

---

**(1993) 04 KL CK 0024**  
**In the High Court Of Kerala**  
**Case No : L.A.A. No. 52 of 1991**

Janaki

APPELLANT

Vs

State and Others

RESPONDENT

---

**Date of Decision :** 07-04-1993

**Acts Referred:**

Kerala Land Reforms Act, 1963 — Section 109, 112, 112(2), 3(1), 79  
Land Acquisition Act, 1894 — Section 30

**Citation :** (1993) 2 KLJ 118

**Hon'ble Judges :** K.G. Balakrishnan, J

**Bench :** Single Bench

**Advocate :** George Poonthottam and R. Shankar, for the Appellant; M. Rameshchander, M. Vijayakumar and M.S. Manikantan, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

K.G. Balakrishnan, J.—This is an appeal against the judgment in L.A.R. No. 271 of 1987 on the file of Sub Court, Payyannur. The judgment of the court below was in a reference u/s 30 of the Land Acquisition Act. An extent of 0.0405 hectares of land situated in R.S. 31/14 was acquired for the purpose of Naval Academy. The award was passed on 28-1-1986. The Land Acquisition Officer fixed the land value at the rate of Rs. 1,19,000/- per hectare and towards acquired land the compensation was fixed at Rs. 4855.95. There were coconut trees and a house. They were separately valued and Rs. 53,113.15 was fixed as the value of bearing trees and other structural improvements. This property originally belonged to claimant No. 1 Ayamad Haji. He died and the rights of this property devolved on claimant 2 to 4. They contended that they are entitled to the entire compensation amount. They also contended that the 5th claimant, who was in occupation of a building situated in this property, was not a Kudikidappukari. The 5th claimant, on the other hand, contended that she was a Kudikidappukari in the property and therefore, the entire compensation amount was due to her. The court below held that the 5th claimant was entitled to get only the land value with the solatium and interest therein and that claimants 2 to

4 were entitled to the value of improvements. This finding is challenged by the 5th claimant. The 5th claimant filed O. A- 17/83 about 2 years prior to the notification u/s 3(1) of the K.L.R. Act for purchase of Kudikidappu right in respect of the acquired property. The Revenue Inspector filed an enquiry report and the house occupied by the 5th claimant was valued at Rs. 733/-. This was later set aside and an Advocate Commissioner was appointed. The Commissioner found that the building occupied by the 5th claimant would have fetched a monthly rent of Rs. 3.26. The Land Tribunal found that the house in question was a hut, but in view of the acquisition proceedings the purchase application was dismissed. Against the dismissal of O.A. 17/83, the 5th claimant preferred A. A. 9/86 before the Appellate Authority. The Appellate Authority also confirmed the dismissal of the O. A. The 5th claimant preferred a revision before this Court and this Court held that as the property had already been acquired by the Government for public purpose the remedy of the petitioner is only to get the compensation amount in the land acquisition proceedings. So as the matter stands, the fact that 5th claimant was a Kudikidappukari in occupation of the building situated in the acquired property is not in dispute. So the further question to be decided is whether the 5th claimant is entitled to get the entire compensation as contended by her or whether she is entitled only to the land value as held by the court below.

2. To understand the scope of the dispute in this case it is necessary to look into the various provisions of the K.L.R. Act. u/s 80 A of the K.L.R. Act a Kudikidappukaran was allowed to purchase the Kudikidappu occupied by him and the land adjoining thereto. In the case of Kudikidappu which is situated in a city area the land that could be purchased is 3 cents and 5 cents in any other municipality or ten cents in a Panchayat area or township provided that where the land available for purchase in the land in which the kudikidappu is situate, or the land in which the kudikidappu is situate, is less than the extent specified above the kudikidappukaran shall be entitled to purchase only the land available for purchase as the case may be. The land in which kudikidappu is situate, in the instant case is only 10 cents and the entire 10 cents was acquired by the Government.

2A. Sub-section (7) of Section 80 A of the K.L.R. Act says that the purchase price payable by a kudikidappukaran in consideration of the purchase allowed u/s 80A shall be twenty-five per cent of the market value of the land purchased and the improvements therein, other than the improvements, if any, belonging to the kudikidappukaran. Sub-section (8) of Section 80 A further says that one-half of the purchase price payable by the kudikidappukaran shall be met from the kudikidappukars Benefit Fund constituted u/s 109 and one-half of such price shall be paid in 12 equal annual instalments. So a reading of sub-section (7) & (8) of Section 80A shows that the kudikidappukaran was liable to pay only half of 1/8th portion of the market value of the land and improvements therein. By Act 16 of 1989 these provisions were further amended and sub-section (8) of Sec. 80A was substituted by a new subsection, which is to the following effect:

(8) The purchase price payable by the kudikidappukaran shall be met from the kudikidappukars" Benefit Fund constituted u/s 109.

So consequent on the commencement of Act 16 of 1989 the kudikidappukaran is entitled to purchase the statutorily permissible extent of kudikidappu land with the improvements thereon free of cost. Kudikidappukaran is not liable to pay any amount for obtaining a purchase certificate in respect of the kudikidappu occupied by him.

3. It is not disputed that the relevant provision for the purpose of apportionment of compensation in case of acquisition is section 112 of the Kerala Land Reforms Act. Clause (1) of section 112 says that in case of acquisition the compensation amount shall be apportioned among the land owner, intermediaries, cultivating tenant and the kudikidappukaran in the manner specified in the section. In the present case there is only the Land owner and the kudikidappukaran, as the matter in dispute is with regard to the acquisition of the kudikidappu site. Clause (2) of section 112 says that compensation for any building or other improvements shall be awarded to the person entitled to such building or other improvements and clause (3) says that the kudikidappukaran shall be entitled to the value of the minimum land occupied by his homestead or hut subject to the minimum of 3 cents in a city or major municipality or five cents in any other Municipality or 10 cents in panchayat area or township. The main thrust of the arguments of the appellant's counsel is that the kudikidappukaran is not only entitled to the value of the land but also the improvements standing thereon. The counsel contended that the land includes the improvements and other structures. I am unable to accept this contention. Section 112 of the K.L.R. Act specifically categorises the items and states that the compensation in respect of the building and improvements would only be paid to the person entitled to such building or other improvements. So it is clear that if the building belonged to the landowner, he would be entitled to get compensation. Under the Land Reforms Act two types of buildings are defined. The expression "hut" used in the Act is to mean a dwelling house constructed by a person other than the person permitted to occupy it, whereas the expression "homestead" is defined as a dwelling house erected by the person permitted to have the use and occupation of any land for the purpose of such erection and includes any such dwelling house re-constructed by the kudikidappudaran in accordance with the provisions of section 79. So if it is a homestead the landlord would be entitled to get value of that homestead and if the kudikidappukaran had made any re - construction as envisaged u/s 79 of course he would be entitled to get a portion of the compensation amount. In the present case admittedly the building situated in the property was constructed by the land owner and he alone is entitled to get the value of that building.

4. In the case of improvements also it is specifically provided u/s 112 (2) that the value of the improvements is to be awarded to the person entitled to such improvements. The appellant has no case that she effected any improvements in

the property. The counsel for the appellant contended that the "person" mentioned in clause (2) of section 112 does not refer to the landowner and it refers only to kudikidappukaran. This contention is not correct. If the improvements were effected by the kudikidappukaran, certainly he would be entitled to get the value of improvements, and if they were not effected by him, the compensation should go to the landowner.

5. The counsel for the appellant further contended that by virtue of the provisions contained in section 80A read with section 109 and the provisions of Act 16 of 1989 kudikidappukaran was entitled to purchase the kudikidappu site with the buildings and other improvements thereon free of cost and the acquisition proceedings have foiled the attempt of the kudikidappukaran to purchase the kudikidappu site and therefore she has been deprived of her valuable rights and it is further contended that therefore section 112 of the K.L.R. Act has to be interpreted in such a manner to give the benefits to the kudikidappukaran. Of course if there was any ambiguity in the language used in the section the provisions could be interpreted in such a way to confer the benefit to the kudikidappukaran, as the Act itself is enacted to protect the interests of the weaker sections, like the tenants and the kudikidappukars. But in the instant case specific provisions have been made as to how a apportionment is to be effected and there is no ambiguity as such.

6. The counsel for the appellant also contended that the appellant filed an application in 1983 and the award was passed only subsequently. So the rights of parties have to be determined as on the date of filing of the application and that the kudikidappukaran should have been deemed to be the landowner as on the date of the application. This plea also has not much force. A kudikidappukaran would cease to be a kudikidappukaran only after acquiring a purchase certificate. Until a purchase certificate is obtained the kudikidappukaran will continue as a kudikidappukaran and at the time of passing of the award and taking possession of the land by the Government the appellant herein continued as a kudikidappukari and section 112 of the K.L.R. Act is the relevant provision to be applied for the apportionment of the amount. It is made clear u/s 80 C (2) that as soon as may be after the order of the Land Tribunal under sub-section (3) of Section 80B has become final the Land Tribunal shall issue a certificate of purchase in such form and containing such particulars as may be prescribed, and thereupon the right, title and interest of the landowner, the intermediaries if any and the person in possession where he is not the landowner, in respect of the land allowed to be purchased shall vest in the kukidappukaran free from all encumbrances with effect from the date on which the order of the Land Tribunal under the said sub-section (3) has become final. In the instant case the appellant could not get a certificate of purchase as the land was acquired by the Government before the order under sub - section (3) of section 80B was passed by the Land Tribunal. In view of the clear and unambiguous provisions of the K.L.R. Act it can only be held that the appellant is entitled to only that part of the compensation which represents the value of the land which she was entitled to

purchase. The order passed by the court below is not liable to be interfered with. The land acquisition appeal is without any merit and the same is dismissed, however, without costs.