PETITIONER:
AUNDAL AMMAL

Vs.

RESPONDENT:
SADASIVAN PILLAI

DATE OF JUDGMENT09/12/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1987 AIR 203 1987 SCR (1) 485
1987 SCC (1) 183 JT 1986 1028
1986 SCALE (2)1004
CITATOR INFO :
* 1987 SC2323 (*)
E 1987 SC2323 (3,7,12,13,14)
RF 1988 SC 339 (6)
* 1988 SC 812 (2,3,7,9,12,14,15,18,19,26,30,

ACT:
Kerala Buildings (Lease & Rent) Control Act, 1965, Section 18(5) & 20--Jurisdiction of the High Court to interfere in revision under Section 115 C.P.C-- Whether ousted.
Civil Procedure Code, 1908--Section 115--High Court's jurisdiction to interfere in revision with an order under the Kerala Buildings (Lease & Rent) Control Act. 1965.
Words and Phrases-'Shall be final'--Shall not be liable to be called in question in any Court of Law'--Meaning of..

HEADNOTE:
The Kerala Buildings (Lease and Rent Control) Act, 1965, by s. 13(3) provides that a landlord's petition for eviction of his tenant from a premises on the ground of bona fide personal need, has to be disposed of by the Rent Control Court. Section 18(1)(b) makes provision of an appeal to the Appellate Authority against the order of the Rent Control Court. Sub-s.(5) of section 18, stipulates that the decision of the appellate authority and subject to such decision, an order of the Rent Controller 'shall be final' and 'shall not be liable to be called in question in any court of law', except as provided in section 20. By section 20, a revision is provided where the appellate authority is Subordinate Judge to the District Judge and in other cases, that is to say, where the appellate authority is District Judge, to the High Court.
The respondent-landlord filed an eviction petition against the appellant's husband-tenant on the ground of bona fide personal need. The Rent Controller passed an order dismissing the petition. The order was confirmed in appeal filed by the respondent before the Appellate Authority. Thereafter, the respondent preferred a revision petition before the District Judge. That petition having been dismissed, he moved the High Court under s. 115 of the Code of Civil Procedure. During the pendency of the second revision, the appellant's husband died and she was brought on record

as the legal representative. The High Court set aside all the orders of the courts below and ordered eviction of the appellant.
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In appeal to this Court, it was contended on behalf of the appellant tenant that the High Court had exceeded its jurisdiction in setting aside the judgments and orders of the courts below, since no revision lies to the High Court against the order of the District Judge in view of s. 18(5) read with s.20 of the Act which has completely ousted the High Court's jurisdiction to interfere u/s. 115 of the Code of Civil Procedure.
Allowing the appeal,
HELD: (1) The High Court had no jurisdiction to interfere in the matter u/s. 115 of C.P.C. Therefore, the judgment and order of the High Court are set aside. [496 B,G]
2(i) The ambits of revisional powers are well-settled and need not be restated. It is inconceivable to have two revisions. The scheme of the Kerala Buildings (Lease & Rent Control) Act, 1965 does not warrant such a conclusion. [492 D]
2(ii) Sub-s. (5) of s. 18 of the Act says that subject to the decision of the appellate authority, the decision of the Rent Controller shall be final an,] could only be questioned in the manner provided in section 20 and in no other manner. The expression 'shall be final' in the Act means what it says. The intention of the legislature in enacting the said Act is clear and manifest from s. 18(5) and the scheme of the Act, that is to say, to regulate the leasing of buildings and to control the rent of such buildings and to provide a tier of courts by themselves for eviction of the rented premises. This is writ large in the different provisions of the Act. [492 G]
2(iii) When section 18(5) of the Act specifically states that "shall not be liable to be called in question in any Court of law" except in the manner provided under section 20, it cannot be said that the High Court which is a court of law and which is a civil court under the Code of Civil Procedure under section 115 of the Code of Civil Procedure could revise again an order on again after revision under section 20 of the Act. That would mean there would be a trial by four courts, that would be repugnant to the scheme manifest in the different sections of the Act in question. Public policy or public interest demands curtailment of law's delay and justice demands finality within quick disposal of case. The language of the provisions of section 18(5) read with section 20 inhibits further revision. The courts must so construe. [494 G-495 A]
Kydd y. Watch Committee of City of Liverpool, (1908) Appeal Cases 327 at 331-332; South Asia Industries Private Ltd. v. S.B. Sarup Singh and
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Others, [1965] 2 SCR 756 & Vishesh Kumar v. Shanti Prasad, [1980]3 SCR 32, relied upon.
Ouseph Vareed v. Mary, (1968) K.L.T. 583, over-ruled.
Maung Ba Thaw and Another--Insolvents v. Ma Pin, AIR 1934 P.C. 81, distinguished.
Kurien v. Chacko, (1960) KLT 1248, approved.
In the instant case, the appeal lay from Rent Control Court to the appellant authority who was the Subordinate Judge and therefore the revision lay to the District Judge. After the dismissal of the revision by the District Judge from the appellate decision of the Subordinate Judge who confirmed the order of the Rent Controller, the respondent-landlord chose again to go before the High Court under

section 115 of the Code of Civil Procedure. But, he could not have a second revision to the High Court, since the jurisdiction of the High Court u/s. 115 of the C.P.C. was excluded by the Act. [491 H-492 B, D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5032 of 1985

From the Judgment and Order dated 20.8.1985 of the Kerala High Court in C.R.P. Nos. 1643 and 2552 of 1980.

P.S. Poti and E.M.S. Anam for the Appellant.

G. Vishwanath lyer, P.K. Pillai and K. Dileep Kumar for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This appeal by special leave from the decision of learned single judge of the High Court of Kerala is disposed of on a short question of law.

The appellant is a tenant. The High Court had reversed the concurrent findings and the decisions of three courts below it and ordered eviction of the appellant.

The dispute relates to a portion of the ground floor of a three-storeyed building situated in one of the busiest commercial areas Pazhavangadi of the city of Trivandrum. where the appellant had been conducting a tea shop by

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name 'Sourashtra Hotel'. In the adjacent rooms on the ground floor, the landlord was conducting a business in textiles namely 'Sarada Textiles'. The tenancy began on 12th June, 1965. The tenancy was taken by the husband of the appellant. The rent was Rs. 140 per month. The husband of the appellant died. Thereafter the appellant had been conducting the business from there.

On or about 15th April, 1976, the respondent purchased.a three storeyed building. The petition schedule premises is a portion of the ground floor of the said three storeyed building. It is the case of the appellant that there were seven rooms on the first floor of the said building out 'of which four were in the possession of the respondent and three rented out as aforesaid. The premises on the second floor were used by the respondent-landlord as a lodge. On 9th April, 1977, the respondent filed an application under section 17 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter called the Act) for permission to convert the non-residential building to a residential building. On 30th November, 1977, the Accommodation Controller rejected the said application.

On 2nd June, 1978, the respondent filed the petition for eviction of the appellant on the ground of bona fide need of the premises in question for his residence. Arrears of rent was also one of the grounds taken against the appellant. The tenant duly filed his objection. On 31st October, 1978, the Rent Control Court dismissed the respondent-landlord's petition for eviction. It was found that the landlord had other buildings in his own possession and therefore. no order of eviction could be passed by virtue of the first proviso to section 11(3) of the Act. The Rent Control Appellate Authority on or about 2nd July, 1979 dismissed the respondent-landlord's appeal.

On 28th March, 1980, the revision petition filed by the respondent was also dismissed by the District Court.

The High Court was moved by the respondent-landlord under section 115 of the Code of Civil Procedure.

The husband of the appellant died on 8th May, 1985. She

was therefore impleaded as the legal representative and she is conducting the business since the death of her husband;

By the order dated 20th August, 1985, the High Court by its impugned order has set aside all the orders of the courts below. The tenant, the appellant herein has come up in appeal to this Court under article 136 of the Constitution.

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Several questions were posed before us in this case, inter alia, (i) whether the revision under section 115 of the Code of Civil Procedure lies to the High Court from a revision order passed under section 20 of the said Act? (ii) whether the High Court has exceeded its jurisdiction under section 115 in setting aside the judgments and orders of the courts below in ordering eviction of the appellant from the premises in question reversing the findings of facts? (iii) whether eviction of a tenant from a non-residential building could be ordered for the user of the building for residence of the landlord, if the Accommodation Controller had refused permission under section 17 of the Act to convert the building from non-residential to residential? (iv) where the Accommodation Controller refused the permission to convert the building from non-residential to residential, does the claim to the building by the landlord for a residential purpose become illegal and not recognised by law and whether the claim of the landlord can still be held to be bona fide? (v) whether in ordering eviction the special reasons relied on by the High Court on a reappreciation of facts are borne out from the evidence in this case and whether the facts stated by the High Court constitute "special reasons" required under the first proviso to section 11 (3) in ordering eviction and setting aside the judgments and orders of the courts below.

For the present purpose, it is relevant to refer to section 11(3) of the Act which provides as follows:

> "11 (3). A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him;
>
> Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so:
>
> Provided further that the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business;
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> Provided further that no landlord whose right to recover
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> possession arises under an instrument of transfer inter vivos shall be entitled to apply to be put in possession until the expiry

of one year from the date of the instrument;

Provided further that if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the transferee shall not be entitled to be put in possession unless he proves that he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him."

In the view we have taken on the question that no revision lay to the High Court, it is not necessary to refer to other provisions of the Act or to the details of the facts of this case. It is, however, necessary to refer to sections 18 and 20 of the Act which are as follows:

"18. Appeal--(1) (a) The Government may, by general or special order notified in the Gazette, confer on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall send for the records of the case from the Rent Control Court and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court, shall decide the appeal.

Explanation:--The appellate authority may, while confirming the order of eviction passed by the Rent Control

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Court, grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.

(5) 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.

20. Revision:--(1) In cases where the appellate authority empowered 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 proceed-

> ings 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.
>
> (2) The costs of and incidental to all proceedings before the High Court or District Court under Sub-section (1) shall be in its discretion."

It has further to be borne in mind that the Act in question was an Act to regulate the leasing of buildings and to control the rent of such buildings in the State of Kerala.

It was contended by Shri Poti, learned counsel for the appellant, that no revision lay to the High Court. He submitted that section 18(5) read with section 20 of the Act has completely ousted the High Court's jurisdiction to interfere in this matter under section 115 of the Code of Civil Procedure.

Under the scheme of the Act it appears that a landlord who wants eviction of his tenant has to move for eviction and the case has to be disposed of by the Rent Control Court. That is provided by sub-section (2) of section 11 of the Act. From the Rent Control Court, an appeal lies to the Appellate Authority under the conditions laid down under sub-section (1)(b) of section 18 of the Act. From the Appellate Authority a revision in certain circumstances lies in case where the appellate authority is a Subordinate Judge to the District Court and in other cases to the High Court. In this case as mentioned hereinbefore the appeal lay from Rent Control Court to the
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appellate authority who was the Subordinate Judge and therefore the revision lay to the District Judge. Indeed it is indisputed that the respondent has in this case taken resort to all these provisions. After the dismissal of the revision by the District Judge from the appellate decision of the Subordinate Judge who confirmed the order of the Rent Controller, the respondent-landlord chose again to go before the High Court under section 115 of the Code of Civil Procedure. The question, is, can he have a second revision to the High Court? Shri Poti submitted that he cannot. We are of the opinion that he is fight. This position is clear if sub-section (5) of section 18 of the Act is read in conjunction with section 20 of the Act. Sub-section (5) of section 18, as we have noted hereinbefore, dearly stipulates that the decision of the appellate authority and subject to such decision, an order of the Rent Controller 'shall be final' and 'shall not be liable to be called in question in any court of law', except as provided in section 20. By section 20, a revision is provided where the appellate authority is Subordinate Judge to the District Judge and in other cases, that is to say, where the appellate authority is District Judge, to the High Court. The ambits of revisional powers are well-settled and need not be re-stated. It is inconceivable to have two revisions. The scheme of the Act does not warrant such a conclusion. In our opinion, the expression 'shall be final' in the Act means what it says.

In Kydd v. Watch Committee of City of Liverpool. [1908] Appeal Cases 327 at 331-332. Lord Loreburn L.C., construing the provisions of section 11 of the Police Act, 1890 of England which provided an appeal to quarter sessions as to the amount of a constable's pension, and also stipulated that the Court shall make an order which would be just and final, observed:

"Where it says, speaking of such an order, that it is to be final, I think it means there is to be an end of the business at quarter sessions ..... "

The said observation could most appropriately be applied to the expression used by the legislature in sub-section (5) of section 18 of the Act in question. It means what it says that subject to the decision of the appellate authority, the decision of the Rent Controller shall be final and could only be questioned in the manner provided in section 20 and in no other manner. The intention of the legislature in enacting the said Act is clear and manifest from this section and the scheme of the Act, that is to say, to regulate the leasing of buildings and to control the rent of such buildings and to provide a tier of courts by themselves for eviction of the rented premises. This is writ large in the different provisions of the Act. This Court, referring to the aforesaid observations of Lord Loreburn, L.C. in the case of South Asia Industries Private Ltd. v.S.B. Sarup Singh and Others. [1965] 2 S.C.R. 756 observed at
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page 766 of the report that the expression "final"prima facie meant that an order passed on appeal under the Act was conclusive and no further appeal lay. This Court was construing sections 39 and 43 of the Delhi Rent Control Act, 1958 and the effect thereof in the context of Letters Patent Appeal. There sections 39 and 43 provided as follows:--

"Section 39. (1) Subject to the provisions of sub-section (2), an appeal shall lie to the High Court from an order made by the Tribunal within sixty days from the date of such order.

(2) No appeal shall lie under sub-section (1), unless the appeal involves some substantial question of law.

Section 43. Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings."

This Court observed at page 766 that a combined reading of the said two sections made it clear that subject to the fight of appeal to the High Court on a substantial question of law, the order passed by the Controller or an order passed on appeal was final and could not be called in question in any original suit, application or execution proceeding. The use of the expression "shall be final" will have to be understood in the proper context and keeping in view the purpose of the different sections.

On behalf of the respondent, Shri Iyer relied on a decision of the Full Bench of the Kerala High Court on which the High Court had rested its decision in Ouseph Vareed v. Mary, [1968] K.L.T. 583 in repelling the submission by the appellant on this aspect. There the High Court was concerned with the identical Act. Balakrishna Eradi, J. speaking for the Full Bench of the Kerala High Court on this contention after referring to several decisions observed at pages 588-589 of the report as follows:

"The contention of the respondent that the decision of the District Court rendered under S. 20(1) is not amenable to revisional jurisdiction of the High Court under S. 115 of the Civil Procedure Code is based mainly on the provision for
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finality contained in S. 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 S. 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 S. 20 shall be final and shall not be called in question in any higher court."

The learned judge referred to the decision of the Judicial Committee in the case of Maung Ba Thaw and Another--Insolvents v. Ma Pin, AIR 1934 P.C. 111. The learned judge also referred to a decision of this Court in South Asia Industries (P) Ltd. v. S.B. Sarup Singh & Ors. (supra). The learned judge concluded that so long as there was 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 Code of Civil Procedure, it had to be held that the decision rendered by the District Court under section 20(1) of the Act being a decision of a court subordinate to the High Court to which an appeal lay to the High Court was liable to be revised by the High Court under section 115 of the Code of Civil Procedure. In that view of the matter, the Full Bench rejected the view of the division bench of the Kerala High Court in Kurien v. Chacko, [1960] KLT 1248. With respect, we are unable to sustain the view of the Full Bench of the High Court on this aspect of the matter. In our opinion, the Full Bench misconstrued the provisions of subsection (5) of section 18 of the Act. Sub-section (5) of section 18 clearly states that such decision of the appellate authority as mentioned in section 18 of the Act shall not be liable to be questioned except in the manner under section 20 of the Act. There was thereby an implied prohibition or exclusion of a second revision under section 115 of the Code of Civil Procedure to the High Court when a revision has been provided under section 20 of the Act in question. When section 18(5) of the Act specifically states that "shall not be liable to be called in question in any Court of law" except in the manner provided under section 20, it cannot be said that the High Court which is a court of law and which is a civil court under the Code of Civil Procedure under section 115 of the Code of Civil Procedure could revise again an order once again after revision under section 20 of the Act. That would mean there would be a trial by four courts, that would be repugnant to the scheme manifest in the different sections of the Act in question. Public policy or public interest demands curtailment of law's delay and justice demands finality within quick disposal of
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case. The language of the provisions of section 18(5) read with section 20 inhibits further revision. The courts must so construe.

Judicial Committee in Maung Ba Thaw v. Ma Pin (supra)

was dealing with the Provincial Insolvency Act and the Judicial Committee observed that when a right of appeal was given to any of the ordinary courts of the country, the procedure, orders and decrees of that Court would be governed by the ordinary rules of the Civil Procedure Code, and therefore an appeal to Privy Council was maintainable from the decision of the High Court. Here in the instant case the right of appeal has been given under the Act not to any ordinary court of the country under the Code of Civil Procedure but to the courts enumerated under the Rent Act. In that view of the matter, the ratio of that decision cannot be applied in aid of the submission for respondent in this case.

Indeed this view, in our opinion, is concluded by the decision of this Court in the case of Vishesh Kumar v. Shanti Prasad, [1980] 3 S.C.R. 32 where this Court was concerned with section 115 of the Code of Civil Procedure and the amendments made therein which superseded the bifurcation of the revisional jurisdiction between the High Court and the District Court. The High Court possessed revisional jurisdiction from an order of District Judge disposing of revision petition. This Court observed that section 115 of the Code of Civil Procedure conferred on the High Court of a State power to remove any jurisdictional error committed by a subordinate court in cases where the error could not be corrected by resort to its appellate jurisdiction. There after tracing the history of the amendment of the Code of Civil Procedure by Amendment Act, 1976, this Court observed that the amendment superseded the scheme of bifurcation of revisional jurisdiction with effect from 1 st February, 1977. Section 25 of the Provincial Small Cause Courts Act was amended from time to time in its application to the State of U.P. The two questions that fell for consideration before this Court were (i) whether the High Court possessed the revisional jurisdiction under section 115 of the Code of Civil Procedure in respect of an order of the District Court under section 115 disposing of a revision petition and (ii) whether the High Court possessed revisional jurisdiction under section 115 of C.R.C. against an order of District Court under section 25 of Provincial Small Cause Courts Act. It was held that the High Court was not vested with that. revisional jurisdiction. This Court was of the view that an order under section 25 of the Provincial Small Cause Courts Act was not of a court of District Court and was not amenable of revisional jurisdiction. This COurt 'further observed that an examination of the several provisions of the Provincial Small Cause Courts Act indicated that it was self-sufficient code so far as the enquiry covered by that Act was concerned. All the indications in the Act were to that effect. After

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analysing the scheme and referring to the decisions of this Court, this Court held that the jurisdiction of the High Court under section 115 of the Code of Civil Procedure was excluded.

In that view of the matter, we are of the opinion that the Full Bench of the Kerala High Court was in error and the High Court in the instant case had no jurisdiction to interfere in this matter under section 115 of C.P.C.

It was urged that in case we are of the opinion that a revision under section 115 of the Code of Civil Procedure does not lie, the case should be remitted to the High Court for consideration as a petition under article 227 of the Constitution. We are unable to accede. A petition under article 227 of the Constitution is different from revision

under section 115 of the Code of Civil Procedure. The two procedures are not interchangeable though there are some common features. It must, however, be emphasised that we are not dealing in this appeal with the constitutional powers of the High Court under article 227 of the Constitution nor are we concerned with the powers of the High Court regulating appeals under the Kerala High Court Act, 1958. We are concerned in this case whether the High Court, in view of the scheme of the Act, had jurisdiction to interfere under section 115 of the Code of Civil Procedure. We reiterate that to vest the High Court with any such jurisdiction would be contrary to the scheme of the Act, would be contrary to the public policy, and would be contrary to the legislative intent as manifest from the different sections of the Act.

In that view of the matter, the appeal must be allowed on that ground alone and it is not necessary for us to refer to the other grounds. We must necessarily overrule the decision of the Full Bench of the Kerala High Court referred to hereinbefore.

Before we conclude, we must, however, note that Shri Poti appearing for the tenant has conceded that rent should be increased to Rs. 500 per month for the premises in question, as the existing rent is too low. The appeal is accordingly allowed and we direct on the concession of Shri Poti that rent would be Rs. 500 per month from this date. The judgment and order of the High Court are set aside.

In the facts and circumstances of this case, there will be no order as to costs.

M.L.A. Appeal allowed.

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