

**(1974) 09 KL CK 0010**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 2492 of 1971**

M.M. Joseph

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

**Date of Decision :** 16-09-1974

**Acts Referred:**

Constitution of India, 1950 — Article 31A

Kerala Land Reforms Act, 1963 — Section 75, 76 , 77 , 78 , 79

**Citation :** AIR 1975 Ker 103

**Hon'ble Judges :** P. Govindan Nair, C.J.;V.P. Gopalan Nambiyar, J;G. Viswanatha Iyer, J

**Bench :** Full Bench

**Advocate :** Joseph Augustine, for the Appellant; A.G., K. Ravindranathan Nair and K. Parameswaran, for the Respondent

**Final Decision :** Dismissed

## Judgement

P. Govindan Nair, C.J. and V.P. Gopalan Nambivar, J.—The question raised in this petition is whether the provisions regarding "kudikidappu" and the right of a "Kudikidappukaran" to purchase the "kudikidappu" will apply to the land inside the municipality.

2. The petitioner rented out a small building to the third respondent. The fourth respondent, the daughter of the third respondent, and his son-in-law the 5th respondent, are residing in that building. It is alleged that the 6th and 7th respondents trespassed on the property and put up two huts. All five of them have filed applications for purchase of the "kudikidappu."

3. This petition has been taken on the basis of the decision in Sankaran Nambissan v. Sarvothama Rao 1972 K LT 891. The contention is that the Kerala Land Reforms Act, 1964 will apply only to agricultural lands and will not therefore apply to the buildings inside the municipality. The very definition of a "kudikidappukaran" indicates that the Act would apply to areas within the municipality. The provision in sub-section (3) of Section 80-A dealing with the

right of a "kudikidappukaran" to purchase his kudikidappu indicates that the lands inside the municipal areas are specifically brought within the ambit of the section, necessarily indicating that there can be "kudikidappu" inside a municipal area. It is therefore idle to contend that the Act will not apply to municipal areas. The Act having been included in the Ninth Schedule to the Constitution its validity cannot now be questioned on the ground that it infringes Article 31A of the Constitution. The decision in 1972 KLT 891 will therefore be of no assistance to the petitioner. We may add that the correctness of the decision is also challenged by the respondent in the light of the pronouncements of the Supreme Court in *Balmadies Plantations Ltd. and Others Vs. State of Tamil Nadu*, and *State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.*, . But this question does not arise for the Act has become immune from challenge by its inclusion in the Ninth Schedule to the Constitution. We dismiss this petition. There will no order as to costs.

Viswanatha Iyer, J.

4. With respect, "I agree with my lord Chief Justice and Gopalan Nambiyar, J. in their conclusion toot the original petition should be dismissed but I would like to state my own reasons. The constitutional validity of Act I of 1964 as amended is not open to any challenge now in that the Act as amended has been included in the Ninth Schedule to the Constitution and the State Legislature is competent to legislate in respect of land. The court can only interpret the various provisions of it and find out the legislative intent. No doubt, the scope of the various provisions of the Act is not widened by the inclusion of the Act in the Ninth Schedule and to that extent the decision in 1972 KLT 891 is correct. But, with respect, I do not agree with the said decision in so far as it states that the Act does not apply to non-agricultural lands. Whether a particular provision in the Act applies to an agricultural or non-agricultural and is a matter for judicial interpretation and for that the court may have to look into the language used, (the subject-matter dealt with, the object of the provisions and its context. In this case the provisions regarding kudikidappu and rights of kudikidappukarans, namely Sections 75 to 80-G alone arise for consideration and I am considering their scope only. They refer to lands located in a Panchayat, town Municipality or City and state that the rights of a kudikidappukaran to purchase a particular extent of land will depend on such location. They emphasise the main aspect of occupation of a homestead or hut in the land for residence and confer new rights to such occupants. The character of the land in which that homestead or hut stands is immaterial and is not reckoned at all. Land in any part of the State will fall under one or other local authority abovementioned. Any such land, agricultural or non-agricultural, containing a kudikidappu or which adjoins a kudikidapyu or which is fit for erecting a homestead will be hit by these provisions. That is the scope of Sections 75 to 80-G, Thus the petitioner's contention that these provisions, in so far as they apply to non-agricultural lands in a municipality and confer kudikidappu rights on persons other than agricultural labourers and villages artisans are invalid, cannot stand. I dismiss the original

petition.