

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

RSA.No.1030 of 2006 (E)

AGAINST THE JUDGMENT IN AS 225/2000 of II ADDITIONAL DISTRICT COURT,
PALAKKAD DATED 07-09-2004

AGAINST THE JUDGMENT IN OS 410 OF 1994 of ADDITIONAL MUNSIF COURT,
PALAKKAD DATED 28-02-2000

APPELLANT/APPELLANT/PLAINTIFF:

KOMALAKUMAR,
PROPRIETOR, M/S. RAMCO ENGINEERING WORKS
INDUSTRIAL DEVELOPMENT AREA, KANJIKODE WEST, PALAKKAD
REPRESENTED BY POWER OF ATTORNEY
HOLDER SMT. MADHAVIKUTTY ALIAS VIMALA.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS/DEFENDANTS:

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1. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, THIRUVANANTHAPURAM.
 2. THE DIRECTOR OF INDUSTRIES AND COMMERCE,
THIRUVANANTHAPURAM.
 3. GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, PALAKKAD.
 4. B.HARI, S/O. BALAKRISHNAN,
PROPRIETOR, SUJAYA RUBBER INDUSTRIES, PIRUVUSALA
RESIDING AT "SUSEEL", COIMBATORE ROAD, PALAKKAD.

R4 BY ADV. SRI.N.MURALEEDHARAN NAIR
R4 BY ADV. SRI.V.K.SHAMUSUDHEEN
R1 TO R3 BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R”

ALEXANDER THOMAS, J.

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Dated this the 9th day of December, 2015.

J U D G M E N T

This appeal is directed against the impugned judgment and decree dated 07-09-2004 rendered in Appeal Suit, A.S.No.225/2000 by the District Court, Palakkad, which has affirmed the impugned judgment and decree dated 28-02-2000 in Original Suit, O.S.No. 410/1994 of the Munsiff's Court, Palakkad. The suit was for injunction, which was dismissed by the trial court on 28-02-2000, which in turn has been affirmed by the impugned verdict of the lower appellate court. So it is against the concurrent findings by both the courts below that the plaintiff has instituted the aforecaptioned Regular Second Appeal.

2. The case set up by the plaintiff is as follows:- That he is conducting the business of steel furniture and other fabrication works in the name and style, “Ramco Engineering Works”, which has been registered as a Small Scale Industrial Unit (SSI Unit). The plaint schedule property, having an extend of 37 cents of land, is part of the property acquired by the Government for

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industrialisation and has been allotted to the plaintiff as per Ext.A-1 dated 11-12-1984 issued by the 3rd defendant-General Manager, District Industries Centre, Palakkad. Later, Ext.A-3 hire purchase agreement dated 21-12-1984 was entered into between the plaintiff and the 1st defendant in respect of the aforesaid land allotted to the plaintiff for setting up an industrial unit. That the plaintiff had paid initial sum of Rs.2,000/- and he was to pay a balance sum of Rs.7,425/- in annual instalments within a period of ten years along with interest @ 6.5% per annum. That the plaintiff secured possession of the aforesaid property on 31-12-1984 and he constructed a building in the property and has been using the same for the purpose of running his fabrication unit. That though he was ready and willing to pay the balance instalments, which fell in arrears, the 3rd defendant's office had refused to accept the same tendered by him, by demanding a larger amount than what was due. By Ext.A-4 dated 30-09-1985, the 3rd defendant had permitted the plaintiff to mortgage the superstructure built on the aforesaid land, to the Kerala State Financial Corporation for availing a loan for the purpose of running the industrial unit. As per Ext.A-5 letter

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dated 11-08-1993, the 3rd defendant had informed the plaintiff that he has to remit Rs.11,300/- towards cost of the land and interest thereon, within 15 days from date of receipt of the said letter dated 11-08-1993, failing which action will be taken to receive the land. By Ext.A-7 letter dated 26-10-1993, the 3rd defendant again reminded the plaintiff to remit the aforesaid amount of Rs.11,300/- (within ten days). That no follow up action was taken by the defendants for resumption of the land on the ground of non-payment of the aforesaid amount as referred to in Exts.A-5 and A-7. Later the 3rd defendant issued Ext.A-6 letter dated 09-02-1994 stating that on inspection of the unit, it was found that its built up area comes only to 646 sq.feet and that as such, the plaintiff is eligible to get only 9 cents of land. Further that the plaintiff has not remitted the first instalment towards the hire purchase dues and that considering the lay out of the land and the location of the existing unit, the plaintiff is allowed to retain only 12 cents of land and that by limiting the extent of land by 12 cents, the plaintiff was requested to surrender to the Department the balance 25 cents out of the total 37 cents earlier allotted, etc. In reply to Ext.A-6

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dated 9-2-1994, the plaintiff sent Ext.A-8 letter dated 22-09-1994 pointing out that his unit is engaged in heavy structural fabrication and hence apart from the building constructed in the land, he requires extensive vast and open area for running of his fabrication unit and that the work is being done in open space. That the building is used only for storing the erection materials and as store and office. That the District Industries Centre (DIC) officials, after verification, were fully satisfied that the nature of work in the unit requires vast space to run his industry and it is only after such verification and satisfaction that the 3rd defendant had allotted 37 cents of land to the plaintiff as per Ext.A-1 dated 11-12-1984. That the proposed reduction of the allotted land to 12 cents is done in an arbitrary manner and that ever since the allotment of the land on 31-12-1984, the plaintiff has been utilizing the said entire extent of 37 cents of land for the last ten years and that the direction in Ext.A-6 dated 09-02-1994 to surrender 25 cents, out of the total 37 cents, is illegal and against natural justice and fairness. The plaintiff has also alleged in Ext.A-8 that the action has been proposed as per Ext.A-6 only at the instigation of another industrialist, who had earlier

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attempted to persuade the plaintiff to sell the plot to them, which he had refused, etc. The plaintiff reiterated that the entire extent of 37 cents of land allotted to him is absolutely essential and required for the continued functioning of his fabrication unit and that he is not liable to surrender any portion of the said area. He has also pointed out that thereafter there are several other industrial units in the locality, which are not functioning and that it is for the defendants to take effective action to resume such defunct industrial units, which have occupied by vast tracts of land, etc. Accordingly, the plaintiff prayed that he should be allowed to retain the entire extent 37 cents of land allotted to him, which is an absolutely essential requirement for running his unit, etc. That without considering the matters in its proper perspective, the 3rd defendant had issued Ext.A-10 proceedings dated 08-06-1994, by stating an altogether new ground that the considerable extent of the 37 cents of land is kept unutilised by the plaintiff, despite the lapse of eight-and-a-half years after taking possession and hence he is eligible only to keep 12 cents of land in proportion to the construction he has so far made. Accordingly, it was ordered in Ext.A-10 to resume the 27 cents of

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land out of the 37 cents of land allotted to the plaintiff, etc. It is the case of the plaintiff that the ground made out in Ext.A-6 dated 09-02-1994 was only that, on inspection it was found that the built up area comes only to 646 sq.feet and as such, the plaintiff will be permitted to retain only 12 cents of land, etc. and that there was no allegation in Ext.A-6 that the plaintiff had kept considerable extent of the 37 of cents of land unutilised, despite lapse of eight-and-a-half years. That the said allegation regarding unutilisation of considerable extent of land has been raised for the first time only in the final impugned order of resumption as per Ext.A-10, etc. The plaintiff contended that the impugned decision to resume the land as per Ext.A-10 is without jurisdiction and that it is illegal and that the further action proposed to be taken by the defendants in pursuance of the said impugned resumption order is liable to be interdicted. It is in the light of these aspects that the plaintiff prayed for grant of a decree of prohibitory injunction restraining the defendants from interfering possession, enjoyment of the plaint schedule property, etc. The specific averment in the plaint is that the cause of action for instituting the suit arose on the issuance of the

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impugned resumption order dated 08-06-1994.

3. Defendants 1 to 3 filed their joint written statement contending that the suit is not maintainable in terms of want of jurisdiction. That the plaintiff was bound by the agreement between the parties to pay an amount of Rs.7,425/- in equal annual instalments, which he had failed to pay even one month instalment in spite of demand. That the 3rd defendant had requested the plaintiff to remit Rs.11,300/- towards the cost of land and interest, which he had not remitted etc.

4. After the issuance of the impugned Ext.A-10 proceedings dated 08-06-1994, the 3rd defendant had formally allotted the 25 cents of land covered by Ext.A-10 to another person as per Ext.B-1 dated 26-04-1994, for which purpose, subsequently Ext.B-2 agreement dated 23-09-1994 was also entered. Thereupon, the said subsequent allottee got himself impleaded in this suit as additional defendant No.4. and had filed his written statement contending that the plaintiff has been using only 12 cents for industrial purpose and that the plaintiff committed default in paying the instalments towards the sale consideration and that there is no illegality in issuance of Ext.A-

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10 order, etc. That the suit is not maintainable in law and that the court has no jurisdiction to entertain this suit.

5. The trial court had framed the following issues for determination:

- “1. Whether the suit is maintainable
2. Whether the plaintiff is entitled to get an injunction as prayed for ?
3. Reliefs and costs.”

6. The plaintiff had tendered evidence as PW-1 and had marked Exts.A-1 to A-10 on his side. The defendants 1 to 3 gave evidence as DWs 1 and 2 and the additional defendant No.4 tendered evidence as DW-3. Exts.B-1 and B-2 documents are also marked by the defence.

7. While admitting this Regular Second Appeal, this Court had passed order dated 08-01-2007 ordering that the questions suggested in the appeal memorandum are framed as the substantial questions of law in this appeal. The said questions are as follows:

- “(a) Have not the courts below gone wrong in holding that Section 20A of the Kerala Land Conservancy Act, 1957 imposes a bar on jurisdiction of the civil court in entertaining the suit?
- (b) Has not the trial court erred in holding that the relief of injunction if granted would operate against the provision

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of clause B of Section 20A of the Kerala Land Conservancy Act?

- (c) Whether the entertainment of the suit would operate against the enforcement of the summary remedy of eviction by executive action?
- (d) Whether on the facts and circumstances of the case Exhibit A6 is binding on the plaintiff?"

8. Heard Sri.P.V.Chandramohan, learned counsel appearing for the appellant herein/plaintiff, the learned Government Pleader appearing for respondents 1 to 3/defendants 1 to 3 and Sri.N.Muraleedharan Nair, learned counsel appearing for respondent No.4/Additional D-4.

9. It is to be noted that though by Ext.A-5 dated 11-08-1993 and Ext.A-7 dated 26-10-1993, the 1st defendant had demanded that the plaintiff is to remit Rs.11,300/- towards the balance amount payable to the cost of the land and the interest thereon, and that failure in this regard will lead to action to resume the land, etc., the said aspect regarding non-payment of the said amount has not been taken as a ground for resumption of the land as per the impugned Ext.A-10 proceedings dated 08-06-1994. True that there is a passing reference in Ext.A-6 dated 09-02-1994 that the plaintiff has not even remitted the first instalment towards hire purchase agreement, etc. But the main

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thrust therein is regarding the allegation that the built up area of the plaintiff's building in the land comes only to 646 sq.feet and that therefore he is eligible to retain only 12 cents of land, etc. But it is to be seen that the aspects regarding the non-payment of the amount of Rs.11,300/- as stated in Exts.A-5 and A-7 and the reference regarding the non-payment of first instalment made in Ext.A-6, are not in any way taken as grounds for resumption as per Ext.A-10. In the impugned resumption order as per Ext.A-10 proceedings dated 08-06-1994, the only ground taken by the 3rd defendant is that considerable extent of the 37 cents of land allotted to the plaintiff is still kept unutilised despite the lapse of eight-and-a-half years, after taking possession and that therefore he is eligible to keep only 12 cents of land. The fulcrum of the cause of action projected in the plaint is the issuance of the impugned land resumption order as per Ext.A-10 dated 08-06-1994. In fact the specific and precise plea in the plaint is that the cause of action in the instant suit arose in view of the impugned land resumption order dated 08-06-1994. Therefore, the matter lies in a very narrow compass and the civil court was only called upon to decide only the legality or

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otherwise of the impugned Ext.A-10 proceedings. Since that is the clear and indisputable position in this matter, the main issue to be determined is as to the correctness and tenability of the grounds disclosed in Ext.A-10 and also as to whether Ext.A-10 proceedings are vitiated by any illegality or jurisdictional errors. Bearing these crucial aspects in mind, it will be pertinent to examine the relevant clauses of Ext.A-3 agreement arrived at between the parties regarding the allotment of the land.

Clause 4 of the agreement reads as follows:

“Clause 4). During the period of Hire, the plot shall not be used by the Hirer for any purpose other than that for which it is hired.”

Clause 12 of the agreement reads as follows:

“Clause 12). The Hirer shall pay all takes, cases and other charges payable in respect of the said properly (sic) to Government, State or Central, Corporation or any other legally constituted body in due times.”

(The words 'takes' and 'cases' mentioned in Clause 12 of the original of Ext.A-3 appear to be a mistake and the Government Pleader points out that the corresponding rules use the expressions, “taxes” and “cess” in that regard instead of 'takes' and 'cases'. The plaintiff has no dispute about the terms made by the learned Government Pleader.)

Clause 13 reads as follows:

“Clause 13). In case the Hirer commits breach of all or any of the provisions herein contained, the Hirer shall surrender possession of the plot to the Government immediately on demand and the Government shall have power to deal with the plot in any

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manner they deem fit.”

Clause 14 provides as follows:

“Clause 14). In case the Hirer fails to surrender the said plot when demanded, the Hirer shall be considered to be trespasser liable to be proceeded against and evicted under the provisions of Land Conservancy Act for the time being in force.”

Clause 15 reads as follows:

“Clause 15). All sums found due to the Government under or by virtue of this Agreement shall be recoverable from the Hirer and his assets movable and immovable under the provisions of the Revenue Recovery Act for the time being in force as through such sums are arrears of land revenue and in such other manner as the Government may deem fit.”

A reading of the aforestated clauses of the agreement would make it clear that in the contingency that the hirer commits breach of all or any of the provisions contained in the said agreement, the hirer shall surrender the possession of the plot to the Government immediately on demand and then the Government shall have the power to deal with the plot in any manner they deem fit. If the jurisdictional fact stipulated in Clause 13 that the hirer has indisputably committed breach of all or any of the provisions contained in the agreement and that the Government has made a demand for surrender of the possession. In such a case, if the hirer fails to surrender the said plot despite the fulfilment of the aforestated conditions envisaged in the said Clause 13, then Clause 14 of the agreement envisages that on the

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failure of the hirer to surrender the plot on demand in such a contingency, then only the hirer shall be considered to be a trespasser liable to be proceeded against and evicted under the provisions under the Land Conservancy Act for the time being in force.

10. The main finding made by both the courts below is to the extent that by virtue of the operation of Clause 14 of Ext.A-3 agreement, the jurisdiction of the civil court is barred by virtue of provisions contained in Sec.20A of the Land Conservancy Act as it stood at the relevant time. At the outset it is to be noted that sub sec.(1) of Sec.20A has subsequently been amended with effect from 8.11.2008 as per Amendment Act 29 of 2009 published in Kerala Gazette Extra Ordinary No.1843 dated 7.10.2009. The amended provision contained in sub section (1) of Sec.20A is not applicable in the instant case as the cause of action in this case arose on 8.6.1994 and the instant suit has been filed on 14.07.1994, whereas the amended provision was brought in force only with effect from 8.11.2008. Therefore, sub sec.(1) of S.20A, as it stood prior to the said amendment, is relevant for the present purposes. The said sub sec.(1) of Sec.20A reads as follows:

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“Sub Sec.(1) No civil court shall have jurisdiction to entertain any suit or proceeding for the eviction of any person who is in unauthorised occupation of any land which is the property of Government, whether a poramboke or not, or the recovery of any fine, assessment, or prohibitory assessment or the value of any trees destroyed or appropriated or any compensation or damages, payable under this Act or cost of eviction or removal of encroachments, or any portion of such fine, assessment, prohibitory assessment, value of trees, compensation, damages or cost.”

11. It is to be noted at the outset that the facts of the present case are not concerning a situation, whereby the plaintiff was in illegal occupation of any Government land as envisaged in the Land Conservancy Act, as he has been duly allowed to occupy the said Government land after securing the necessary permission for allotment of such land. It is only by virtue of Clause 14 of Ext.A-3 agreement that the effect of the Land Conservancy Act must be examined. Even in respect of a person, who is in unlawful occupation of Government land and for whom, the provisions contained in the Land Conservancy Act gets automatically attracted, a Division Bench of this Court has held in the case Kurivila Yohannan v. Kumaran reported in 1989 (2) KLT 859 (paras 14, 15 & 19), that though at first blush it may appear that Sec.20A(1) provides a bar of jurisdiction of civil courts to entertain any suit or proceedings for eviction of any person, who

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is in unauthorised occupation of any land, which is property of the Government and therefore, a person having possessory title in Government land may not approach Civil Court for recovery of possession from the trespasser. But it was held therein that the latter portion of sub Sec.(1) of Sec.20A makes it unmistakably clear that the bar operated only against Government filing a suit or any other proceeding in a civil court for eviction of persons in unauthorised occupation of Government lands or for recovery of fine, assessment, or prohibitory assessment or the value of any trees destroyed or appropriated or any compensation or damages payable under the Act, or cost of eviction or removal, encroachment, or any portions of such fine, assessment, prohibitory assessment, value of trees, compensation, damages or cost, etc. If that be the position, the former portion of Sec.20A (1) is to be read as prohibiting a suit by a person having title like the plaintiff therein, the latter portion thereof cannot be reconciled, since such a person is not competent to file a suit or proceeding for recovery of fine, assessment, prohibitory assessment, value of trees destroyed or cost, etc. Such an action to recover fine, assessment, prohibitory assessment, value of

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trees, etc. could have been maintained only by the Government. Accordingly, the Division Bench held that it cannot be said that the State Legislature intended to exclude suits by person in occupation of Government lands to seek the assistance of courts to maintain possessory title against forcible dispossession made by third parties. That it cannot be assumed that the Legislature meant to create a situation where the policy of the law as understood and interpreted by courts should be set at naught and substituted by recognising lawlessness as law, in respect of possession of Government lands. Hence it was held that S.20A of the Act has to be read in a restricted sense as disabling the Civil Courts from entertaining suits filed by the State and only the State for eviction of persons in unauthorised occupation of any land, which is the property of the Government whether poramboke or not, and for other reliefs, for which specific and express provisions are made empowering the governmental authorities to take such necessary steps for eviction as in Secs.7 to 12 of the Act. In this view of the matter, the Division Bench held that Sec.20A does not operate to bar suits by persons in occupation of Government lands for recovery of lost possession

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under Sec.6 of the Specific Relief Act and that it does not have any application, where the plaintiff is any one other than the Government or any other Government authority, which is empowered to seek remedies under Secs.7 to 12 of the Kerala Land Conservancy Act. The same position was earlier reiterated by a learned Single judge of this Court in Philip v. Scaria reported in 1987(1) KLT 213 (paras 6,7 & 8). Therefore, even in a case where the provisions of the Land Conservancy Act get statutorily attracted in a given fact situation, it has been held by this Court in clear and categorical terms that the bar contained in the aforestated unamended provisions in Sec.20A(1) of the Land Conservancy Act is only to the extent of disabling the civil courts from entertaining any suits that may be instituted by the Government and its officers for getting eviction of the unauthorised occupants from the Government puramboke land as the legislature has conferred easy and summary procedures and remedies for Governmental authorities to get eviction of such unauthorised occupants from Government lands as per the provisions under Secs.7 to 12 of the Land Conservancy Act. In this view of the matter, it is only to be held that the bar contained

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in the unamended provision of Sec.20A(1) of the Land Conservancy Act has no relevance and therefore, in a scenario like the present one, wherein indisputably there is no unlawful occupation of the Government land by the plaintiff, the aforestated bar has no application so as to, in any manner, affect the maintainability of the instant suit preferred by the plaintiff herein.

12. The next issue to be considered is as to whether the provisions contained in sub-section (2) of Sec.20A is attracted in the facts and circumstances of the present case so as to affect the maintainability and entertainability of the present suit in any manner. Though the substantial question of law formulated in this appeal does not make any reference to Sec.20 of the Act, it would also be pertinent to make a reference to the provisions contained in Sec.20 and also to examine the issue as to whether the bar engrafted in Sec.20 of the Act also has any application to the facts and circumstances of this case. Sub-Section (2) of Sec.20A of the Land Conservancy Act reads as follows:

“Sec.20A. Bar of jurisdiction of civil courts.–

(1)

(2) No suit, prosecution or other legal proceeding shall lie against the Government or the Commissioner of Land Revenue or

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any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or under made thereunder.”

Sec.20 of the Land Conservancy Act provides as follows:

“Sec.20. Saving of suits by persons aggrieved by proceedings under this Act.– No suit against the Government shall be entertained in any Civil Court in respect of any order passed under this Act except upon the ground that the land in respect of which such order has been passed is not a land which is the property of Government whether a poramboke or not:

Provided that Civil Courts shall not take cognizance of any such suit unless it shall be instituted within one year from the date on which the cause of action arose.”

13. As noted earlier hereinabove, none of the parties have a case that the provisions of the Land Conservancy Act gets statutorily attracted to the facts of this case as the plaintiff cannot be said to be an unlawful occupant of Government land from the initial commencement of his occupation as he has been duly allotted the Government land for running an industrial unit for which purpose he has secured necessary approval and permission and allotment from the Governmental authorities concerned. The only issue to be examined is as to the impact of the provisions contained in clause (14) of the agreement as stated above. It would be pertinent to refer to the basic principles relating to exclusion of jurisdiction of civil courts. Sec.9 of the Code of Civil Procedure reads thus:

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“Sec.9. Courts to try all civil suits unless barred.– The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

Thus under the Code of Civil Procedure, the civil court has jurisdiction to try all suits of a civil nature unless they are barred and for this purpose two vital conditions are to be fulfilled; viz, (1) the suit must be of a civil nature and (2) the cognizance of such a suit should not have been expressly or impliedly barred. In this regard, it is imperative to bear in mind that while dealing with the question whether a civil court's jurisdiction to entertain a suit is barred or not, every presumption should be made in favour of the jurisdiction of a civil court and the exclusion of jurisdiction of a civil court to entertain civil process should not be readily inferred unless the relevant statute contains an express provision to that effect, or leads to a necessary and inevitable implication of that nature (see AIR 1964 SC 322 p.324, AIR 1940 PC 105, AIR 1955 SC 576 p.581, AIR 1962 SC 547 pp.549, 550, etc.). In examining the issue as to whether the cognizance of the suit has been expressly or impliedly barred as envisaged under Sec.9 of the CPC, the courts should consider whether the remedy afforded by an alternative provision prescribed by special statute is

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sufficient or adequate. In cases, where exclusion of civil courts' jurisdiction is expressly provided for, the consideration as to the scheme of statute in question and adequacy or sufficiency of the remedy provided for, it may be relevant, but it need not be decisive. When exclusion is pleaded as a matter of necessary implication, such consideration would be very important and become very decisive as held by the Apex Court in cases as in Vatticherukuru Village Panchayat v. Nori Venkararama Deekshithulu reported in (1991) Supp. (2) SCC 228 and State of Tamil Nadu v. Ramalinga reported in (1985) 4 SCC 10 = AIR 1985 SC 794, etc. But, where statutory enactments only create rights or liabilities without providing forums for remedies, any person having a grievance that he has been wronged or his right is being affected, can approach a civil court on the principle of law that where there is a right, there is a remedy (ubi jus ibi remedium). Where a right of liability is created by a particular enactment which also provides for a forum for enforcement of such right also for protection from enforcement of a liability, the ouster of courts' jurisdiction can be upheld on the finding that the rights or liabilities in question have been created by the Act without

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touching a pre-existing common law right and remedy provided therein is adequate and complete. But the situation will be different where a statute purports to oust the jurisdiction of the court so far as the remedy against the orders passed under such statute is concerned and the courts will have to deeply probe into the question as to whether adequate redressal machinery has been provided under which the person may agitate his grievances. In the light of the rulings of the Apex Court as in Abdul Waheed Khan v. Bhawani reported in AIR 1966 SC 1718, Sri.Vedagiri Lakshmi Narasimha Swami Temple v. Indura Pattabhirami Reddi reported in AIR 1967 SC 781, etc., it is by now well settled that it is for the party who seeks to oust the jurisdiction of a civil court to establish his contention. It is equally well settled that a statute ousting the jurisdiction of a civil court must be strictly construed (AIR 1969 SC 439, AIR 1969 SC 560, AIR 1966 SC 893 and AIR 1971 SC 1558, etc.). Where such a contention is raised, it has to be determined in the light of the words used in the statute and the scheme projected for the purpose of the enactment, etc., and in case of doubt as to the jurisdiction, the court should lean towards assumption of jurisdiction. It has to be

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borne in mind that in the facts and circumstances of this case, the exclusion of civil courts' jurisdiction is sought to be urged by the defendants herein not by virtue of the operation of the plenary provisions of law or of the provisions of a validly enacted subordinate legislation but on the basis of an agreement between the parties. It is by now well settled that consent cannot confer nor take away jurisdiction of a court and if the court has no inherent jurisdiction, neither acquiescence nor waiver nor estoppel can create such jurisdiction (AIR 1979 SC 193 p.198, AIR 1978 SC 22 p.25, (1983) 4 SCC 707 p. 709, etc.) The defect of jurisdiction goes to the root of the matter and strikes at the very authority of the court to pass a decree and such a basic and fundamental defect cannot be cured by the consent of parties and judgment passed by the court can be challenged at any stage, etc. It has been held by the Apex Court in cases as in Sushil Kumar v. Gobind Ram reported in (1990) 1 SCC 193 p.205, Issabela v. Susai reported in (1991) 4 SCC 494 p. 498, Patel Roadways v. Prasad Trading Co. reported in (1991) 4 SCC 270 that a decree passed by a court without jurisdiction is a coram non judice. The converse of this position is that where the court has

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jurisdiction to decide a dispute, then the same cannot be taken away or ousted by consent of the parties. An agreement to oust absolutely the jurisdiction of the court would be unlawful and void being against the public policy. The Latin Maxim in this regard is “ex dolo malo non oritur actio” (see *A.B.C. Laminart (P) Ltd. v. A.P. Agencies* reported in AIR 1989 SC 1239 and *Supdt. Of Taxes v. Onkarmal Nathmal Trust* reported in AIR 1975 SC 2065 p.2071. But, if two or more courts have jurisdiction to try the suit, it is open to the parties to select a particular forum and exclude the other forums as held by the Apex Court in cases as in *Hakam Singh v. Gammon (India) Ltd.* reported in AIR 1971 SC 740 *Globe Transport Corporation v. Triveni Engineering Works* reported in (1983) 4 SCC 707 p.709, etc. In a case where parties agree among themselves that the suit should be brought in one of those jurisdictional courts and not in the other, since there is no inherent lack of jurisdiction in the court, such an arrangement would be legal, valid and enforceable as there is no inherent lack of jurisdiction in the court concerned. In the instant case as noted earlier herein above, the ouster by jurisdiction is not on the basis of statutory provision which gets directly attracted to the

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facts of the case, but solely on the basis of consent of the parties pursuant to Ext.A-3 agreement entered into between them. Therefore, any interpretation which leads to a situation of total bar of jurisdiction of the civil court to try the cause of action as in the instant case would be undoubtedly against public policy and would be void as it has been held that where the court has jurisdiction to decide a dispute the same cannot be taken away or ousted by the consent of the parties.

14. The authority to decide on the issue as to whether the plaintiff/land allottee has committed breach of all or any of the provisions contained in the agreement as envisaged in clause (13) of the agreement is vested with the competent authority of the Industries Department of the Government and not by the Revenue officials. Whereas the power to decide as to whether an occupant of the Government land has to be evicted or not is to be exercised by the competent revenue official designated as per the Land Conservancy Act. In a case where the provisions contained in the Land Conservancy Act gets statutorily attracted to a fact situation involving an unlawful occupant of Government land, the competent authority (Collector) has to issue notice under Sec.12

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of the Act to such occupant and the Collector has to take appropriate and proper decision as envisaged in terms of Sec.12 of the Act after conducting a reasonable enquiry as contemplated therein and thereafter decide on the question of eviction and pass appropriate orders thereon after an order of eviction is passed pursuant to the decision making process envisaged under Sec.12 of the Act. The aggrieved party is conferred with a right of appeal and revision in terms of Sec.16 of the Act subject to period of limitation as per Sec.17 of the Act. If such eviction order has thus become final and conclusive in terms of the Act, he will face eviction from the Government land. In all such situation, reasonable opportunity has to be provided to the alleged unlawful occupant before passing original orders as per Sec.12 or before issuance of the appellate and revisional orders in terms of Sec.16 of the Act. Such reasonable opportunity has to be afforded by the designated revenue officials concerned as per the provisions of the Land Conservancy Act. But in a case covered by the present agreement, the competence and capability to decide on merits as to whether there is breach of all or any of the provisions in Ext.A-1 agreement is solely vested with the

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competent officials of the Industries Department. The Revenue officials invested with the original appellate and revisional powers as per the Land Conservancy Act has no capability or competence to decide in such issues, which is the sole prerogative of the Industries Department. So if it is held that the statutory bar engrafted in the Land Conservancy Act is applicable to the present case, then it will lead to highly absurd and impractical result that the Revenue officials, who are totally alien to the exercise of powers under Ext.A-1 agreement, should necessarily decide on the merits of the issue as to whether there is breach of Ext.A-1 agreement, etc. For this reason alone, it is only to be held that the bar under the Land Conservancy Act will have no application as far as the competence of a civil court to decide on the validity of the resumption order issued under Ext.A-1 agreement is concerned.

15. The question as to whether the hirer had committed breach of all or any of the provisions of the Act so as to warrant the resumption of the land is to be decided by the competent authority of the Industries Department. Once such an order is passed and if such order of resumption of land is not disputed by the affected party and if still thereafter he does not give vacant

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possession of the land, within the reasonable time stipulated in such resumption order, then the competent authorities of the Industries Department are empowered to seek the benefit of the assistance of the official machinery provided under the Land Conservancy Act and the Land Conservancy Rules so as to ensure that they get vacant possession of the land. This is the only reasonable construction that can be made from the provisions contained in the agreement. The officers of the Industries Department do not have any other independent machinery so as to get the vacant possession of the land even after passing a resumption order. It is only because of this that Ext.A-1 agreement has envisaged for this limited purpose alone, that on satisfaction of the jurisdictional facts envisaged under clause (13) of the agreement, if the hirer fails to surrender vacant possession of the plot, then he shall be treated as a trespasser and shall be liable to be proceeded against and evicted by taking recourse to the provisions contained in the Land Conservancy Act. The reasonable opportunity to be granted to the hirer and the decision to be taken against the hirer are all to be taken by the competent officer of the Industries Department, after adhering to

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the due process of law. If the vital conditions stipulated in clause (13) are indisputably attracted, then the hirer can be treated as a trespasser so as to enable the competent officer of the Industries Department to take necessary steps to set in motion the eviction machinery provided under the Land Conservancy Act and the Rules framed thereunder. On the other hand, if the hirer has a serious dispute in the finding made by the competent authority that he has committed breach of all or any of the conditions of agreement as envisaged under clause (13) of the agreement is patently wrong or is vitiated by any illegality or jurisdictional error, etc., then he cannot be left without a remedy. If the contention of the defendant that clause (14) of the agreement would lead to a total ouster of the civil courts' jurisdiction to entertain such a suit is upheld it would lead to a situation whereby he will be left without any remedy other than to approach the prerogative writ jurisdiction as envisaged under Article 226 of the Constitution of India. It is by now well established that if there is serious disputed questions of facts, it may not be proper and correct for the High Court to exercise the prerogative bar of judiciary review available under Article 226 of

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the Constitution of India. Such disputed question of fact can only be resolved by an independent forum like the civil court. Therefore, if an interpretation urged by the defendant is accepted, it will lead to a situation whereby the affected parties will be left without any effective remedy before an independent forum like the civil court. Moreover, the so called bar of jurisdiction is arising not on the basis of plenary provisions of law or subsequent legislation but only on the basis of consent between the parties pursuant to the agreement executed by them. Therefore, the only irresistible conclusion in the facts and circumstances of this case is that where the hirer has a serious dispute on the competent authority's allegations that he has committed breach of all or any of the provisions contained in the agreement as envisaged under clause (13) of Ext.A-1, then certainly it cannot be said that he is barred from approaching the civil court for ventilating his grievances in the manner known to law. In other words, in such a situation the affected party can approach the civil court for ventilating his grievances in the manner known to law. The affected party can impeach the correctness and legality of the resumption order on well recognized ground like law of

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jurisdiction, illegality and also on the basis of other contentions that the factual allegations regarding breach of all or any of the provisions contained in the agreement are factually wrong for which adducing evidence will necessarily be required. Therefore, though the parties are bound by Ext.A-1 agreement, the only reasonable intent and purport of clause (14) of the agreement regarding the applicability of the Land Conservancy Act is that where the hirer has indisputably committed breach of all or any of the provisions contained in the agreement and he does not dispute with that resumption order, but yet he refuses to hand over vacant possession of the land, the competent authority of the Industries Department will be at liberty to seek the assistance of the official machinery available under the Land Conservancy Act and Rules framed thereunder so as to get vacant possession. So also, in a case where the affected party disputes the resumption order in a civil court and ultimately the validity of the resumption order is upheld in such civil court adjudication, then the validity of the resumption order becomes final and conclusive and in such a situation also, the competent authority of the Industries Department can seek the assistance of the machinery available

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under the Land Conservancy Act and the Rules framed thereunder so as to get vacant possession of the plot. This is the only reasonable purport and intent of clause (14) of Ext.A-1 agreement. Therefore, where a party like the present plaintiff has a serious dispute as regards the correctness and legality of the resumption order, then the provisions contained in Sec.20A or under Sec.20 of the Land Conservancy Act will not in any manner lead to ouster of the jurisdiction of the competent civil court. There is yet another important aspect in the facts of this case. Though Ext.A-10 resumption order has been passed on 8.6.1994, he had filed the civil suit on 14.7.1994. The lower appellate court has rightly found that the possession of the entire 37 cents of land continues to be with the plaintiff and not with the additional 4th defendant. At any rate, as on the date of filing of the suit, the stage for invoking the assistance of the eviction machinery envisaged under the provisions of the Land Conservancy Act has not arisen. What is substantially and directly in issue in the suit is only the legality and validity of the resumption order. The effect of clause (14) of the agreement is only for facilitating the invocation of the eviction machinery

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envisaged as per the Act. That stage has not factually arisen as far as the matters directly and substantially in issue in the present suit is concerned. Therefore, the bar under Sec.20 or Sec.20A of the Act cannot have any application whatsoever to the facts of this case.

16. The question of law referred to above stands answered in the light of the aforestated discussion, in favour of the appellant herein/plaintiff.

17. The only ground urged in the impugned Ext.A-10 resumption order is that considerable extent of 37 cents of land allotted to the plaintiff has been unutilised by him despite lapse of 8 ½ years and that therefore he could retain only 12 cents of land and that the balance 25 cents of land out of 37 cents has to be resumed. So the matter directly and substantially in issue in the suit is as to the validity and correctness of the grounds disclosed in the resumption order and the resultant issue as to whether the said impugned order is vitiated by illegality, lack of jurisdiction, impropriety, etc. The additional 4th defendant is only an interested/proper party and he is not a necessary party in the suit as he is only a subsequent allottee. Defendants 1 to 3 in

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their written statement has not in any way denied the averment in the plaint in regard to the aspects relating to the validity or otherwise of the impugned resumption order. Defendants 1 to 3 in their written statement has not made any averments or reference by giving material facts and circumstances so as to justify and uphold the impugned resumption order. On the other hand, they have urged in their written statement only regarding certain aspects relating to non-payment of the moneys allegedly due from the plaintiff. As already indicated herein above, the aspect relating to non-payment of the amounts has been totally given up by the defendants in the impugned Ext.A-10 resumption order.

18. The written statement of defendants 1 to 3 reads as follows:

- “1. The suit is not maintainable in law.
2. This Hon'ble Court has no jurisdiction to entertain it. The suit is also bad for want of statutory notice under section 80 C.P.C.
3. The plaintiff was allotted 37 cents of land comprised in survey No.468 A/1A of Pudusseri Central village, Palakkad Taluk for the purpose of setting up of a Small Scale unit for the manufacture of Steel Furniture and other Fabrications. The hiring of the said land by the Govt of Kerala to the plaintiff is on the basis of the provisional Hire purchase agreement executed by him. The plaintiff has violated the agreement conditions. As per the agreement conditions the plaintiff is to pay 80% of the balance

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purchase price with interest in 10 equal instalments. Accordingly, Rs. 7425/- is to be paid by the plaintiff in 10 years, in equal annual instalments together with 6.5% interest. The first instalment is to be paid on 1.6.86 as per the terms of the Agreement. The plaintiff has not paid any amount as stipulated, in spite of notice dated 17.6.1987. Subsequently the General Manager, District Industries Centre, Palakkad vide his Regd. with Ack. Due letter No.1-9030/93 dated 26.10.93 requested the plaintiff to remit Rs. 11,300/- towards the cost of the land and interest. The plaintiff has not chosen to send a reply even.

4. The plaintiff has no cause of action to file a suit of this nature. The plaintiff has not approached this Honourable Court with clean hands. He has suppressed material particulars.”

19. As the defendants have not pleaded anywhere in their written statement so as to justify the grounds urged in the impugned resumption order, they cannot be permitted to lead any evidence on that crucial aspect of the matter. But a perusal of the evidence tendered by DWs 1 and 2 on behalf of defendants 1 to 3 would also disclose that both those defence witnesses had taken charge long after the transactions in question in this case and that they have no direct knowledge whatsoever about the facts of this case. Though they have deposed that they are giving evidence on the basis of the matters in the file, the official files concerned in this case had neither been produced before the court below nor marked in evidence. That apart, DW-2 has deposed that the industrial activity undertaken by the plaintiff is one which requires vast extensive land other than the space for

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the building constructed thereon and further that it is only after being convinced about the actual necessity to allot 37 cents of land that the decision was taken by the authorities concerned to allot 37 cents of land to the plaintiff in the year 1984.

20. On a perusal of the averments in the plaint, it is seen that the only prayer sought for by the plaintiff is injunction simpliciter. The entire fulcrum of the cause of action rests on the validity or otherwise of the impugned resumption order. In fact the specific and precise plea in the plaint is that the cause of action arose due to the issuance of the impugned resumption order. When that is the very basis of the cause of action projected in the plaint, the plaintiff should have sought appropriate declaration regarding the correctness and validity of the impugned resumption order and for a direction to the court to set aside the impugned resumption order. Certainly as a consequential relief, the plaintiff could have sought for an injunction order. Therefore, the frame of the prayer of the suit appears to be not correct and proper.

21. Since the plaintiff has not sought all the necessary appropriate reliefs and as defendants 1 to 3 have not made

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proper pleadings and let in proper evidence to justify the resumption order and as the land belongs to the Government, this Court is of the considered opinion that the entire matter requires fresh consideration at the hands of the trial court, in order to do full justice to both sides. In this view of the matter, the impugned judgments and decrees of both the courts below are set aside and the suit will stand remitted to the trial court for disposal afresh. The parties will be at liberty to make appropriate amendments of the pleadings and to let in additional oral or documentary evidence as may be relevant for the determination of the matters in the suit. The parties will also be at liberty to seek the appointment of Advocate Commissioner for inspecting the plaint schedule property in order to ascertain the crucial fact as to whether the land has been properly utilized by the plaintiff or not, etc. Since the suit has been instituted as early as on 14.7.1994, this Court of the considered opinion that the trial court shall expedite the trial of this case by giving top priority and all reasonable endeavours should be made so as to finally dispose of the suit without any further delay at any rate, within a period of eight months from the date of production of a certified

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copy of this judgment. The parties will enter appearance through their respective counsel before the trial court on 15.1.2016 at 11 a.m. and shall produce a certified copy of this judgment before that court. The Registry shall transmit the lower court records to the respective lower courts.

With these observations and directions, the Regular Second Appeal stands finally disposed of. However, there will be no order as to costs.

ALEXANDER THOMAS,
Judge.

Sdk/bkn