REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3331 of 2002

State of Kerala & Anr. …Appellant(s)

Versus

Kondottyparambanmoosa & Ors. …Respondent(s)

J U D G M E N T

TARUN CHATTERJEE, J.

1. The present appeal is filed at the instance of the State of Kerala & Another against the impugned judgment dated 1st of June, 2001 passed by the High Court of Kerala at Ernakulam in C.R.P. No. 1365 of 1992 whereby the High Court had allowed a Revision Petition filed by the respondents and set aside the order of the Taluk Land Board (hereinafter referred to as the 'Board') and directing that the Board may proceed afresh under sub-section (9) of Section 85 of the Kerala Land Reforms Act, 1963 (in short 'the Act').

2. The brief facts leading to the filing of this appeal may be narrated as under :

The Respondents had filed a statement under Section 85(A) of the Act relating to lands held by their family. According to the verification report, the family of the respondent consisted of five members including the respondent, his wife and three minor children. According to the said verification report the total extent of land held by the family was equivalent to 25.40 standard acres. Out of this 0.85 acre of land was eligible for exemption under Section 81 of the Act. After allowing the family of the respondent to retain standard acres equivalent to 18.72 acres, it was provisionally concluded that the family held 36.88 acres of land in excess of the ceiling limit.

3. Accordingly, a draft statement with a notice under Rule 12(i) of the Kerala Land Reform (Ceiling) Rules was issued to the respondents to file objections, if any, against the draft statement and also to appear for hearing before the Board. Accordingly, the objection statement was filed by the

respondents and the same was verified through the Authorised Officer.

4. The Board at its sitting on 13th of June,1985 held that the respondents were in possession of 10.63 standard acres, out of which 0.85 acres had fallen under the exempted category. The net extent accountable was 18.47 acres. The respondent's family was entitled to retain 11 standard acres. The respondents were thus not liable to surrender any land.

5. Against the above judgment of the Board, the appellants had preferred a Revision along with an application for condonation of delay. However the High Court dismissed the application for condonation of delay and accordingly the Revision was also dismissed as belated. It is evident from the order of the High Court passed in the aforesaid Revision Case that the High Court had not at all dealt with the merits of the Revision Case as the Revision

case was rejected only on the ground that the delay could not be condoned.

6. However on scrutiny of the order of the Board by the State Land Board, it was found that the respondents were entitled to retain only 10 standard acres of land as against 11 standard acres worked out by the Board. In view of this, the State Land Board directed the Board to re-open the case.

7. Accordingly, the case was reopened and notice was issued to the respondents stating that as per the enquiry report dated 7th of January,1976, the family of the respondent consisted of only 5 members as on 1st of January,1970, and that the family was holding 11 standard acres instead of the prescribed limit of 10 standard acres for a family consisting of 5 members. The respondents were called upon to file their objections, if any, by 10th of June,1992.

8. The respondents filed their objection, the main objection of the respondent was that in the draft statement issued by the Board, it was shown that the family consisted of 6 members as on 1st of January,1970 and that his family was entitled to hold 11 standard acres. It was also objected that since the order of the Board had become final, the cause of rejection of earlier Revision Case by the High Court on the ground of delay, the matter was not liable to be reopened.

9. The Board by its order dated 10th of June,1992 decided to reopen the case under Section 85(9) of the Act as amended by Act 16 of 1989 and to proceed afresh after issuing a revised draft statement.

10. Being dissatisfied by the aforesaid order, the respondents filed Revision Petition dated 6th of July,1992 before the High Court, challenging the order of the Board reopening the case. The main ground for challenge was that the earlier order of the Board dated 13th of June,1985 was

merged with the revisional order of the High Court and, therefore, the case could not be reopened under Section 85 (9) of the Act.

11. The High Court by the impugned judgment dated 1st of June, 2001 allowed the Revision Petition filed by the respondents on a finding that the order dated 13th of June, 1985 ceased to exist as it was merged with the order of the High Court dismissing the revision and that there was no scope for invoking Section 85(9) of the Act.

12. Being aggrieved and dissatisfied with the aforesaid judgment of the High Court, the appellant has filed this Special Leave Petition in this Court which, on grant of leave, was heard by us in presence of learned counsel for the parties.

13. We have heard the learned counsel for the parties and examined the judgment of the High Court and the Board and other materials on record.

14. The questions that need to be decided in this appeal are as under:

First, whether the dismissal of a Revision Petition on the ground of delay would result in the merger of the order of the lower court with that of the High Court.

And, whether the High Court was right in holding that the order of the Board ceased to exist when the Revision was dismissed by the High Court and as such there was no scope to invoke Section 85(9) of the Act.

15. Before we answer these questions, it would be expedient at this stage to record the findings of the High Court while allowing the Revision Petition filed by the Respondents and thereby setting aside the order of the Board. Accordingly, we reproduce those findings as under :-

> *"The Land Board has conducted an investigation and passed orders. The result is the order dated 13th of June,1985 do not exist. But that order had ceased to exist when the Revision was dismissed by the High Court. As such, there was no scope to invoke Section 85(9). The present situation will amount to an issue which can be contrary to the order dated 13th of June,1985 that the Taluk Land Board cannot do as the said order has been affirmed in Revision by this Court.*

As such I hold that the Land Board has no jurisdiction under Section 85(9) of the Act to reopen its earlier order and to initiate proceedings under Section 85(9) of the Act."

16. Let us now consider the submissions of the learned counsel for the parties. The learned counsel for the appellants argued before us that the impugned judgment of the High Court dated 1st of June, 2001 was incorrect as the same was not in agreement with the judgment of this Court in Kunhayammed & Others Vs. State of Kerala & Anr. [(2000) 6 SCC 359].

17. It was also submitted that the principle of merger would be applicable only if the revisional judgment of the High Court could be said to be a judgment on merits and the same principle would not be applicable to the facts of the present case since in this case the revision was dismissed by the High Court only on the ground of delay and not on merits. The learned counsel for the appellants accordingly submitted that the dismissal of the revision petition by the

High Court on the ground of delay did not amount to confirmation of the order of the Board dated 13th of June,1985.

18. These submissions of the learned counsel for the appellants were contested by the learned counsel appearing on behalf of the respondents. The learned counsel for the respondents contended that according to the order passed by the Board dated 16th of June,1985, the respondent was not liable to surrender any land and once the order of the Board had been affirmed by the High Court of Kerala, the Board could not reopen the case because the order of the Board had completely merged with the order of the High Court passed in revision.

19. It was finally argued that the appellants have not given any reason to reopen the case and that the State cannot be permitted to reopen the assessments which have attained finality unless it could show special reasons for doing the same.

20. Having heard the learned counsel for the parties and after carefully examining the aforementioned orders, we are unable to agree with the finding of the High Court that the order passed by the Board dated 13th of June,1985 had ceased to exist when the Revision was dismissed by the High Court only on condonation of delay but not on merits and that the Board had no jurisdiction under Section 85(9) of the Act to reopen its earlier order.

Section 85 of the Act deals with surrender of excess lands. It runs as under :-

(1) Where a person owns or holds land in excess of the ceiling area on the date notified under Section 83, such excess land shall be surrendered as hereinafter.

Provided that where any person bona fide believes that the ownership or possession of any land owned or to be resumed by the land owner or the intermediary under the provisions of this Act, the extent of the land so liable to be purchased or to be resumed shall not be taken into account in calculating the extent the land to be surrendered under this sub-section.

(9) The Taluk Land Board may, at any time, set aside its order under sub-section (5) or sub-section (7), as the case may be, and proceed afresh under that sub-section if it is satisfied that –

(a) the extent of lands surrendered by, or assumed from, a person under section 86 is less than the extent of lands which he was liable to surrender under the provisions of this Act, or

(b) the lands surrendered by, or assumed from, a person are not lawfully owned or held by him; or

(c) in a case where a person is, according to such order, not liable to surrender any land, such person owns or holds lands in excess of the ceiling area;

Provided that the Taluk Land Board shall not set aside any order under this sub-section without giving the persons affected thereby an opportunity of being heard;

Provided further that the Taluk Land Board shall not initiate any proceedings under this sub-section [after the expiry of seven years] from the date on

which the order sought to be set aside has become final.

A plain reading of Section 85(9) of the Act would clearly show that the Board is conferred with the power to set aside its order under sub-section (5) or sub-section (7) and proceed afresh under that sub-section if grounds mentioned in Section 85(9) are satisfied. It is also clear from the proviso to Section 85(9) that such power can be exercised only when 7 years had not expired from the date on which the order sought to be set aside had become final. Before we proceed further, we may keep it on record that question of expiry of 7 years in the facts and circumstances of the case does not arise at all. Therefore, let us proceed on the question whether the rejection of the revision petition of the High Court on the ground of delay would take away the right of the Board to proceed afresh under Section 85(9) of the Act.

21. It is clear that the Board vide its order dated 13th of June,1985 held that the respondents were not liable to

surrender any land. However it cannot be said that the aforesaid order has merged with the order of the High Court dismissing the Revision petition of the appellant State as the same was dismissed on the ground of rejection of the application for condonation of delay and not on merits.

22. In this connection, the decision of this Court in the case of **Smt. S. Kalawati vs. Durga Prasad & Anr. [AIR 1975 SC 1272]** may be strongly relied upon. In paragraph 7 of the said decision, this Court observed as follows:

> *"The principle behind the majority of the decisions is thus to the effect that where an appeal is dismissed on the preliminary ground that it was not competent or for non-prosecution or for any other reason the appeal is not entertained, the decision cannot be said to be a decision on appeal nor of affirmance. It is only where the appeal is heard and the judgment delivered thereafter the judgment can be said to be a judgment of affirmance."*

23. Again in **Shankar Ramchandra Abhyankar vs. Krishnaji Dattatraya Bapat [(1969) 2 SCC 74]**, this Court

laid down the pre-conditions attracting applicability of doctrine of merger in the following manner :

(i) the jurisdiction exercised should be appellate or revisional jurisdiction;

(ii) the jurisdiction should have been exercised after issue of notice; and,

(iii) after a full hearing in presence of both the parties."

24. Approving the principles laid down in Shankar Ramchandra Abhyankar's case (supra), this Court again in **Kunhayammed & Ors. Vs. State of Kerala & Anr. [2000 (6)SCC 359]**, has observed as follows :-

> *"Once the superior court has disposed of the lis before it either way – whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."*
> (Emphasis supplied)

25. Keeping these principles as enunciated by this Court in the aforesaid three decisions in mind and applying the said principles in the facts of this case, we have no hesitation in our mind to conclude that the High Court in the impugned order did not at all consider that in the earlier revision order of the High Court, revisional application was rejected not on merits but only on the ground of delay. Therefore, it must be held that since earlier revision application was not rejected on merits, the said order rejecting the same on the ground of delay cannot be said to be the order of affirmance and that being the position, we must hold that since the earlier revision petition was not decided on merits, the doctrine of merger cannot be applied to the facts and circumstances of the present case. In this connection an observation made by this Court in the case of **Chandi Prasad and Others Vs. Jagdish Prasad and Ors. (2004) 8 SCC 724,** needs to be reproduced which is as under:-

> *"When an appeal is dismissed on the ground that delay in filing the same is not condoned, the doctrine of merger shall not apply."(Emphasis supplied.)*

26. In this view of the matter, we are, therefore, of the opinion that the doctrine of merger would only apply in a case when a higher forum entertains an appeal or revision and passes an order on merit and not when the appeal or revision is dismissed on the ground that delay in filing the same is not condoned. In our view, mere rejection of the revision petition on the ground of delay cannot be allowed to take away the jurisdiction of the Board, from whose order forms a subject matter of petition and Section 85(9) of the Act confers powers on the Board to reopen the case if such grounds for reopening the case are shown to exist.

27. For the reasons aforesaid, we are unable to accept the view expressed by the High Court to the effect that the order passed by the Board dated 13th of June, 1985 ceased to exist when the revision petition against the said order was rejected on the ground of delay only. Therefore, we are of the view that the order of the Board dated 13th of June, 1985 could not be merged with the order of the High Court passed in revision case. Such being the position, it must be held

that the Board under Section 85(9) of the Act was entitled to reopen the case in compliance with Section 85(9) of the Act.

28. For the reasons aforesaid, the impugned judgment of the High Court is liable to be set aside and it is accordingly set aside. The appeal is thus allowed. There will be no order as to costs.

……..….J.
[Tarun Chatterjee]

New Delhi; ……J.
August 05, 2008 [Harjit Singh Bedi]