

(2001) 05 KL CK 0031
In the High Court Of Kerala
Case No : A.F.A. No. 3 of 2000

State of Kerala

APPELLANT

Vs

Kiriyar Varghese (died) and Others

RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:

Arbitration Act, 1940 — Section 39, 39(2)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 43 Rule 1, 110, 111, 115
Criminal Procedure Code, 1973 (CrPC) — Section 146(1)
Insolvency Act, 1955 — Section 79(3)
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 20
Kerala Civil Courts Act, 1957 — Section 12, 13
Kerala High Court (Amendment) Act, 1966 — Section 3(13)
Kerala High Court Act, 1958 — Section 3, 3(13), 3(4), 4, 4(7)
Kerala Land Acquisition Act, 1961 — Section 59, 60
Kerala Land Reforms Act, 1963 — Section 103
Land Acquisition (Amendment) Act, 1921 — Section 26, 26(2)
Land Acquisition Act, 1894 — Section 18, 26(2), 30, 32, 53
Partnership Act, 1932 — Section 69(3)
Presidency Small Cause Courts Act, 1882 — Section 22

Citation : (2001) 05 KL CK 0031

Hon'ble Judges : T.M. Hassan Pillai, J;P.K. Balasubramanyan, J;K.V. Sankaranarayanan, J

Bench : Full Bench

Advocate : Govt. Pleader, for the Appellant;

Judgement

P.K. Balasubramanyan, J.—This appeal sought to be filed u/s 5 of the Kerala High Court Act is by the State of Kerala which feels aggrieved by the dismissal of an appeal filed by it as L.A.A. 930 of 1997 u/s 54 of the Land Acquisition Act read with Order XLI Rule 1 of the Code of Civil Procedure. When the appeal came up for admission the Division Bench before which it came entertained a doubt whether an appeal u/s 5 of the Kerala High Court Act would lie against the decree passed by this Court in an appeal u/s 54 of the Land Acquisition Act. The State relied upon a decision of a Full Bench in A.F.A. 109 of 1994 reported as K. Premavalli Vs. State of Kerala, in support of its position that an appeal u/s 5 of

the High Court Act was maintainable. The Division Bench having felt that some aspects require a deeper examination referred the question to a Full Bench. That is how this appeal has come up before the Full Bench.

2. Section 26 of the Land Acquisition Act in Sub-section (2) thereof provides that every "award passed under Part III of the Land Acquisition Act shall be deemed to be a decree as defined in Section 2(2) of the CPC and the grounds of every such award shall be deemed to be a judgment as defined in Section 2(9) of the Code of Civil Procedure. Section 54 of the Act provides for an appeal and Section 53 of the Act provides that the CPC is to apply to proceedings before Court. Section 54 provides not only for an appeal to the High Court from an award passed by the Court of first instance, but also provides for a further appeal to the Supreme Court from the decision of the High Court in the appeal. The appeal before this Court, L.A.A. 930 of 1997, was filed by "the State of Kerala invoking Section 54 of the Land Acquisition Act. That appeal was disposed of by a learned single Judge of this Court, presumably in the light of the power conferred on him u/s 3(13)(b) of the High Court Act since the value of the subject matter of the proceeding did not exceed Rs. 1 lakh. It is that decree that is sought to be challenged by the State of Kerala in a further intra Court appeal, invoking Section 5(11) of the High Court Act on the basis that Section 5(11) of the Act applies and it has a right of appeal under the provision.

3. Earlier, when the Kerala Land Acquisition Act 1961 was in force, Section 60 of that Act provided for appeals from the award of the Court of first instance as if the award were a decree passed by a civil Court under the provisions of the Code of Civil Procedure, 1908. Section 59 of the Act provided that the CPC shall apply to proceedings before the Court. Section 28 provided that every award shall be deemed to be a decree as defined in Section 2(2) of the CPC and the grounds for the award shall be deemed to be a judgment as defined in Section 2(9) of the Code of Civil Procedure. u/s 12 of the Kerala Civil Courts Act, 1957, save as provided in Section 13 of that Act, appeals from the decrees or orders of a District Court or a Subordinate Judge's Court lay to the High Court. A dispute relating to compensation either by way of a claim for enhancement or by way of apportionment, lay before the Subordinate Judge's Court. Section 13 of the Civil Courts Act provided for an appeal from a decree of a Subordinate judge's Court to the district Court in a case where the subject matter of the suit did not exceed Rs. 25000 (earlier the amount was lesser). The question are whether an appeal against an award decree of the Subordinate Judge's Court could be filed in the District Court based on the valuation, as contemplated by Section 13 of the Kerala Civil Courts Act 1957. A Full Bench of this Court in P.D. Palakattumala Devaswom and Others Vs. Ulahannan Pylee, Kanjirakkuzhiyil Alapuram and Others, held that all appeals lay to the High Court since what was excluded from the operation of Section 12 of the Civil Courts Act by Section 13 of that Act was only an appeal from, a decree or order in a suit. The Full Bench held that a proceeding in the Court under the Land Acquisition Act being not one instituted by the presentation of a plaint or in any other manner as may be prescribed by

the Rules in the First Schedule to the Code of Civil Procedure, it could not be understood as a suit to which Section 13 of the Civil Courts Act applied. The Full Bench therefore held that appeals from decrees or orders of a Subordinate Judge's Court in proceedings under the Land Acquisition Act, lay to the High Court u/s 12 of the Civil Courts Act, irrespective of the value of the subject matter and in no circumstance Section 13 can apply so as to make an appeal maintainable in the District Court. Thus the Full Bench held that the proceeding under Part III of the Land Acquisition Act is not a suit within the meaning of Section 13 of the Kerala Civil Courts Act. It may be noted here that Section 60 of the Kerala Land Acquisition Act did not as such provide for an appeal to the High Court (unlike Section 54 of the Act) but merely provided that an appeal shall lie from an award as if the award is a decree passed by a civil Court, under the Code of Civil Procedure, 1908. Even then, the Full Bench ruled that Section 13 of the Kerala Civil Courts Act did not have application to an award passed on a reference under the Kerala Land Acquisition Act.

4. In view of the extensive amendment brought to the Land Acquisition Act, 1894 by the Land Acquisition (Amendment) Act, 1984, Act 68 of 1984, the amended Central Act was adopted in Kerala and it replaced the Kerala Land Acquisition Act, 1961. The proceeding giving rise to the present appeal and the present appeal, are hence governed by the Land Acquisition Act 1894 as amended by Act 68 of 1984.

5. In *Rangoon Botatoung Co. Ltd. v. Collector, Rangoon* (1912) 39 Ind App 197 the question arose whether an appeal would lie to the Privy Council from the decision of the Rangoon Chief Court, affirming an award made by the Collector under the Land Acquisition Act, 1894. The Privy Council referred to Section 53 of the Act, making the CPC applicable in so far as the provisions of the Act are not inconsistent with anything contained in the Act, and Section 54 of the Act conferring the right of appeal reading:

Subject to the provisions of the CPC applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Act.

Their Lordships quoted with approval the observations of Lord Bramwell in *Sandback Charity Trustees v. North Staffordshire Ry. Co.* (1877) 3 QBD 1 that:

An appeal does not exist in the nature of things. A right of appeal from any decision of any Tribunal must be given by express enactment.

and held:

Special and limited appeal is given by the Land Acquisition Act from the award of the Court to the High Court. No further right of appeal is given. Nor can any such right be implied.

Their Lordships overruled the contention that when once the claimant is admitted to the High Court he has all the rights of an ordinary suiter including the right to

carry an award made in an arbitration as to the value of the land taken for public purpose, upto the Privy Council as if it were a decree of the High Court made in the course of its ordinary jurisdiction. Thus an appeal to the Privy Council from the award passed by the High Court in exercise of jurisdiction u/s 54 of the Land Acquisition Act, was held to be not maintainable.

6. A Full Bench of the High Court of Madras in *Manavikraman v. Collector, Nilgiris* AIR 1919 Mad 626 held that the decision of the High Court in appeal u/s 54 of the Land Acquisition Act was not a "judgment" within the meaning of Clause 15 of the Letters Patent. Their Lordships referred to the decision in *Rangoon Botatoung Company Ltd. v. Collector, Rangoon* (1912) 39 Ind App 197 as also the subsequent decision in *Special Officer, Salsette Building Sites v. Dosabhai* (1913) 20 Ind Cas 763 (PC) and noticed that in the latter decision, there are observations which undoubtedly point to the conclusion that in the opinion of their Lordships of the Privy Council, the decision on appeal in a land acquisition case was not a judgment within the meaning of Clause 15 of the Letters Patent. It was in this context that Section 54 was amended by the Land Acquisition (Amendment) Act, Act 19 of 1921. The amended Section read:

Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award or from any part of the award of the Court and from any decree of the High Court passed on such appeal as aforesaid, an appeal shall lie to His Majesty in Council subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and Order XLV thereof.

The expression "His Majesty in Council" was replaced by the expression "Supreme Court" in the year 1950.

7. The question came up before the Lahore High Court in *Har Dial Shah v. Secretary of State* AIR 1923 Lah 275 whether an appeal under Clause 10 of the Letters Patent would lie against the decision rendered by a single Judge of the High Court, in an appeal u/s 54 of the Land Acquisition Act. Their Lordships noticed the addition of Sub-section (2) of Section 26 to the Land Acquisition Act by the amending Act of 1921 and took the view that since Clause 10 of the Letters Patent conferred in express terms a right of appeal, it could not be held that the right has been impliedly taken away by Section 54 of the Land Acquisition Act. The Court came to that conclusion in its view that Section 54 was merely an enabling section and was enacted in order to confer a right of appeal to His Majesty in Council which right was not earlier available, as held by the Privy Council in *Rangoon Botatoung Company Ltd. v. Collector, Rangoon* (1912) 39 Ind App 197. Their Lordships held that the expression "only" used in Section 54 of the Act did not restrict the right of appeal but was intended to make it clear that the forum of appeal in land acquisition cases was always the High Court and not the District Court irrespective of the amount of compensation involved. With

respect, we have to observe that their Lordships did not specifically deal with the effect of the further provision that "from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to His Majesty in Council". But their Lordships have stated that Section 111 of the CPC prohibited an appeal to His Majesty in Council from the judgment of a single Judge of a High Court established by the Letters Patent and the reason for that prohibition was that an appeal from such judgment is provided for in the Letters Patent and that an aggrieved party should not be permitted to appeal directly to His Majesty in Council but that he should in the first instance appeal under the Letters Patent to the other Judges of the High Court. With respect, we are bound to point out that a right of appeal is only the creature of a statute and the content of that right must be understood from the provision that confers the right of appeal. This was the reasoning adopted by the Privy Council in *Rangoon Botatoung Company Ltd. v. Collector, Rangoon* (1912) 39 Ind App 197, which led to the very amendment of Section 54 of the Act. No doubt, once conferred by the statute, the right of appeal becomes a substantive right. Therefore when Section 54 conferred the right of appeal, we think, with respect, that the content of that right must be understood only on the terms of the provision conferring the right of appeal. With great respect, we also find it difficult to accept the position: that Section 54 of the Land Acquisition Act is merely an enabling section and was enacted in order to confer a right of appeal to His Majesty in Council, now to the Supreme Court. We must notice that Section 54 of the Act was retained and amended by Act 19 of 1921, in spite of the amendment brought to Section 26 by adding Sub-section (2) to it and creating a fiction that an award on a reference to the Court shall be deemed to be a decree as defined in the CPC inviting the consequences that may arise therefrom. We are inclined to the view in that context, that Section 54 of the Act is the Section that confers the right of Appeal and it is not merely an enabling provision.

8. In *Collector of Dacca Vs. Gholam Kuddus Choudhury and Others*, it was held that a judgment in a land acquisition appeal was a judgment as mentioned in Clause 15 of the Letters Patent and was appealable. But their Lordships also noticed that a right of appeal from any decision of any Tribunal must be given by express enactment and such a right cannot be implied. On this conclusion their Lordships followed the view taken by the Lahore High Court in *Har Dial Shah v. Secretary of State* AIR 1923 Lah 275.

9. In AIR 1944 284 (Nagpur) it was held that a right of appeal under Clause 10 of the Letters Patent against the judgment rendered by a single Judge was not affected by Section 54 of the Land Acquisition Act. Their Lordships did not independently consider the argument based on the wording of Section 54 of the Land Acquisition Act and preferred to follow the views of the Calcutta and Lahore High Courts in the decisions referred to above. Their Lordships were pleased to point out that since no appeal lay from the decision of a single Judge to the Privy Council, notwithstanding the wording in Section 54 of the Land Acquisition Act, the litigant was bound to file a Letters Patent Appeal first and then approach the

Privy Council challenging the decision of the Division Bench.

10. In *Union of India (UOI) Vs. Mohindra Supply Company*, , the Supreme Court held that the right of appeal otherwise available under Clause 10 of the Letters Patent of the Punjab High Court, was curtailed by Section 39(2) of the Arbitration Act, Section 39 being the section that conferred the right of appeal on the litigant. Their Lordships held that the Arbitration Act which was a consolidating and amending Act, being substantially in the form of a Code relating to arbitration, must be construed without any assumption that it was not Intended to alter the law relating to appeals. When the words of the statute are plain and explicit, they must be given their full effect and must be interpreted in their natural meaning uninfluenced by any assumptions derived from the previous state of the law and without any assumption that the legislature must have intended to leave the existing law unaltered. In *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, , the Supreme Court held that when a statute gave a right of appeal from an order of a Tribunal or a Court to the High Court without any limitation thereon, the appeal to the High Court would be regulated by the practice and procedure obtaining in the High Court. Construing Sections 39 and 43 of the Delhi Rent Control Act, their Lordships held that an appeal disposed of by a single Judge of the High Court and the appeal from the judgment of a single Judge to a Division Bench thereof, are different appeals. An appeal u/s 39(1) of the Delhi Rent Control Act and an appeal under Clause 10 of the Letters Patent do not form part of a single appeal. The expression "appeal" in Section 39 of the Rent Control Act did not take in a Letters Patent Appeal under Clause 10 of the Letters Patent. Therefore an appeal did not lie under Clause 10 of the Letters Patent to a Division bench of the Punjab High Court against the judgment passed by a single Judge of that Court in a Second Appeal u/s 39 of the Delhi Rent Control Act.

11. We find that some of the subsequent decisions brought to our notice have essentially followed the view of the Lahore High Court and there is no independent discussion as such on the wording of Section 54 of the Land Acquisition Act. But, we think that it would be proper to consider in some detail the decisions of the Delhi High Court on this question.

12. In *Basanth Kumar v. Union of India* (LPA 97 of 1980) and in *jugti v. Union of India* LPA 148 of 1988), the Delhi High Court took the view that a Letters Patent Appeal was not maintainable against the decision of a single Judge of the High Court in an appeal filed u/s 54 of the Land Acquisition Act. Their Lordships rested their Lordships' decision on the decision of the Supreme Court in *Bulgit Singh v. State of Harayana* (Civil Appeals Nos. 1663-1668/1982). In that decision, the Supreme Court had held:

The short question raised is whether the Letters Patent appeals were maintainable under the law. The learned Counsel for the Appellants agree that such appeals did not lie on the authority of a judgment of this Court in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, , where a four

Judge bench-has already held that such an appeal does not lie. On this authority, the judgment of the Division Bench of the High Court has to be vacated and consequently the decision of the learned single Judge has got to be restored.

The question was again considered by the Full Bench of the Delhi High Court in *Mahli Devi Vs. Chander Bhan and Others*, . Therein the Full Bench of the Delhi High Court purported to get over the decision of the Supreme Court in Civil Appeals Nos. 1663-1668/1982 on the basis that the judgment of the Supreme Court proceeded on a concession that the question was covered against the Appellants by the decision of the Supreme Court in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, . The Full Bench of the Delhi High Court proceeded to say that the decision of the Supreme Court in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, was distinguishable and since the decision in Civil Appeal Nos. 1663-1668/1982 did not discuss the question, but proceeded on the basis of a concession made by counsel for the Appellants before the Supreme Court, the same could not be treated as an authority to hold that no Letters Patent Appeal would lie against the decision of a single Judge in an appeal filed u/s 54 of the Land Acquisition Act. With great respect, we are not sure whether a High Court would be justified in holding a view directly opposed to the view expressed by the Supreme Court on the basis that the Supreme Court has not rendered that decision after a discussion of the question concerned but had accepted the concession made by counsel appearing in the case. We may observe with respect that the concession was not accepted without reference to the relevant authority on the question. As we understand the decision of the Supreme Court in *Bulgit Singh v. State of Haryana* (Civil Appeals Nos. 1663-1668/1982), we find that the learned Judges who decided that case agreed with the submission that the ratio of the decision in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, applied .to the case and hence the Letters Patent Appeal before the Division Bench was not maintainable in the High Court. The Full Bench of the Delhi High Court was also inclined to say that Section 54 of the Act was not in conflict with Clause 10 of the Letters Patent of the High Court and the non obstante clause in Section 54 had to be confined to the choice of forum rather than to the right of appeal. With great respect, we find no justification for confining the operation of the non obstante clause in Section 54 of the Act to the forum alone. There is nothing in the Section or in the Act which indicates that the non obstante clause occurring in Section 54 of the Land Acquisition Act must be given a limited operation as sought to be done by the Delhi High Court. With great respect, we feel that the fact that the right of appeal is conferred by Section 54 of the Land Acquisition Act and the principle that when a right of appeal is conferred by a statute the Court has to look to that statute to understand the right to appeal and the scope of the appeal, has not been fully appreciated by the Full Bench of the Delhi High Court. Therefore, with respect, we cannot also agree with the approach of the Full Bench of the Delhi High Court when it says that Section 54 of the Act does not contain any bar to an appeal being taken under Clause 10 of the Letters Patent. According to us, the question

to be asked is whether the section which confers the right of appeal, confers a further right of appeal to a Division Bench or on its terms excludes or precludes any further appeal in the High Court expressly or by necessary implication. We have therefore difficulty in accepting the ratio of the decision of the Full Bench of the Delhi High Court both on the ground that it goes against a decision of the Supreme Court and also on the ground that it proceeds on an unwarranted restrictive interpretation of the non-obstante clause occurring in Section 54 of the Land Acquisition Act.

13. Earlier, a Division Bench of this 1 Court had felt that the question was of sufficient importance and referred the question to a Full Bench. In that order of reference in A.F.A. 109 of 1994 it was observed:

With respect we feel that on the scheme of Section 54 of the Land Acquisition Act only two appeals from an award passed by the land acquisition Court are contemplated. One appeal is to the High Court and the further appeal is to the Supreme Court. Whether the appeal to the High Court is disposed of by a single Judge or by a Division Bench depending upon the dispensation available in that Court, according to us, the same would suggest that from the decision of the High Court an appeal could be filed only in the Supreme Court. It is in that context that the words "decision on such appeal as aforesaid" occurring in Section 54 of the Act assumes importance, especially if understood in the light of the observations in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, .

The question thus referred came up before a Full Bench. The Full Bench by the decision in *K. Premavalli Vs. State of Kerala*, accepted the view taken by the Full Bench of the Delhi High Court and held that an appeal was maintainable. The Full Bench stated that unless there was an express or implied bar curtailing the right of appeal, the Court should always uphold the right of appeal. Section 54 of the Land Acquisition Act does not curtail a right of appeal to a Bench of two Judges as provided u/s 5(11) of the Kerala High Court Act nor has it made final, the decision of a single Judge of a High Court u/s 54 of the Land Acquisition Act read with Section 3(13)(v) of the Kerala High Court Act. With respect, again, we find difficulty in agreeing with this position. Once it is conceded that a right of appeal is a conferred right and not a natural right and the source and content of that right must be understood from the language of the statute which confers the right of appeal, what is involved is a construction of the section conferring the right of appeal and not a search to see whether it has expressly or impliedly barred an appeal. At this stage, at the risk of repetition, we may quote Section 54 of the Land Acquisition Act:

Subject to the provisions of the CPC 1908 (5 of 1908) applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid

and appeal would lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof". (Emphasised supplied)

It is settled that a literal interpretation of a provision is the interpretation that has to be preferred unless such an interpretation leads to absurd results or gives rise to impracticable situations. There is no such problem on a literal interpretation, which is the golden rule of interpretation, of Section 54 of the Land Acquisition Act. The section plainly read, says that an appeal shall lie in any proceeding under the Act to the High Court from an award and from any decree of the High Court passed on such appeal, an appeal would lie to the Supreme Court. We cannot see why the wording of the statute cannot be given effect to. There is no right in a party to insist that he must have an appeal, in addition to what is provided for by the very statute which confers the right of appeal. We must remember that Section 54 of the Land Acquisition Act has been enacted notwithstanding the deeming provision contained in Section 26(2) of the Act which deems any award or part of an award passed under Part III of the Act, to be a decree as defined in the Code of Civil Procedure. If the statute had merely enacted the fiction contained in Section 26(2) of the Act, it would have been open to the Court to say that the right of appeal to the Court is conferred, without limitation, on the basis that the award is a decree and once it has come to the Court by way of an appeal, the normal procedure and the normal dispensation of that Court will apply and there is nothing to exclude the applicability of Section 5(11) of the High Court Act. But in this case, a specific provision in Section 54 of the Act has been enacted conferring the right of appeal. We think that to understand the content of that right of appeal, we are bound to look at Section 54 of the Act and construe the right as conferred by that Section, being uninfluenced by the fact that what is passed is a decree and that under the general procedure available in the High Court, an appeal may be contemplated against the decision of a single Judge u/s 5(11) of the High Court Act. In fact, with respect, we are even prepared to say that an appeal under Clause 10 of the Letters Patent governing the Delhi High Court or u/s 5(11) of the Kerala High Court Act, is barred by clear implication by Section 54 of the Land Acquisition Act. We are therefore not in a position to agree with the decision of the Full Bench in *K. Premavalli Vs. State of Kerala*, .

14. In this situation, the normal course that would be open to us would be to refer the question for reconsideration to a larger bench. But at this stage, we are constrained to notice yet another decision of the Supreme Court, reported in *Basant Kumar and Others Vs. Union of India (UOI) and Others*, . We may notice that this decision is not seen referred to in the Full Bench decision of this Court in *K. Premavalli Vs. State of Kerala*, . That was a case which arose under the Land Acquisition Act and one of the questions involved was the appealability to a Division Bench from a decision by a single Judge in an appeal u/s 54 of the Act. In that decision, the Supreme Court did not consider the question in detail. But their Lordships in paragraph 9 of the judgment stated thus:

The next question is whether the LPA would lie against the judgment of the learned single Judge? It is a settled legal position that u/s 54 of the Land Acquisition Act, the appeal would lie to the High Court; when the appeal on the basis of the pecuniary value was decided by a single Judge necessarily, it being the judgment of the single Judge, an appeal would lie to the same Court in the form of LPA to the Division Bench. The Division Bench was not right in holding that the LPA would not lie to the High Court against the judgment of the single Judge. To that extent, the view of the High Court is not correct.

We may notice here that this was an appeal from the decision of the Delhi High Court in LPA 97 of 1980 (*Basanth Kumar v. Union of India*) referred to by the Full Bench of the Delhi High Court in *Mahli Devi Vs. Chander Bhan and Others*, . We may notice that the Delhi High Court had taken the view in LPA 97 of 1980 that Letters Patent Appeal was not maintainable. Even though the question is not discussed with reference to Section 54 of the Act and there is no independent consideration of the scope of Section 54 of the Land Acquisition Act by the Supreme Court, the Supreme Court has clearly reversed the decision of the Delhi High Court in LPA 97 of 1980 and has held that the Letters Patent Appeal was maintainable. Whatever may be our view on the matter of interpretation of Section 54 of the Land Acquisition Act and the right of appeal conferred by that Section, we feel that we are bound by the decision of the Supreme Court in *Basant Kumar and Others Vs. Union of India (UOI) and Others*, . In that situation, we are desisting from referring the question to a larger bench in spite of our disagreement with the ratio of the decision of the Full Bench in *K. Premavalli Vs. State of Kerala*, . Following the observations of the Supreme Court we hold that the appeal is maintainable.

15. Mr. Gopikrishnan Nambiar who assisted the Court as Amicus Curiae suggested that in the light of the practice followed by this Court it is possible to say that an appeal u/s 54 of the Land Acquisition Act cannot be heard and disposed of by a single Judge of this Court whose jurisdiction is confined to the appeals referred to in Section 3(13)(b) of the Kerala High Court Act. Counsel pointed out that appeals arising from special enactments like the Motor Vehicles Act, the Employees' State Insurance Act, The Hindu Marriage Act, Arbitration Act and other similar enactments are all being posted only before a Division Bench irrespective of valuation and the question has to be examined in the light of that position. Learned Senior Government Pleader Mr. K. Jayakumar on the other hand submitted that on a proper interpretation of Section 3(13)(b) of the High Court Act, there was no impediment in appeals arising from special enactments being heard by a single Judge, subject to the valuation of the subject matter and all appeals under special enactments, unless the special enactment itself insists that the appeal should be heard by a Division Bench, can be heard and disposed of by a single Judge if the valuation of the subject-matter of the proceeding did not exceed one lakh of rupees. Since this question relates to the jurisdiction of the single Judge to hear an appeal arising from the Land Acquisition Act and other special enactments (unless the special enactment itself provides otherwise)

and it also has impact on the practice of this Court, we will now deal with the question thus raised by counsel.

16. We will first advert to the history of the legislation. The powers of the single Judge under the Kerala High Court Act, 1958, Act 5 of 1959 are defined by Section 3 of that Act. Section 3 of the Act provides:

The powers of the High Court in relation to the following matters may be exercised by a single Judge, provided that the Judge before whom the matter is posted for hearing may adjourn it for being heard and determined by a Bench of two Judges.

We are concerned with clause No. 13 thereunder. Section 3(13) as it originally stood read as follows:

13. An appeal-

(a) from a judgment or order of a criminal Court, except in cases in which the Appellant or a person tried with him has been sentenced to death or imprisonment for life;

Provided that in the exercise of such power a single Judge shall not impose a sentence of death or imprisonment for life;

(b) from an original decree or order, where the amount or value of the subject-matter of the suit does not exceed ten thousand rupees;

(c) from an original decree when such appeal relates to costs only;

(d) from an order u/s 104 of the Code of Civil Procedure, 1908, except an order of the kind mentioned in Clause (h) of Sub-section (1) of the said section or in Clauses (c), (d) or (J) of Rule 1 of Order XLIII of the First Schedule to the said Code;

(e) from an appellate decree or order;

(f) u/s 79(3) of the Insolvency Act, 1955; and

(g) u/s 476B of the Code of Criminal Procedure, 1898.

A doubt was felt whether an appeal under the Kerala Agricultural Debt Relief Act, 1958, Act 31 of 1958 could be heard by a single Judge even though the value of the subject-matter of the proceeding did not exceed rupees ten thousand at that time, (now it is rupees one lakh). The Legislature stepped in and by the Kerala High Court (Amendment) Act, 1966, Act 6 of 1966, Sub-clause (b) of Clause (13) of Section 3 was amended by substituting a new provision in the place of the old. In the place of original Clause (b) reading:

from an original decree or order, where the amount or value of the subject-matter of the suit does not exceed ten thousand rupees.

the following was substituted.

(b) from an original decree or order in any suit or other proceeding, where the amount or value of the subject-matter of the suit or other proceeding does not exceed ten thousand rupees.

In the reasons for the enactment it was stated that Section 3(13)(b) of the Kerala High Court Act empowered a single Judge of the High Court to hear an appeal from an original decree or order where the amount or value of the subject-matter of the suit does not exceed rupees ten thousand. All other- appeals which were not provided for u/s 3 had to be heard, by virtue of Section 4 of the High Court Act, by a Bench of two Judges. Hence appeals arising from other proceedings like applications under the Kerala Agricultural Debt Relief Act, 1958 have to be heard by a Division Bench even though the amount or value of the subject-matter may be Rs. 10,000 or below. This is an anomaly which has to be removed. Though the reason given for the amendment cannot control the interpretation of the provision as amended, the intention of the Legislature is clear, though, again, that by itself may not control a proper interpretation of the provision by the Court. But we think that the reasons for the amendment do indicate what was sought to be achieved by the amendment. The provision was further amended by Amending Act 36 of 1989 by enhancing the jurisdiction of the single Judge to hear appeals where the amount or value of the subject-matter does not exceed one lakh rupees.

17. As per the amended provision, the power of the single Judge extends to hearing an appeal from an original decree or order in any suit or other proceeding where the amount or value of the subject-matter does not exceed one lakh rupees.

18. Thus the present position is that where the value of the subject-matter of the suit or other proceeding does not exceed one lakh rupees, a single Judge of this Court can hear that appeal. In this context, what falls for consideration is the scope of the expression "original decree or order in any suit or other proceeding" occurring in the section. There cannot be any difficulty in understanding the expression "original decree or order in any suit". In *P.D. Palakattumala Devaswom and Others Vs. Ulahannan Pylee, Kanjirakkuzhiyil Alapuram and Others*, the Full Bench has clearly held that a reference to the Land Acquisition Court u/s 18 or Section 30 (then Section 32) of the Land Acquisition Act, is not a suit. Everything therefore boils down to understanding the scope of the expression "other proceeding" occurring in the section. The expression "of her proceeding" is preceded by the words "any suit or". The rule of *ejusdem generis* may not apply since that rule applies when (1) the statutes contains an enumeration of specific words; (2) the subjects of enumeration constitute a class or category; (3) that class or category is not exhausted by the enumeration; (4) the general terms follow the enumeration and (5) there is no indication of a different legislative intent. (See *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, .

19. In *United Towns Electric Co. v. Attorney General, Newfoundland* (1939) 1 All

ER 423 it was held that there is no room for the application of the ejusdem generis rule in the absence of any mention of genus, since the mention of a single species does not constitute a genus. In Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., while construing the words "a claim of set-off or other proceedings to enforce a right arising from a contract" occurring in Section 69(3) of the Indian Partnership Act, the Supreme Court after referring to the examples given by Acquith, J. in Allen v. Emmerson (1944) 1 KB 362 held:

It follows, therefore, that interpretation ejusdem generis or noscitur a sociis need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted. Here, the expression "claims of set off" does not disclose a category or a genus.

In Quazi v. Qauzi (1979) 3 All ER 897, the House of Lords while interpreting the expression "judicial or other proceedings" stated that there was no genus and the "other proceedings" must simply be proceedings which were not judicial. In Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India (UOI) and Another, , their Lordships held:

The expression ejusdem generis - "of the same kind or nature" - signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words. The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found ejusdem generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus.

20. Thus, it being essential for application of the ejusdem generis rule that enumerated things before the general words must constitute a category or a genus or a family which admits of a number of species or members, it cannot be held that the rule could be applied when there is no enumeration of words in the section that may constitute a category. The only thing is that the expression or other proceeding is juxtaposed with the expression "suit". Though it maybe

possible to say that the expression "other proceeding" must take its colour from the expression "suit", the company of which it keeps, in the context of the provision, that approach cannot also be adopted to restrict the scope of the expression "other proceeding". In *Crawford on construction of statutes*, it is stated "in ordinary use, the word "or" is a disjunctive that marks an alternative which generally corresponds to the word "either"" (paragraph 188). The Supreme Court in *Ramchandra Aggarwal and Another Vs. State of Uttar Pradesh and Another*, had occasion to construe the expression "suit, appeal or other proceeding occurring in Section 24" of the Code of Civil Procedure. The Supreme Court held that the expression "proceeding" used in Section 24 of the CPC was not a *terra of art* which had acquired a definite meaning. Looking into the context in which the word had been used in Section 24(1)(b) of the Code of Civil Procedure, their Lordships held that it appeared to be something going on in a Court in relation to the adjudication of a dispute, other than a suit or an appeal. Bearing in mind that the term "proceeding" indicates something in which business is conducted according to a prescribed mode, it would be only right to give it a comprehensive meaning so as to include within it, all matters coming up for judicial adjudication and not to confine it to a civil proceeding alone. Their Lordships therefore held that a proceeding before a civil Court arising out of a reference to the civil Court u/s 146(1) of the Code of Criminal Procedure, 1898 was a proceeding that could be transferred by the District Court in exercise of its power u/s 24 of the Code of Civil Procedure, because, in any case, it was a "proceeding". We see no reason why in interpreting the present provision, we should not be guided by the approach made by the Supreme Court in the above decision. We are all the more re-assured in our adopting this approach, especially in the context of the amendment brought about to the provision, by the Amending Act, Act 6 of 1966.

21. One other aspect requires to be considered. The provision uses the expression "from an original decree or order". The expression "original" qualifying the expression "decree or order" is intended only to explain that the appeal contemplated is an appeal against a decree in an original suit or original proceeding or against an order in an original suit or original proceeding. No particular significance can therefore be attached to the use of the expression "original decree" and there does not appear to be any warrant for understanding that expression as a decree confined to a final adjudication in a suit in terms of the Code of Civil Procedure.

Normally, the expression "order" is used with reference to a final adjudication that does not amount to a decree. The expression "order" only indicates that the "other proceeding" contemplated is a proceeding in which the final adjudication does not amount to a decree. It may include a proceeding under the Code of Civil Procedure. But in the context of the statute, we do not see any reason to confine the scope of the expression "original order in any proceeding" to an original order in a proceeding under the Code of Civil Procedure. The expression "other proceeding" appears to us to be a term of expansion rather than a term of

confinement.

22. We may also notice that there is no specific provision in Section 4 of the Kerala High Court Act dealing with the powers of Division Bench of the High Court relating to appeals arising from suits or other proceedings. The hearing of an appeal from an original decree or order by a Division Bench is only by tracing the power to the residuary power contained in Section 4(7) of the Kerala High Court Act. Therefore, from the scheme of Sections 3 and 4 of the Kerala High Court Act, what is discernible is that the hearing of an appeal, whether it be against a decree in a suit or a decree or order in a proceeding arising under a special enactment, can be by a single Judge if the value of the subject-matter does not exceed one lakh rupees and it need only be heard by a Division Bench if the value of the subject-matter exceeds one lakh rupees. The same will be the position while entertaining an appeal from an order either under the CPC or in a proceeding under any other enactment, subject of course to the specific exclusions contained in the special enactment and in Section 3 itself.

23. Two decisions of this Court remain to be noticed. In the decision in Ouseph Chacko v. Saraswathi Antharjanam 1966 Ker LT 1060 it was held that a revision u/s 103 of the Kerala Land Reforms Act can be heard only by a Division Bench in view of the saving of the power of the Division Bench u/s 4(7) of the High Court Act. Their Lordships noticed that it was Section 4(7) of the Act that saved the residuary powers of the High Court and held that, on the wording of Section 3(4) of the High Court Act, which provided for hearing of a revision by a single Judge only if it were one u/s 115 of the CPC or Section 22 of the Small Cause Courts Act, a Revision u/s 103 of the Kerala Land Reforms Act could not be heard by a single Judge. This of course led to an amendment of Section 103 of the Kerala Land Reforms Act itself providing that a revision thereunder could be heard by a single Judge. The question again came up for consideration while considering whether a revision filed u/s 20 of the Kerala Buildings (Lease and Rent Control) Act could be heard by a single Judge in the context of Section 3(4) of the High Court Act read with Section 4(7) of the High Court Act. A Division Bench in Kunhikelu v. Abdul Samad (1990) 2 K LT 506 held that the revision could be heard only by a Division Bench. Their Lordships referred to the decision in Ouseph Chacko v. Saraswathi Antharjanam 1966 K LT 1060, the scope of Section 4(7) of the High Court Act and the restrictive words in Section 3(4) of the High Court Act. In the context of the wording of Section 3(4) of the High Court Act dealing with the powers of a single Judge relating to hearing of a Revision, we do not think that these decisions can have any impact on the interpretation of Section 3(13)(b) of the High Court Act adopted by us as above. At best, these decisions do indicate the scope of the residuary power available with the Division Bench u/s 4(7) of the High Court Act.

24. We have already referred to the practice in this Court whereby appeals arising under special statutes, even if it is not provided by the relevant statute that they should be heard only by a Division Bench, are being sent up for

hearing, only before a Division Bench. But we could not lay our hands on any reported or unreported decision of this Court taking the view that such appeals could be heard only by a Division Bench and could not be heard by a single Judge. We think that this practice which was justified under the provision as it stood before its amendment by the Kerala High Court (Amendment) Act, 1966, Act 6 of 1966, since the provision as it stood then, provided that the single Judge had power only to hear an appeal from an original decree or order where the amount or value of the subject-matter of the suit did not exceed ten thousand rupees and the words "other proceeding" were absent. But there is no warrant for following that practice after the amendment brought about by Act 6 of 1966.

25. Thus on a true construction of Section 3(13)(b) of the Kerala High Court Act we are of the view that a Land Acquisition Appeal and all appeals arising under special enactments, unless otherwise provided for by the special enactment itself, could be heard by a single Judge. Therefore the argument that an appeal u/s 54 of the Land Acquisition Act could not be sent up for hearing before a single Judge, cannot be sustained.

26. Thus we hold that a further appeal to a Division Bench u/s 5(11) of the Kerala High Court Act is maintainable in view of the decision of the Supreme Court in *Basant Kumar and Others Vs. Union of India (UOI) and Others*, and that appeals arising under special enactments, unless otherwise insisted on by the special enactment itself, can be heard and disposed of by a single Judge, if the value of the subject-matter does not exceed the amount specified in Section 3(13)(b) of the Kerala High Court Act.

Before parting with the case, we place on record our appreciation of the valuation assistance rendered to us, by Sri. Gopikrishnan Nambiar, Advocate, who assisted the Court as *Amicus Curiae* at our request.