to those trees after he is evicted."

56. One of the submissions raised before the Apex Court was that the plaintiff in that case did not get an opportunity to remove his improvements, but for the reasons given in paragraph 14 the Apex Court did not permit the plaintiff to raise the above contention. It is useful to quote paragraph 14 which is to the following effect:

"14. In any case, as the High Court rightly observed, the position of a trespasser cannot be better than that of a lawful tenant who having lost his possession cannot claim compensation or damages for anything erected on the land or any improvements made therein. The appellant's claim after he was evicted cannot, on the same parity of reasoning, be held to be valid. Once the appellant's counsel was confronted with this proposition, he tried to raise an entirely new point, namely, that no notice of eviction was given to the appellant, and if such a notice had been given to him under S. 9, he would have cut the trees and taken them away within the time allowed for him to vacate the lands. In support of this

contention he has referred us to the pleadings contained in paragraph-3 of the plaint in which it is stated :

"The improvements effected by the plaintiff have a value of Rs. 2 lakhs as per the accounts shown below. In his helplessness the plaintiff had even applied to Government to give him the land in which he had effected improvements, on kuthakapattom. But out of the said land 160 acres were taken out of my possession and given to the 2nd defendant even without giving me the opportunity to remove the movable improvements, such as cultivation, cattle, machines, utensils, houses, stocked crops, ripe crops etc., belonging to me." These averments in the above paragraph do not clearly allege that he was evicted without notice, nor has any allegation been made that he was forcibly evicted from the lands with the help of the police etc. as it has now been contended before us. On the other hand what the plaintiff (appellant) stated shows that no opportunity was given to him to remove the movable improvements such as cultivation, cattle, machines, utensils, houses, stocked crops, ripe crops etc. which belonged to him. There is nothing stated by him that he had no opportunity to cut trees and take them away. Even in paragraph-4 of the plaint where he complains that no notice of forfeiture was given to him, he mentions only the items referred to in paragraph-3. It is in this connection he says, that no legal procedure had been followed by Government for taking them into possession which only implies that it is in respect of the items mentioned in paragraph-3. It is again stated in paragraph-4 that "It was irregular on the part of Government to take possession of the above items',. The respondent did not understand the averments in the plaint as

alleging that no notice to quit was given to him is evident from the written statement of the respondent in paragraph 7 where it is stated thus:

“This defendant submits that after due notice an order of forfeiture has been passed in Poramboke Case 112 of 1100 and the plaintiff is therefore not entitled to claim any value of improvements or value of any building.” The issues that had been framed by the Trial Court also do not refer to this aspect. No doubt in the evidence of the plaintiff P.W. 1 he states that he was evicted from the lands without giving him an opportunity to remove the improvements, and in cross-examination he was asked whether he was not given any notice prior to the dispossession and he said that certainly no notice was received. P.W. 4 the Manager was asked in cross-examination whether he had been given any prior information or notice about eviction and this witness also said that there was no prior information or notice. While these passages might show that no notice of eviction was given, even at that stage there was no application for an issue being framed, nor has such an application been made in the appeal before the High Court, nor even before this Court. When it has been held that the appellant was not a mere trespasser and had deliberately entered upon the lands knowing fully well that he had no right claim or title to the lands or had in any manner a right to enter the land and has been rightly evicted as a trespasser, he cannot now be permitted to raise this contention before us.”

57. The ratio of the judgment of High Court as well as the Apex Court is that the trespasser who has made improvements in the land belonging to someone else cannot claim value of improvements but his right to remove the improvement was not denied. The case before the High Court in 1965 KLT 666 was not a case of Kuthakapattam lease where certain statutory conditions and requirements are prescribed. Thus on the basis of above judgment, the contention of learned Special Government Pleader, that the petitioner cannot claim value of improvements, cannot be accepted. As observed above, the State Government intended to take the land along with improvements after paying compensation which was clearly recorded in Ext.P9 Government Order and proceedings dated 01.03.1996. In the Government Order dated 27.05.1995 (Ext.P9) it has been recorded that "the Kannies are agreeable for shifting to the new location...". The above indicates that rehabilitation of Kannies on the selected site which includes Sy No.945/1(94 acres) was proposed with all facilities and improvement on the land hence the State could not have

permitted the petitioner to remove the improvement. This circumstance clearly proves that the petitioner was entitled for value of improvements. It has to be accepted that petitioner had no opportunity to remove the improvements. Thus he was entitled for the value of improvements, as has already been determined by the State Government. Issue No.VII is answered in the following manner:

"Issue No.VII. The State having intended to resume the land in Survey No.745/1 along with the improvements and the petitioner having not given an opportunity to remove the improvements, the petitioner is clearly entitled for value of improvements."

Issue No.VIII :

58. One of the submissions which has been pressed by learned counsel for the petitioner is the submission based on the 'promissory *estoppel*'. It is submitted that the State has issued a Government Order dated 27.05.1995 and have initiated proceedings dated 01.03.1996 that the land in Survey No.745/1 shall be resumed after paying the value of improvements, the

State cannot go back from its promise and is estopped by the doctrine of promissory estoppel. It is relevant to recaptulate the facts and the ground on which the above submission is made.

59. As noted above though the Land Conservancy proceedings were initiated in the year 1971 and orders were passed by the authorities in 1972-1974, the State directed that the petitioner need not be evicted in the year 1974 and said interim order continued till 1989. The petitioner's application for assignment of land was also recommended by the Collector on 24.10.1994 which were pending active consideration before the State Government. The State issued the Government Order dated 27.05.1995. It is useful to refer to the Government Order which is to the following effect:

“ GOVERNMENT OF KERALA

No.26277/IR3/94/IrD
Irrigation (Irrgn) Dept.
Thiruvananthapuram, 27/5/95.

From
The Secretary to Government

To
The District Collector,
Thiruvananthapuram/Kollam.

Madam,

Sub:- Vamanapuram Irrigation Project - Transfer of forest land
Resettlement of Kani families - Oustees from reservoir
area - reg:

xxxxxx

During the conference held by the Minister (I&C) on 22/12/94 regarding Vamanapuram and Idamalayar Projects, it has been decided to purchase private land for the resettlement of Kani families who become oustees from the reservoir area of Vamanapuram Irrigation Project. The land has to be purchased by personal negotiation and valuation fixed by the Revenue authority. There are 75 Kani families who become oustees from the reservoir area. For their resettlement, at least 75 h. (185.32 acres) of land for their accommodation and 5 h. (12.35), altogether 80 h. (197.67 acres) of land, is essential for their infrastructural developments such as road, school, community hall etc. The details of private land proposed to be purchased from Sri.Shahul H. Musaliar, Kollam (124 Acres) and Mrs. & Mr.George Mathew, Kozhencherry (76.57 acres) are shown below :-

Name of Owner	Sy.No.	Extend	Taluk/Dist.
Shri.George Mathew, Poyanil House, Kozhencherry	412/1	45 Acre	Pathanapuram, Quilon
Smt.Kamamma Mathew	413/1	31.57 Acre	-do-

Name of Owner	Sy.No.	Extend	Taluk/Dist.
Shri.Shahul H.Musaliar Quilon	738/1 738/2 991/992 8745/1 3756, 3757, 3759, 3760, 3761 & 745/1	124 Acre	-do-
Total		200.57 Acre	

These two sites are having all facilities such as road, hospital etc. and are reported to be suitable for accommodation of Kani families. The Kanis are agreeable for shifting to the new location.

It is proposed to allot 2.47 Acres of land for each Kani family (185.25 acres) and the balance for their infrastructural development such as roads, school, hospital, community hall etc.

I am to request you to take urgent necessary action for the procurement of the above land after detailed valuation through the revenue authorities. Copies of the willingness of the owners of the above said land in surrendering their land are also enclosed.

Yours faithfully,
Sd/-
K.Appu
Under Secretary
For Secretary to Govt."

60. In pursuance of the Government Order dated 27.05.1995 a High Power meeting was held under the

Chairmanship of Hon'ble Minister for Irrigation, in which Secretary Board of Revenue, Chief Engineer Project II, Chief Conservator of Forests (Protection), Additional Secretary Irrigation Department, Joint Secretary Revenue Department, Joint Secretary Forest and Wild Life Department, Superintending Engineer Project Circle, Piravom, Deputy Collector(LA), Divisional Forest Officer, Under Secretary Irrigation Department and Special Tahsildar(LA) were present. Petitioner was also present in the meeting. It is useful to extract the minutes at Item 8 & 9 which is to the following effect:

"8. The Joint Secretary, Revenue Department told the meeting that 95 acres of Government land now under the custody of Sri.Shahul H. Musaliar is actually an unauthorised occupation as the lease granted to him was over and the lease period has not so far been extended. This was confirmed by the owner who was called in as witness. But he said that he has every right to get it assigned. It was decided to resume the land after paying the value of improvement if any to the 95 acres and payment of land value and improvement for the balance registered land. The balance land required for the resettlement may be acquired urgently. Tahsildar, Pathanapuram is directed to take urgent steps for the detailed valuation of the improvements of 95 acres urgently.

9. The Irrigation Department and Forest Department are directed to prepare a programme for getting the forest land urgently and take follow up action for the implementation of the project."

61. Pursuant to the decision taken on 01.03.1996 the Tahsildar submitted a report dated 03.04.1996 where value of improvements was assessed at Rs.1,70,94,000/-. There was some objection to the report on which a further report was submitted by the Tahsildar on 11.04.1997 reiterating the earlier assessment of the improvements.

62. The State thus has clearly represented that the land of the petitioner shall be taken after paying the value of improvements. It is relevant to note that the petitioner's application for assignment which was pending was rejected on 28.07.1997 and notice dated 01.08.1997 was issued to take possession of the land, in pursuance of which possession was taken on 04.08.1997. State thus by its order dated 27.05.1995 and proceedings dated 01.03.1996 clearly represented that the petitioner will be paid the value of improvements. But suddenly without any notice or information State went back from its

promise and issued notice on 01.08.1997 to take possession.

63. The District Collector, Kollam in his counter affidavit to the Original Petition has pleaded that the decision to take possession of the land was taken under the orders of the State Government. Paragraph 12 of the counter affidavit of the District Collector stated as follows(relevant portion):

"The Government thereafter rejected the application for assignment vide letter No.83775/U2/92/RD dated 28.7.97. On the same day the 1st respondent directed me to resume the land in question and also to recover the likely loss to the Government that occurred due to continued illegal occupation of the land by the applicant."

64. Thus the possession was taken under the order of the State Government as stated by the Collector. Whether the doctrine of promissory estoppel shall stop the State Government from going back from its promise to pay value of improvements is the question to be answered. The doctrine of promissory estoppel has been clearly explained in the Apex Court judgment reported in **M/s.Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and others** [AIR 1979 SC 621]. In the

above case the Apex Court held that the doctrine of Promissory Estoppel is a principle evolved by equity to avoid injustice. In the above case the question was whether the assurance given by the State Authorities on behalf of the State Government that they had decided to give exemption from payment of sales tax for a period of three years from the date of commencement of the production and the State Government is bound to honour such assurance by invoking the provisions of promissory estoppel. The Apex Court referred to the English law, the American Law and the Indian law and held that the Government was bound on the principle of promissory estoppel to make good the representation made by it. It is useful to refer to the observations made by the Apex Court in paragraphs 7 and 19 which is to the following effect:

“7. That takes us to the question whether the assurance given by the 4th respondent on behalf of the State Government that the appellant would be exempt from sales tax for a period of three years from the date of commencement of production could be enforced against the State Government by invoking the doctrine of promissory estoppel. Though the origin of the doctrine of promissory estoppel may be found in *Hughes v. Metropolitan Rly. Co.*, (1877) 2

AC 439 and Birmingham and District Land Co. V. London and North Western Rly. Co., (1888) 40 Ch D 268 authorities of old standing decided about a century ago by the House of Lords, it was only recently in 1947 that it was rediscovered by Mr. Justice Denning, as he then was, in his celebrated judgment in Central London Property Trust Ltd. v. High Trees House Ltd. (1956) 1 All ER 256 : 1947 KB 130. This doctrine has been variously called 'promissory estoppel', 'equitable estoppel', 'quasi estoppel' and 'new estoppel'. It is a principle evolved by equity to avoid injustice and though commonly named 'promissory estoppel', it is, as we shall presently point out, neither in the realm of contract nor in the realm of estoppel. It is interesting to trace the evolution of this doctrine in England and to refer to some of the English decisions in order to appreciate the true scope and ambit of the doctrine particularly because it has been the subject of considerable recent development and is steadily expanding. The basis of this doctrine is the interposition of equity. Equity has always, true to form, stepped in to mitigate the rigours of strict law. The early cases did not speak of this doctrine as estoppel. They spoke of it as 'raising an equity'. Lord Cairns stated the doctrine in its earliest form - it has undergone considerable development since then - in the following words in Hughes v. Metropolitan Rly. Co. (Supra):

"It is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in

suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties."

19. When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negated. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was formulated by Denning, J., in England, a Division Bench of two English Judges in the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the *Ganges Mfg. C. V. Sourujmull*, (1880) ILR 5 Cal 669. The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in *Municipal Corporation of Bombay v. Secy. of State*, (1905) ILR 29 Bom 580."

In paragraph 24 the Apex Court recorded its conclusion and ratio which is to the following effect (relevant portion):

"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the

Govt. would be held bound by the promise and the promise would be enforceable against the Govt. at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Art. 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter."

65. As per the ratio of the Apex Court as laid down in the above case it is clear that there was a failure of promise on behalf of the State to the petitioner that he shall be paid the value of improvements. The decision to pay the value of improvements was taken due to the reasons as has been disclosed from the pleadings of the parties and noted above while deciding issue No.VII. The Government Order Ext.P9 clearly provided that the State required the land for resettlement of Kani families who were ousted from the reservoir area of the Vamanapuram Irrigation Project. The State Government decided

to purchase the land from private holders in which Government Order, Survey No.745/1 of the petitioner's land was also included. As observed above, the Government wanted the entire land and intended to obtain the land along with its improvements. Item No.8 of the High Power meeting dated 01.03.1996 as extracted above clearly indicate that the said decision was taken even when the Joint Secretary told in the meeting that the petitioner is an unauthorised occupant of the land, since the lease granted to him was over and since the period of lease was not extended, although the stand taken by the Joint Secretary was incorrect, even after that Government took the decision to resume the land of petitioner after paying the value of improvements, if any, to the petitioner for his 94 Acres of land. Thus the decision of the State was clear and unequivocal representation was there to pay the value of improvements. The land has been resumed for a purpose by the State Government. But now the State Government has gone back from its promise to deny the value of improvements. We thus conclude that the doctrine of promissory estoppel is fully

attracted which desists the State in going back from its promise to pay the value of improvements to the petitioner. **We thus answer issue No.VIII in favour of the petitioner and against the State.**

66. In view of our answer to issue Nos.II to VIII, we come to the conclusion that the petitioner is entitled to get the value of improvements existed on the land when it was resumed by the Government on 04.08.1997. The amount of compensation having already been determined, which has been deposited by the State before the Registrar General and after the decision of entitlement of the petitioner, he is entitled to receive the value of improvements. We permit the petitioner to withdraw the amount of value of improvements which is deposited with the Registrar General of High Court of Kerala as noted above as legal heir on behalf of all other legal heirs of original lessee. The Original Petition is allowed to the extent as indicated above.

67. Before we close the judgment we record our deep appreciation to the valuable assistance given by learned counsel for the petitioner as well as learned Special Government Pleader

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-.93:-

(Revenue) which helped us to decide some complicated issues in the case.

Parties shall bear their costs.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

ttb/vsv