

(1973) 07 KL CK 0032
In the High Court Of Kerala
Case No : O.P. No. 288 of 1973

M.T Joseph Alias Thommen Joseph and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-07-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 31, 31A
Kerala Government Land Assignment Act, 1960 — Section 2
Kerala Land Reforms Act, 1963 — Section 103, 127, 14, 15, 16

Citation : AIR 1974 Ker 28

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

Bench : Division Bench

Advocate : C.K. Sivasankara Panicker, S. Narayanan Poti, D. Narayanan Potti, P.G. Panicker, T.A. Narayanan Nair and V. Bhaskara Menon, for the Appellant; M.M. Abdulkhader, for the Respondent

Judgement

V.P. Gopalan Nambiyar, J.—These writ petitions challenged the constitutional validity of certain provisions of the Kerala Act 17 of 1972 amending the Kerala Land Reforms Act 1963 (Act 1 of 1964). For convenience, the Act challenged may be referred to as the Amending Act, and Act 1 of 1964 as the Act. The petitioner in O.P. No. 258 of 1973 is the father and the petitioners in the remaining three O.Ps., are his children. Unless otherwise indicated, the facts are with reference to O.P. No. 288 of 1973. In pursuance of a scheme for the reclamation of the Vembanad Lake, sanction was accorded by Ext. P3 order dated 23rd October 1939 for the registry of QST. Blocks covering an extent of 1,454 acres in the joint names of the petitioner and his father Thommen on terms and conditions evidenced by Ext. P4. One of the conditions was that the Thara Vila" (land value) at Rs. 10/- per acre was to be recovered in ten instalments. Ext. R1 agreement was executed on the 10th Karkitakam 111 6 M.E. (in July 1941) between the petitioner and the Tahsildar of Ambalapuzha, permitting the petitioner to enter the lands, prepare the bunds and carry on cultivation. It was stipulated that, if, on survey conducted by the PWD. authorities, it is found that the petitioner had

occupied excess area, the same would be assigned to the petitioner on payment of the land value at the rate specified in Ext. P3 and a fresh agreement would be executed. It was further stipulated that the rights of the petitioner under the agreement will not be transferred by him to any person without the previous consent of the Government and that anything done contrary to the said provision, will not bind the properties covered by the agreement. The properties were described as in Sy. No. 444/1 of Kumarakam Village. In 1963, a further extent of 161.60 acres was assigned to the petitioner, the total extent thus assigned being 1,615.60 acres. In 1964, according to the Government, the Survey Department surveyed the three blocks and found that only an extent of 967.64 acres in the area reclaimed and enjoyed by the petitioner was in Sy. No. 444/1 and the balance was outside the survey number specified in the agreement. The 1964 Survey disclosed that the petitioner was in possession of 2015.43 acres. According to the petitioner, he was entitled to Q.S. T. Blocks covering an extent of 1,615.60 acres by actual assignment, and the rest on the terms of Ext. R1 to have the excess occupied lands assigned on payment of the land value at the specified rate. On 15th June 1957, Ext. P8 settlement deed was executed by the petitioner in favour of his children. As stated in the petition, the same comprised the properties covered by Q.S. and T. Blocks assigned by Ext. R1. It is admitted that there has been alienations of the excess occupied lands in favour of strangers. These documents themselves have not been produced.

2. According to the provisions of the Act, as it stood till its amendment, by Act 35 of 1969, for the purpose of reckoning the "ceiling area", in excess of which a person was not entitled to own, hold, or possess land, certain exemptions were available. For the sake of convenience, we may reproduce the relevant portions of Clauses (a) and (1) of S. 81 as they stood prior to 1-1-1970.

81. Exemptions -- (1) The provisions of this Chapter shall not apply to -

(a) lands owned or held by the Government of Kerala or the Government of India or a local authority or the Cochin Port Trust or any other authority which the Government may, in public interest, exempt, by notification in the Gazette, from the provisions of this Chapter.

Explanation 1-- "Lands owned by the Government of Kerala" shall, for the purposes of this clause, have the same meaning as "Government Land" under sub-s.(1) of S. 2 of the Kerala Government Land Assignment Act, 1960; but lands escheated to the Government and held by tenants entitled to fixity of tenure under S. 13 shall not be deemed to be lands owned by the Government of Kerala.

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(1) Kayal padasekharams of Kuttanad area specified in Schedule IV, so long as such padasekharams are used for the cultivation of paddy or such other crops as the Government may, by notification in the Gazette specify.

By Act 35 of 1969, S. 81(1) and Schedule IV were omitted; and by Act 13 of 1971 a new Schedule IV was inserted providing for rates of compensation in respect of "lands other than nilams" under Part I of the Schedule, and for "nilams" (paddy fields) under Part II thereof. Then followed the Amending Act 17 of 1972 which made important changes in the provisions of the Act. It is difficult to piece together these amendments and to read them in the basic Act, and the absence of an edited text of the Act at the time of hearing, incorporating the latest amendments had further hampered the sufficiently difficult process of piecing together these amendments. S. 14, 15, 16, 18 and 20 of the Amending Act. were attacked. S. 14 amends S. 81 of the Act. The relevant amendment attacked, is the insertion of a new proviso as follows:-

14 Amendment of S. 81.-- In S. 81 of the Principal Act, in Sub-s.(1),--

(i) in clause (a), before Explanation I the following proviso shall be inserted, namely: --

Provided that the exemption under this clause shall not apply to lands owned by the Government of Kerala and held by any person under lease whether current or time expired or otherwise.

S. 15 of the Amending Act, amended S. 84 of the Act by adding sub-s.(3) which is as follows:-

(3). For the removal of doubts, it is hereby clarified that the expression "ceiling area" in sub-s.(1) and (2) means the ceiling area specified in sub-s.(1) of S. 82 as amended by the Kerala Land Reforms (Amendment) Act, 1969 (35 of 1969).

S. 16 of the Amending Act amended S. 85 by sub-s.(ii) of S. 16, A new explanation was added at the end of sub-s.(2) of S. 85 which is as follows:

16 (ii) the following Explanation shall be inserted at the end, namely:

Explanation V. Where a person owns or holds land in excess of the ceiling area including lands owned by the Government of Kerala, the excess lands to be surrendered shall, as far as possible, be the lands owned by the Government of Kerala.

S. 18 of the Amending Act amends S. 86 of the Act. These amendments provide inter alia that on determination of the particulars of the lands, to be surrendered under S. 85, the ownership or possession or both shall vest in the Government, free from all encumbrances. S. 20 of the Amending Act amended S. 88 of the principal Act by introducing two new sub-sections sub-s.(1A) and sub-s.(5), which are as follows:-

20 (1A) -- Notwithstanding anything contained in sub-s.(1), no person shall be entitled to any compensation in respect of any land owned by the Government of Kerala and held by him under lease, or otherwise.

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(5) For the removal of doubts, it is hereby declared that the compensation payable under this Section in respect of a land shall be deemed to include the compensation for growing crops and improvements, if any, thereon and that no person shall be entitled to any amount other than the compensation payable, under this section for the vesting in the Government or extinguishment of his rights (including his rights in respect of growing crops and improvements, if any), in respect of the land.

The effect of these amendments, as far as the petitioner and his lands are concerned, may be summed up as follows:

3. Prior to the recent amendments, "kayal lands" were exempt from the computation of the ceiling area. But now, by reason of the deletion of Clause (1) of S. 81(1), Kayal lands have also to be included in the reckoning. Being so, under S. 85 of the Act, the petitioner is liable to surrender even kayal lands in excess of the ceiling area; and under Explanation V, newly added to the Section, the excess lands to be surrendered shall, as far as possible, be Government lands. As it originally stood, thirty days" notice of surrender had to be given by Land Board, on default of which, the ownership or possession could be assumed by the Government. After amendment, the ownership or possession of lands to be surrendered under S. 85, are to vest automatically in the Government free from all encumbrances on the determination of the extent and particulars of the lands.

4. Accordingly, the petitioner in O.P. 288 of 1972 was served with Ext. P1 notice by the Land Board to file any objection to the Land Board determining under S. 85(5)(c) the extent and the identity of the land to be surrendered in accordance with the particulars specified in the draft statement enclosed. The said draft statement showed the total extent of lands owned, held and possessed by the petitioner as 3013.03 1/2 acres; and the extent to be surrendered as 2477.64 1/2. Part B of Ext. P1 shows that the transfers made, after 15-9-1963 (date of publication of the Bill) had been treated as invalid. Ext. P2 is a copy of the objection filed by the petitioner. But as the lands vest in the Government immediately after the determination of their extent, the petitioner has approached this Court with this writ petition. He has contended that the lands covered by the settlement of 15th June 1957 and those covered by the alienations made by him, between 15-9-1963 and 1-1-1970, cannot be treated as his lands and surrender cannot be enforced against him on the said basis. His children, who are the petitioners in O.P. 375 to 377 of 1973 have filed those writ petitions on the basis that there is no justification for treating the lands lawfully conveyed to them, under the settlement of 1957, as lands of their father and to proceed to enforce a surrender on that basis.

5. The main question that has been agitated in these writ petitions is whether the amendments noticed earlier can be supported as a "law relating to the acquisition of any estate or rights therein or the extinguishment or modification of such rights" as a measure of agrarian reform. If so, they are protected under

Art. 31A; if not, it was not disputed that the amendments are unconstitutional and may be declared to be so. The proviso to S. 81(1)(a) which takes away the exemption in respect of lands, owned by the Government and held by a person under a lease "whether current or time expired or otherwise", and thereby attracts the provisions for acquisition and vesting in respect of such lands, it was said, cannot be regarded as a law relating to acquisition of estates. The argument was, that whatever may be the position in regard to acquisition etc. of Government lands, held under leases, current or time expired, the same cannot be extended to lands held by persons unlawfully, or as trespassers. And, if the expression "or otherwise" were to be stretched to comprehend such lands, the law relating to acquisition of such lands cannot be regarded as a law under Art. 31A or to relate to agrarian reform. It was said that the lands of the petitioners, in these cases, are lands of the Government, of which they are in unlawful occupation as trespassers and they cannot be regarded either as "estates" or as "rights in estates" so as to be capable of acquisition, or as the case may be, of extinguishment or modification. We shall proceed to consider this argument.

6. Clause (2)(a) of the Art. 31A defines the expression "estate". Under sub clause (iii) thereof, the term "estate" shall include "any land held or let for purpose of agriculture....". Sub clause (b) of Art. 31A(2), states that:

the expression "rights in relation to any estate" shall include any rights vested in a proprietor, sub proprietor, under proprietor, tenure holder (raiya under raiya) or other intermediary and any rights or privileges in respect of land revenue.

The learned Advocate General countered the argument of counsel for petitioners by contending that the expression "held" is wide enough to comprehend both lawful and unlawful occupation and therefore even an acquisition of Government land, in occupation of a trespasser is covered by Art. 31A(2)(a)(iii) and (b) of the Constitution. Without prejudice to this contention, the learned Advocate General stated, that on the facts of this case, the petitioners were in lawful or permissive occupation. We are unable to go the whole hog with the learned Advocate General and to hold that even the lands occupied by a trespasser or one in unlawful occupation, can be covered by a law relating to acquisition of an estate or rights in an estate, or extinguishment or modification of such rights under Art. 31A of the Constitution. In the cases before us, the question pointedly arises, as pointed out by my learned brother, Viswanatha Iyer J, in his judgment, with respect to the excess area of about 399 acres occupied by the petitioners. In respect of these, even if they be land "held" for purpose of agriculture, and therefore an "estate", there can be no question of acquisition by the Government of the land or "estate" as such, which already belongs to it. The acquisition can only be, if at all, of the rights in the land or estate of the persons in occupation; or, there could be an extinguishment or modification of the rights of the occupations, if they had any. The learned Advocate General cited the decision in State of Bihar Vs. Rameshwar Pratap Narain Singh and Others, to show the comprehensive nature of the term "estate" as understood even before

the 17th Amendment of the Constitution. It was ruled therein that the expression "raiyatg" or "under raiyats" or "other intermediaries" occurring at the end of sub clause (b) of Art. 31A(2) do not qualify or colour the meaning to be attached to the tenures newly added. It was further ruled that the right to hold a "Mela" on the land was a right in an estate, that it was only a mode of user by the owner of the land, like the right to hold a hat or a market; and is an interest in land, capable of transfer. The right of the proprietor of an estate to hold a "mela" of his own land, was held to be a right in an estate being appurtenant to his ownership of the land. It was further observed that a licence to hold a Mela on another's land in which no interest is transferred is not an interest in the land. Attention was also called to the exposition by the Supreme Court of the wide connotation of the term "estate" in *Atma Ram Vs. The State of Punjab and Others*, . On the basis of these decisions, there is no difficulty to hold that a right granted to gather men and material on Government land, to prepare the land for cultivation by erecting bunds and making improvements thereon, and to carry on cultivation therein, is a right or interest in the land. It is not a mere licence, but, at least a licence coupled with interest, if nothing higher than that. The foundation of the right is the licence or permission to occupy the land. Without such permission or licence from the Government, one who trespasses on Government land and carries on cultivation, acquires no right or interest in the land. Therefore, the expression "held" in Art. 31A cannot be stretched to its widest extent so as to mean even lands held by a trespasser, or by one in unlawful occupation of the land. Acquisition of such person's rights cannot be acquisition of rights in an estate, or even extinguishment or modification of such rights. It may be noted that S. 2(59) of the Act defined the expression "to hold land" as to be in possession as owner or tenant, or partly as owner and partly as tenant.

7. The next question is whether the excess area of about 399 acres of land were in lawful or permissive occupation of the petitioners. By reason of the clause in Ext. R1 by which the Government agreed to assign occupied lands in excess of those assigned, on registry to the petitioner in O.P. No. 288 of 1973, the occupation, of the excess area commenced with an implied permission, with an obligation to pay Tharavila at the specified rate. But it was contended for the petitioners that after the deletion of clause (1) of S. 81(1) from 1-1-1970, occupation of kayal lands in excess of the ceiling area became unlawful as a result of the operation of S. 83 of the Act, making the holding of lands in excess of the ceiling area unlawful from the notified date (1-1-1970). S. 127 of the Act provides that its provisions shall have effect notwithstanding anything in any other law or custom, or usage, or in any contract express or implied, inconsistent with the provisions of the Act. Despite the Clause in Ext. R1, the occupation of kayal lands, in excess of the ceiling area therefore appears to be unlawful from 1-1-70. But it is seen that notwithstanding the deletion of S. 81(1)(1), the exemption under S. 81(1)(a) regarding lands owned or held by the Government of Kerala, still continued to operate till 2-11-1972, when alone, Act 17 of 1972

was passed, inserting the impugned proviso in Clause (a) of S. 81(1). Had these provisions stood alone, it might have been possible to hold that the occupation of the lands in question till 2-11-1972, was not an unlawful occupation, but one in accordance with the provisions of S. 81(1)(a) of the Act. But the matter is complicated by certain proceedings between the parties to which reference will now be made.

8. Two Land Conservancy cases were filed against the petitioners in respect of portions of the lands in question. Exts. P6 and P7 are copies of the orders passed in these cases, directing eviction of the petitioners from portions of the excess lands occupied by them. The matter is stated to be pending in appeal before the Board of Revenue. There is also a civil suit, O.S. No. 52 of 1972; pending in the Sub Court, Alleppy instituted by the State for recovery of possession of about 1047 acres of these lands from the petitioners. Ext. P5 is a copy of the plaint. The Advocate General stated that though it covers 1047 acres, the claim would be restricted only to 399 acres shown to be occupied in excess of the area assigned. It was strenuously argued that as a result of these proceedings, whatever might have been the nature of the petitioners' possession of the lands prior to the institution of these proceedings, the same had become unlawful thereafter. The Land Conservancy Act 1957 and the machinery provided therein are to be utilised for eviction from Government land in unauthorised occupation of another. The fact that the Government proceeded to invoke the machinery of these provisions and obtained Exts. P6 and P7 orders of eviction seem to indicate that the defendants petitioners in the Land Conservancy cases, were treated as in unauthorised occupation. The finding in these cases is also that the occupation is unauthorised. The orders note the contentions urged on behalf of the defendants that their occupation is lawful and authorised by reason of the terms and conditions of Ext. R1 agreement. The contentions are still at large in the appeal pending before the Board of Revenue. In Ext. P5 suit, while the plaint seems to proceed on the basis of unlawful occupation and claims recovery of possession with mesne profits, the written statement alleges lawful occupation in accordance with an agreement to assign the excess area occupied. To suit the contentions of each side in these O.Ps., while a copy of the Government's plaint was filed by the petitioners as Ext. P5, a copy of the petitioners' written statement has been filed by the Government as Ext. R2. As the proceedings are pending, it would not be proper to decide the question in these proceedings. Even the overriding effect of S. 127, may probably not avail against the contention now raised before us that the very institution of proceedings under the Land Conservancy Act. and the suit O.S. 52 of 1970 amount to a repudiation of the relevant clause in Ext. R1 or to action inconsistent therewith. All things considered, having expressed the view that the proviso to S. 81(1)(a) of the Act introduced by the Amending Act can only relate to lands held under leases whether current or time expired or held under permissive or lawful occupation, it seems better to leave the question whether the petitioners are in permissive or lawful occupation or not, to the proceedings now pending before the Board of

Revenue and in the civil court. Till the question is finally decided in these proceedings, the Land Board will not pursue proceedings in respect of the lands in question in pursuance of Ext. P1.

9. It was said that by the settlement deed of 1957, the properties had been conveyed by the petitioner in O.P. No. 288 of 1973 to his children, the petitioners in the other writ petitions, and therefore the Land Board was wrong in treating these properties as still belonging to the petitioner in O.P. No. 288 of 1973. The learned Advocate General relied on S. 8 of the Kerala Land Assignment Act, which reads:

8. Assignment to take effect with restrictions, conditions etc. according to their tenor. -- All the provisions, restrictions, conditions and limitations contained in any Pattah or other document evidencing the assignment of Government land or of any interest therein shall be valid and take effect according to their tenor, notwithstanding any law or for the time being in force or any custom or contract to the contrary.

Explanation -- In this section, the expression "Government land" shall include land under the control or management of the Government at the time of the assignment.

Ext. R1 is a document evidencing the assignment. By the clause earlier noticed, it prohibits alienation without the previous consent of the Government and therefore Ext. P8 settlement deed was, according to the Advocate General, rightly ignored by the Land Board and Ext. P1 notice issued on the basis that the same, was non est. Had the question depended merely on the construction of the clause in Ext. P8, and S. 8 of the Land Assignment Act, we would have pronounced upon it here. But for the petitioners it was said that Ext. P8 has been accepted by the Government, on the basis of it pattas have been issued to the petitioners in O.P. Nos. 376 to 378, levy notices have been issued to them and levy paddy accepted, and they have been assessed separately to agricultural income tax, and so on. In view of these, it was said that the petitioners in O.P. Nos. 375 to 377 had, in any event prescribed for title by twelve years adverse possession (against their father) after Ext. P8 and before 1-1-70, and therefore the rights, if any of the Government have been extinguished. These aspects involve investigation of facts, for which these proceedings are inappropriate. We would therefore leave it to the Land Board to decide the question of the validity of Ext. P8 settlement, and the other contentions referred to herein.

10. It was then contended that there are certain alienations, and transfers in respect of the lands in question between 15-9-1963 and 1-1-1970 which Ext. P1 notice has treated as invalid. Neither the documents nor copies have been filed, but the numbers and some other particulars of the documents are seen mentioned in Ext. P1. The petitioners contend that these transfers were lawfully effected by them before 1-1-1970 in respect of kayal lands, which, till that date, were exempted from the provisions as to ceiling area by reason of S. 81(1)(a)

and (1) of the Act, and do not get retrospectively invalidated under S. 84 of the Act in the light of the amended ceiling provisions as on 1-1-1970. S. 84 of the Act as it stood before its amendment by the Amending Act, in so far as it is material, reads as follows:

84. Certain voluntary transfers to be null and void. -- (1) Notwithstanding anything contained in any law for the time being in force, all voluntary transfers effected after the date of publication of the Kerala Land Reforms Bill, 1963, in the Gazette, otherwise than --

(i) by way of partition; or

(ii) on account of natural love and affection; or

(iii) in favour of a person who was a tenant of the holding before the 27th July 1960, and continued to be so till the date of transfer; or

(iv) in favour of a religious, charitable or educational institution of a public nature solely for the purposes of the institution, by a family or any member thereof or by an adult unmarried person owning or holding land in excess of the ceiling area shall be deemed to be transfers calculated to defeat the provisions of this Act and shall be invalid:

(Proviso omitted)

(2) Notwithstanding anything contained in any law for the time being in force, all voluntary transfers effected by any person (other than a family or any member thereof or by an adult unmarried person) owning or holding land in excess of the ceiling area after the 1st July, 1969, otherwise than -

(i) by way of partition; or

(ii) in favour of a person who was a tenant of the holding before the 27th July 1960, and continued to be so till the date of transfer;

or (iii) in favour of a religious, charitable or educational institution of a public nature solely for the purposes of the institution, shall be deemed to be transfers calculated to defeat the provisions of this Act and shall be invalid;

(Proviso omitted)

Broadly stated, the effect of S. 84, is to invalidate transfers effected by a person owning or holding land in excess of the ceiling area, after the date of publication of the Land Reforms Bill (15-9-1963). That being the object of the section, in order to determine whether the transfer was in excess of the ceiling area, what is material is the law relating to ceiling area on the date of the transfer, and not the law regarding ceiling area on the date of the acquisition or any date subsequent to the transfer. The learned Advocate General relied upon the Full Bench ruling of this Court in Narayanan Nair's case (1970 KLT 659) in which it was ruled (vide Para. 44) with respect to the second proviso to Art. 31A(1) of the Constitution that in order to decide whether compensation was payable in respect of an

acquisition effected from within the ceiling area, the law in force in regard to ceiling area was the one at the time of the acquisition, and not any anterior law regarding the same. It is difficult to see how the principle of that decision can apply to invalidate transfers, lawful with respect to the ceiling limit in force, when they were made, but rendered unlawful by reason of changes in the law relating to ceiling area, made subsequently. Broadly stated, the scheme of the Sections regarding ceiling area is this. S. 81 provides for exemption from ceiling area. S. 82 lays down the ceiling area of the land in case of unmarried adult person and families, and, by later amendments, in the case of Cooperative Societies, etc., S. 83 makes unlawful the holding or possession of the lands in excess of the ceiling area after the notified date (1-1-1970). S. 84 invalidates transfers effected after 15-9-1963. S. 85 provides for surrender of lands in excess of the ceiling area; S. 86 provides for the vesting of the lands to be surrendered under S. 85. The remaining sections need not be noticed. From this scheme of the provisions it is quite possible to give the full scope and content, and free play to S. 84 of the Act. without reading into it, the provisions of S. 83, which came into force only on 1-1-1970. Indeed, the Full Bench decision in Narayanan Nair's case (1970 KLT 659) speaking specifically with respect to S. 84 of the Act, stated in Para. 50 that "the ceiling area referred to in sub-s.(1) is the ceiling area under the Bill of 1963, but the ceiling area for the purpose of sub-s.(2) is the ceiling under the Amending Act. To the same effect is also the principle of the decision of our learned brother Subramonian Poti J. in Sivaramakrishnan v. State of Kerala (1973 KLT 356). In the light of these, there is no justification to treat the alienations effected after 15-9-63, and before 1-1-1970, and lawful and valid with respect to the law relating to ceiling area at the time when they were made, as having been invalidated by reason of the subsequent amendments in the law as to ceiling area. Ext. P1 notice to the extent to which it so treats the alienations should be declared illegal.

11. Sub-s.3 of S. 84, (extracted earlier) newly added by the Amending Act which purports to be declaratory of the law, by enacting that the ceiling area specified in sub-s.(1) and (2) of S. 84 shall be the ceiling area specified in sub-s.(1) of S. 82 as amended by Act 35 of 1969, can hardly serve any purpose. It cannot have retrospective effect, and cannot be regarded as really declaratory or clarificatory of the law.

12. The attack on sub-s.(1A) of S. 88, denying compensation in respect of Government lands held "under lease or otherwise", could, in the nature of things, be far weaker than the attack on the proviso to S. 81(1)(a) Even if "or otherwise" in this clause comprehends unlawful occupation, the denial of compensation in such cases is just and equitable. And if it is restricted to lawful or permissive occupation, Art. 31A is sufficient to protect the clause from any attack based on Art. 31.

13. The newly added sub-s.(5) of S. 88 was attacked on the ground that growing crops on land, is movable property and that acquisition of movable property

along with the land, cannot be justified by the provisions of Art. 31A, as a measure of agrarian reform. "Land" itself is not defined in the Constitution. But by reason of Art. 367 of the Constitution, the General Clauses Act 1897 is made applicable to the interpretation of the provisions of the Constitution. That Act again does not define "land". But S. 2(26) defines "immovable property", as including "land" and "things attached to the earth". The petitioners' Counsel took us through the definitions of "immovable" and "immovable property" in various enactments to show that immovable property does not include standing timber, growing crops or grass. Strictly speaking, those definitions in the different statutes, are not applicable, as only S. 2(26) of the Central General Clauses Act 1897 would apply, and that does not, in terms, define "land". The learned Advocate General cited the meaning of the expression "land" as given in Law Lexicons. Thus, for instance, Ballantyne in his "Law Dictionary" describes "land" as including soil and everything attached to it, whether by course of nature, as trees, herbage and water, or by hand of man as buildings and fences. Black's "Law Dictionary" adopts the same description. Stroud's Judicial Dictionary explains the term "land" as meaning not only the surface of the ground but also everything on, over, or under it. There seems to be little force therefore in the contention that standing crops cannot form part of land. Under the Land Acquisition Act, when land is acquired, standing crops are treated as part of the land for award of damages under S. 23(2) of the Act. The acquisition of standing crops as part of the land, does not seem to offend the provisions of Art. 31A. Nor is there any substance in the argument that the real object of acquisition of the kayal lands under the impugned provisions was to get at the crops and not in the land.

14. Even so there seems to be little substance in the contention of the petitioners that they had made extensive improvements by erecting bunds of a perimeter of nearly 22 miles, and put up improvements worth over hundred lakhs of rupees, and that as a result of the acquisition, they have been deprived of these valuable rights of improvements. This was pressed again to show that the object of the acquisition was not to get at the land, but the improvements effected thereon. It is difficult to appreciate or to accept this argument. As occupiers of Government land, the petitioners are not entitled to any value of improvements under the provisions of the Land Conservancy Act. Neither does Ext. R1 give them any right to claim the value of improvements. The acquisition being of the land together with the improvements and being one under Art. 31A for purpose of agrarian reform, the adequacy of compensation is not justiciable.

15. Our conclusions on the points argued, are as follows:

The proviso to S. 81(1)(a) introduced by the Amending Act, should be considered to take in only lands held under current or time expired leases or otherwise held in lawful or permissive occupation. So understood, the proviso does not offend Art. 31A of the Constitution, and can well be regarded as a measure of agrarian reform. In that view, neither Explanation V to S. 85(2) nor sub-s.(1A) of S. 88,

would be invalid. Sub-s.5 of S. 88 is not invalid. S. 84(1) of the Act cannot invalidate alienations made after 15-9-1963 and prior to 1-1-1970, which were valid with respect to the law relating to the ceiling area, in force when they were made, but become invalid by reference to the amendments in regard to the land ceiling effected subsequently. S. 84(3) introduced by the Amending Act is not retrospective, nor really, declaratory. In the light of our above conclusions, we would direct the Land Board to decide whether Ext. P8 is invalid, whether it has been accepted by the Government, and whether the petitioners had prescribed for rights in pursuance of Ext. P8 settlement even before 1-1-1970. The Land Board would, after investigation, exclude from Ext. P1 notice the properties covered by transfers effected subsequent to 15-9-1963 and before 1-1-1970, if such transfers were valid according to the law regarding land ceiling, at the time when they were made. The Land Board will not pursue further proceedings in respect of 399 acres of land stated to be in occupation of the petitioners in these O.Ps. in excess of the lands assigned under Ext. R1 and thereafter, till after the final determination of proceedings pending before the Board of Revenue against Exts. P6 and P7 orders, and Ext. P5 suit, pending in the Sub Court, Alleppey. These O.Ps. are disposed of as above. No costs.

Viswanatha Iyer J.

16. I agree to the conclusions arrived at by my learned brother but in view of the important questions raised in these cases I shall state my reasons.

These writ petitions arise under the Kerala Land Reforms Act. O.P. No. 288/73 is by the father and the other petitions are by his children. They relate to the same matter and are disposed of together by this common judgment. The petitioner in O.P. No. 288/73 has been served with a draft statement prepared under R. 10 of the Kerala Land Reforms (Ceiling) Rules by the Land Board. As per the statement he is stated to hold 3,019.035 acres. Out of this an extent of 520.99 acres is said to be exempted under S. 81 of the Land Reforms Act. 15 acres is fixed as the ceiling area for his family consisting of himself and his wife. An area of 2,477.645 acres is stated to be liable to be surrendered under S. 85. The copy of the draft statement is filed as Ext. P1. The petitioner challenges the various entries in this statement and seeks to quash them. The main attack made by the father petitioner is that certain sections of the Land Reforms (Amendment) Act, 1972 (Act 17 of 1972) relied on in the draft statement are ultra vires the powers of the State Legislature and therefore are null and void. It is further alleged that transfers made by him in June, 1957 in favour of his children have been ignored by the Land Board and the lands comprised therein are treated as lands still belonging to him. Again, the kayal lands which were exempted under S. 81(1)(1) of the Land Reforms Act 1 of 1964 and which were alienated before 1-1-1970 and after 1-4-1964 have also been included in the statement as lands belonging to him and liable to be surrendered. All these are challenged. To understand these contentions some more facts have to be stated.

17. The Government of Travancore formulated the Vembanad Kayal Reclamation

Scheme about the year 1939 to reclaim and bring under cultivation, if possible at least a portion of the bed of the lake otherwise immersed in water. The scheme was sponsored at a time of acute food shortage in the State. In implementation of that scheme various portions of the lake were assigned to various persons. On 14th Kumbham 1113 the petitioner applied for registry of portions of "Q", "T" and "S" blocks of the Vembanad lake. He was informed by the Government as per their letter dated 4th October, 1939, that if a joint application could be made by the petitioner and his father the Government would consider the same and the registry would be given in the joint names of the petitioner and his father subject to the following conditions which would be incorporated in the agreement to be executed by the parties:-

- (a) Tharavila will be fixed at Rs. 10/- per acre and assessment at the 13th tharam.
- (b) The tharavila is to be recovered in 10 equal annual instalments.
- (c) No tax will be levied for the first two years of the registry and that thereafter tax for the whole area will have to be paid.
- (d) If adequate progress in the matter of reclamation is not made within two years of the registry the registry is liable to be cancelled by the Government.

In pursuance of this endorsement the petitioner made the necessary application on 21-2-1115 along with his father praying for the registry of Q, T and S blocks of the Vembanad Reclamation Scheme. By the order dated 23rd October, 1939 the Government sanctioned the registry of an area of 1454 acres in Q, T and S blocks, in their joint names on the terms and conditions set forth in the endorsement dated 4th October, 1939 referred to above and agreed to by the petitioners in their petition quoted above. The copies of these two endorsements have been filed in the case as Exts. P4 and P3 respectively. Subsequently, the petitioner entered into an agreement Ext. R1 with the Government on 10-12-1116 (1941) in which the terms and conditions referred to earlier and other terms as well, were incorporated. That agreement referred to the orders sanctioning the registry and provided that a sum of Rs. 14,540/- had been fixed as the tharavila which the petitioner was required to pay in ten annual equal instalments. It was noted that the first instalment of Rs. 1,454/- had already been paid and the balance must be paid in nine equal instalments. If default was made in the punctual payment of any one instalment, the entire balance amount payable as tharavila was agreed to be recovered under the Revenue Recovery Act or the Government was also given the option to cancel the registry and recover possession of the lands as per the Land Conservancy Act and Rules. Until all the instalments were completely paid off the petitioner was to have no right of alienation in the properties. It was further provided that in case the Government decided, on account of any breach of the conditions, to took back the land, he would not claim any value of improvements. It was also provided that the rights under the udampadi should not be transferred or encumbered without the

previous consent of the Government and if any such transaction was made the same would not be binding on the properties. There was one more clause in the agreement to the effect that on payment of the first instalment and on execution of the agreement the petitioner could enter possession and put up bunds as per the survey made by the PWD. and if after a proper survey it is found that he is in possession of more area than that had been already sanctioned to be assigned he should pay for the excess area at the same rate on which the sanctioned area has been ordered to be assigned and a fresh agreement executed.

18. In pursuance of these orders "and agreement the petitioner put up bunds, and according to him, the bunds put up by him have a perimeter of 22 miles (comprising all the sides of the area occupied by him) costing nearly a crore of rupees. On the bunds he has planted coconut trees and put up buildings for fitting the pumping sets and put up a number of other buildings and store houses. He paid all the instalments stipulated in the agreement and was cultivating the kayal lands annually with paddy crops. The cultivation process is stated to be a very laborious and costly one involving dewatering and occasional strengthening and filling up the bunds or breaches therein. This arrangement continued for a long time thereafter. The petitioner executed a settlement deed in favour of his children on 15-6-1957 transferring some of his properties in Kuttanad and Ambalappuzha taluks including the Q, S and T blocks in favour of his children. It is stated that the transferees entered possession, began the cultivation on their own responsibility, paid tax respectively payable by them, measured levy on the basis of the extent each was holding and the Agricultural Income Tax was also being paid by the respective transferees. The petitioner claims that he had divested himself of all his rights in the lands comprised in the settlement in favour of his children and the Government have dealt with the transferees as stated above recognising their independent rights in the lands. It seems, at about 1964 the lands within the bunds were surveyed and it was found that they comprised a large area than that sanctioned in Ext. P3 order of registry. These lands are comprised not only in Sy. No. 444/1 which alone, according to the Government, was intended to be conveyed but included other survey numbers comprised in the adjoining taluk. A demand was made by the Revenue authorities claiming tharavila for 161 and odd acres for the excess land comprised in Sy. No. 441. There seem? to have been some dispute as regards the tharavila payable. Anyhow, the amount claimed was deposited. The area thus registered initially and subsequently together came to 1,615 and odd acres only. There was still an area of 399 and odd acres within the bunds. The Government did not claim any tharavila for the same or offer to register those lands on the basis of the agreement. After 1-1-1970 the Government treated the persons in possession as in unauthorised occupation of these lands and proceedings under the Land Conservancy Act were taken against the persons in possession and the Tahsildar, Ambalappuzha, passed one order on 15-6-1970 declaring that the occupation is unauthorised. It was also stated in that order that the petitioners are not entitled to get assignment of any more lands. Therefore, they were

ordered to be evicted from these lands. A copy of that order is produced in this case as Ext. P6. Another case was also registered in respect of another portion of the kayal against these petitioners under the Land Conservancy Act and orders passed thereon to evict them. The copy of that order is produced as Ext. P7. After these orders were passed the Government filed a suit also in 1970 in the Alleppey Sub Court as O.S. 52 of 1970 against the petitioner and his children for recovery of 1047 and odd acres of land comprised in Q, T and S blocks on the basis that they are trespassers. Mesne profits for three years prior to the date of suit was also claimed. The suit was being contested by the petitioner. The plaint and the written statement are filed in this case as Exts. P5 and R2. In Ext. R2 the petitioner claimed that he is entitled to get registry of the excess lands and in case he is liable to be evicted he is entitled to the value of improvements for putting up the bunds, buildings and planting coconut trees all along the bunds. While this suit was pending, Act 17 of 1972 was passed and that came into force on 2-11-1972. Certain changes have been made in the ceiling provisions of the Act. S. 81 enumerates the various exemptions of lands from Chapter III of the Act. One such exemption is that the lands owned by the Government of Kerala shall be excluded. By S. 14 clause (i) a proviso is added to clause (a) of sub-s.1 of S. 81 to the following effect, namely:

Provided that the exemption under this clause shall not apply to lands owned by the Government of Kerala and held by any person under lease whether current or time expired or otherwise.

By S. 16, Explanation V is added to sub-s.(2) of S. 85 which reads as follows:

Explanation V. -- Where a person owns or holds land in excess of the ceiling area including lands owned by the Government of Kerala the excess lands to be surrendered shall, as far as possible, be the lands owned by the Government of Kerala.

By S. 20, sub-s.(1A) is added to S. 88 of the principal Act which reads thus:

(1A). Notwithstanding anything contained in sub-s.(1), no person shall be entitled to any compensation in respect of any land owned by the Government of Kerala and held by him under lease or otherwise.

And by the same section another sub-section is added to S. 88 of the principal Act after sub-s.(4) therein

(5). For the removal of doubts, it is hereby declared that the compensation payable under this section in respect of a land shall be deemed to include the compensation for growing crops and improvements, if any, thereon and that no person shall be entitled to any amount other than the compensation payable under this section for the vesting in the Government or extinguishment of his rights (including his rights in respect of growing crops and improvements, if any) in respect of the land.

There are other amendments made by the Amending Act of 1972, but they are

not relevant for consideration in this case. So they are not stated. After this Act was passed the Land Board prepared the draft statement and served a copy of the same on the petitioner. In this the Board ignored the settlement effected by the petitioner in favour of his children on 15-6-1957 (at the close of the arguments a copy of the settlement deed was produced in this case and marked Ext. P8). The Board has also ignored the transfers made by the petitioner and others of various portions of the kayal lands during the period 15-9-1963 to 1-1-1970. The petitioner challenges this draft statement on the ground that the Board was not right in ignoring the provisions of the settlement deed Ext. P8 and also the transfers made during the period 1-4-1964 to 1-1-1970 of the kayal lands. It is contended that the kayal lands were exempted from Chap.3 relating to ceiling and that exemption was taken away only by Act 35 of 1969 which came into force on 1-1-1970 and therefore the transfers effected in respect of the kayal lands earlier are not hit by the provisions of S. 84 of the Land Reforms Act. It is further contended that Government lands, which are held otherwise than under a lease whether current or time expired, do not constitute an "estate" within the meaning of Art. 31A(1) and (2) of the Constitution and a scheme of agrarian reform contemplated by the ceiling provisions including these Government lands is ultra vires the powers of the legislature as it is violative of Art. 14, 19 and 31 of the Constitution. Therefore, the various amendments referred to above are also challenged as beyond the scope of Art. 31A of the Constitution.

19. Consistent with the stand taken by the petitioner in O.P. No. 288 of 1973 his children on receipt of notice of the draft statement have filed the three other original petitions wherein they also challenge the draft statement Ext. P1. According to them, they have obtained transferor these kayal lands by Ext. P8 on 15 6 1957 and these lands cannot be taken as the lands of the father petitioner, but reckoned only as their lands and compensation paid to them determined on the basis that the respective portions given to them under Ext. P8 are taken as part of their lands. They also challenge the inclusion of lands comprised in the transfers effected by them during the period 15-9-1963 to 1-1-1970. They also challenge the provisions of the Amending Act 17 of 1972 by which Government lands held otherwise than a lease current or time expired are included and reckoned for the purpose of the ceiling provisions. These lands do not, it is contended, constitute an "estate" and therefore they cannot be included.

20. In answer to these contentions the State has field a counter affidavit in O.P. No. 377 of 1973 and filed a petition to treat the same as the common affidavit for the other cases as well. That petition has been allowed. According to the Government, the settlement deed Ext. P8 is in violation of the terms of the agreement Ext. R1 entered into by the petitioner in O.P. No. 288/73 with the Government in the year 1941. As per that agreement any transfer without the previous consent of the Government will be invalid and will not bind the properties. No such consent has been given. Therefore, the Government is entitled to treat the father petitioner as the owner of these properties. The

transfers effected during the period 15-9-1963 to 1-1-1970 in respect of kayal lands are invalid under S. 84 inasmuch as the exemption granted under S. 81(1) to kayal lands has been cancelled from 1-1-1970. It is further contended that even if the Government lands are held not under a lease but otherwise by trespass they form an "estate" within the meaning of Art. 31A(2)(a)(iii). At any rate the lands in excess over assigned area held by the petitioners are held by them permissively and therefore it is not open to the petitioners to contend that they do not form an "estate" for the purpose of agrarian reform. Therefore, the provisions challenged in the original petitions are valid and cannot be held *ultra vires* in these cases.

21. On these contentions the following questions arise for determination:-

(a) Whether the proviso to clause (a) of S. 81(1), Explanation V to sub-s.(2) of S. 85, Sub-s.(1A) to S. 88 and Sub-s.(5) to S. 88 added by Act 17 of 1972 are *ultra vires* of the State Legislature?

(b) Whether the petitioners are in possession of 399 and odd acres of Government lands on permission on the date of the amending Act 17 of 1972?

(c) Whether the transfer affected by the petitioner in O.P. No. 288/73 in favour of his children by Ext. P8 can be ignored in determining the lands liable to be surrendered by the petitioner therein?

(d) Whether the transfers effected by the petitioners during the period 15-9-1963 to 1-1-1970 in respect of kayal lands can be ignored in determining the lands liable to be surrendered

(e) Whether growing crops and improvements can be treated as rights or interests in land for the purpose of fixing compensation under the Act?

22. Point (a):-- The various provisions referred to in point (a) above are added by the Amending Act 17 of 1972 which has not been included in the IXth Schedule of the Constitution. Therefore, whether these provisions are either valid as measures of agrarian reform under Art. 31A of the Constitution, or whether they are even otherwise valid have to be considered. The learned Advocate General appearing on behalf of the State relied on only Art. 31A to sustain these provisions and he expressly stated so during the course of the arguments. Therefore, we are only called upon to consider whether these provisions are valid and can be sustained as a measure of agrarian reform under Art. 31A of the Constitution. Under Art. 31A no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Art. 14, 19 or 31 of the Constitution. This provision is to the effect that the acquisition by the State is of any estate or of any rights therein or the extinguishment or modification of any such rights. What is an "estate" is defined in sub clause (2) of Art. 31A. That clause is in the following terms:

2 (a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include

(i) any jagir, inam or muafi or other similar grant and in the Sates of Tamil Nadu and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including wasteland, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

The Respondent relied on clause (2)(a)(iii) alone to sustain the case that there is an estate here for the purpose of Art. 31A. As per this provision any land held or let for purposes of agriculture or for purposes ancillary thereto will be an estate. In respect of Government lands if they are held or let for purposes of agriculture they will directly come within the scope of this provision. Here there is no case of a letting and the petitioners are not claimed to be tenants of the Government. Therefore, that also can be ignored. Then the only other point is to consider whether any land is held for purposes of agriculture or for purposes ancillary thereto by the petitioners. The expression "held" must be understood in the legal sense meaning "lawfully held". If the property is on trespass from the beginning or becomes so later, that cannot be taken from that stage to be "held" within the meaning of Art. 31A. He has no right to hold possession of Government land as against the State and it will be incorrect to call a trespasser in possession of Government land as having an estate which the State can acquire under Art. 31A. The expression "held" in Art. 31A(2)(iii) can be understood only as referring to a lawful holding. It must either be held as an owner or there must be a permission given by the State to hold possession in order that the requirements of sub clause (iii) can be taken as satisfied. This view is supported by the decision of the Supreme Court in Bhudan Singh and Another Vs. Nabi Bux and Another, .

23. Then the question is what is the meaning of the expression Government land held "otherwise" mentioned in the proviso to S. 8(1)(a). It is reasonable to understand a legislative provision as having been enacted only within permissible limits even though the language used in the legislation is capable of a wider meaning. If an expression has two meanings, that meaning which is within the permissible limit alone can be taken as intended by the expression used in the legislation. So understood the exemption now made in clause (a) of sub-s.1 of S. 81 by which "Government lands held under a lease current or time expired or otherwise" can be understood only as referring to such lands which are held by persons in permissive possession. The word "otherwise" must be understood as a permissive occupation otherwise than under a lease. The word ""otherwise" has no wider meaning in the context. So understood, the exemption to clause (a) of

that Section is perfectly legal and in that limited sense we uphold that provision as valid. So understood all the impeached provisions of the Amending Act 17 of 1972 are also valid as measures of agrarian reform under Art. 31A.

24. Point (b):-- The next question is whether any portion of the Government land is in the possession of the petitioners otherwise than under permission. An answer to this question involves a narration of the developments that took place before the passing of the amending Act 17 of 1972. After executing Ext. R1 udampadi the father petitioner was allowed to enter possession and to put up the necessary bunds on the basis of the PWD. survey enclosing the lands that he proposed to cultivate. It is further provided that if after a proper survey it is found that a larger area than was intended to be conveyed is included within the bunds, he must pay the tharavila in respect of the excess and execute a fresh agreement. The survey was made only about the year 1964. Until then the petitioner was in uninterrupted possession of the entire kayal lands lying within the bunds. The permission to occupy the land, to put up bunds and to cultivate mentioned in Ext. R1 amounts to a permission to occupy Government land for the purpose of cultivation. So, the occupation by the petitioners at any rate upto 1964 cannot be said to be without permission. Whether there is a change in their possession thereafter is the next aspect to be considered.

25. When the lands in their possession were surveyed it was found that in the survey number mentioned in Ext. R1 they were in possession of 161 and odd acres in excess. So, the father petitioner was called upon to pay the tharavila failing which coercive Revenue Recovery steps were threatened. The amount was paid under protest. Though an attempt was made to get back that amount by way of a suit, so far that has not been successful and we do not know whether any steps in that regard are pending. Whatever that be, in respect of 161 and odd acres the possession has been recognised as possession on the basis of title. There was still an area of 399 and odd acres not included in the survey number mentioned in Ext. R1. In respect of it the Government did not take any steps to recover the tharavila or to recover the lands until 1970, and the permission under Ext. R1 can be deemed to continue. But after the exemption of kayal lands from the ceiling chapter was taken away the petitioner or persons under him became disentitled to own or hold more than the ceiling area. Any assignment of these lands will offend that provision (S. 83) So there was no scope for performing or enforcing the contract contained in Ext. R. 1. So after 1-1-1970 when Act 35 of 1969 was brought into force, the attitude of the Government changed. Steps were taken first under the Land Conservancy Act to evict the petitioners in respect of the excess lands. Exts. P6 and P7 orders were passed holding that the petitioners are in unauthorised occupation. Not satisfied with that proceedings or being not sure of the favourable outcome of those proceedings (the petitioners had taken up the matter in appeal) a suit was filed before the Alleppey Sub Court to recover the excess lands with mesne profits for a period of three years in the past and for future. In that the stand taken up by Government is that these lands are in unauthorised occupation of the petitioners,

that the petitioners have no right to get assignment of these lands and that their continued possession is only as trespassers. These facts, by themselves lead to the inference that the Government have ceased to recognise the possession of the petitioners as permissive. That was the position when Act 17 of 1972 was passed. So, on that day this was a land in the possession of the petitioners without permission which may take such lands out of the category of "estate" under Art. 31A of the Constitution. If they are not estates, they cannot be acquired under Art. 31A as a measure of agrarian reform. But we cannot hasten to that conclusion. Those proceedings taken have not ended. An appeal filed by the petitioners under the Land Conservancy Act is pending and the suit is being resisted by filing a written statement (Ext. R2). In these the stand taken up by the petitioners is just the opposite of the stand of the Government. They claim rights under Ext. R1 in respect of these lands. In this state of affairs it will be improper to enter a finding in these proceedings one way or other until those proceedings are finalised. If ultimately in those proceedings (I mean including the suit also), it is finally found that the petitioners were in lawful possession of these lands on the date of the Amending Act (2-11-1972) it will be open to the Land Board or Taluk Land Board to take steps under S. 85(9). Until then these lands, viz., 399 and odd acres, should not be taken into account and should be taken out of the draft statement and subsequent proceedings of the Land Board.

26. Point (c):-- The next question is whether the transfer effected by the father petitioner in favour of his children by Ext. P8 can be ignored in determining the lands liable to be surrendered by him. Really this is a question which cannot be decided in these proceedings under Art. 226. A determination of this question involves a consideration of the terms of the grant. According to the petitioners, the grant is made by the Government under Exts. P3 and P4 and Ext. R1 is only an agreement for the purpose of fulfilling the terms of the grant. The tharavila for the grant is to be paid in instalments. The Government wanted to ensure the due payment of that and for that purpose, according to the petitioners, Ext. R1 agreement was entered into. Rights under that agreement alone cannot be assigned without permission. On the other hand, the respondent contends that Ext. R1 is the grant and the terms of Ext. R1, which restrict the power of alienation, control the grant. In answer to this contention and assuming for arguments sake that that is right not admitted the petitioners' counsel alternatively contended that the possession of the children petitioners are adverse to the father from the date of Ext. P8 grant and they have prescribed by adverse possession" such title as the father had and that even going by the terms of Ext. R1 the conduct of the Government in recognising their possession and imposing levy under the Essential Commodities Act and the Paddy Procurement Order, the receipt of revenue tax from them, the assessment of Agricultural Income Tax on them in respect of the income from these lands and other circumstances will tend to show that the transfer in their favour has been recognised and acted upon by the Government and it is not open to the Government to turn round and not ignore all these matters. The nature of the

contentions which I have stated clearly show that these are matters which require proper pleadings, giving an opportunity to let in evidence and then a determination as to the correctness of the respective contentions. The Land Board is given the power under S. 85(5) read with the Ceiling Rules to determine the extent and identity of the lands which are liable to be surrendered. I am sure that the Land Board will give due and serious consideration to these various aspects and after giving sufficient opportunity to the parties to adduce evidence determine this question. There is power of revision in the High Court under S. 103 if the Land Board acts erroneously, and therefore this is a matter which must be decided by the Land Board and not by us at this stage.

27. Point (d):-- Under Act 1 of 1964 brought into force on 1-4-1964 kayal lands were exempted from the ceiling provisions contained in Chap.3 of the Act. S. 81, 82 and 84 were brought into force on 1-4-1964. S. 81 relates to the exemption of various kinds of lands. S. 82 prescribes the ceiling area permissible to the various units like unmarried adults, families, association of persons, companies, etc. S. 84 invalidates voluntary transfers of lands in excess of ceiling area effected after the publication of the Kerala Land Reforms Bill, 1963 (15-9-1963). Those transfers will be reckoned as calculated to defeat the provisions of this Act and therefore ignored. S. 83, 85, 86, 87 and 88 relate to the prohibition to hold land in excess of the ceiling area, liability to surrender, vesting of the excess lands in the State and determination of compensation for the lands liable to be surrendered. These latter sections were not brought into force on 1-4-1964. They were also brought into force only on 1-1-1970 after the Act was amended by the amending Act 35 of 1969. By the latter amending Act the ceiling area fixed under the principal Act was modified and reduced. Some exemptions which were granted under the principal Act were taken away by the amending Act. Between these dates, namely 15-9-1963 and 1-1-1970, the petitioners contend that they have effected certain alienations of kayal lands and these alienations are referred to in the draft statement Ext. P1 filed by the petitioners. In the draft statement these alienations are ignored and the lands comprised therein are also reckoned as lands liable to be surrendered. The petitioners contend that these alienations in respect of kayal lands are not affected by the provisions of S. 84 and therefore they cannot be deemed as calculated to defeat the provisions of this Act. In support of their contentions they rely on a decision of this Court reported in *Sivaramakrishnan v. State of Kerala* (1973 KLT 356), a Judgment by Subramonian Poti J. According to the petitioners, until 1-1-1970 these kayal lands were exempt from the ceiling Chapter of the Act. There were no restrictions in their holding and transferring these lands, and S. 84 prohibited only voluntary transfers of lands, in excess of the ceiling area and to which the ceiling chapter will apply. Necessarily those transfers must be in respect lands which are liable to be surrendered as and when orders are issued under S. 85 and 86 of the Act. The petitioners would have been called upon to surrender only such lands which are within the ceiling Chapter, These kayal lands being earlier excluded from the Chapter and brought into the scheme of the Act only on

1-1-1970 they can come in only to the extent to which they still belong to the petitioners on 1-1-1970; or in other words, such lands which have not been alienated by the petitioners on 1-1-1970 can alone be reckoned in calculating the ceiling area thereafter. This contention, according to me, is right and the law has been correctly stated in that decision. S. 81, 82 and 84 brought into force on 1-4-1964 excluded these kayal lands. The freedom of alienation in respect of these lands was not any way affected by the said provisions. There was no legislation invalidating these provisions. Lands which are exempted are outside I will use a geometrical expression a circle which is affected or liable to be affected by the ceiling provisions. A segment out of it is taken as the ceiling area and the remaining area of the circle is liable to be surrendered as and when provisions for surrender are brought into force. The circle contains all the lands which are not excluded under S. 81. The invalidation under S. 84 is only in respect of the lands which come within the circle. In respect of those lands S. 84 will have its full play. If any lands have subsequently been acquired after 1-4-1964 by the unit they will be roped in only from the date of their acquisition. Similarly, as and when any exemptions earlier granted under the principal Act are taken away they are brought into the circle only on the date that exemption is taken away. The exemption for kayal lands is taken away here only on 1-1-1970. Till then these exempted lands were beyond the scope of any legislation relating to the ceiling provision. If the exemption had been taken away from an anterior date, from that date these lands would have been included in the circle. This conclusion of mine is further supported by the provisions in S. 87, Explanation. In respect of exemptions of other lands still available after 1-1-1970 if they ceased to be exempted later, the Act provides that they will be deemed to be acquisitions after that date. This is a consistent and logical consequence of the scheme of the Act which I have tried to explain above. Nothing contained in Para. 44, 50 and 51 in the majority judgment in the Full Bench decision reported in *Narayanan Nair v. State of Kerala* (1970 KLT 659 (F.B.)) warrants a different conclusion. Para. 44 dealt with a contention whether the second proviso to Art. 31A(1) will be attracted in respect of the difference in the ceiling area between the principal Act and the amending Act 35 of 1969. Their Lordships said that the ceiling area has to be determined with reference to the law in force on the date of the acquisition. The acquisition takes place only after 1-1-1970 and therefore the ceiling area must be the ceiling area on 1-1-1970A larger ceiling area prescribed earlier at a time when the provision for acquisition was not brought into force is immaterial. This has nothing to do with the question of the applicability of S. 84 to the exempted lands before 1-1-1970. Para. 50 and 51 relate to the validity of S. 84 and 85. Their Lordships sustained S. 84 and struck down the Explanation to Sub-s.1 of S. 85. They also do not touch this question.

28. Certain alienations which were permitted both under the principal Act and the amending Act 35 of 1969 were invalidated by the amending Act 17 of 1972. Voluntary transfers out of love and affection were permitted before 1972. By the Amending Act 17 of 1972, clause (ii) of sub-s.(1) of S. 84 was taken away from

16-8-1968. So, the transfers effected after 16-8-1968 out of love and affection cannot be reckoned for the purpose of the lands liable to be surrendered. If the contention of the respondent is to be accepted namely that ceiling area as on 1-1-1970 is to be determined with reference to the lands and the transfers treated as invalid on 1-1-1970, lands included in voluntary transfers made out of love and affection effected earlier to 16-8-1968 would also have to be brought in because when S. 83 was brought into force on 1-1-1970 these transfers are not recognised in S. 84. That is not the intention. All transfers out of love and affection effected anterior to 16-8-1968 are not ignored for the purpose of fixing the ceiling area on 1-1-1970. So, the scope of S. 84 read with S. 81 and 82 is only limited to transfers which were invalid on the date of the transfers.

29. Again, if the contention urged on behalf of the respondent is accepted, namely that it is with reference to 1 1970 when S. 83 was brought into force that the ceiling area must be taken and in computing the ceiling area only such exemptions as are retained on 1-1-1970 can be allowed, there will be an anomalous result. Assume that an unmarried adult person had 6 acres of kayal lands on 1-4-1964 and he alienated the same before 1-1-1970 and purchases 5 acres of garden land before 1-1-1970. At the time of the alienation there was no scope for application of S. 84, because kayal lands were exempted and he was in possession of only an area which will be less than the ceiling area permissible. If the invalidity is to be judged with reference to the ceiling area on 1-1-1970 the land purchased by him and the land alienated by him will have to be reckoned and the alienation will be invalid, a result which looks rather anomalous. Possibly as stated by Subramonian Poti J. in *Sivaramakrishnan v. State of Kerala* (1973 KLT 356) if this exemption had been taken away retrospectively and the ceiling area is reckoned only on 1-1-1970 the contention of the respondent may have some force. But, that is not the case here. The exemption is taken away only from 1-1-1970. Until then these kayal lands which were alienated were not affected by any provision of Chap.3 of the Land Reforms Act and S. 84 has no application during that period to these lands. Therefore, all alienations in respect of kayal lands between 15-9-1963 and 1-1-1970 have to be recognised and kayal lands comprised therein excluded in reckoning the ceiling area and the excess lands to be surrendered after 1-1-1970. Point (e):-- It has been found that sub-s. (5) to S. 88 added by Act 17 of 1972 is valid as a measure of agrarian reform. Under Art. 31A the State is entitled to acquire an estate for the purpose of agrarian reform and in respect of such acquisition the law will not be invalid for the reason that it may be inconsistent with Art. 14, 19 and 31 of the Constitution. That means the State can acquire the lands without compensation or on payment of such compensation as the State may deem proper to give. The adequacy of the compensation cannot be questioned by the person whose land has been taken away. That being the position, if at the time of the acquisition there are growing crops and improvements the law providing for acquisition being a law in agrarian reform can very well specify that the compensation is given towards the land, the growing crops and improvements thereon. The

person aggrieved cannot question it in any court of law. Growing crops are, it is contended, movable properties and the land is only the warehouse where these growing crops are collected and therefore they are not part of the land. This contention cannot be accepted. Growing crops, though for certain purpose treated as moveable property, as seen in many of the enactments, arise out of the land and in fixing the compensation everything that forms part of the land or arises out of the land can be included as part of the estate and acquired. Therefore, the inclusion of all growing crops as part of the land in the provision for payment of consolidated compensation is correct. The same applies to the improvements. Improvements if they are liable to be paid for may at best be a charge on the land as an equitable claim to be countenanced at the time of dispossession. If it is stated that in the compensation all these are included it cannot be questioned; and the law is valid as a measure of agrarian reform.

Therefore, I agree to the conclusion stated by my learned brother.