

**(1954) 03 KL CK 0012**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 104 of 1951**

Eravi Vasudevan Nambooripad and Others

APPELLANT

Vs

Travancore-Cochin State and Another

RESPONDENT

**Date of Decision :** 29-03-1954

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19(1), 31(2)  
General Clauses Act, 1897 — Section 10, 11, 12, 13, 14

**Citation :** AIR 1954 Ker 522

**Hon'ble Judges :** V.S. Subramanya Iyer, J;M.S. Menon, J;K. Sankaran, J

**Bench :** Full Bench

**Advocate :** P.K. Achen, for the Appellant; Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Subramania Iyer, J.—This original petition is before the Pull Bench (sic) to the sub-joined order of reference (sic) by a Division Bench of which one of us (sic) a member.

(ORDER OP REFERENCE: PER SANKARAN AND J. VITHAYATHIL JJ.)

This petition is for a writ quashing the orders of the Government of Travancore-Cochin, dated 2-6-1950 and 30-6-1951 relating to the imposition of basic tax on lands within the Desavazhies of Oorakket and Nediyaam belonging to the Petitioner's Mana and to direct the State to treat such lands as exempted from the operation of the Travancore Land Tax Proclamation, 1121. It is alleged that these two Desavazhies were given to the Petitioner's Mana by the Ruler of Travancore more than three centuries ago as absolute free-hold lands. The Travancore Land Tax Proclamation, 1121, was promulgated with a view to introduce a uniform rate of basic tax in the State in lieu of the varying rates of tax at which lands have been assessed. According to the Petitioner, the proclamation was not intended to impose tax on free lands like Desa Ozhivoos. By petition dated 23-5-1122 and 3-11-1122 the Petitioner moved the

Government of Travancore to exempt the two Desa Ozhivoos from the operation of the Proclamation. By order ROC. 9608/46/ Rev. dated 3-9-1947 the Government exempted the said Desa Ozhivoos along with Ors. from the operation of the Proclamation. But on 2-6-1950 Government passed an order R. Dis. 164/50/RD cancelling the previous order and imposing basic tax on the properties in the two Desavazhees.

On 26-9-1950 the Petitioner moved the Government to review this order. He also prayed by a petition dated 22-11-1950 that if Government did not find their way to exempt the two Desavazhees from the operation of the Proclamation he might be awarded sufficient compensation. These petitions were rejected by the Government by order dated 30-6-1951. The Petitioner impeaches the orders dated 2-6-1950 and 30-6-1951, on the following grounds (1) the Proclamation does not apply to free-hold lands but only to lands assessed to revenue. (2) When once the Government exercised the power of exemption granted by Section 6(2) of the Proclamation Government had no power to revoke the same. (3) The order offends Articles. 14, 19(1) (f) and 31(2) of the Constitution.

2. The petition was opposed by the State. It was contended on behalf of the State that the Travancore Land Tax Proclamation 1121, applies to all lands except those excluded by Section 6(1) and those exempted by Government in exercise of the power conferred on Government u/s 6(2). It was further contended that the order dated 3-9-1947 did not amount to an exemption u/s 6(2) as it was not notified in the Government Gazette as provided in that Sub-section. It was further contended that even if the order amounted to an exemption Government had the power to revoke the same. With regard to the argument based on Articles. 14, 19(1) (f) and 31(2) of the Constitution it was contended that those articles did not apply to the case and that the Constitution itself did not apply to the Proclamation which was promulgated before the date of the Constitution.

3. With regard to the first question the State relies on the preamble to the Proclamation and Sections 4 and 6. According to the learned Government Pleader the preamble shows that the object of the Proclamation was to impose a low and uniform rate of basic tax on "all lands" in the State. Section 4 says that subject to the provisions of the Proclamation there shall be charged and levied in respect of "all lands" in the State whether, wet, dry or garden, or under whatever tenure held, a uniform rate of tax to be called the basic tax. It is further argued that if the Proclamation did not apply to all lands Section 6 which excludes certain categories of lands from the operation will have no meaning.

4. Learned Counsel for the Petitioner argued that the wording of Section 4 shows that the object of the Proclamation was only to introduce a uniform rate of tax on all lands assessed to revenue and not to impose tax on free-hold lands. Reliance was also placed on Section 5(2) which says that the basic tax. charged and .levied under the Proclamation shall be the tax payable to Government "in lieu of any existing tax in respect of the land." Reference was made to Section 15(a) also which says that nothing in the Proclamation shall affect the condition

of any agreement, grant or deed relating to any land except to the extent provided in the Proclamation. With regard to the contention of the State that there was no valid exemption since the order dated 3-9-1947 was notified, in the Government Gazette learned Counsel for the Petitioner replied that exemption was complete when the Government communicated the order to the Petitioner and that in the nature of this case notification in the Government Gazette was not necessary to complete the exemption.

5. With regard to the power of Government to revoke the exemption once granted learned Government Pleader relied on Section 21, General Clauses Act (India), which provides that power to issue notifications or orders includes power to vary or rescind the same. According to the Petitioner that section does not apply to a case of revoking an exemption granted by the Government to a party under the Proclamation.

6. The argument based on Article 14 of the Constitution is that the order of Government amounts to discriminating between Adhikara Ozhivoos and Desa Ozhivoos which belong to the same category. It was also argued that the order virtually deprives the Petitioner of his right to hold the lands in question and that therefore it offends Article 19(1)(f) of the Constitution and that it offends Article 31(2) also since it does not provide for compensation to be paid to the Petitioner.

7. The main question to be decided in this petition is whether the Travancore Land Tax Proclamation, 1121, will apply to free-hold lands or whether it will apply only to lands already assessed to revenue. The decision of this question will have far-reaching consequences. We think it proper that this question is decided by a Pull Bench of this Court The other questions of law raised in this petition are also of considerable importance, and we think that it is desirable" that those questions also are considered by a Full Bench. We, therefore, refer this petition to a Full Bench. 28-10-1953.

The facts are set out in the order of reference and it is not necessary to state them over again. The questions that arise for decision are, firstly, whether the Petitioner's lands come within the ambit of the Proclamation providing for levy of basic land tax, secondly, whether they have been exempted from the operation of the Proclamation by the second clause of the 6th section of the Proclamation. A point subsidiary to the second that arises is whether, if there had been an exemption, the Government is competent to; revoke it. The third point is whether the levy of basic tax upon the Petitioner's lands offends Article 14 of the Constitution of India as legislation discriminatory against the Petitioner.

(2) POINT No. 1: The preamble states that the object of the Proclamation was to enact that a low and uniform rate of basic tax shall be charged and levied on "all lands", and to declare that the arrangement herein contemplated and enacted shall "inter alia" and subject to the provisions hereinafter contained be deemed to be a general revenue settlement of the State.

The third section enacts that

notwithstanding anything in any statute, grant, deed or other transaction, the arrangement herein made for the levy of the basic tax shall be deemed "inter alia" to be a general revenue-settlement of the State.

There are two provisos to the section which are not relevant for the case. The 4th section enacts that

subject to the provisions of this Proclamation, there shall be charged and levied in respect of "all lands in the State", whether wet, dry or garden or under whatever tenure held, "a uniform rate of tax" to be called the basic tax.

The 5th section contains three clauses, the second of which provides that

The basic tax charged and levied at this rate shall be the tax payable to Our Government "in lieu of any existing tax" in respect of the land.

The 6th section contains two clauses, the first of which enacts that

This Proclamation is not applicable to the following classes of lands:

- (a) Sreepandaravaga lands belonging to the Sri Padmanabha Swami Temple.
- (b) Kandukrishi lands which are our Home Farms or private property;
- (c) Sreepadom lands;
- (d) Freeholds (Adhikara Ozhiyus) belonging to the Edavagais of Edappally, Kilimanoor Vanjipuzha and Poonjar.

The second clause says that

Our Government may, by notification in Our Government Gazette, exempt any land or classes of lands, either wholly or partially, from the provisions of this Proclamation.

Section 7 to 14 are not relevant for the case. Section 15 enacts as follows:

Nothing in this Proclamation shall:

- (a) affect the conditions of any agreement, grant or deed relating to any land except to the extent hereinbefore provided;
- (b) affect any rights which have accrued to Our Government before the date on which this Proclamation comes into force

The last and 16th section empowers the Government to make rules to carry into effect the provisions of the Proclamation. It is clear from the provisions of the Proclamation read above that the Proclamation was meant to affect all lands in the State except those excluded under the first clause of the 6th section. Under the second clause of the 6th section the Government have taken power to exempt any class or classes of lands either wholly or partially from the provisions

of the Proclamation. Stress is laid on behalf of the Petitioner on the second clause of the 5th section which provides that the basic tax charged by the Proclamation is in lieu of any existing tax in respect of the land. The argument is that the basic tax being in lieu of any existing tax it was not contemplated to impose a tax upon, any land which was not then subject to a tax, placing reliance upon the words "in lieu of". The point is that in order that the words "in lieu of" should have a meaning something must have existed in lieu of which the new impost is made.

Learned Government Pleader on behalf of the Respondent argues that if that be the intent of the Legislature the words "any" would not have been used as the more appropriate word would have been "the". The use of the word "any" is meant, according to the learned Government Pleader to connote the idea that the basic tax was in lieu of existing tax, if any. The provisions contained in the preamble which refers to all lands and the 4th section which enact that there shall be charged or levied in respect of all lands in the State of whatever description would show that the contention urged by the Government. Pleader as regards the true interpretation of the second clause of the 5th section is correct. That clause and several other clauses of the Proclamation have not been happily worded but nevertheless the intent of the Legislature is amply clear. In our judgment the Proclamation was meant to levy a basic tax upon all the lands in the State irrespective of the question whether they were or were not then subject to any land tax. This conclusion is confirmed by the 6th section of the Proclamation which has been read, where the classes of lands outside the ambit of the Proclamation have been excluded and the second clause of which provides for the exemption from basic tax levied under the Proclamation of any land or class of lands thereafter.

(3) POINT No. 2: Learned Counsel for the Petitioner argues on the strength of Exs. A to C that the Government did exempt the Petitioner's lands from tax. Exhibits A and B relate to the two Desa Ozhivoos of Oorakad and Nediyaam respectively. They are similarly worded. The communications are sent on behalf of the Government to the Petitioner intimating him that action is being taken to exempt the Desa Ozhivoo lands in question u/s 6(2). Exhibit C is an order dated 2-6-1950 wherein it is stated in the first paragraph as follows:

Section 3 of the Land Tax Proclamation provides that notwithstanding anything contained in any Statute, grant, deed or other transaction, the arrangement provided for in the Proclamation for the levy of basic tax shall be deemed inter alia to be a general revenue settlement of the State. Section 4 provides that subject to the provisions of the Proclamation, there shall be charged and levied in respect of lands in the State, whether wet, dry or garden or under whatever tenure held, a uniform rate of tax to be called the basic tax. u/s 6(2) of the Proclamation, Government have taken power to exempt any land or classes of lands, either wholly or partially, from the provisions thereof. "In G.O. ROC. No. 9303/46/Rev. dated 3-9-1947 read above Government sanctioned certain lands

being exempted from taxation in exercise of the powers conferred on them under this section". Government have since had occasion to reconsider these orders. They have also had under consideration representations received from various parties for exemptions of further lands from basic tax assessment.

The argument is that the sentence underlined (here in " ") in the above extract from Ex. C amounts to an exemption of the Petitioner's lands from basic tax under the Proclamation. In the first place, the sentence does not warrant the argument because it says merely that Government sanctioned certain lands being exempted. That is to say, the Government were agreeable to their exemption being made. There is no statement that any exemption had in fact been made. Further, the second clause of the 6th section under which it is contended the Petitioner's lands have been exempted provides that

Our Government "may by notification in Our Government Gazette exempt any" land or class of lands whether wholly or partially from the provision of this Proclamation.

The act of exemption or the process of exemption is the notification in the Government Gazette. Unlike a case where it is provided that a particular order given or appointment made should be notified in the Gazette for particular purposes here the very act contemplated is to be done by means of the notification. The notification is the act. If there is no notification there is not the act. The notification is not, therefore, merely evidence of the act or order. It is the act itself. In our judgment in order to attract the application of Cl. 2 of the 6th section there must be a notification. In its absence the Petitioner's lands have not been exempted. Proceedings taken by the Government by Exts. A to C are steps towards an exemption which have to culminate in the notification. There was not such a notification in this case and the steps, therefore, are of no effect and count for nothing. This being our view, the other questions, namely, whether there has been revocation of the exemption by the Government and whether if an exemption had been made under Cl. 2 of Section 6 it is revocable at all do not arise for consideration.

(4) POINT No. 3.: This relates to the applicability of Article 14 of the Constitution. The argument for the Petitioner is that the classes of lands excluded from the operation of the Proclamation under the first clause of the 6th section are similar to the Petitioner's lands which are Desa Ozhivoos. We are not able to agree. Firstly the classes of lands excluded by the first clause of Section 6 form a distinct class. The Petitioner had no case that his lands would come within that class because Cl. 1 refers to classes of lands which are outside the ambit of the Proclamation altogether. The second clause provides for exempting lands within the operation of the Proclamation. The Petitioner applied to the Government under the 2nd clause for exemption from levy. A prayer for exemption from the operation of the Proclamation is inconsistent with a case that the Proclamation would not apply to the case at all which would be the position had he contended that his lands would come within the category of lands mentioned in the first

clause. If the Petitioner's lands are outside the ambit of the Proclamation how could he ask for exemption from the operation of the Proclamation? As already stated, the Proclamation by its preamble as also by the 4th section which have been read above envisages a scheme for levying basic tax on all lands in the State to which the Proclamation will apply. Only the lands comprised in the four sub-clauses of the first clause of S. 6 are excluded from its operation and no other lands. It would be an act of discrimination if any land coming within the ambit of the Proclamation and liable to the levy of basic tax is to be exempted unless it falls under Anr. distinct category. If the Petitioner has a case that his lands fall under a distinct category admitting of a treatment different from that accorded to the other lands on which basic tax has been levied under the Proclamation it is up to him to move the Government for appropriate orders. We are not called upon nor are we competent to consider the question.

(5) The result is that the petition fails and is dismissed with costs, Advocate's fee Rs. 100/-.