

(1989) 03 KL CK 0021
In the High Court Of Kerala
Case No : C R. P. No. 1613 of 1983

John Mendez

APPELLANT

Vs

K. P. Mathew and Others

RESPONDENT

Date of Decision : 07-03-1989

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 102, 72F, 72F(4), 80B

Citation : (1989) 1 KLJ 473

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

Bench : Single Bench

Advocate : T. P. Mathai, for the Appellant; N. Sukumaran and S. Ananthasubramonian for Respondents and Government Pleader, for the Respondent

Judgement

K. G. Balakrishnan. J.

1. The revision petitioner filed O. A. 589 of 1980 before the Land Tribunal, Vypeen u/s 80B of the Kerala Land Reforms Act for purchase of kudikidappu rights. The original application was filed with the present respondent on the party array. Thereafter I. A. 308 of 1982 was filed before the Land Tribunal praying that notices may be issued to two other persons who have got interest in the land. The Land Tribunal rejected the application and refused to send notice to these two persons. The petitioner filed an appeal before the Appellate Authority u/s 102 of the K. L. R. Act. The Appellate Court dismissed the appeal stating tint the appeal is not maintainable against an interlocutory order passed by the Land Tribunal. The present revision is directed against the judgment in the appeal. The learned counsel for the revision petitioner pointed out that the Land Tribunal was bound to issue notice to the two persons who have interest in the land sought to be purchased by the kudikidappukaran. Sub-section (3) of section 80B says that the "Land Tribunal shall after giving notice to the kudikidappukars in the land in which the kudikidappu is situate and other persons interested in the land and after such enquiry as may be prescribed, pass such order on the application as it

thinks fit", (emphasis supplied). Therefore, it is clear that the Land Tribunal should have issued notice to the persons interested in the land especially when the petitioner moved the Land Tribunal by a separate application requesting to issue notice to the interested persons. Rule 92(3) of the Tenancy Rules empowers the Land Tribunal to implead additional parties as party to the proceedings. The order passed by the Land Tribunal dismissing the interlocutory application is not sustainable

2. As regards the maintainability of the appeal before the Appellate Authority it was contended on behalf of the respondent that this is not an order passed u/s 80B of the K. L. R. Act; therefore an appeal is not maintainable u/s 102 of the Act. It is true that the impugned order of the Land Tribunal is not a final order passed u/s 80B of the Act. The order passed by the Land Tribunal could be construed only as an order passed under sub-section (3) of Section 80B of the Act. But it is to be noted that if the interested parties are not on the party array and if the final order is passed without notice to the real person interested in the land, the purchase certificate that would be issued to the petitioner may not bind the person interested in the land. That would definitely affect the rights of the petitioner. Therefore, the dismissal of the application of the revision petitioner really amounts to the denial of the valid rights of the petitioner. As the order passed by the Land Tribunal has affected the rights of the petitioner, it is to be held that an appeal would lie u/s 102 of the K. L. R. Act.

2A. I am fortified in my view by the decision of a Division Bench of this Court in *Mathevankochu v. Madhavan* (1979 K. L. T. 316). There the petitioner filed an application u/s 72F (4) to get himself impleaded in the proceedings u/s 72F alleging that he is an interested person. That application was dismissed and this Court held that the order refusing or rejecting an application filed under sub-section (4) of section 72F of the K. L. R. Act by a person interested in the land is not in the nature of an interlocutory order and is certainly an order which affects the right, title and interest of the persons and the object of section 102 is only to confer a right of appeal to a party aggrieved by an order which affects his right or liability. Therefore, the dismissal of the appeal by the Appellate Authority holding that the appeal was not maintainable is patently illegal and it has resulted in miscarriage of justice. Hence, I set aside the order passed by the Appellate Authority and direct the Land Tribunal to issue notice to the persons mentioned by the petitioner and proceed with the purchase application in accordance with law.

The C. R. P. is disposed of as above. No costs.