

(2010) 02 KL CK 0084

In the High Court Of Kerala

Case No : W.A. No's. 2880 of 2009 and 155 of 2010

Muhammed Basheer

APPELLANT

Vs

Kannur District Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 31

Citation : AIR 2010 Ker 118 : (2010) 2 KLT 577

Hon'ble Judges : P.R. Raman, Acting C.J.; Thottathil B. Radhakrishnan, J

Bench : Division Bench

Advocate : V.T. Madhavanunni, P.C. Thomas, Rojo J. Thuruthipara, Jestin Mathew, V.C. James, Raj Mohan R. Pillai and V.A. Satheesh, for the Appellant; P. Narayanan, for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—By virtue of Section 31(i) thereof, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for short, the "Act", does not apply to any security interest created in agricultural land. The issue raised in this Writ Appeal is as to whether such exemption applies to lands on which rubber plants/trees are grown.

Views in the impugned judgment:

2. Learned single Judge noted that the term "agricultural land" is not defined in the Act. Therefore, it was taken that the term had to be read and understood as in common parlance. With that, the decision in *State of Kerala v. Lucy Kochuvareed* 1987 (1) KLT 578 was distinguished and it was held that considering the scope and ambit of the relevant provisions of the law and also the scheme of the statute, it can only be read and understood as not including rubber plantation even by the farthest stretch of imagination. The Writ Petition was accordingly dismissed. Hence this appeal by the writ petitioner.

3. Heard learned Counsel for the appellant and the learned Counsel for the respondents.

Contentions and arguments of the appellant:

4. The appellant-writ petitioner contended that the respondents did not have jurisdiction to initiate the impugned proceedings under the Act in as much as such action is taken in relation to security interest created in agricultural land; the land in question being a rubber plantation, duly certified and supported by the Rubber Board through various schemes. These contentions are reiterated before us. Ext.P1 is the rubber cultivation development permit issued by the Rubber Board on 19.7.1996 cancelling an earlier permit issued on 31.3.1992. The expenditure and subsidy support are evidenced by Ext.P1, which also reveals that the first two instalments of subsidy were paid to the previous owner. Ext.P6 is the document as per which the petitioner obtained the property.

Contentions and arguments of the respondents:

5. The respondents contended that the basic document relating to the property in question would show that the land was originally a barren one and that at the most, it can be treated as a rubber plantation which is not an agricultural land falling u/s 31(i) of the Act. It is contended that it is not the scheme of the Act to exclude its application in respect of plantations like rubber, coffee, tea etc. The plea is that the term "agricultural land" in Section 31(i) of the Act means only such lands, on which agricultural operations are being carried on for the purpose of livelihood, whereas plantations with large extent of property is, essentially, commercial activity, not intended to be excluded from the purview of the Act. It is pleaded that the different items specified in Section 31 predominantly show that properties of commercial importance are not intended to be exempted and the exemption applies only to small items, recovery of which may affect livelihood. The respondents accordingly contend that the property of the petitioner, which is a rubber plantation, is not eligible to be excluded from the purview of the Act. Respondents reiterated these contentions before us.

Consideration of the appeal:

6. It is not disputed before us that the land in question stands planted with rubber plants/trees and is a rubber plantation duly certified as such, by the Rubber Board. In fact, the pleadings of the respondents stand to admit this position. Therefore, there is no disputed question of fact as to the identity of the property or the nature and utility to which it is put to.

7. The only issue for decision is as to whether a piece of land planted with rubber is to be excluded from the term "agricultural land" for the purpose of Section 31(i) of the Act.

8. Section 31(i) of the Act reads as follows:

31. Provisions of this Act not to apply in certain cases.- The provisions of this Act

shall not apply to:

(i) any security interest created in agricultural land.

9. It is the well-settled principle of law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended, but what has been said. See - AIR 2003 SC 2103 . The Apex Court stated in *Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad*, , that it is a well-settled rule of interpretation that a statute must be construed according to its plain language and, neither should anything be added nor subtracted, unless there are adequate grounds to justify the inference that the legislature clearly so intended and, further, that when the language of a statutory provision is plain and unambiguous, there is no need to resort to the object and purpose of the enactment because in such a case, the language best declares the intention of the law-giver. In *Bakhtawar Singh Bal Kishan Vs. Union of India (UOI) and Ors*, , the Apex Court laid down that the words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear and manifest, without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. It was hence reiterated that the object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act and that the dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand. In *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, , it was held that the current and correct view of the interpretative process is that words must be given their "literal" or "ordinary" meaning unless there are compelling reasons, recognised by canons of construction, to the contrary. It was reiterated that the judicial rule of law for interpreting statutes applies the grammatical approach, thereby to bring out the value judgment incorporated in the statute itself. Sometimes it is called the "equity of the statute". In *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, , the Apex Court held that if the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense and the mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect.

10. In *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*, , the Apex Court stated as follows:

...The foremost task of a court, as we conceive it, in the interpretation of statutes, is to find out the intention of the legislature. Of course, where words

are clear and unambiguous no question of construction may arise. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to legislators as to judges, it may be safely presumed that the legislature intended what the words plainly say. This is the real basis of the so-called golden rule of construction that where the words of statutes are plain and unambiguous effect must be given to them. A court should give effect to plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the legislature to others as well as judges. Intention of the legislature and not the words is paramount. Even where the words of statutes appear to be prima facie clear and unambiguous it may sometimes be possible that the plain meaning of the words does not convey and may even defeat the intention of the legislature; in such cases there, is no reason why the true intention of the legislature, if it can be determined, clearly by other means, should not be given effect...

It was further noticed in *Girdhari Lal* that Parliamentary intention may be gathered, first from the statute itself; next from the Preamble to the statute; next from the Statement of Objects and Reasons; thereafter from Parliamentary Debates, Reports of Committees and Commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light, due regard being also had to legislative history too.

The Apex Court went on to state in *Girdhari Lal* as follows:

...the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary.

11. *Girdhari Lal* (supra) was cited before the Apex Court in *Bhaiji Vs. Sub Divisional Officer, Thandla and Others*, . Quoting *Principles of Statutory Interpretation* by Justice G.P. Singh, 8th Edn., with approval, the Apex Court reiterated in *Bhaiji* that reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. It was noticed that the weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the legislature in drafting a statute. Accordingly, *Girdhari Lal*, wherein it was held that the courts can by ascertaining legislative intent

place such construction on a statute as would advance its purpose and object, was explained by stating that where the words of a statute are plain and unambiguous, effect must be given to them. It was stated that the legislature may be safely presumed to have intended what the words plainly say. The Apex Court noticed that the plain words can be departed from when, reading them as they are, leads to patent injustice, anomaly or absurdity or invalidation of a law and that the Statement of Objects and Reasons, Parliamentary Debates, Reports of Committees and Commissions preceding the legislation and the legislative history are permitted to be referred to only for the purpose of gathering the legislative intent and not beyond.

12. In *Bhargavy v. Janaki* 1994 (2) KLT 262 (F.B.), the Full Bench of this Court stated as follows:

We remind ourselves of the well established guidelines for interpretation of statutory provisions. The object or purpose of all constructions or interpretations is to ascertain the intention of the law makers and make it effective. In Crawford's *Interpretation of Laws* learned author quoting from a series of decisions, stated that "the basic principle has been announced time after time that if the statute is plain, certain and free from ambiguity a bare reading suffices and interpretation is unnecessary. It is only when the statute is ambiguous or its meaning is uncertain that interpretation is required in order to ascertain what the legislature meant". (Vide page 244). The caution in this regard is that in the endeavour to discover the intention of the law maker court shall not rewrite a statute and shall not exercise a sort of legislative power which the court does not have. Even when Lord Coke reported *Haydon's* case "the mischief rule" laid down the standards to eschew the mischief which the statute wanted to undo and uphold the remedy adumbrated therein. (Maxwell "Interpretation of Statute" at page 40 of the 12th Edition.).

13. With the above, as rightly noticed by the learned single Judge, "agricultural land" is not a term defined in the Act. Nor is the word "agriculture". Then, how is the term "agricultural land" to be understood?

14. The Apex Court said in *R.D. Saxena Vs. Balram Prasad Sharma*, that where a statute does not define a term used in it, the legislature should be presumed to have used that word in its ordinary dictionary meaning. In *Diwan Bros. Vs. Central Bank of India, Bombay and Others*, , the Apex Court stated that it is a well-settled principle of interpretation of statutes that where the Legislature uses an expression bearing a well-known legal connotation it must be presumed to have used the said expression in the sense in which it has been so understood. In that precedent, *Craies on Statute Law* is quoted to state that there is a well-known principle of construction, that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted, unless a contrary intention appears and further, that the rule as to words judicially interpreted applies also to words with well-known legal meanings, even though they have

not been the subject of judicial interpretation.

15. A survey of the precedents would show that the general sense of a term in which it has been understood in common parlance is adopted for understanding the scope of the terms "agriculture", agricultural purpose", "agricultural land" etc. in different context where the statute that fell for consideration did not give any definition for such terms. Looking at Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, and Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, , it could be seen that the ordinary dictionary meaning of the terms are applied, however, maintaining in focus, the purpose of the legislation, so as to avoid any unreasonable interpretation by which there could be exclusions or exemptions which are never contemplated by the legislature. It has been held in Raja Benoy Kumar Sahas Roy (supra) as follows:

If the term "agriculture" is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the land of products which have some utility either for consumption or for trade and commerce, it will be seen that the term "agriculture" receives a wider interpretation both in regard to its operations as well as the results of the same. Nevertheless there is present all throughout the basic idea that there must be at the bottom of it cultivation of land in the sense of tilling of the land, sowing of the seeds, planting, and similar work done on the land itself. This basic conception is the essential sine qua non of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same. But if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations.

(underlined to emphasise)

16. "Agricultural land" is that species of land which could be said to be either used or ordinarily used for agricultural purposes. "Agricultural land" must have a connection with an agricultural user or purpose. It is on the nature of user that the meanings of "agricultural purpose" and "agriculture" become relevant. Popular and authoritative Dictionaries say that "agriculture" is the art or science relating to the practices of cultivating the land. Agriculture is the process by which human skill is expended upon land. Human labour, with or without the aid of implements, tools and machines, is employed utilising the art or science of cultivating the ground. In its good sense, it means farming, horticulture, forestry etc., including the allied pursuits, preparation of land or fields in large quantities, preparation of soil, planting of seeds, raising and harvesting of crops etc. In certain shades, agriculture also includes management of livestock etc. But primarily, it is understood as the process of putting land to use in the growing of crops by employing human skill and labour upon land. As noted above from Raja Benoy Kumar Sahas Roy (supra), agriculture includes raising, on the land, of products which have some utility either for consumption or for trade and

commerce. The term "agriculture" cannot be defined or understood by the nature of the products cultivated. No such classification is conceivable unless specifically provided for, having regard to the specific need to make such classification. If such classification is to provide different consequences of a piece of statute law, including its applicability, we definitely think that such classification should be found explicit on the clear expressions in that particular statute.

17. The primary exercises in agriculture cannot be treated as an activity alien to agriculture, even if it relates to growing and harvesting of product or crop which goes in for consumption otherwise than as an edible item. Rubber sap is a biological product generated from the rubber trees which are grown as plantations, utilising human skill and labour, by carrying out an agricultural process starting with preparing the lands for the cultivation. Rubber saplings are generated by different modes; by germination of seeds or by botanical manipulations like grafting, budding etc. Those saplings are planted, watered, provided with manure and otherwise cared for, to grow them up. The said process is nothing but "agriculture". The mere fact that the product that is ultimately taken from the rubber trees is sap that goes into processing or consumption other than as food is no intelligible criteria to say that rubber sap taken from the rubber trees is not an agricultural produce, in common parlance, or that cultivation of rubber is not agriculture and still further, that lands on which rubber is cultivated is not agricultural land.

18. We would now advert to the apparent assumption expressed by the respondents, even in pleadings, that the exemptions provided by the operation of Section 31 are made with predominant thrust on matters attendant to livelihood and small items and that properties of commercial matters are not included therein. We notice the plea in that regard in para. 7 of the respondent's statement in opposition to the Writ Petition; that certain items may not fall even in that exemption. Security interest in any aircraft; in any vessel falling under the Merchant Shipping Act, 1958; in any conditional sale, hire purchase or lease of goods, pledge of movables; unpaid seller's lease under the Sale of Goods Act, 1930 etc. fall within those enumerated in Section 31. In that view of the matter, we are unable to see that the provisions of the Act are excluded from application solely on the basis of any commercial or financial yardsticks, or such other matters.

19. Different considerations would have gone into the making of Section 31(i) to the effect that the Act does not apply to any security interest created in agricultural land. Even as regards agricultural land, we cannot ignore that the Act being a central legislation, the Parliament would have considered it fit to exclude security interest created in agricultural land because Entry 18 under List II of the Seventh Schedule to the Constitution gives exclusive competence to States to legislate as regards matters falling in that entry. "Agricultural land", as such, could be visited by legislations made by the Union also, having regard to Entries

86, 87, and 88 of List I. Yet, security interest created in agricultural land is excluded from the reach of the Act. Therefore, it may not be a safe method of interpreting Section 31 to look into the legislative wisdom behind the making of the exemption or exclusion from application of the Act, unless such a course becomes inevitable owing to the need to resolve any ambiguity; which contingency is just not there in the matter of construing the enactment in hand.

20. When the Bill leading to the Act was introduced, to replace the predecessor Ordinance, the Statement of Objects and Reasons, in Clause 2(m), specifically referred to the intention to provide for the non-application of the proposed legislation to security interests in agricultural lands. The purpose of using the term "agricultural land" in the Act, to wit, in Section 31(i) thereof, is to provide that the Act shall not be applied to security interests created on such lands. Yet, the legislature though it fit not to define the term "agricultural land" for the purpose of the Act. It expressed no intention to classify agricultural lands on any basis. Had it intended, nothing prevented such intention being expressed in the enactment itself. We look at the issue from this angle also because, in hand is a provision that makes an exemption from the application of a statute, which is predominantly penal in nature, as regards securitisation and attendant proceedings involving the enforcement of rights of creditors against debtors. The inexcusable conclusion is obvious; that the clear legislative intention is that the term "agricultural land" in Section 31(i) of the Act would be applied without culling out any exemption from that term on the basis or nature of crop or the cultivation that is made on that land. All that is required is that it should be an agricultural land.

21. With the aforesaid, we also notice that in W. A. No. 1057/06, the Division Bench has held that when a loan was advanced on the security of rubber plantation, it does not cease to be an agricultural land merely because the rubber trees growing thereon have been cut down. It was held that the rubber plantation does not lose its character as an agricultural land by the felling of the old and unyielding trees since the next step is to replant the land with rubber siblings. It was held that even if the land is kept idle for some time, it does not cease to be agricultural land and if that were so, the provisions of the Act in question cannot apply in view of the embargo in Section 31(i) of the Act. Though it could be stated that the issue as to whether land planted with rubber is to be excluded from the term "agricultural land" in Section 31(i) of the Act was not pivotally raised in that case and that it proceeded on the assumption that a rubber plantation is "agricultural land", the precedential value of that decision, in re the facts and arguments in case in hand, cannot to be ignored. However, unfortunately, that binding decision of the Division Bench was not brought to notice when the Writ Petition was argued. We are in complete agreement with that Bench decision.

22. For the aforesaid reasons, the impugned judgment is erroneous in law. The respondents do not have the authority to proceed under the provisions of the Act

as against the property in question. It is so declared.

In the result, this Writ Appeal is allowed vacating the impugned judgment. Consequently, all steps taken against the land in question under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are quashed hereby. Writ Petition allowed to that extent. No costs.