

# KERALA HIGH COURT

Vareed Kunnan Ouseph

Vs

Mary

C.R.P. 1710 of 1967, in R. C.R.P. No. 18 of 1967

(M. Madhavan Nair, T.S. Krishnamoorthy Iyer and V. Balakrishna Eradi, JJ.)

29.05.1968

## JUDGMENT

### **Balakrishna Eradi, J.**

1. This Civil Revision Petition has been placed before a Full Bench pursuant to an order of reference made by one of us (Madhavan Nair, J.) since it was felt that the decision of a Division Bench of this Court in *Kurien v. Chacko*<sup>1</sup>, required reconsideration.

2. In the ruling above cited the Division Bench has expressed the view that the revisional powers of this court under Section 115 of the Code of Civil Procedure cannot be invoked or exercised in respect of an order passed by a District Court in the exercise of the jurisdiction conferred on it under Section 20 (1) of the Kerala Buildings (Lease and Rent Control) Act, 1959. Section 20 (1) of the aforesaid Act of 1959 was identical in terms with Section 20 (1) of the current Act, namely the Kerala Buildings (Lease and Rent Control) Act, 1965. The correctness of this view is under challenge in this Civil Revision Petition and has to be examined by us.

3. Thus the question to be considered is whether a decision rendered by a District Court in the exercise of the revisional powers conferred on it by Section 20 (1) of the Kerala Buildings (Lease and Rent Control) Act, 1965 is not liable to be revised by this Court under Section 115 of the Code of Civil Procedure .

4. The Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the Act, is a statute enacted for the avowed purpose of regulating the leasing of buildings and for controlling the rents of such buildings in this State. For adjudication of all disputes arising between landlords and tenants of buildings in regard to the matters specified in the Act, provision is made in Section 3 (1) for constitution of Rent Control Courts and jurisdiction is conferred on such Courts by Sections 5, 10, 11, 13 etc. for determining fair rent, for making direction regarding deposit of rent in cases of doubt or dispute as to the person who is entitled to receive the rent, for passing orders of eviction of tenants on grounds specified in the Act, for directing the landlord to restore amenities previously enjoyed by the tenant but subsequently

<sup>1</sup>1960 Ker LT 1248

illegally cut off or withheld by the landlord without just and sufficient cause etc. etc. Section 18 provides for the constitution of appellate authorities to whom appeals shall lie from all orders passed by the Rent Control Courts at the instance of any person aggrieved. It is clear from an examination of the relevant provisions of the Act that the Rent Control Courts as well as the appellate authorities are special tribunals created by the statute and do not form part of the hierarchy of the established Civil Courts of the State. Although the person appointed to function as the Rent Control Court or as the appellate authority may be a Munsiff or a District Judge in the judicial service of the State, his appointment to such post under this Act is as a *persona designata* and he will be functioning only as such and not as a Court while exercising jurisdiction as Rent Control Court or as an appellate authority under the Act. But the position is different when we come to Section 20 of the Act because it is seen that the remedy by way of revision from the decision of the appellate authority provided for by this Section is to be sought from the District Court in cases where the appellate authority is a Subordinate Judge and in other cases, the High Court.

5. Section 20 (1) is in the following terms :-

"In cases where the appellate authority under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereto as it thinks fit."

It is seen from the aforesaid Section that the revisional power is conferred not upon any special tribunal or authority constituted under this statute but on an established Court, viz., the District Court or the High Court, as the case may be. In exercising the revisional power under this Section the revisional authority functions as a Court and not as a *persona designata* inasmuch as the jurisdiction has been conferred under the Act on the Court itself.

6. It is now well established that where by a statute matters are referred to the determination of a Court of record with no further provision, the necessary implication is that the Court will determine the matter "as a Court". Its jurisdiction is enlarged, but all the incidents of such jurisdiction including the rights of appeal from its decision remain the same. The legal position has been stated thus by Viscount Haldane L. C., in *National Telephone Co., Ltd. v. Postmaster-General*<sup>2</sup>:-

"When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches."

Since the statute in the case before us has conferred the revisional jurisdiction on one of the ordinary Courts of country, viz., the District Court, the procedure as well as the

<sup>2</sup>1913 AC 546

orders and decrees of that Court will be governed by the ordinary rules of civil procedure.

7. In *Secretary of State v. Chellikani Rama Rao*<sup>3</sup>, a question arose as to whether the decision rendered by a District Court in an appeal preferred to it under Section 10 (ii) of the Madras Forest Act (V of 1882) could be taken up in appeal to the High Court and in further appeal therefrom to the Judicial Committee of the Privy Council. Under Sections 6 to 8 of the Madras Forest Act, jurisdiction is conferred on a Forest Settlement Officer to enquire into and to determine the existence, nature, and extent of any rights claimed by or alleged to exist in favor of any person in or over any land constituted as reserved forest. Section 10 (ii) of that Act provides that if a claim is rejected wholly or in part the claimant may prefer an appeal to the District Court in respect of such rejection. In the two appeals that went up to the Privy Council two such claims had been rejected by the Forest Settlement Officer and appeals had been filed before the District Court by the aggrieved claimants. The District Court affirmed the decisions of the Forest Settlement Officer. The claimants took up the matter in further appeals to the High Court of Madras and the High Court reversed the decisions of the District Court. The two appeals were thereupon filed before the Privy Council by the Secretary of State for India and one of the principal contentions raised before their Lordships was that the High Court had no jurisdiction to entertain any appeals from decisions rendered by the District Court under Section 10 (ii) of the Forest Act. Rejecting this contention Lord Shaw who delivered judgment of the Board observed as follows :-

"What happened in the present case was that the claim was rejected. An appeal by the respondents was thereupon made to the District Court, and a decision was pronounced. It was contended on behalf of the appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the Statute just quoted. In their Lordships' opinion this objection is not well founded. Their view is that when proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders, and decrees the ordinary rules of the Civil Procedure Code apply."

8. The aforesaid principle was reaffirmed by the Privy Council in *Maung Ba Thaw v. Ma Pin*<sup>4</sup>, where it was held that an appeal lay to the Privy Council against an appellate decision rendered by the High Court in the exercise of the jurisdiction conferred on it by Section 75 (2) of the Provincial Insolvency Act. It has to be noted that Section 4 (2) of the Provincial Insolvency Act specially provides that the decision of the District Court shall be final subject only to the limited right of appeal to the High Court provided for under Section 75 (2). On the strength of this provision for finality contained in Section 4 it was urged before the Privy Council that any further right of appeal as against the decision of the High Court was thereby excluded. This contention was rejected by their Lordships as being opposed to the dictum laid down in AIR 1916 PC 21. The same view has again been expressed by their Lordships of the Privy Council in *B. M. A. R. A. Adaikappa Chettiar v. R. Chandrasekhara*

<sup>3</sup> AIR 1916 PC 21

<sup>4</sup> AIR 1934 PC 81

*Thevar*<sup>5</sup>, wherein it was stated :

"..... where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable

thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal."

The aforesaid decisions of the Privy Council were referred to and relied on by the Supreme Court in *National Sewing Thread Co. Ltd., Chidambaram v. James Chadwick and Bros., Ltd.*<sup>6</sup>, where it was held that an appeal lay under Clause 15 of the Letters Patent (Bombay) from the decision of a single Judge of the High Court in the exercise of the appellate jurisdiction conferred on the High Court under Section 76 of the Trade Marks Act. Section 76 (1) of the Trade Marks Act provides that an appeal shall lie to the High Court from any decision of the Registrar of Trade Marks rendered under the Act or Rules made thereunder. Dealing with the contention that the judgment rendered by the Single Judge of the High Court in an appeal preferred under Section 76 was not subject to further appeal under Clause 15 of the Letters Patent his Lordship Mahajan, J., (as he then was), observed as follows at pp. 359 and 360 :-

"The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can, if it likes, make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court.

x x x x x

Section 76, Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act."

9. In *Collector, Varanasi v. Gauri Shanker Misra*<sup>7</sup>, a question arose before the Supreme Court as to whether it was within the competence of the Supreme Court to grant special leave under Article 136 of the Constitution in respect of a judgment rendered by the High Court while acting under Section 19 (1) (f) of the Defence of India Act, 1939. It was contended before their Lordships that special leave could not be granted by the Supreme Court as the judgment appealed against was neither that of

<sup>5</sup> AIR 1948 PC 12

<sup>7</sup> AIR 1968 SC 384

<sup>6</sup> AIR 1953 SC 357

a court nor of a tribunal and that the High Court while exercising its appellate function under Section 19 (1) (f), was acting only as a *persona designata*. Overruling this contention Hegde, J., who spoke for the Court, observed thus :-

"There was no dispute that the arbitrator appointed under Section 19 (1) (b) was not a

Court. The fact that he was the District Judge, Varanasi, was merely a coincidence. There was no need to appoint the District Judge of Varanasi or any other District Judge as an arbitrator under that provision. Section 19 (1) (f) provides for an appeal against the order of the arbitrator. That section reads : 'An appeal shall lie to the High Court against an award of an arbitrator excepting in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.' It is not in dispute that in the instant case, the amount fixed by the arbitrator exceeded the amount prescribed by the rules and therefore the claimants had a right to go up in appeal to the High Court. We were informed that neither the Act nor the rules framed thereunder, prescribed any special procedure for the disposal of appeals under Section 19 (1) (f). Appeals under that provision have to be disposed of just in the same manner as other appeals to the High Court. Obviously after the appeal had reached the High Court, it had to be determined according to the rules of practice and procedure of that Court. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was stated by Viscount Haldane, L. C., in 1913 AC 546 thus: "When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches.' This statement of the law was accepted as correct by this Court in 1953 SCR 1028 : AIR 1953 SC 357. It may be noted that the appeal provided in Section 19 (1) (f) is an appeal to the High Court and not to any Judge of the High Court.

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The fact that the arbitrator appointed under Section 19 (1) (f) is either a designated person or a tribunal - as to whether he is a person designated or a tribunal we express no opinion - does not in any way bear on the question whether the 'High Court' referred to under Section 19 (1) (f) is a Court or not. Our statutes are full of instances where appeals or revisions to Courts are provided as against the decisions of designated persons and tribunals. See for example, Advocates Act, Trade Marks Act. Reference in this connection may usefully be made to the decisions in 1953 SCR 1028 : AIR 1953 SC 357 (to which reference has already been made), and 43 Ind App 192 : AIR 1916 PC 21.

Prima facie it appears incongruous to hold that the High Court is not a 'Court'. The High Court of a State is at the apex of the State's judicial system. It is a Court of record. It is difficult to think of a High Court as anything other than a 'Court'. We are unaware of any judicial power having been entrusted to the High Court except as a 'Court'. Whenever it decides or determines any dispute that comes before it, it invariably does so as a 'Court'. That apart, when Section 19 (1) (f) specifically says that an appeal against the order of an arbitrator lies to the High Court, we see no justification to think that the legislature said something which it did not mean.

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In our judgment, while acting under Section 19 (1) (f), the High Court functions as a

'Court' and not as a designated person. Our conclusion in this regard receives support from the decision of the Judicial Committee in 43 Ind App 192 : AIR 1916 PC 21 referred to earlier.

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We have already come to the conclusion that the decision rendered by the High Court under Section 19 (1) (f) is a 'determination'. Hence, it was within the competence of this Court to grant special leave under Article 136."

In the light of the aforesaid statements of law as laid down by the Privy Council and our Supreme Court we have no hesitation to hold that in exercising the revisional power under Section 20 (1) of the Kerala Buildings (Lease and Rent Control) Act the revisional authority, viz., the District Court functions as a Court and that the ordinary incidents of the procedure of that court, including any rights of appeal or revision, will attach to the decision rendered by the District Court in the exercise of the jurisdiction conferred by Section 20, so long as there is no statutory provision excluding such right of appeal or revision.

10. As observed in *S. S. Khanna v. F. J. Dillon*<sup>8</sup>, "a decision of the Subordinate Court is therefore amenable to the revisional jurisdiction of the High Court unless that jurisdiction is clearly barred by a special law or an appeal lies therefrom". It is not disputed before us that no appeal lies from the decision rendered by the District Court under Section 20. Hence the only question that remains to be considered is whether there is anything in the special law which excludes the revisional jurisdiction of the High Court in respect of order passed by the District Court under Section 20 (1) of the Act.

11. The contention of the respondent that the decision of the District Court rendered under Section 20 (1) is not amenable to revisional jurisdiction of the High Court under Section 115 of the Civil Procedure Code is based mainly on the provision for finality contained in Section 18 (5) of the Act. That Section is in the following terms:-

"The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any Court of law, except as provided in Section 20."

What is to be noted here is that there is nothing in the section which says that the decision of the revisional authority under Section 20 shall be final and shall not be called in question in any higher Court. Notwithstanding an exactly similar provision for finality contained in Section 4 (2) of the Provincial Insolvency Act, the Privy Council held in AIR 1934 PC 81, that the appellate decision rendered by the High Court under Section 75 (2) of the Provincial Insolvency Act was liable to be called in question by way of further appeal to the Judicial Committee of the Privy Council.

<sup>8</sup> AIR 1964 SC 497 at p. 505

That the absence of a statutory provision conferring finality on the decision of the established Civil Court to which the remedy by way of appeal or revision is provided for by the statute is highly significant is pointed out by their Lordships of the Supreme Court in *South Asia Industries (P) Ltd. v. S. B. Sarup Singh*<sup>9</sup>, wherein it has been observed as follows :-

"In 61 Ind App 158 : AIR 1934 PC 81 the Judicial Committee had to consider whether an appeal lay to the Privy Council against the order of the High Court under Section 75 (2) of the Provincial Insolvency Act, 1920. The said Act provided by Section 4 (2) that subject to the provisions of the Act and notwithstanding anything contained in any other law for the time being in force, the decision of the District Court under the Act was final; but under Section 75 (2), however, there was a right of appeal to the High Court from the decision of the District Court. The Judicial Committee held that in a case where the Act gave a right to appeal to the High Court, an appeal from the decision of the High Court lay to the Privy Council under, and subject to, the Code of Civil Procedure. It reiterated the principle that where a Court is appealed to as one of the ordinary Courts of the country, the ordinary rules of the Code of Civil Procedure applied. It will be noticed at once that the order of the District Court was final subject to the provisions of the said Act and under the said Act a right of appeal was given to the High Court. The order of the High Court in the appeal was not made final. Therefore, the Judicial Committee held that an appeal lay to the Privy Council against the order of the High Court."

It is therefore clear that so long as there is no specific provision in the statute making the determination by the District Court final and excluding the supervisory power of the High Court under Section 115 of the Civil Procedure Code, it has to be held that the decision rendered by the District Court under Section 20 (1) being 'a case decided' by a Court subordinate to the High Court in which no appeal lies thereto, is liable to be revised by the High Court under Section 115, Civil Procedure Code. We are constrained to hold that the contrary view taken by the Division Bench in 1960 Ker LT 1248, cannot be regarded as correct.

12. It accordingly follows that there is no merit in the preliminary objection taken by the respondent that no revision lies to this Court against the order passed by the District Court under Section 20 (1) of the Act. The case will now be sent back to the learned Single Judge for disposal on the merits in the light of the decision on the preliminary point.

Order accordingly.

<sup>9</sup> AIR 1965 SC 1442 at p. 1447