PETITIONER:
STATE OF KERALA

Vs.

RESPONDENT:
M.K. KUNHIKANNAN NAMBIAR MANJERIMANIKOTH, NADUVIL (DEAD) AND

DATE OF JUDGMENT04/12/1995

BENCH:
PARIPOORNAN, K.S.(J)
BENCH:
PARIPOORNAN, K.S.(J)
RAMASWAMY, K.

CITATION:
1996 AIR 906 1996 SCC (1) 435
JT 1995 (8) 533 1995 SCALE (6)734

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PARIPOORNAN. J.

The State of Kerala, having obtained leave of this Court in Special Leave Petition (C) No. 13411 of 1987, appeals against the judgment of a learned single Judge of the High Court of Kerala, rencered in C.R.P. No. 2538 of 1981 dated 1.7.1987. The matter arises under the Kerala Land Reforms Act in connection with the proceedings relating to determination of ceiling area of the 1st respondent, by the Taluk Land Board, Taliparamba (hereinafter referred to as the Board) in T.L.B. 447 of 1977. The Board initiated proceedings, T.L.B. 447 of 1977 and issued notice to late respondent No. 1, head of the family, to surrender an extent of 6.32 acres of land, which according to the Board is the land, the family headed by the first respondent was holding in excess of the ceiling area. Respondent No. 2 is the wife of the first respondent. In the said proceedings, respondents No. 3 and 4 (sisters of the first respondent) sought impleament under Section 85 (8) of the Land Reforms Act, to set aside the proceedings of the order of Board dated 28.6.1977 and claimed tenancy rights over an extent of property measuring 10 acres, in R.S. Nos. 201 and 208 of Naduvil village, Taliparamba. The impleament petition was rejected by the Board on 7.10.1977. Respondents No.1 and 2 filed C.R.P. No.3440 of 1977 before the High Court of Kerala, which was disposed of on 2.11.1977. the relevant portion of which reads as follows:-

> "The declarant in ceiling proceedings No.447777(TBA) on the file of the Taluk Land Board, Taliparamba was directed by the Taluk Land Board by its order dated 28.6.1977 to surrender an extent of 6.32 acres of land held by his family in excess of the ceiling limit. This two petitioners, who are the

sisters of the declarant, filed an application under section 85(8) of the Kerala Land Reforms Act for reopening the order contending that they are cultivating tenants in respect of the property with respect to an extent of 10 acres. The Taluk Land Board after having gone into the evidence placed before it found that no proof regarding the alleged tanancy was produced before the Taluk Land Board and that the cultivating tenancy alleged was a collusive attempt between the brother and the sisters to defeat the provisions of the Act. It cannot be said that the Taluk Land Board has either decided erronedusly or failed to decide a question of law to attract Section 103 of the Act. The revision is therefore dismissed without admitting in the file."

(Emphasis supplied)

2. The first respondent also challenged the proceedings dated 28.6.1977. by which he was directed to surrender 6.32 acres of land, in C.R.P. No. 3696 of 1977. The Civil Revision Petition was allowed by order dated 14.3.1979 and the operative portion of the order reads as follows:-

"I do not think that I should go into the merits of the objections raised by the petitioner in regard to the fixation of the ceiling area in view of the fact that the impugned order is in a suo moto Proceedings where the proceedings have been initiated not on intimation given by the Land Board about the non-filing of the statement as required by section 85(7) of the Kerala Land Reforms Act. However, the order was sought to be supported by the learned Government pleader on the ground that they have subsequently ratified the proceedings before the final order was actually issued. In the nature of the provision in Section 85(7) that may not validate the proceedings which would render such proceedings void in law cannot be cured by ratification. No doubt, the disposal of the C.R.P. by quashing the impugned order on this ground will not prevent the Taluk Land Board for proceedings the matter afresh on due, intimation to the Land Board and in accordance with Law."

(Emphasis supplied)

3. In pursuance to the later order of the High Court, the Board issued a revised draft statement and issued notice to respondents No. 1 and 2 calling upon them to file objections, if any. No objections were filed. However, respondents No. 3 and 4 filed a fresh petition for impleadment on 30.6.1980, which was allowed by the majority members of the Board on 29.7.1980. The majority members of the Board, by proceedings dated 9.1.1981, accepted the plea put forward by respondents No. 3 and 4 regarding tenancy and further held that respondent No. 1 was holding lands only within the ceiling limit. There was no surplus land to be

surrendered. The aforesaid decision was assaifed by the State of Kerala before the High Court in C.R.P. No. 2538/81. The learned single Judge of the High Court of Kerala, by order dated 1.7.1987, held thus:-

> "The order in C.R.P. 3696/77 has become final. It can be seen from the said order that the S.M. proceedings initiated by the T.L.B. was declared void and hence non est. That being the position, it is needless to say that the proceedings from which C.R.P. 3440 of 1977 arose also is non est. It cannot therefore be said that the rights of the parties to the said proceedings has been determined by any authority constituted under the K.L.R. Act."

On the merits, the learned single Judge also held that it cannot be said that the Board decided any question of law erroneously or failed to decide any question of law to merit interference in exercise of the revisional powers vested under Section 103 of the Kerala Land Reforms Act. It is from the aforesaid order of the High Court, the State had filed the present appeal.

4. We heard Mr.M.T. George, who appeared for the appellant and also Mr. A.S. Nambiar, senior counsel, who appeared for the respondents. Counsel for the appellant argued that the majority members of the Board committed a grave error in ordering the impleadment of respondents No.3 and 4 by order dated 29.7.1980 and in upholding the plea of tenancy urged by them. He further argued that the learned single Judge of the High Court erred in law in holding that in view of the order passed in C.R.P. No. 3696 of 1977, the S.M. proceedings initiated by the Board was void and non est and that being the position, the proceedings from which C.R.P. 3440 of 1977 (Revision filed by respondents No.3 and 4 ) arose, also is non est. The conclusion of the learned single Judge "that it cannot be said that the rights of the parties to the said proceedings had been determined by any authority constituted under the Kerala Land Reforms Act" was assailed as illegal. On the other hand, counsel for the respondents, Mr. A.S. Nambiar, argued that since the proceedings initiated by the Board dated 28.6.1977 was found to be void in law, in C.R.P. 3696 of 1977, it cannot be cured by ratification, and the order passed by the Board rejecting the impleadment of respondents No. 3 and 4 dated 7.10.1977 and confirmed by the High Court in C.R.P. No. 3440 of 1977, by order dated 2.11.1977 is non est and in this perspective the fresh application for impleadment filed in pursuance to the order passed by the High Court in C.R.P. No. 3696 of 1977 and the consequential final decision of the Board dated 29.7.1980 are sustainable and valid in law.

5. The short question that arises for consideration is whether the order passed by the Board in the first instance, rejecting the impleadment of respondents No. 3 and 4, and holding that the tenancy put forward is a "collusive" one, which was affirmed by the High Court in C.R.P. No. 3440 of 1977 on 2.11.1977. can be ignored in view of the order passed in C.R.P. No. 3696 of 1977 filed by the first respondent ? As between the State and respondents No. 3 and 4 the order passed by the Board as confirmed by the High Court in C.R.P. 3440 OF 1977 Dated 2.11.1977 has become final. It is a valid order. Will the observations made in C.R.P. 3696 of 1977 to the effect "that the S.M. proceedings without intimation by the Board under Section 85(7) of the Kerala Land Reforms Act render such proceedings void",

effect the legality or validity of the proceedings which culminated in C.R.P. 3440 of 1977 ?

6. It is not necessary for us to go into the merits of the case. We are of the view that the order passed inter parties in C.R.P. 3440 of 1977 dated 2.11.1977, has become final, and it concludes the matter. The observations made in the proceedings. at the instance of the 1st respondent regarding the validity of the order of the Board, in C.R.P. 3696 of 1977. will not, in any way, effect the legality and validity of the proceedings declining to implead respondents No. 3 and 4 or the order passed in Revision therefrom-C.R.P. 3440 of 1977. It is true that the proceedings dated 28.6.1977 was observed to be void in law in C.R.P. 3696 of 1977, filed by the first respondent. In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact be effective inter parties until it is successfully avoided or challenged in higher forum. Mere use of the word "void" is not determinative of its legal impact. The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity, depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise and in this case, the only complaint about the initiation of the suo moto proceedings by Board was, that it was not initiated on intimation by the State Land Board about the non-filing of the statement as required by Section 85(7) of the Kerala Land Reforms Act. In our opinion, this is not a case where the infirmity is fundamental. It is unnecessary to consider the matter further.

7. In Halsbury's Laws of England, 4th edition, (Reissue) Volume 1(1) in paragraph 26, page 31, it is stated, thus:-

> "If an act or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes: and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved."

In the Judicial Review of Administrative Action, De Smith. Woolf and Jowell, 1995 edition. at pages 259-260 the law is stated, thus:-

> "The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows:
> (1) All official decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent Jurisdiction."

Similarly, Wade and Forsyth in Administrative Law, Seventh edition- 1994, have stated the law thus at pages 341-342:-

> "every uniawful administrative act,

> however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage Lord Raodliffe said:
> An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Uniess the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.
> This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects."

The above statement of the law supports our view that the order of the Board dated 28.6.1977, declining to implead respondents No. 3 and 4 (which stood confirmed in Revision) concludes the matter against respondents No. 3 and 4.

8. The additional feature in this case, is that the decision of the Board declining to implead respondents No. 3 and 4 was taken up in Revision - C.R.P. 3440 of 1977 wherein the order of the Board was affirmed and it was further observed that the plea of tenancy was not proved and it was only a collusive attempt between respondent No. 1 and respondents No. 3 and 4. Even assuming, for arguments sake that the order of the Board was held to be void in C.R.P. 3696 of 1977 (in the proceeding at the instance of the 1st respondent). the order passed in Revision between the parties herein, in C.R.P. 3440 of 1977 will be valid and cannot be said to be without jurisdiction or invalid. In this context. the Constitution Bench decision of this Court in Janardhan Reddy & others vs. State of Hyderabad and others, (A.I.R. 1951 SC 217) is of great relevance. In that case, the Court found that there is no specific order of the civil administrator making over the case covered by charge-sheet No. 14 dated 20.7.1949 [charge sheet No. 14 (2)] to the Tribunal. Therefore, the Court held that prima facie there was room to hold that case No. 17. which was affected by the charge sheet No. 14 (2) was never properly made over to the Tribunal and the trial of the accused in that case was, therefore, without jurisdiction. But the matter was carried in appeal before the High Court of Hyderabad and the convictions and sentences were confirmed. It was urged before the Supreme Court that notwithstanding the decision rendered by the High Court in appeal since the decision of the Tribunal was without jurisdiction, the detention was invalid. In repelling this piea, Fazl Ali, J. observed at page 225, thus:-

> "Evidently, the appellate Ct. in a case which properly comes before it on appeal, is fully competent to decide whether the trial was with or without jurisdiction, & it has jurisdiction to decide the matter rightly as well as

wrongly. If it affirms the conviction and thereby decides wrongly that the trial Ct. had the jurisdiction to try and convict it cannot be said to have acted without jurisdiction and its order cannot be treated as a nullity."

"It is well settled that if a Ct. acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the Ct. to which it would lie if its order was with jurisdiction."

9. In the light of the above position in law, whatever may have been the infirmity in the proceedings of the Board dated 28.6.1977 (which was set aside in C.R.P. 3696 of 1977), since the said proceedings were affirmed in C.R.P. 3440 of 1977 dated 2.11.1977, which is the final decision inter-parties, (State of Kerala and respondents No. 3 and 4), it was not open to the Board to order impleadment of respondents No. 3 and 4 in the revised draft statement proceedings by order dated 29.7.1980 and in finally ordering the matter in favour of respondents No. 3 and 4, as it did, by order dated 9.1.1981. We are constrained to hold that the learned single Judge of the High Court committed a grave error in holding that the proceedings rendered inter parties between the State and respondents No. 3 and 4, which finally stood confirmed by the order in C.R.P. 3440 of 1977, is non est and can be ignored. We set aside the order passed by the High Court in C.R.P. No. 2538 of 1981 dated 1.7.1987. In consequence, the revised orders passed by the Board dated 29.7.1980 and 9.1.1981 will stand annulled. This appeal is allowed with costs payable by respondents No. 3 and 4 herein. quantified at Rs.5000/-.