

(1992) 12 KL CK 0003
In the High Court Of Kerala
Case No : S.A. No. 364 of 1981

Muhammed Haji and others

APPELLANT

Vs

Kunhunni Nair and others

RESPONDENT

Date of Decision : 01-12-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 9
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 92
Kerala Land Reforms (amendment) Act, 1979 — Section 16
Kerala Land Reforms Act, 1963 — Section 101, 101(3), 101(4), 101(5), 105A

Citation : (1993) 1 KLJ 1

Hon'ble Judges : M. Jagannadha Rao, C.J;K.S. Paripoornan, J;K.A. Nayar, J

Bench : Full Bench

Advocate : T.R.G. Warriyar, Sebastian Davis and P.V. Jyothi Prasad, for the Appellant; V.P. Mohan Kumar and P. Santhosh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The above appeal comes up before the Full Bench on a reference made by a Division Bench of this Court, by order dated 12-12-1989. The Division Bench felt that the decision in Parameswaran Thampi v. Podiyan Thomas (1984 KLT 397), relied on by the respondents in the appeal (Plaintiffs in the suit) in support of the decrees of the courts below requires reconsideration. Since the decision in Parameswaran Thampi's case (1984 KLT 397) is one rendered by a Bench of this Court, the matter is referred for consideration by a Full Bench. The short facts necessary for the disposal of this appeal are as follows:-

Defendants 2 to 6 in O.S. No. 172/73, Munsiff's Court, Ponnani are the appellants in this second appeal. The plaintiffs in the suit are the respondents herein. The suit was originally laid, against defendants 1 and 2 only. Pending the suit the first defendant died. His legal heirs were impleaded. Second defendant was recorded as one of the legal heirs of the first defendant Defendants 3 to 6

were impleaded as the legal heirs of the first defendant on 13-8-1976. The suit was one for redemption of Ext. A1 mortgage dated 14-3-1956. There was also a prayer for recovery of possession of the property on the basis of title. There are two items in the suit, Item No. 1 consists of three thaks, Item No. 2 consists of one thak. Item No. 1 (thak No. 1) was given on possessory mortgage, Item No. 1 (thak No. 2 and 3) and item No. 2 were given on simple mortgage. It was alleged that in 1965 the first defendant surrendered possession of item No. 1 (thak No. 1) orally to the plaintiffs for cultivation. The first defendant also accepted possession of thaks No. 2 and 3 in item No. 1 and item No. 2 orally in exchange. The second defendant is the son of the first defendant. He pleaded that item No. 1 (thak No. 2 and 3) and item No 2 were held by him on an oral lease granted in 1135 M.E. (1959). Thus the second defendant claimed tenancy over item No. 1 (thaks 2 and 3) and item No. 2. The plaintiffs filed O.P. No. 5 of 1969 and deposited the mortgage amount. The suit was filed on 29-11-1973 for redemption, and for recovery of possession on the basis of title. Since the plea of tenancy was raised, the civil court referred the question of tenancy to the appropriate Land Tribunal on 9-7-1974. While the matter was pending there, the first defendant died. His legal heirs were brought on record on 13-8-1976. The Land Tribunal answered the reference on 31-12-1976, and forwarded the same to the civil court holding that the second defendant is not a tenant. The suit was decreed by the trial court on 31-8-1977. The second defendant appealed before the Sub Court, Tirur on 30-9-1977 (A.S. No. 114 of 1977). While the matter was pending before the Land Tribunal on a reference made by the civil court (O.A. No. 1234 of 1974), the second defendant assigned his rights to the 6th defendant and one Ummer on 18-10-1975. The 6th defendant and the said Ummer filed an application u/s 72 B of the Kerala Land Reforms Act against the jenmi/Devaswom and the inter-mediaries (Plaintiffs in O.S. No. 172 of 1973) for purchase of the rights, title and interest in respect of the holding. This is O.A. No. 17732 of 1976 before the Special Tahsildar (L.R). Malappuram. It was filed on 22-10-1975. The said O.A. was disposed of on 17-10-1977 holding that the applicants (2nd defendant and Ummor) are cultivating tenants entitled to the assignment in respect of the holding. The application was allowed. It was ordered that the right, title and interest of the land owner and intermediary in respect of the above holding be assigned in favour of the applicants free from all encumbrances. The plaintiffs in O. S. No. 172/73 pleaded before the Land Tribunal (Munsiff), Kozhikode that in view of the order passed in O.A. No. 1234 of 1974 the applicants in O.A. No. 17732 of 1976 have no fixity of tenure. Since the copy of the order passed by the Land Tribunal in O.A. No. 1234 of 1974 was not produced before the Special Tahsildar (L.R), Malappuram in O.A. No. 17732 of 1976, the matter was disposed of on 17-10 1977 holding that the 6th defendant and Ummor are entitled to the purchase of the holding u/s 72-B of the Act. The appeal filed by defendants 2 to 6 before the Sub Court, Tirur (A.S. No. 114 of 1977) was heard and disposed of on 13-11-1980. The appellants before the Sub Court filed additional documents in the appeal. One such document is Ext. B6, the order passed by the Land Tribunal in O.A. No. 17732 of 1976 dated

17-10-1977. Ext. B7, the purchase certificate dated 21-2-1978 was also filed by them. In the appeal, the appellants took up a plea that the question of tenancy was barred by res judicata. The learned Subordinate Judge (Lower Appellate Court) repelled the said plea. After referring to Ext. B6, copy of the order of Land Tribunal in O.A. No 17732 of 1976 dated 17-10 1977, the learned Subordinate Judge held that the said order was passed long after the finding of the Land Tribunal in the original suit holding that the appellants before it are not tenants (decision dated 31-12-1976) and the order of the Land Tribunal, Ext. B6 (and the consequential purchase certificate, Ext. B7) in O.A. No. 17732 of 1976, is barred by res judicata by reason of the finding of the Land Tribunal referred to in the suit and so Ext. B6 ignoring the earlier decision of the Land Tribunal cannot be relied on and is of no avail to substantiate the plea of tenancy pleaded by the appellants. The decree of the Civil Court and the finding of the Land Tribunal which formed part of it were confirmed and the appeal was dismissed. It is from the the aforesaid judgment and decree passed by the learned Subordinate Judge, Tirur dated 13-11-1980, defendants 2 to 6 in O.S. No. 172 of 1973 have come up in second appeal.

2. The following six questions have been formulated as substantial questions of law arising for decision in this Second Appeal. They are:

- i) What is the legal effect of the certificate of purchase evidenced by Exts. - B6 and B7 over the right of the plaintiffs to claim relief in respect of the properties covered by it?
- ii) Whether the plea that Taks 2 and 3 of item 1 and item 2 are held on the basis of the mortgage sought to be redeemed is barred by section 92 of the Evidence Act?
- iii) Whether the plea of the plaintiffs in respect of the said items is barred by res judicata?
- iv) Whether the claim of the plaintiffs in respect of the said items is barred by limitation?
- v) Whether the decree for recovery of possession of Taks 2 and 3 of item 1 and item No. 2 is sustainable in law?
- vi) Whether the terms of the registered Mortgage Deed (Ext. A1) can in law be varied without the execution of another registered deed?

3. Padmanabhan, J., who heard the Second Appeal in the first instance, passed an order referring the appeal to a Division Bench, holding that the decision in Parameswaran Thampi v. Podiyan Thomas (1984 KLT 397) on which reliance was placed by the respondents to substantiate the finding of the lower appellate Court, that the finding of the Land Tribunal on a reference made by the Civil Court operates as res judicata and therefore the subsequent decision to the contrary in O.A. No. 17732 of 1976 in the Purchase proceeding by the Land Tribunal was clearly wrong and unsustainable required reconsideration.

Subsequently, a Division Bench of this Court, by order dated 12-12-1989, has referred the case for consideration by a Full Bench;

4. We heard counsel for the appellants, Mr. T.R.G. Wariyar as also counsel for the respondents, Mr. V.P. Mohan Kumar.

5. Counsel for the appellants formulated the following points:-

- (i) The Land Tribunal is a Court of exclusive jurisdiction;
- (ii) Such Tribunal rendering a decision which is within its exclusive jurisdiction will be *res judicata* even if the matter comes up before the Civil Court. It is a decision which is later in point of time that will constitute *res judicata*;
- (iii) The decision of the Tribunal of exclusive jurisdiction can be attacked in the Civil Court only if it is a nullity;
- (iv) The decision of the Tribunal of exclusive jurisdiction cannot be collaterally attacked;
- (v) The Principle formulated in *Anisminie v. Foreign Corporation etc.* (1969 (1) All. E.R. 208, HL) and followed in the decisions of the Supreme Court can be applied only in a direct attack and not open to a collateral attack; and
- (vi) If the court of Tribunal had inherent jurisdiction to entertain the proceeding, any decision rendered by it in the proceeding cannot be said to be one without jurisdiction or a nullity, whatever the infirmity may be.

6. Counsel for the respondents formulated the following points:

- (i) The Land Tribunal in rendering the order in O.A. No. 17732 of 1976, dated 17-10-1977, acted in flagrant violation of the fundamental provisions of law specified in section 101 (3) of the Kerala Land Reforms Act read with rules 9 and 10 of the Kerala Land Reforms (Vesting and Assignment) Rules, 1970. No preliminary order was passed by the Land Tribunal; nor was the procedure contemplated by rules 9 and 10 of the Rules adhered to in passing the final order. In such circumstances, the later order passed by the Land Tribunal in O.A. No. 17732 of 1976, dated 17-10-1977, is without jurisdiction and a nullity and the Civil Court could adjudge the plea that the later order passed by the Land Tribunal is one without jurisdiction and is a nullity;
- (ii) The Land Tribunal gets jurisdiction to render the decision in proceeding initiated u/s 72 B (3) of the Act, only u/s 101 (3) of the said Act. The Land Tribunal can decide the question as to whether a person is a tenant or whether the right, title and interest of the Land owner and the intermediaries, if any, in respect of the holding have vested in the Government u/s 72 of the Act "only if a question arises in that behalf". In view of the earlier decision of the Land Tribunal in O.A. No. 1234 of 1974, in the reference made by the Civil Court, dated 31-12-1976, the question as to whether the appellants are tenants did not "arise" for consideration for decision in O.A. No. 17732 of 1976, (the later

decision of the Land Tribunal). Any decision rendered u/s 101 (3) of the Act, wherein a question did not arise for decision, is one without jurisdiction and a nullity. The later decision of the Land Tribunal which is put forward as constituting *res judicata* is of no avail, since the said decision is wholly illegal, without jurisdiction and, a nullity.

7. Before us, the arguments on both sides covered a wide range. Though the arguments stressed different points and various aspects, as formulated by us in paragraphs 6 and 7 *supra*, the only cardinal point argued before us, entered round the fundamental plea raised by counsel on both sides in the following form:

Appellant's counsel argued that the later decision rendered by the Land Tribunal in O.A. No. 17732/76 holding that the appellants are "cultivating tenants" entitled to purchase the rights of the landlord and the intermediaries, will constitute "*res judicata*" and whatever be the decision rendered earlier by the Land Tribunal, in the reference made by the Civil Court in O.A. No 1234/74, is of no avail and the lower appellate court was bound to give effect to the said legal position. And further it was stressed that the learned Subordinate Judge was wrong in holding that the earlier decision in the civil suit, incorporating the decision in O.A. No. 1234/74 of the Land Tribunal would constitute *res judicata* for the later decision in O.A. No. 17732/76. The Civil Court was incompetent to adjudge the issue, as to whether the later decision rendered in O.A. No. 17732/76 is competent or valid. The jurisdiction of the civil court is barred.

The respondents' counsel argued in the following form:-

Between the same parties, on a reference made by the civil court, the Land Tribunal first rendered the decision in O.A. No. 1234/74 holding that the appellants are not tenants and it formed part of the judgment of the civil court - a decision rendered by a court of general jurisdiction. There-after the question of "tenancy" did not and cannot be said to, "arise", as specified in section 101 (3) of the Land Reforms Act, before the Land Tribunal for decision in the later proceedings (O.A. No. 17732/76) for consideration. Any decision rendered in the later proceeding (O.A. No. 17732/76), without complying with the mandatory provisions (condition precedent) of section 101 (3) of the Land Reforms Act and the procedure prescribed by section 101 (3) read with rules 9 and 10 of the Tenancy Rules, is wholly without jurisdiction and is a nullity and it is open to the Civil Court to adjudge the same and the jurisdiction of the civil court is not barred. That is what has been given effect to by the lower appellate court, in substance, in this case. The plea that the later decision constitutes "*res judicata*" is of no avail, since it is wholly without jurisdiction and a nullity.

8. Counsel on both sides referred to many provisions in the Kerala Land Reforms Act as amended in 1969 and the relevant rules under the Act and also an array of authorities to substantiate their pleas. We shall refer to the more important provisions of the statute as also the important decisions which have got a direct bearing on the decision which we have reached in this case focussing our

attention on the central point formulated in the earlier paragraph.

9. The following statutory provisions are relevant:

THE KERALA LAND REFORMS ACT, 1963 (As amended by Act 35/1969)

Sec. 2(8).

"Cultivating tenant" means a tenant who is in actual possession of, and is entitled to cultivate, the land comprised in his holding:

Sec. 2(32) :

"Land Tribunal" means a Land Tribunal constituted u/s 99;

Sec. 72:

Vesting of landlord's rights in Government -

(1) On a date to be notified by the Government in this behalf in the Gazette, all right, title and interest of the landowners and intermediaries in respect of holdings held by cultivating tenants (including holders of kudiyruppus and holders of karaimas) entitled to fixity of tenure u/s 13 and in respect of which certificates of purchase under sub-section (2) of section 59 have not been issued, shall, subject to the provisions of this section, vest in the Government free from all encumbrances created by the landowners and intermediaries and subsisting thereon on the said date:

Sec. 72B:

Cultivating tenants' right to assignment-

(1) The cultivating tenant of any holding or part of a holding, the right, title and interest in respect of which have vested in the Government u/s 72, shall be entitled to assignment of such right, title and interest;

Sec. 72B (3):

Any cultivating tenant entitled to assignment of the right, title and interest in respect of a holding or part of a holding under sub-section (1) may apply to the Land Tribunal within whose jurisdiction such holding or part is situate within two years from the date of vesting of such right, title and interest in the Government u/s 72, or such further time as may be allowed by the Government in this behalf, for such assignment to him.

Sec. 72C:

Assignment where application is not made by cultivating tenant. Notwithstanding anything contained in sub-section (3) of section 72B or section 72BB the Land Tribunal may, subject to such rules as may be made by the Government in this behalf, at any time after the vesting of the right, title and interest of the landowners and intermediaries in the Government u/s 72, assign such right, title

and interest to the cultivating tenants entitled there to, and the cultivating tenants shall be bound to accept such assignment.

Sec. 72F:

Land Tribunal to issue notice and determine the compensation and purchase price - (1) As soon as may be after the right, title and interest of the landowner and the intermediaries, if any, in respect of a holding or part of a holding have vested in the Government u/s 72, or, where an application u/s 72B or section 79BB has been received by the Land Tribunal, as soon as may be after the receipt of such application, the Land Tribunal shall publish or cause to be published a public notice in the prescribed form, in such manner as may be prescribed, calling upon-

(a) the landowner, the intermediaries, if any, and the cultivating tenant; and

(b) all other persons interested in the land, the right, title and interest in respect of which have vested in the Government, to prefer claims and objections, if any, within such time as may be specified in the notice and to appear before it on the date specified in the notice with all relevant records to prove their respective claims or in support of their objections.

(2) The Land Tribunal shall also issue a notice individually to the landowner, each of the intermediaries and the cultivating tenant and also, as far as practicable, to the other persons referred to in clause (b) of sub-section (1) calling upon them to prefer claims and objections if any within such time as may be specified in the notice and to appear before it on the date specified in the notice with all relevant records to prove their respective claims or in support of their objections-

(3)...

(3A) The Land Tribunal shall furnish a copy of the public notice under sub-section (1), along with a statement containing the names and addresses of the persons to whom individual notices have been issued under sub-section (2) and such other particulars as may be prescribed, to the village committee of the village in which the holding is situate or, where the holding is situate in more than one village, the village committee of each such village and require the village committee or village committees, as the case may be, to advise the Tribunal on the matters mentioned in sub-section (3B) before such date as may be specified in the requisition.

(3B) On receipt of the copy of the public notice and the statement from the Land Tribunal under sub-section (3A), the village committee, or each of the village committees shall, after such inquiry as may be prescribed, advise the Land Tribunal in respect of the following matters, namely :-

(a) the names and addresses of the landowner, the intermediaries, if any, and the cultivating tenant;

(b) the names and addresses of all other persons interested in the land:

(c) such particulars as are necessary for the identification of the land comprised in the holding, as may be prescribed;

(d) the value of encumbrances subsisting or claims for maintenance or alimony charged on the right, title and interest of the landowner and intermediaries, if any;

(e) the amount due to the holders of encumbrances or the persons entitled to maintenance or alimony and the order of priority in which the amount is payable; and

(f) such other matters as may be prescribed.

(4)...

(5) The Land Tribunal shall, after considering the claims and objections received in pursuance of the notice issued under sub-section (1) or sub-section (2) and the advice received from the village committee or village committees before the date specified therefor and hearing any person appearing in pursuance of the notice issued under sub-section (1) or sub-section (2) and after making due enquiries, pass an order specifying-

(a) the extent, survey number and such other particulars as may be prescribed, of the land, the right, title and interest in respect of which have vested in the Government u/s 72;

(b) the compensation due to the the landowner and intermediaries, if any;

(c) the amount due to the landowner and each of the intermediaries, if any, on the apportionment of the compensation;

(d) the value of encumbrances subsisting or claims for maintenance or alimony charged on the right, title and interest of the land-owner and the intermediaries, if any;

(e) the amount due to the holders of encumbrances or the persons entitled to maintenance or alimony, and the order of priority in which the amount is payable;

(f) the amount payable to the landowner and each of the intermediaries after deducting the value of encumbrances or claims for maintenance or alimony;

(g) the purchase price payable by the cultivating tenant;

(h) the rent payable by the cultivating tenant to the Government in the cases falling u/s 72 E;

(hh) where the landowner or intermediary is a religious, charitable or educational institution of a public nature and is entitled to annuity instead of compensation, the amount of such annuity; and

(i) such other particulars as may be prescribed.

Sec. 72 K:

Issue of certificate of purchase - (1) As soon as may be after the determination of the purchase price u/s 72 F or the passing of an order under sub-section (3) of section 72MM the Land Tribunal shall issue a certificate of purchase to the cultivating tenant, and thereupon the right, title and interest of the landowner and the intermediaries, if any, in respect of the holding or part thereof to which the certificate relates shall vest in the cultivating tenant free from all encumbrances created by the landowner or the intermediaries, if any.

Explanation - For the removal of doubts, it is hereby declared that on the issue of the certificate of purchase, the landowner or any intermediary shall have no right in the land comprised in the holding, and all his rights including rights, if any, in respect of trees reserved for his enjoyment shall stand extinguished.

(2) The certificate of purchase issued under sub-section (1) shall be conclusive proof of the assignment to the right, title and interest of the landowner and the intermediaries, if any, over the holding or portion thereof to which the assignment relates.

Sec. 99:

Constitution of Land Tribunal - (1) The Government may, by notification in the Gazette, constitute one or more Land Tribunal or Land Tribunals for any area or for any class of cases specified in the notification, for the purpose of performing the functions of a Land Tribunal under this Act.

(2) The Land Tribunal shall consist of a sole member who shall be a judicial officer of the rank of munsiff or an officer not below the rank of a Tahsildar, appointed by the Government.

Sec. 101;

Powers of the Land Board and the Land Tribunal -

(1) The Land Board and the Land Tribunal constituted under this Act shall have all the powers of a civil court while trying a suit under the Code of civil Procedure, 1908, in respect of the following matters namely:-

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(a) Summoning and enforcing the attendance of any person and examining him on oath-,

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses or for local investigation; and

(e) any other matter which may be prescribed.

(3) Where in any proceeding before the Land Tribunal a question arises whether a person is a small holder or not or whether a person is or is not a tenant or whether the right, title and interest of the landowner and the intermediaries, if any, in respect of any holding, have or have not vested in the Government under S. 72, it shall be competent for the Land Tribunal to decide the question.

(4) If any question arises as to whether any land is exempted u/s 81, the question shall be decided by the Land Board, or the Taluk Land Board, as the case may be, in such manner and having regard to such matters as may be prescribed, and the decision of the Land Board or the Taluk Land Board shall be final.

(5) If any question arises as to whether any land is principally used for the purposes specified in clause (5) of section 2, the question shall be decided by the Land Board or the Taluk Land Board, as the case may be, after taking into account the extent of the amount invested in, and the income from the portion of the land so used and the remaining portion and other relevant matters, and the decision of the Land Board or the Taluk Land Board shall be final.

Sec. 125:

Bar of jurisdiction of civil courts:- (1) No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the appellate authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government:

(1) Provided that nothing contained in this sub-section shall apply to proceedings pending in any court at the commencement of the Kerala Land Reforms (Amendment) Act, 1969.

(2) No order of the Land Tribunal or the appellate authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government made under this Act shall be questioned in any civil court, except as provided in this Act.

(3) If in any suit or other proceeding any question regarding rights of a tenant or of a kudikidappukaran (including a question as to whether a person is a tenant or a kudikidappukaran) arises, the civil court shall stay the suit or other proceeding and refer such question to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situate together with the relevant records for the decision of that question only.

(4) The Land Tribunal shall decide the question referred to it under sub-section (3) and return the records together with its decision to the civil court.

(5) The civil court shall then proceed to decide the suit or other proceedings accepting the decision of the Land Tribunal on the question referred to it.

(6) The decision of the Land Tribunal on the question referred to it shall, for the

purposes of appeal, be deemed to be part of the finding of the civil court.

(7) No civil court shall have power to grant injunction in any suit or other proceeding referred to in sub-section (3) restraining any person from entering into or occupying or cultivating any land or kudikidappu or to appoint a receiver for any property in respect of which a question referred to in that sub-section has arisen, till such question is decided by the Land Tribunal, and any such injunction granted or appointment made before the commencement of the Kerala Land Reforms (Amendment) Act, 1969, or before such question has arisen, shall stand cancelled.

(8) In this section, "civil court" shall include a Rent Control Court as defined in the Kerala Buildings (Lease and Rent control) Act, 1965."

Sec. 127 :

Act to override other laws, etc. - The provisions of this Act shall have effect notwithstanding anything any other law or any custom or usage or in any contract, express or implied, inconsistent with the provisions of this Act".

(Section 108A, making applicable section 11 C.P.C. to proceedings before the Land Tribunal, was inserted by section 16 of the Kerala Land Reforms (Amendment) Act, 1979 with effect from 7-7-1979 and A so not considered herein).

THE KERALA LAND REFORMS (VESTING AND ASSIGNMENT) RULES, 1970.

Rule 9;

Dispute about tenancy or vesting:- (1) Where after the publication of the public notice under sub-section (1) of section 72F and the service of the individual notice under sub-section (2) of that section in respect of a holding, any of the parties to the proceedings pleads that the land comprised in such holding is not held by any cultivating tenant or that the right, title and interest of the landowner and the intermediaries in respect of such holding have not vested in the Government, the Land Tribunal shall decide such question as a preliminary point and pass an order therein with reasons for such order.

(2) Where the order under sub-rule (1) is that such land is not held by any cultivating tenant or that such right, title and interest have not vested in the Government, the Land Tribunal shall forthwith reject the application referred to in rule 4 or discontinue the proceedings referred to in rule 5 and such order for rejection or discontinuance, as the case may be, shall be deemed to be an order u/s 72F for all purposes of the Act.

Rule 10;

Further proceedings for assignment and determination of compensation purchase price, etc.-

(1) Where in any proceedings for the assignment of the right, title and interest of

the landowner and intermediaries in respect of a holding vested in the Government, to the cultivating tenant, there is no dispute of the nature referred to in sub-rule (1) of rule 9, or, where there is such a dispute, the Land Tribunal has ordered that the holding is held by a cultivating tenant or that "the right, title and interest of the landowner and intermediaries have vested in the Government, as the case may be, the Land Tribunal shall, after perusal and consideration of the application, if any, referred to in rule 4, the information referred to in rule 5, the written statement, if, any filed by the parties, other documentary evidence, if any, produced and the report, if any, of the officer appointed u/s 105A and after such further enquiries as it may deem necessary and after giving a reasonable opportunity of being heard to all the persons to whom individual notices have been issued under sub-section (2) of section 72F, and to the other persons who have preferred claims and objections and appeared before the Tribunal in pursuance of the notice issued under sub-section (1) of that section, pass an order under sub-section (5) of the said section:

Provided that the order on a dispute referred to in sub-rule

(1) of Rule 9 shall not be reviewed by the Land Tribunal.

(2) The Land Tribunal shall before passing the order under sub-section (5) of section 72F ascertain from persons claiming to be cultivating tenants, in case they appear before it, as to whether they opt to pay the purchase price in a lump.

10. The appellants' case in this appeal solely depends on a plea of res judicata. The plea is that the later decision of the Land Tribunal in O.A. No. 17732 of 1976 concludes the plea of tenancy and the lower appellate court should have held that it constitutes res judicata. Counsel for the respondents would say that the later decision of the Land Tribunal in O.A. No. 17732 of 1976, being one without jurisdiction or a nullity, the plea of res judicata is of no avail. The decisions of this Court reported in *Kunjan v. Janaki* (1980 KLT 796); *Kochu Pennu Appi Pennu and Others Vs. Kalyambi Nanani and Others*, and *M. Kunhirama Kurup and Others Vs. Mayyarath Krishnan Kurup and Others*, have laid down that in the case of plurality of decisions on the same matter which are conflicting, between the same parties, the later decision will prevail and operate as res judicata. - See *Mulla C.P.C. Vol 1* (14th Edn.) 1981, page 164; *Sarkar C.P.C. Vol. 1*, 7th Edn. (1986), page 65, *V.V. Chitale C.P.C. (10th Bdn.) Vol. 1*-Notes 101 and 126 A, pages 289 and 311, and *C.P.C. B.V. Viswanatha Iyer. 4th Edn. (1986)* page 45. To resolve the controversy in this case, we have necessarily to adjudicate on the following:-

(A) whether the Land Tribunal is a Court or Tribunal of exclusive jurisdiction?

(B) whether the principle of res judicata will apply to decisions rendered by Land Tribunal (before the amendment Act of 1979, i.e. when Section 108A was not in the statute book?

(C) To what extent the jurisdiction of the civil court is barred regarding the

decision of the Land Tribunal?

On the above aspects, the decisions of this Court rendered under the provisions of the Land Reforms Act before the amendment effected in it by Act 35/69 and the decisions rendered after Act 35/69 stand on different footing.

Points A & B:

11. Under the provisions of the Kerala Land Reforms Act, before its amendment by Act 35/69, on the basis of sections 101 (3), 125 and 127, as it stood then, this Court had taken [the view that the Land Tribunal constituted under the Kerala Land Reforms Act is a Tribunal of limited Jurisdiction, that the bar of jurisdiction of the civil court under the Act would not include a decision on the collateral decision on facts made under the Act. In other words, the jurisdiction of the civil court u/s 9 C.P.C. is not barred. This was so held in Gopalakrishnan Nair v. Land Tribunal, Chengannur (1967 KLT 184 - 1967 KLJ 132) and Kunjan Kumaran v. Ramachandra Iyer (1969 KLT 822). But, from 1-4-1970, in view of the amendment Act (Act 35/69), the position changed. The legal position after the amendment Act (Act 35/69) is considered, amongst others, in three Full Bench decisions of this Court Koran v Kamala Shetty (1977 KLT 358-Full Bench of three Judges); Govindan Gopalan v. Raman Gopalan (1978 KLT 315 - Full Bench of three Judges) and Kesava Bhat v. Subraya Bhat (1979 KLT 766 - Full Bench of five Judges). It is the legal effect of these three Full Bench decisions that will have a bearing on the adjudication of this appeal. We shall briefly advert to the facts and the ratio laid down in these three decisions.

12. In Koran v. Kamala Shetty (1977 KLT 358 - FB), the facts are as follows:-

The revision-petitioner in the said case had obtained an assignment of Government lands in 1966. It was cancelled on 11-8-1971. He filed applications for purchase of kudikidappu rights u/s 80-B of the Land Reforms Act (O.A. No. 381/70 and 881 of 1971). They were dismissed on 15-11-1971 and 11-11-1971. The latter application was dismissed on the ground that the revision-petitioner had 3.66 acres of land on registry under the rules for assignment of Government lands and so he was disentitled under the Act to claim the status of a kudikidappukaran. Even so, the revision-petitioner filed a third application for purchase of kudikidappu rights u/s 80-B of the Act. The Land Tribunal allowed the application. In appeal, the Appellate Authority (Land Reforms), Kozhikode directed that the application for purchase of kudikidappu be dismissed. The reason given was that the two prior applications for purchase of kudikidappu were dismissed. From the decision of the Appellate Authority, the petitioner filed a revision-petition in this Court and contended that since the assignment of Government lands to him was cancelled on 11-8-1971, the third application filed by him for purchase of kudikidappu rights is maintainable and the principle of res judicata will not apply. Delivering the judgment of the Full Bench, Gopalan Nambiyar, Ag. C.J., at page 361 of the report, held thus:

"There is thus sufficient authority to hold that the principle of finality or

conclusiveness of a prior decision or the general principle of res judicata is applicable even to quasi-judicial bodies like the Land Tribunals functioning under the Kerala Land Reforms Act. On principle it appears to us that this should be so, at these Tribunals are invested with the task of deciding important rights and have to do so on principles of natural justice and fair-play. In these circumstances, the rules of res judicata are applicable to them".

The revision was dismissed.

13. In *Govindan Gopalan v. Raman Gopalan* (1978 KLT 315-FB), the respondent Civil Revision Petition filed O.P. No. 47 of 1973 before the Munsiff's Court, Kottarakkara for redemption of a mortgage u/s 11 of Kerala Act 11 of 1970. The revision-petitioner in the said proceeding, contended that he was a tenant in respect of the land and filed I.A. No. 1891 of 1974 u/s 125 (3) of the Kerala Land Reforms Act requesting the Court to refer the question of tenancy to the Land Tribunal. The revision-petitioner had also filed O.A. No. 16 of 1974 before the Land Tribunal u/s 72B of the Land Reforms Act for purchase of the landlord's right. The Land Tribunal allowed the petition: but the Appellate Authority reversed the said decision. In revision, the appellate order was upheld in C.R.P. No. 2471 of 1976. In I.A. No. 1891 of 1974; the respondent in the C.R.P. contended that in view of the order in C.R.P. No. 2471 of 1976, there was no necessity to refer the matter again to the Land Tribunal since the said order operated as res judicata. The Munsiff's Court upheld the said plea. That order was challenged in revision in this Court. The Division Bench which heard the matter referred the case for consideration to a Full Bench. The Full Bench posed the question thus:- "whether the decision of a quasi-judicial authority like the Land Tribunal will be res judicata in a suit pending in a civil court?" - (para 11 of the Judgment) After referring to the decisions of the Supreme Court and other relevant decisions, the Full Bench held thus:

...even in suits decisions made by quasi-judicial tribunals can be res judicata based on general principles provided such tribunals had the jurisdiction to decide the issues, involved.

It is now settled law that a decision of a Court of Special jurisdiction will be res judicata in a Court of general jurisdiction provided the decision was within the competence of the former Court.

...if the earlier decision is by a court or tribunal which is not competent to decide the issue involved in the subsequent suit or proceedings, the decision of the tribunal does not operate res judicata."

After quoting from the book *Res Judicata* Spencer Bower and Turner, 2nd Edition, Page 92, the Full Bench further stated:

"Competent jurisdiction is an essential condition of every valid res judicata. ...

that the judicial tribunal pronouncing the decision had jurisdiction over the cause or matter, and over the parties, sufficient to warrant it in so doing.

A tribunal may exceed its jurisdiction either by embarking upon an inquiry outside its province, or, while confining its inquiry within the proper limits, by making an order in excess of its powers in either case the result will be to nullify the decision as a *res judicata*; in the former case, by the effect of the events we have mentioned upon the declaratory part of the decision, and, in the second, by their effect upon its jussive or prohibitory provisions."

After referring to sections 101 (3), 125 (1), 125(2) and 125(3) of the Kerala Land Reforms Act, the Full Bench concluded thus:

"...The above provisions clearly indicate that while dealing with the question of tenancy under the Act, the Land Tribunal is no longer deciding a Jurisdictional fact but an issue which is exclusively within the competence of the Tribunal. The fact that an appeal lies against the decision of the Civil Court which has merely to accept the decision of the Land Tribunal on the question referred to it does not affect the exclusive jurisdiction of the Land Tribunal to decide the question of tenancy or reduce it to a Tribunal of limited jurisdiction. The result is that the decision of the Land Tribunal as to the existence of a tenancy will be *res judicata* in a subsequent civil suit or proceedings and will be a bar for a further decision on the same point by the Land Tribunal or a court in a subsequent suit or proceedings. If the question of tenancy has been decided by a Land Tribunal after the coming into force of the Land Reforms Amendment Act, 35 of 1969 as provided in the Act, there need not be a reference to the Land Tribunal under S 125 (3) of the Act if the identical issue is raised in subsequent proceedings.

The plea of *res judicata* was upheld and the revision was dismissed.

14. *Kesava Bhat v. Subraya Bhat* (1979 KLT 766-FB) is a decision rendered by a Full Bench of five Judges. Two cases were decided there in (A.S.A. 1 of 1977 and C.R.P. No. 241 of 1978). In A.S.A. 1 of 1977, the defendant in O.S. No. 16 of 1972, Munsiff's Court, Kasaragod, was the appellant. The respondent in the appeal was the plaintiff in the suit. The suit was filed for a permanent injunction to restrain the appellant from trespassing on the respondent's property and from interfering with the plaintiff's property and from interfering with the plaintiff's possession. The suit was filed on 19-1-1972, after the amendment of the Kerala Land Reforms Act, by Act 35 of 1969. The defendant in the suit (appellant in the appeal) applied for purchase of the landlord's rights u/s 72-B of the Act stating that he was a tenant. Issues 1 and 4 in the suit were as follows:-

1. Whether the plaintiff was in possession of the suit properties on the date of the plaint?

X X X

4. Whether the court has got jurisdiction to try the suit?"

The appellant in the appeal filed I.A. No. 463 of 1982 for reference of the question of tenancy for determination by the Land Tribunal u/s 125(3) of the Act. It was rejected holding that the suit was one for injunction and the question

whether the appellant was a tenant or not did not "arise" for consideration. The appeal filed there from was dismissed. In second appeal, the decree of the lower appellate court was affirmed. In further appeal, a point was raised by the appellant, that once a plea of tenancy was raised by the defendant in the suit, the Court was bound to refer the question for determination to the Land Tribunal u/s 125 (3) of the Act. The Full Bench adverted to section 125 of the land Reforms Act, and also to the earlier conflicting Full Bench decisions of this Court, and the decision of the Supreme Court and stated the law thus:-

1. Section 101 (3) of the Act makes the jurisdiction of the Tribunal an exclusive one;
2. Whether a plain and simple suit for injunction is liable to be referred under S. 125 (3) of the Act, should depend on whether a question regarding the rights of a tenant can be said to arise in the suit."

At page 771 (para 6), the Full Bench observed:

"...Unaided by authorities, we think that in suits for injunction, we are concerned only with the question of possession - the nature and the character of the possession is immaterial. If the plaintiff does not make out his possession, there is not no need at all to consider whether the defendant is in possession, and if the plaintiff makes, out his case of possession, the question of defendant's tenancy again would not full for consideration. This was the view taken in the two decisions in Alavi v. Mohammedkutty Haji (1973 KLT 937) and Narayana Menon v. Kallandi (1973 KLT 983). As a statement of general principle applicable in the generality of cases for injunction that is the view which commends itself to us."

At page 772, the Full Bench further observed:

"...We therefore overrule the decision of the Full Bench in Lissy v. Kuttan (1976 KLT 571) on this point, and hold that the decisions in Alavi v. Mohammedkutty Haji (1973 KLT 937 and) Narayana Menon v. Kallandi (1973 KLT 983) were rightly decided. We endorse the judgment of Mr. Justice Krishnamoorthy Iyer in C.R.P. No. 298 of 1973 which was also overruled in Lissy v. Kuttan (1976 KLT 571)."

3. The Full Bench posed the question as to when can it be said that a question regarding the rights of a tenant "arise" within the meaning of S. 125(3). The further aspect that if a question thus "arises", and is not referred to the Land Tribunal but is dealt with and disposed of by the civil court is the resultant decree one without jurisdiction was also considered.

After considering the relevant decisions, in paragraph 11 [at page 775], the Full Bench observed thus:-

"11. Counsel for the appellant contended, on the strength of the decisions in Noor Mohammad Khan v. Fakirappa (AIR 1988 SC 1217) and Bhimaji Shanker Kulkarni Vs. Dundappa Vithappa Udupudi and Another, that the question of tenancy arises as soon as the plea was raised by the defendant that he was a

tenant, and therefore the matter had to be referred to the Land Tribunal. We do not think this extreme position taken up by counsel for the appellant will be justified. A statement in such wide and comprehensive terms is to be found in the Full Bench decision in *Lissy v. Kuttan* (1976 KLT 571). The Full Bench observed:

"The only matter to be considered in the court is whether any question regarding the rights of a tenant or a kudikidappukaran including the question as to whether a person is a tenant or a kudikidappukaran arises in a suit or proceeding. This, the court will have to examine and for this purpose what will have to be examined are the pleadings, and we consider nothing else. Whether the plea is frivolous or sustainable or prima facie true or not are all foreign to the scope of the enquiry before court. We are in complete agreement with the decision in *Sankaran v. Rajammal* (1974 KLT 486) where all the decisions on the subject on an analogous provision of previous enactments have been reviewed. The view has been taken is the decision that S. 125 (3) has barred any consideration by the court of question even for the purpose of finding out whether prima facie case has been established".

We consider that the principle has been very widely and broadly stated in the above passage. We cannot accept the statement of the law as correct. Unless the question actually "arises" for consideration, there is no obligation u/s 125 (3) to make a reference to the Land Tribunal. The, mere incorporation of an unnecessary or irrelevant plea of tenancy into the written statement which has no relation whatever to the material averments and the reliefs sought in plaint, cannot attract the bar of Section 125 (1), or the provisions of Section 125 (3). It follows that the statement of the principle in *Sankaran v. Rajammal* (1974 KLT 488) which was approved by the Full Bench in *Lissy v. Kuttan* (1976 KLT 571) must also be overruled. That decision stated that Section 125 (3) bars any consideration by the court of the question even for the purpose of finding out whether a prima facie case has been established. We consider this an over-statement of the principle. It is only if the question arises for consideration that the obligation that to refer u/s 125 (3) also arises. We do not think it can be the intention of the Legislature to make the reference to the Land Tribunal dependent upon a plea in the written statement which has got no relation to the claim made in the plaint, and which would not, having regard to the frame of the plaint, or to other legal obstacles in raising the defence, call for any adjudication at all."

4. In the decision in *Wood v. Ward* (40 Chancery Division 555), Cotton L.J. stated that a question which "arises" for consideration is something which will necessarily have to be decided. Much the same thing was said by Lindley, L.J. and Lopes L.J.

In paragraph 13, at page 777, the Full Bench concluded thus:-

"....Being a plain and simple suit for injunction on the averment that the defendant was only the plaintiff's agent, we do not think any question regarding

the rights of a tenant "arises" so as to attract S. 125 (3) of the Act Attention was called to the decision of a learned Judge of this Court in *George v. Ghakunni* (1977 KLT 865). Our learned Brother Bhaskaran, J. very rightly noticed that the legislature had guardedly used the expression "arising" instead of "raised". It was observed that to invoke the section, it is not sufficient that a dispute regarding the right of tenancy is raised and that the question should, on the other hand, "arise" in the proceedings. The learned Judge was of the view that if, as a matter of fact, the plea is barred by the operation of the principles of *res judicata*, the Court trying to proceed has no jurisdiction to try that question over again, and in that view, the question does not really "arise" for decision. We give our assent to this exposition of the principle by the learned Judge".

5. If a question of tenancy did "arise" for determination and was not referred for adjudication to the Land Tribunal, but was dealt with by the Civil Court itself, is the decree one without jurisdiction? We are of the opinion that the resultant decree passed by the Civil Court would be one without jurisdiction.

6. We are of the opinion that there is an ouster of jurisdiction of the civil court to decide a question of tenancy, by S. 125 (1) of the Act. Such a question must be referred to the Land Tribunal under S. 125 (3), and dealt with as provided by that clause and the other clauses of that Section. 1976 KLT 691, stating a contrary position cannot be accepted as correct and we overrule the said statement of legal principle. A contravention of the provisions of S. 125(3) is a matter of jurisdiction and not one relating to procedure. In paragraph 19, at page 780, the Full Bench concluded thus:-

"We are of the opinion that being a suit for injunction, no question of tenancy or rights of a tenant arises, and reference to the Land Tribunal is not called for. On that footing, the decision of the civil court, affirmed throughout, is correct and calls for no interference. If a question of tenancy arose, the civil court decree without reference to the Tribunal would be without jurisdiction and therefore null and void. We would, in that event, held accordingly..."

In C.R.P. No. 241 of 1978, the defendant in O.S. No. 143 of 1977 was the revision-petitioner. The suit was one for recovery of possession on title. The revision-petitioner/defendant contended that he was a tenant under the Land Reforms Act. The plaintiff in the suit was a Receiver appointed in O.S. No. 32 of 1967, Sub Court, Ottappalam, which was a suit for partition. The defendant in O.S. No. 143 of 1977 (revision-petitioner in C.R.P. No. 241 of 1978) was the 35th defendant in that suit (O.S. No. 32 of 1967). Therein he claimed, that he is a tenant. By Ext. A1 judgment, dated 29-5-1976, it was found that the revision-petitioner was not entitled to reservation of any rights and that he was a trespasser. Since the suit was for partition, no relief was granted against him. When the place of tenancy was raised by the revision-petitioner in O.S. No. 143 of 1977 the suit filed for recovery of possession, as a sequel to the decree in O.S. No. 32 of 1967, the plaintiff contended that the question of tenancy did not arise for consideration and the same was barred by *res judicata* and there was no

need for any reference to the Land Tribunal. The trial court found that the question regarding tenancy was res judicata by reason of Ext. A1 judgment and therefore did not "arise" for consideration in the suit and need not be referred to the Land Tribunal. The question that was posed for consideration was whether a question, the determination of which is barred by res judicata, can be said to "arise" for consideration within the meaning of S. 125 (3) of the Act. The Full Bench answered the question in the negative and held that the question regarding the rights of a tenant did not arise for determination.

15. We have elaborately dealt with the three Full Bench decisions of this Court, in Koran's case (1977 KLT 358); Govindan Gopalan's case (1978 KLT 315) and Kesava Bhat's case (1979 KLT 766), since they are binding on us. The Full Bench decision in Koran's case (1977 KLT 358) was referred to with approval in the later Full Bench decision in Govindan Gopalan's case (1978 KLT 315). Similarly, the decision in Govindan Gopalan's case was referred to with approval in the Full Bench decision in Kesava Bhat's case (1979 KLT 766) in the light of the Full Bench decisions in Govindan Gopalan's case (1978 KLT 315), at page 322, paragraph 14, and Kesava Bhat's case (1979 KLT 766) at page 771 - paragraph 5 we have to hold that the Land Tribunal is a court or Tribunal of exclusive jurisdiction. In the light of the decisions in the above three Full Benches, we have to further hold that the general principle of res judicata will apply to decisions rendered by the Land Tribunal. The decision of the Land Tribunal regarding the existence of a tenancy will be res judicata in a subsequent civil court or proceeding and will be a bar for the further decision on the same point, either by the Land Tribunal or by a Civil Court.

16. We hold that the first two aspects, (Points A & B) posed by us in paragraph 11 supra, should be answered as above and in the affirmative, in view of the above Full Bench decisions. We may hasten to add that for the purpose of this case, we are proceeding on the basis that the Land Tribunal is a court or Tribunal of exclusive jurisdiction based on the earlier Full Bench decisions in Govindan Gopalan's case (1978 KLT 315) and Kesava Bhat's case (1979 KLT 766). But, there are certain aspects on that question which may have to be adverted to in an appropriate case and we will highlight those aspects in the later part of this judgment. Points A & B are decided accordingly.

Point - C:

17. Now, the only further aspect, specified as "C" in para 11 supra is to what extent the jurisdiction of the civil court is barred regarding the decision of the Land Tribunal, even proceeding on the basis that the Land Tribunal is a court or Tribunal with exclusive jurisdiction over the subject matter. Section 9 of the CPC is as follows:-

"9. Courts to try all civil suits unless barred. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suit of which their cognizance is either expressly or impliedly barred."

In AIR 1940 105 (Privy Council) Lord Thankerton, delivering the judgment of the Board, which has now become a classic, at page 110, stated the law thus:-

"...It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

After referring to the above decision of the Judicial Committee of the Privy Council and the decisions of the Supreme Court of India on the subject, delivering the judgment of a Constitution Bench, Hidayatullah, C.J. In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, laid down seven propositions of law regarding the exclusion of jurisdiction of Civil Court, as follows:-

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not excluded those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principle of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find on the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant inquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

The said decision has become a locus classicus on the subject and has been followed in innumerable cases by the Supreme Court of India.

18. In *Lala Ram Swarup and Others Vs. Shikar Chand and Another*, a Constitution Bench of the Supreme Court had occasion to consider section 3 (4) read with section 16 of the U.P. (Temporary) Control of Rent and Eviction Act (Act 3 of 1947), whereby the order of the Commissioner u/s 3(3), subject to an order passed by the State Government u/s 7-F, was declared to be final and section 16 provided that no order made under the Act by the State Government shall be called in question in any Court. The Supreme Court opened that section 16 in terms provides that the order made under the Act to which the section applies shall not be called in question in any Court and also there was an express provision excluding the Civil Court's jurisdiction. But in the view of the Court, the bar created by the relevant provisions of the Act excluding the jurisdiction of, the Civil Court cannot operate in cases where the plea raised before the Civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity. At page 897, in paragraph 15 of the judgment, the Court held as follows:

But where a plea seeks to prove that the impugned order is a nullity in the true legal sense, that is a plea which does not come within the mischief of the bar created by Sec. 3 (4) and 16 of the Act."

The Court observed thus;

"16. Similar questions have often been considered by Judicial decisions to some of which we will now refer. In AIR 1924 175 (Privy Council) , dealing with the effect of S. 6 of the Bengal Alluvion and Diluvion Act (IX of 1847), the Privy Council observed that the finality of the Order specified in the said section had to be read subject to two conditions, the first was that the said orders should not suffer from any fundamental irregularity, that is to say, "a defiance or non-compliance with the essential of the procedure"; and the second condition was that the alleged defiance or non-compliance with the essential of the procedure must be strictly proved by the party alleging it. This decision shows that if the special statute prescribes certain mandatory conditions subject to which the orders in question can be passed, and the said mandatory provisions are violated, the validity of the said orders can be challenged in a civil proceeding. Similarly, if principles of natural Justice are not complied with, the orders passed in violation of the said principles would be wholly inoperative in law and their

validity can be impeached in civil proceedings.

18. The same principle has been emphasised by the Privy Council in AIR 1940 105 (Privy Council) .

In *Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh*, , a notification promulgated u/s 3 (2) of Andhra Pradesh (Andhra Area) Estates Land (Reduction of Rent) Act (Act 30 of 1947), based on the decision of the Special Officer u/s 2, which itself was based on "no evidence", was held to be in violation of the fundamental principles of judicial procedure and so the order passed u/s 3 (2) of the Act was held to be not in conformity with the provisions of the Act and the jurisdiction of the Civil Court cannot be excluded.

19. The sheet anchor of the plea of the appellant is one of *res judicata*. It was argued that the later decision of the Land Tribunal in O.A. No. 17732 of 1976 concludes the plea of tenancy and the lower appellate court should have given effect to the said decision. The reply of the respondent thereto is that the decision in O.A. No. 17732 of 1976 is one rendered without jurisdiction or a nullity and so the plea of *res judicata* will not apply. It was contended that u/s 101 (3) of the Act, only if a question "arises" as to whether a person is or is not a tenant or whether the right, title and interest of the landowner and the intermediaries, if any, in respect of any holding, have or have not vested in the Government u/s 72, it shall be competent for the Land Tribunal to decide the question. The plea is that the question as to whether a person is or is not a tenant should ""arise" for the Land Tribunal to decide the matter. It was argued that in the light of the earlier decision of the Land Tribunal in O.A. No. 1234 of 1974, which formed part of the findings of the Civil Court, the question whether the appellant is a cultivating tenant did not ""arise" for the decision of the Land Tribunal. It was *res judicata*. The same argument is put in a different form. In order to enable the Land Tribunal to decide the later proceeding, (O.A. No. 17732 of 1976) it is a mandatory condition, that the question as to whether the appellant is a tenant should "arise" before the Land Tribunal for decision, in exercising the power u/s 101 (3) of the Act. In view of the earlier decision of the Land Tribunal in O.A. No. 1234 of 1974, the question as to whether the appellant is a cultivating tenant did not arise for the decision of the Land Tribunal, when the matter was decided finally in O.A. No. 17732 of 1976. It is in "defiance of the mandatory provisions" of section 101(3) of the Act, the Land Tribunal held, in the later proceeding (O.A. No. 17732/76), that the appellant is a cultivating tenant. This was totally unauthorised and an order passed in defiance of the essentials of section 101 (3) of the Act. The mandatory condition specified by section 101 (3) of the Act was violated. That the question as to whether the appellant was a tenant did not arise for the decision of the Land Tribunal, is evident from the dictum of the Full Bench of this Court in *Kesava Bhat's case* (1979 KLT 766, at page 777, para 13) - see paragraph 15 *supra* Since the point did not arise determination, the decision of the Land Tribunal in the later case is one without

jurisdiction and a nullity.

20. We are of the view that the question as to whether the appellant was a cultivating tenant did not "arise" for decision in the later proceeding (O.A. No. 17732 of 1976). The Land Tribunal had held earlier in O.A. No. 1234 of 1974 on 31-12-1976, that the appellants are not tenants. When the later proceeding (O.A. 17732/76) was decided on 17-10-1977, the question as to whether the appellants were cultivating tenants did not "arise". The matter was concluded by the earlier decision. It constituted "res judicata". It is in defiance of the mandatory provision of section 101 (3) of the Act, the Land Tribunal decided O.A. No. 17732 of 1976 and held that the appellants are cultivating tenants. In the light of the decision of the Supreme Court in *Lala Ram Swarup and Others Vs. Shikar Chand and Another*, and the Full Bench decision of this Court in *Kesava Bhat's case* (1979 KLT 766, at page 777, para 13), the later order passed by the Land Tribunal also suffers from a fundamental irregularity, in that there was a defiance or non - compliance with the essentials of the procedure. The mandatory condition subject to which alone the Land Tribunal could decide the matter, was totally absent. The question as to whether the appellants were cultivating tenants did not arise for decision. Since the mandatory provision was violated, the later order passed by the Land Tribunal in O.A. No. 17732 of 1976 is illegal, without jurisdiction and a nullity. The enquiry was totally outside its province. The question as to whether the appellants are tenants did not "arise" in the proceeding to attract the exercise of jurisdiction u/s 101 (3) of the Act. (See - *Noor Mohd. Khan Ghouse Khan Soudagar Vs. Fakirappa Bharmappa Machenahalli and Others*, : *Govindan Gopalan's case* - 1978 KLT 315 at P. 332 and *George v. Vareed* - 1978 KLT 691 at p. 694).

21. Respondents' counsel Mr. V.P. Mohan Kumar also highlighted the fact that in rendering the decision in O.A. No. 17732 of 1976, the Land Tribunal failed to comply with the provisions specified in rules 9 and 10 of the Kerala Land Reforms (Vesting and Assignment) Rules, 1970 and section 72F of the Act. It was argued that rules 9 and 10 aforesaid contemplate passing of a preliminary order regarding the vesting of the right title and interest of the landowner and intermediaries in respect of such holding. It is only where the Tribunal passes an "order" to the effect that the holding is held by a cultivating tenant or that the right, title and interest of the land owner and intermediaries have vested in the Government, then the Land Tribunal shall, follow the procedure specified in rule 10; consider the application, gather information referred to in rule 5, peruse the written statement and other documentary evidence, if any, produced and the report, if any, of, the officer appointed u/s 105A and after such further enquiries as it may deem necessary - (Sec. 72F (3A), (3B) etc. of the Act) and after giving a reasonable opportunity of being heard to "all" the persons, pass an order in accordance with section 72F of the Act. It is seen from the records that only a final order was passed in O.A. No. 17732 of 1976. The application was posted for filing written statement on 10-8-1977 and adjourned to 24-8-1977. On 26-5-1977 the second respondent in this appeal (5th respondent in the suit) filed

a written statement stating that the Land Tribunal has already answered the matter on [31-12-1976, in O.A. No 1234 of 1974. There was no sitting of the Tribunal on 24-8-1977. The first respondent-Devaswom filed another written statement on] 24-8-1977. The matter was adjourned to 26-9-1977. On that day, the matter was part heard and was adjourned to 17-10-1977 and on that day the order in O.A. No. 17732 of 1976 was passed. A bare perusal of the way in which the matter stood posted from time to time and was considered by the Land Tribunal would go to show that the Land Tribunal has failed to conform strictly to the procedure specified in Section 72 F of the Act and rules 9 and 10 of the Vesting and Assignment Rules, 1970. The statutory Tribunal failed to comply with the provisions of the Act and the Rules. No order on the preliminary point, as to whether the land comprised is held by a cultivating tenant or not or that the right, title and interest of the landowner and intermediaries in respect of such holding have vested in the Government or not, seems to have been passed. It is only thereafter further proceedings for assignment and determination of compensations purchase price etc., should be pursued. That is not the way in which the Land Tribunal has proceeded in disposing of O.A. No. 17732 of 1976. The application for assignment filed under rule 4 and the written statement filed by the parties seem to have been perused. But, it does not appear that the Land Tribunal has complied with Section 72F (3A) of the Act and obtained the advice of the village committee u/s 72F (3B) of the Act. It is not clear whether any report was obtained from the officer appointed u/s 105A of the Act. The procedure contemplated by section 72F(3A) and (3B) of the Act was not followed which is necessary before passing an order u/s 72F (5) of the Act. The statutory Tribunal failed to act in conformity with the procedure prescribed by section 72F of the Act read with rules 9 and 10 of the Vesting and Assignment Rules. We perused through the order of the Land Tribunal in O.A. No. 17732 of 1976 dated 17-10-1977. The order states that the notices contemplated by section 72F of the Act were published and issued to the interested parties and the application and the written statement and evidence adduced during the enquiry were perused. There is not even a formal recital that the procedure contemplated by section 72F (3A) and (3B) were followed. There is also no formal recital even, that the report, if any, of the officer u/s 105A of the Act was obtained. As to whether any further enquiry was made is not clear. The order passed u/s 72F does not even mention whether the advice was received from the village committee contemplated by section 72F(3B) of the Act. We are constrained to hold that the order passed by the Land Tribunal, in the circumstances, is perfunctory and it is obvious that the provisions of the Act and the Rules have not been complied with. The fundamental principles of judicial procedure, as required by the Act, were totally contravened. In such cases, the jurisdiction of the civil court is not excluded, as stated by the Privy Council in AIR 1940 105 (Privy Council) and Lala Ram Swarup and Others Vs. Shikar Chand and Another, . This is another fundamental infirmity in the later decision rendered by the Land Tribunal, rendering it a nullity.

22. Appellant's counsel Mr. Govinda Wariyar submitted that even if the order passed by the Land Tribunal in O.A. No. 17732 of 1976 u/s 72F of the Act holding that the appellants are tenants and so entitled to the purchase of the right of the landlord and intermediaries in proceedings u/s 72B of the Act, is illegal or a nullity, it will not have the effect of annulling the certificate of purchase issued to the appellants u/s 72K of the Act. It was argued that a certificate of purchase issued u/s 72K of the Act is conclusive proof the assignment to the tenant of the right, title and interest of the landowner and the intermediaries over the holding. We are unable to accept this plea on the facts of this case. We have held that the order passed by the Land Tribunal u/s 72F of the Act in O.A. No. 17732 of 1976 is illegal, without jurisdiction and a nullity. It is only in consequence of a valid order passed u/s 72F of the Act, wherein the determination of the purchase price is made, the Land Tribunal shall issue a certificate of purchase to the cultivating tenant. Existence of a valid order u/s 72F of the Act is a prerequisite or a sine qua non, for passing the consequential order u/s 72K of the Act, whereby a certificate of purchase is issued. We have held that the order passed u/s 72F of the Act is without jurisdiction and a nullity and so of no legal effect. In the result, the consequential order passed u/s 72K of the Act should also share the same fate. We hold so.

23. Finally, we have to consider whether the later decision of the Land Tribunal in O.A. No. 17732 of 1976 will operate as "res judicata" mandating the lower appellate court to give effect to it and hold that the appellants are tenants. We have already held that the decision in O. A. No. 17732 of 1976 was a decision rendered without jurisdiction and a nullity. The law seems to be fairly clear that if a decision of a court or tribunal is a nullity and beset with jurisdictional infirmity, such a decision cannot operate as res judicata, in any subsequent proceeding. The plea of res judicata presupposes that there is in existence a decree or judgment which is legal and valid. If the decree or judgment is a nullity, it is non-existent in law. No plea can be founded on such a judgment which has no legal foundation. Janaki Amma, J. speaking for the Full Bench in Govindan Gopalan v. Raman Gopalan (1978 KLT 315), quoted with approval the following passage from "Res judicata" Spencer Bower and Turner, 2nd Edition, Page 92:-

Competent jurisdiction is an essential condition of every valid res judicata, which means that, in order that a judicial decision relied upon, whether as a bar, or as the foundation of an action, may conclusively bind the parties, or (in the case of in rem decisions) the world, it must appear that the judicial tribunal pronouncing the decision had jurisdiction over the cause or matter, and over the parties, sufficient to warrant it in so doing."

Hukm Chand, in his book "A Treatise on the Law of Res Judicata"- 1894 Edn., at page 397 (para 167) has stated thus:-

"Judgment by a court without jurisdiction is void - Competency of jurisdiction has been deemed essential to the application of the doctrine of res judicata, as it is generally agreed upon that a judgment rendered by a court not having

jurisdiction is void and a mere nullity: and the rule applies equally whether the judgment is of a court of general or special, of foreign or domestic jurisdiction, and whether the judgment is questioned directly or collaterally. Nor is it important for the prima facie invalidity of the judgment whether it is the essential jurisdiction or the local or personal that is wanting. Mr. Herman, speaking of the practice of the American Courts, says: "When a Court transcends the limits prescribed for it by law, and assumes to act where it has no jurisdiction, its adjudication will be utterly void and of no effect either as an estoppel or otherwise. A judgment pronounced by a tribunal having no authority to determine the matter in issue it, necessarily and incurably void, and may be shown to be so in any collateral or other proceeding in which it is drawn in question".

In Mulla C.P.C Vol. I, 1981 Edn., at page 133, the law is stated thus:

"Judgment of Court not competent to deliver it - A judgment delivered by a Court not competent to deliver it cannot operate as res judicata, since such a judgment is not of any effect....

At page 134, it is stated:-

"Decision on a question of Jurisdiction. The law is well settled that a Court which has no jurisdiction to try a cause cannot by its own erroneous decisions confer on itself competence to decide it and its decision on the question of jurisdiction cannot operate as res judicata in subsequent suit between the parties. Conversely the decision relating to jurisdiction cannot be said to constitute the bar of res judicata where the court by an erroneous interpretation of a statute holds that it has no jurisdiction...."

In Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, , delivering the Judgment of the Bench, Shah, J. observed as follows :

"9. A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit....

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as res judicata. Similarly, by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute the question cannot operate as res judicata between the same parties whether the cause of action in the subsequent litigation is the same or otherwise.

10.... Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res

judicata, for a rule of procedure cannot supersede the law of the land".

In *Richpal Singh and Others Vs. Dalip, , Sabyasachl Mukarji, J.* after advising to the principle of res judicata in the light of the decisions of the Supreme Court, held as follows:

"15. A salutary and simple test to apply in determining whether the previous decision operates as res judicata or on principles analogous thereto is to find out whether the first court, here the Revenue Court could go into the question whether the respondent was a tenant in possession or mortgagee in possession. It is clear in view of language mentioned before that it could not. If that be so, there was no res judicata. The subsequent civil suit was not barred by res judicata".

In *Pandurang Ramchandra Mandlik (Since Deceased) by his Lrs. and Another Vs. Shantibai Ramchandra Ghatge and Others*, the Court stated the law thus:-

"In *Pandurang Mahadeo Kavade and Others Vs. Annaji Balwant Bokil and Others*, It was held that in order to operate as res judicata it must be established that the previous decision was given by a court which had jurisdiction to try the present suit, and there would be no res judicata if the previous decision was by a court having no jurisdiction. Of course, that was a case of pecuniary jurisdiction, but there is no reason why the same principle should not apply in other cases of courts without jurisdiction. The law is well settled that a court which had no jurisdiction to try a cause cannot by its own erroneous decision confer on itself competence to decide it and its decision on the question of jurisdiction cannot operate as res judicata"

A Division Bench of Andhra Pradesh High Court in *Mohd. Yousuf Basha v. A.P. State Road Transport Corporation* [(1979) 2. An. W.R. 403] at page 409, observed thus:

"...It was settled that the doctrine of res judicata never applies to decisions of Courts and Tribunals rendered without jurisdiction. In *Daryao v. Uttar Pradesh* (1962 (1) SCJ 702), the Supreme Court ruled that finality should be given to "the binding decisions pronounced by Courts of competent jurisdiction." "Competent jurisdiction is an essential condition of every valid res judicata" (See, *Spencer-Bower and Turner on the doctrine of res judicata-II* Edition, Page 92...."

24. In the light of the above legal position, we hold that the later order passed by the Land Tribunal in O.A. No. 17732 of 1976 u/s 72F of the Act, being one passed without jurisdiction and a nullity, cannot operate as res judicata and the lower appellate court was justified in ignoring the said decision and in not giving effect to it. The lower appellate court was justified in holding that Ext. B6, the order passed in O.A. No. 17732 of 1976 ignoring the earlier decision of the Land Tribunal in O.A. No. 1234 of 1974, is unsustainable. So also, the consequential purchase certificate, evidenced by Ext. B7 is unsustainable. Independently

considering, under Point No. 1, as to whether the second defendant is a tenant entitled to fixity of tenure in respect of Thaks 2 and 3 Item No. 1 in the plaint schedule items, the lower appellate court, in paragraph 8 of the judgment, after a detailed consideration of the matter, held that from the facts and circumstances of the case, it is clear that the oral lease set up by the defendants is not true and the second defendant is not a tenant in respect of the disputed items and, therefore, the finding of the Land Tribunal in O.A. No. 1234 of 1974, which formed part of the judgment of the Munsiff's Court, was confirmed. It is after evaluating the oral and documentary evidence and the attendant circumstances, the lower appellate court so affirmed the decision of the Land Tribunal, which formed part of the judgment of the trial court. We see no error, either in the reasoning or in the conclusion aforesaid. As to whether the oral lease set up by the defendants is true and genuine it is a question of fact. Concurrently, the courts below have found against the defendants, against the oral lease set up by them. - Point C is decided accordingly.

25. We are of the view that no question of law much less a substantial question of law is involved in the matter. On this basis, the plea of tenancy set up by the defendants was validity and properly negated. We concur with the said view. Our conclusion on the third aspect, posed by us in para 11 supra, is that the jurisdiction of the civil court is not barred regarding the decision of the Land Tribunal in the instant case.

26. The only cardinal point argued before us, as stated in para 8 supra, is thus answered against the appellants. Since the above was the only point on which stress was laid by counsel on both sides and all other aspects formulated in paragraphs 6 and 7 centred round the same, which we have dealt with in appropriate places, it is not necessary to repeat our conclusions on those points over again.

27. We hold that the second appeal is without merit. It deserves to be dismissed. We hereby do so.

28. In the way the questions were posed for consideration and the matter was argued, we indicated the counsel, even at the time of argument, that this is not a fit case to consider the correctness or otherwise of the Division Bench decision of this Court in Parameswaran Thampi v. Podiyan Thomas (1984 KLT 397), We refrain from doing so.

29. Now, we shall advert in brief to an important aspect which counsel on both sides argued at length, as to whether the Land Tribunal is a court or Tribunal of exclusive jurisdiction. Just an introductory observation in the matter before we exactly go into the point. Civil Courts are courts of "general jurisdiction". The people have a right, unless expressly or impliedly barred, to insist for free access to the courts of general "jurisdiction for the redress of their grievances. It is settled law. "that even "in cases where the jurisdiction of civil courts is excluded by use of Prima facie comprehensive language, the civil courts which are courts

of "general jurisdiction" can decide whether a court, or tribunal or authority exercising statutory jurisdiction has acted in excess or beyond the statutory powers. The civil courts can interfere when the order of the statutory tribunal or authority is really not an order under the Act conferring jurisdiction on it but is a nullity." Similarly, if a tribunal abuses its power or does not act under the Act but in violation of its provisions (Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana,). or if the tribunal makes an order not in conformity with the power conferred, or if the order is not one under the Act but a nullity, the jurisdiction of the civil court will not be excluded. As stated in paragraph 17 supra, for the purpose of this case, we have proceeded on the basis that the Land Tribunal is a court or tribunal of exclusive jurisdiction, in view of the earlier Full Bench decisions in Govindan Gopalan's case (1978 KLT 315) and Kesava Bhat's case (1979 KLT 766) Counsel for the respondents Mr. Mohan Kumar argued that the earlier Full Bench decisions have failed to advert to the crucial language occurring in section 101 (3) of the Act, to the effect that the Land Tribunal is "only competent" to decide, the question of tenancy. But, in sections 101 (4) and 101 (5) of the Act, the decision of [the "Land Board" is stated to be "final". The plea was, that the language of section 101 (3) of the Act is only permissive, conferring jurisdiction on the Land Tribunal to decide the question. "Exclusive power" is not conferred. The decision of the Land Tribunal u/s 101 (3) of the Act has not been made "final". This was submitted to be a "crucial" or perilously decisive to hold that the Land Tribunal is not a tribunal of exclusive jurisdiction. It was argued that the bar of jurisdiction of the civil court under Sec. 125(1) and (2) of the Act by themselves are insufficient to hold that the Land Tribunal is a court of "exclusive jurisdiction". The further submission was that even proceeding on the basis that the Land Tribunal is of a tribunal of exclusive Jurisdiction, and notwithstanding the use of the "finality" and "exclusionary clauses" in the particular statute, the jurisdiction of the civil court cannot be held to be barred. If the tribunal by erroneously deciding a jurisdictional fact" clothes itself with jurisdiction which it does not possess. The ultimate decision can be challenged, in spite of "finality" and "exclusionary clauses", since the jurisdiction was assumed, where it did not exist, by wrongly deciding jurisdictional fact and the decision was not a decision under the Act, but a nullity. This was so submitted on the ground that the traditional theory regarding the concept of jurisdiction, has given way to the modern approach highlighted in Anisminic's case (1969 (1), All. E.R. 208 - HL) - pages 213, 214, 233, 236, 237 and 246 - and the principle of the said decision have been referred to with approval in the post Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, - by the Supreme Court of India See- Union of India (UOI) Vs. Tarachand Gupta and Bros, : Shri M.L. Sethi Vs. Shri R.P. Kapur, ; Hari Prasad Mulshanker Trivedi Vs. V.B. Raju and Others, and the decision of a seven member Bench of the Supreme Court in A.R. Antulay Vs. R.S. Nayak and Another, . To substantiate the plea, our attention was invited to the decisions in Addanki Tiruvankata Thata Desika Charyulu (Since deceased) and after him his legal representatives Vs. State of Andhra Pradesh and Another, -

proceeding under Article 226 of the Constitution); Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, : State of Tamil Nadu Vs. Ramalinga Samigal Madam, ; State of M.P. v. D., Jadav K(AIR 1968 SC 1186- Proceeding under Article 226 of the Constitution): Smt. Munni Devi and Another Vs. Gokal Chand and Others, : Budhu Sao and Others Vs. Baleswar Prosad Sao and Another, and Shiv Chander Kapoor Vs. Amar Bose, .

30. Counsel for the appellants, Mr. Govinda Wariyar made a forceful plea that the absence of a finality clause in section 101 (3) of the Act is of no consequence in view of express ouster of jurisdiction of the civil courts specified in section 125(1) and (2) of the Act and it was argued that in the light of the express bar aforesaid, a decision rendered by a Land Tribunal cannot be collaterally attacked, if the Tribunal had inherent jurisdiction to entertain the proceeding. Counsel for the appellants submitted that the Anisminic principle can be applied only if a direct attack is made against the proceedings and a collateral attack is not permissible, whatever be the wide or extended content of the word "jurisdiction" in Anisminic's case and post Anisminic's cases. Counsel for the appellants further submitted that when a Tribunal is given jurisdiction to decide a case, including a jurisdictional fact, a wrong decision rendered by such a Tribunal cannot be assailed in a suit. Our attention was drawn to the following decisions:- Richpal Singh and Others Vs. Dalip, ; Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), ; Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., : Life Insurance Corporation of India Vs. M/s. Indian Automobiles and Co. and others, ; Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation, ; M. Ghoyamma v. K. Narayanan (AIR 1977 SC 1320) The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd., ; Union of India (UOI) Vs. A.V. Narasimhalu, and Union of India (UOI) Vs. Tarachand Gupta and Bros, . For the purpose of this case, it is not really necessary to resolve the above said controversy. Prima facie, a review of the decided cases, referred to herein above, seem to hold that what is forbidden by the "finality" and "exclusionary" clauses, is only cases of "real determination" or "order" and do not protect or cover a determination or order which is a nullity or void one. The statutory tribunal or authority cannot clothe it with jurisdiction by deciding erroneously a "jurisdictional fact" or by committing a Jurisdictional error", render a valid final decision. Though the Full Bench of this Court in Kesava Bhat's case (1979 KLT 766) noticed the argument based on Anisminic's case (1969 (1) All. E.R. 208 = 1969 (2) A.C. 147) and the decision of the Supreme Court in Shri M.L. Sethi Vs. Shri R.P. Kapur, , an in depth analysis or ramifications of the new approach were not adverted to. That is more, a few important Supreme Court decisions which demonstrate the applicability of the principle" were, not brought to the notice of the Full Bench, which we have referred to earlier herein. On this aspect, there is a very useful discussion and enunciation of the principles of law in principles of Statutory Interpretation" by Justice G.P. Singh, 5th Edition 1992, pages 442 to 449. The three conclusions enumerated at page 445 of the said book, extracted herein below, provide useful guidelines in the matter. (1) An Exclusionary Clause

using the formula "an order of the tribunal under this Act shall not be called in question in any Court" is ineffective to prevent the calling in question of all order of the tribunal if the order is really not an order under the Act but a nullity.

(2) Cases of nullity may arise when there is lack of jurisdiction at the stage of commencement of enquiry e.g., when (a) authority is assumed u/s ultra vires statute; (b) the tribunal is not properly constituted, or is disqualified to act; (c) the subject matter or the parties are such over which the tribunal has no authority to inquire; and (d) there is want of essential preliminaries prescribed by the law for commencement of the inquiry.

(3) Cases of nullity may also arise during the course or at the conclusion of the inquiry. These cases are also cases of want of jurisdiction if the word "jurisdiction" is understood in a wide sense. Some examples of these cases are: (a) when the tribunal has wrongly determined a jurisdictional question of fact or law; (b) when it has failed to follow the fundamental principles of judicial procedure, e.g., has passed the order without giving an opportunity of hearing to the party affected; (c) when it has violated the fundamental provisions of the Act. e.g., When it fails to take into account matters which it is required to take into account or when it takes into account extraneous and irrelevant matters; (d) when it has acted in bad faith; and (e) when it grants a relief or makes an order which it has no authority to grant or make, as also (f) when by misapplication of the law it has asked itself the wrong question.

We only record the rival pleas advanced before us with reference to decided cases and also indicate the relevant case law on the subject. We are aware of the academic criticism about the Anisminic's case voiced in legal periodicals in England and in India and in text books by authors of repute. But, our object herein is only to record or note the development in the law; all the more so, since the Supreme Court of India has referred to Anisminic's case (1969(1) All. E.R. 208) with approval in number of cases, adverted to by us herein.

In view of the three Full Bench decisions in Koran's case (1977 KLT 358); Govindan Gopalan's case (1978 KLT 315) and Kesva Bhat's case (1979 KLT 766), we hold that there is no merit in this second Appeal. We dismiss the Second Appeal. There shall be no order as to costs.