

(1984) 03 KL CK 0022

In the High Court Of Kerala

Case No : M.F.A. No's. 337 and 426 of 1978 and 97 and 380 of 1979

State of Kerala and Another etc.

APPELLANT

Vs

K.C. Moosa Haji and Others etc.

RESPONDENT

Date of Decision : 22-03-1984

Acts Referred:

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 2, 3

Citation : AIR 1984 Ker 149

Hon'ble Judges : K. Bhaskaran, Acting C.J.;V. Bhaskaran Nambiar, J;P.C. Balakrishna Menon, J;M.P. Menon, J;G. Balagangadharan Nair, J

Bench : Full Bench

Advocate : M.K. Musthafa Kani Rawther, T.D. Abdul Salam, P.K. Balasubramoniam, G.K. Usha K. Ramkumar and B. Satheeschandran, for the Appellant; George Thomas, General, A.A.G., P.N.K. Achan K. Vijayan, K.A. Nayar, K.P. Dandapani, Sumathy Dandapani and T.C. Chacko, for the Respondent

Judgement

M.P. Menon, J.—These are appeals u/s 8-A of the Kerala Private Forests (Vesting and Assignment) Act. 1971 (hereinafter called the "Vesting Act"). The Act came into force on 10-5-1971. Its object was to provide for the vesting of private forests in the State Government, and for assignment thereof to agriculturists and agricultural labourers for cultivation, as in the opinion of the legislature, all private forests in Kerala were agricultural lands. Section 2 (f), defined "private forest." Section 3 provided for the vesting of the ownership and possession of all such forests in the Government, and for the extinguishment of rights, title and interests of owners and other persons. u/s 4, vested private forests were to be deemed to be reserve forests so long as they remained vested. Section 5 provided for summary eviction of persons found to be in unauthorised occupation of the vested areas. Section 6 provided for demarcation of the boundaries, and Section 7, for the constitution of Tribunals for the purposes of the Act Disputes as to whether any land was a private forest or not, or whether any private forest had vested in the Government or not, had to be decided by such Tribunal: and Section 8A provided for appeals to the High Court from such decisions. Section 9

declared that no compensation was payable for the vesting or the extinguishment of the rights involved. Section 10 required the Government to "reserve" part of the vested forests, and to assign or lease out the remaining part to agriculturists, agricultural labourers. Scheduled Castes and Scheduled Tribes, unemployed young persons and others interested in taking up agriculture as means of their livelihood u/s 11 the assignment was to be completed within two years. Sections 12 to 14 dealt with the powers of the Tribunals and the Custodian, bar of jurisdiction of civil courts, and indemnity. Section 15 contemplated the constitution of an "Agriculturists" Welfare Fund". Sections 16 and 17 conferred power on the Government to remove difficulties and to make rules, Section 18 repealed the Madras Preservation of Private Forests: Act 1949 and some other enactments/ Ordinances. When the validity of the Act was questioned in State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., the Supreme Court understood the legislative measure as a ""scheme of agrarian reform" designed to take over agricultural lands comprised in private forests, and for the settlement of poorer classes of the rural population on those lands, for promotion of agriculture.

2. To appreciate the nature of the contentions raised in these appeals, it is also necessary to briefly refer to the Kerala, Land Reforms Act and the Madras Preservation of Private Forests Act. Though most of the provisions of the Land Reforms Act were brought into force from, 1-4-1964, the ceiling provisions were given effect to only from 1-1-1970. Chapter III of the Act dealt with fixation of ceiling and disposal of excess lands. The Chapter provided for the fixation of a ceiling on the extent of land a person or family could hold as on 1-1-1970, for take-over of the excess on payment of compensation and for their distribution among kudikidappukar"s, landless agricultural labourers and small-holders. Sep. 81 of the Act exempted private forests from the ceiling provisions; and in this view, the object of the Vesting Act was to get at the lands comprised in such forests also for distribution, as part of agrarian re form. The basic difference between the two schemes was while compensation was payable for excess lands taken over under the Land Reforms Act, no compensation at all was payable for the forest lands taken over under the Vesting Act. Both the enactments were directed at relieving the pressure on land which was, and is, a notorious feature of this over-crowded State.

3. As for the Madras Preservation of Private Forests Act, 1949 ("M P. P. F Act"), its object was to prevent indiscriminate destruction of private forests and interference with customary and prescriptive rights therein, pending further legislation. The Act was conceived as a temporary measure but it continued to be in force by a series of amendments, till it was repealed in 1971 by the Vesting Act. The M. P. P. F. Act applied to private forests in the Malabar and South Kanara districts of the erstwhile Madras State and the key provision was the one contained in Section 3 which prohibited alienation of any part of the forest, and the cutting of trees or the doing of any act likely to denude or diminish the utility of the forest except with the previous permission of the District Collector. Section

6 empowered the Government, by notification, to prohibit or regulate the doing of any act detrimental to preservation, and to regulate exercise of customary or prescriptive rights. The other provisions which dealt with institution of prosecutions, bar of suits, rule making power etc. are not material for our present purposes.

4. The appeals are from the Malabar area where the M. P. P. F. Act was in operation till 10-5-1971. In relation to this area, the Vesting Act defined "private forest" as any land to which the M. P. P. F. Act applied immediately before the aforesaid date, subject to certain exceptions. Naturally therefore, the parties herein had contended before the Tribunals that the lands in dispute were not covered by the M. P. P. F. Act on the crucial date. Alternatively, they had contended, that the lands were excluded under the exemption clauses of the definition. The two common points mainly raised in these appeals are also the same, namely,

(i) whether lands to which the M. P. P. F. Act were applicable in 1949, but which were converted into vacant lands or into teak plantations long prior to 10-5-1971, could be treated as private forests as defined in the Vesting Act ?

and (ii) whether teak plantations come within the scope of any of the exemptions in the same definition clause ?

The second point is practically covered by the Full Bench decisions of this Court in State of Kerala Vs. Amalgamated Malabar Estates (P.) Ltd. and Another, and State of Kerala and Another Vs. Malayalam Plantations Ltd., but another Full Bench doubted their correctness, and that is how these appeals are now before a larger bench. It has also to be stated that the two Full Bench decisions were not before the Tribunals at the time the orders under appeal were passed. One of the appeals raises a few subsidiary contentions, and they will be examined separately.

5. Section 2 (f) of the Vesting Act, in so far as it is relevant for the present, reads :--

(f) "private forest" means--

(1) in relation to the Malabar district referred to in Sub-section(2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956)--

(i) any land to which the Madras Preservation of Private Forests Act 1949 (Madras Act XXVII of 1-949) applied immediately before the appointed day excluding--

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (I of 1064):

(B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands Used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market,

Explanation -- Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed, to be lands used for purposes ancillary to the cultivation of such crops. (C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop and

(D) sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of such buildings;

(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forests Act. 1949 did not apply, including waste lands which are enclaves within wooded areas."

Section 3 of the Act will also be relevant to some extent, and we shall extract that also :

"3. Private forests to vest in Government. -- (1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of Sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of this Act stand transferred to and vested in the . Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished.

(2) Nothing contained the Sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as in within the ceiling limit applicable to him under the Kerala Land Reforms Act. 1963 (I of 1964) or any building or structure standing thereon or appurtenant thereto.

Explanation. -- For the purposes of this sub-section, "cultivation" includes cultivation of trees or plants of any species. (3) Nothing contained in Sub-section (1) shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable does not exceed the extent of the ceiling area applicable to him u/s 82 of the said Act.

(A) Notwithstanding anything contained in the Kerala Land Reforms Act, 1963, private forests shall, for the purposes of Sub-section (2) or Sub-section(3), be deemed to be lands to which Chapter III of the said Act is applicable and for the purposes of calculating the ceiling limit applicable to an owner, private forests shall be deemed to be "other dry lands" specified in Schedule II to the said Act."

The sections of the M. P. P. F. Act which are relevant are the following:--

"1 (1). This Act may be called the Madras Preservation of Private Forests Act. 1949.

(2) It applies--

(i) to private forests in the Districts of Malabar and South Kanara having a contiguous area exceeding 100 acres.

Explanation. -- Nothing in this clause shall be deemed to apply to any land which was brought under fugitive or other cultivation prior to the 14th Dec. 1949 by an owner or any person claiming under him.

* * * * but does not apply to reserved forests constituted under the Madras Forests Act, 1882 and lands at the disposal of the Government as defined in that Act.

Explanation. -- A private forest exceeding 100 acres in extent shall not cease to be such by reason only of the fact that in a portion thereof trees or shrubs are felled with or without the permission of the District Collector, or lands are cultivated, or rocks, roads, tanks, rivers or the like exist, nor shall the area of such forest cease to be contiguous by reason only of the existence of all or any of the aforesaid circumstances.

* * * * 2. In this Act unless there is anything repugnant in the subject or context,

(a) "forest" includes waste or communal land containing trees and shrubs, pasture land and any other class of land declared by the State Government to be a forest by notification in the Fort St. George Gazette."

6. The contention of the land-owners on the first point is this. They had all cleared the forest growth in their lands some ten to twenty years before 10-5-1971. Some parts were kept vacant, and they remained vacant on the crucial date also. The remaining parts were planted with teak, and as on the crucial date, those areas were teak plantations. Once an area is clear-felled and is completely denuded of all forest growth, the land involved cannot be considered as a forest thereafter. The same must be said about such vacant areas replanted with human effort before the crucial date. "Once a forest, always a forest" is not a proper concept. The Vesting Act applies only to forests i. e. lands which were forests under the M. P. P. F. Act immediately before 10-5-1971. Inasmuch as the lands in question had ceased to be forest by that time, whether "forest" is understood in its ordinary sense or in the sense in which it is defined in Section 2 (a) of the M. P. P. F. Act, they had gone out of the purview of the Act : the M. P. P. F. Act was no longer applicable to them. Consequently, they were not private forests for the purposes of the Vesting Act also.

7. We are unable to accept this contention. Section 2 (f) (1) of the Vesting Act defines "private forest" as any land, whatever be its nature or character. If the M. P. P. F. Act was applicable to the land in 1949, and if it continued to apply to it up to 10-5-1971, that land will be a private forest for the purposes of the Vesting Act. The question is not whether there was a forest in existence in 1971; it is whether there was any land in 1971 to which the M.P.P.F. Act, was applicable in 1949 and continued to be under its coverage till 1971. It is common ground that

the lands involved in these appeals were all private forests as defined in the M.P.P.F. Act, in 1049. Clear-felling and replanting were carried out with the permission of the District Collector. Therefore, the enquiry should be as to whether as a result of such operations, the M.P.P.F. Act had ceased to apply to those areas. That will depend on the provisions of that Act, and not on the concept or even the definition of "forest". And our attention has not been drawn to any provision of the said Act which postulates that denudation, with or without permission, was capable of putting an end to its applicability to the denuded area. On the other hand, the First Explanation to Section 1 (2) (i) Of the Act indicates that lands brought under fugitive or other cultivation after the 14th Dec. 1949 (i e. the date on which the Act was published in the Gazette) were to continue as private forest for the purposes of the Act, despite such cultivation. The Second Explanation further indicates that denudation reducing the forest area below 100 acres, or destroying contiguity, was not capable of taking the lands out of the definition in Section 1 (2) (i). Rules framed under the Act also show that except in the case of casuarinas, clear-felling of trees could only have been at a height above six inches from the ground, so that the stumps were retained to allow natural regeneration. Even in the case of casuarina or other trees where natural regeneration could not be thought of the permit-holder had to replant the area during the currency of the permit. The felled areas were to be closed even to grazing for a period of five years. In our opinion, the object of the Act was to pre-serve the private forests as forests, and one of the legislative devices adopted even in respect of areas allowed to be clear-felled was to make provision either for natural regeneration or for obligatory replanting, so that the Act continued to apply and protect or preserve such areas. It was never the intention of the legislature to permit permanent deforestation either through grant of permission by the Collector or through un-authorised felling, so that as and when anything of that kind was done to the area, it would get itself free from the constraints of the Act. Clearly, once the Act was applicable to an area in 1949, nothing done by the owners or others was capable of putting an end to such applicability to that area.

8. Speaking for a Division Bench of this Court in *State of Kerala v. Anglo American D. T. T. Co.* (1980 K LT 215), poti J. (as he then was) had said :--

" "Forest"" is not a term defined in the Act. With reference to lands in the Malabar area and to which the Madras Preservation of Private Forests Act applies on the appointed day the test for determination whether the land is "private forest" is different. Evidently the scheme of that section appears to be that if the land is shown to be private forest on the date the Madras Preservation of Private Forests Act came into force, it would continue to be private forest even if it has actually ceased to be a forest unless one or other of the exclusions in clauses A to D in the definition applies."

We respectfully think that that was true approach to be made to the definition in Section 2 (f) (1) of the Vesting Act. The contrary view taken by another Division

Bench in M. F. A. No. 480 of 1978, without much of a discussion, and without reference to the specific statutory provisions, does not appeal to us.

9. Reference was made to the following observations of the Supreme Court in *The Malankara Rubber and Produce Co. and Others, etc., etc. Vs. The State of Kerala and Others, etc., etc.*, to contend that teak plantations raised as a result of agricultural operations, as distinct from spontaneous growth, could not be considered as "forest":--

"Lands used under eucalyptus or teak which are the result of agricultural operations normally would be agricultural lands. They would certainly not be forests, but the statements in the petitions seem to suggest that operations were carried thereon for the express purpose of growing these plants and trees. However, lands which are covered by eucalyptus or teak growing spontaneously as in a jungle or forest, would be outside the purview of the acquisition."

Their lordships were considering the question whether acquisition of natural forests by the State, under the ceiling provisions of the Kerala Land Reforms Act, would be protected by Article 31A as a measure of agrarian reform, if the lands concerned could not be used for agricultural purposes at all. The assumption, on the facts then disclosed, was that "forest lands and jungles" could not be used for agricultural operations-But a different view was taken in the subsequent decision in *State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.*, where more particulars were apparently available, when their lordships categorically held that all the private forests in Kerala could be treated as agricultural land. That apart, the *The Malankara Rubber and Produce Co. and Others, etc., etc. Vs. The State of Kerala and Others, etc., etc.*, was not dealing with the question as to whether lands covered by the M. P. P. F. Act in 1949 and denuded thereafter of forest growth, could continue to be governed by the provisions of the Act despite such alteration of character.

10. Mr. Balasubramanian, appearing for one of the landowners, suggested that the second Explanation to Section 1 (2) of the M. P. P. F. Act could fit in with the theory that any part of a private forest denuded of trees and undergrowth would automatically go out of the provisions of the Act. According to him the Explanation introduced by an amendment in 1954, was intended to give continued coverage to that part of the area which remained as a forest after deforestation of the other, in cases where such partial deforestation reduced the total area to below 100 acres. The position was explained by illustrating that if there was an extent of 120 acres of private forest in 1949, clear-felling of 40 or 50 acres at any time thereafter would reduce the forest area to 80 or 70 acres, that a contention could then have been raised that the Act was no longer applicable even to that remaining area by reason of Section 1 (2) (i), and that the Explanation was brought in to avoid such a contingency. As we read the provisions, however, both acreage and contiguity were essential for the application of the Act, and the Explanation was introduced to clarify that reduction of the area or loss of contiguity by act of parties was of no

consequence in this respect. It will be absurd to assume that the idea behind the Explanation was to permit large tracts of forests to disappear through wanton act of destruction and to place all such areas outside the purview of the Act, so that in the long run, no private forests at all would be left for the legislature to protect and preserve. It was certainly not the intention of the legislature to make a dead letter of the whole of the enactment by adding a clarification or explanation through which all private forests could escape.

11. Another aspect to be kept in mind is that the very definition in Section 2 (f) (1) of the Vesting Act proceeds on a legislative understanding of the legal position that lands to which the M. P. P. Act was applicable in 1949 continued to be private forests, notwithstanding alteration of their character immediately before 10-5-1971. The exemptions in (A) and (B) of Sub-clause (i) show that but for such exemption, private forest areas converted into garden land, nilams and plantations before the crucial date would have continued as forest lands despite such conversion. We are therefore of the view that the answer to point (i) enumerated in paragraph (4) above must be in the affirmative.

12. The next question is whether lands principally cultivated with teak before 10-5-1971 are eligible for exemption u/s 2 (f) (1) (i) (C). Teak, it is said, bears a fruit or seed necessary for regeneration and that teak trees are therefore fruit-bearing trees. Alternatively, it is suggested that they can be treated as "any other agricultural crop" within the meaning of the latter part of "(C)." Decisions, dictionaries text books on forestry and botany are all pressed into service to assert that "fruit" and "crop" are words of wide import. In the ordinary or usual sense, fruits are "vegetable products fit for food.", or "the edible product of seed with its envelope", yielded by trees and plants, in a wider sense "a vegetable seed with envelope as means of reproduction"" is also a fruit. Referring to teak, the Encyclopaedia Britannica notes :--

"The fruit is a drupe, two-thirds of an inch in diameter."

And "drupe" means "stone-fruit, fleshy or pulpy fruit enclosing stone or nut with kernel." The fruit, nut or seed of teak may not be used for consumption, but the tree yields a fruit necessary for regeneration, it is said. Similarly, "crop" ordinarily means "products of the soil annually or seasonally planted, severed and saved by manual labour." but in a wider and more modern sense, it may include any kind of yield from cultivated plants and trees, taken over a period of years, depending upon the nature of the plant or tree and the use to which they are put. Eucalyptus, for example, are planted as part of organised cultivation so that the trees could be cut and used at the proper time for manufacture of pulp. Planting of teak : for getting poles and timber is also an agricultural operation, when "agriculture" is understood in a broad sense. It is said that certain types of softwood trees are now-a-days being cultivated for use in the match-industry. In a sense, therefore, their yield is also an "agricultural crop." But the question is whether the expressions "fruit-bearing tree" and "agricultural crop" in Section 2 (f) (1) (i) (C) of the Vesting Act are to be understood in the ordinary sense, or in

the wider, bolanical, technical or commercial sense; and it seems to us that the answer will depend on the context, and the policy of the enactment.

13. The policy of the Vesting Act or the object behind it, as we have seen is to reserve part of the vested private forests as forests, and to release the remaining part for settling agriculturists, labourers and others. The statute itself engrafts a number of exemptions most of which are specific and clear: and one must be careful to add to the list by a process of judicial interpretation, if the legislative object of finding enough surplus land is not to be defeated. In these four appeals themselves, the teak area involved comes to more than 2450 acres. In the two appeals which were decided by the Full Bench in State of Kerala Vs. Amalgamated Malabar Estates (P.) Ltd. and Another, exemption was claimed in respect . of more than 11.000 acres of eucalyntus area. Not that consequences alone should deter us from giving effect to the legislative intent where it is clear but where it is not so clear, the policy or object cannot be totally ignored.

14. Section 9 of the Travancore Land Conservancy Act provided for forfeiture of "any crop or other products raised on the land" where the land was found to be in unauthorised occupation: and in Rev. Father K.C. Alexander of Kuttikandathilaya Vs. State of Kerala, this Court held that trees could not be considered as "crop or ether product." When the matter was taken to the Supreme Court Rev. Fr. K.C. Alexander Vs. State of Kerala, it was noticed that the "product of a farm may include the increase of cattle on the premises," but not anything attached to the land like trees. Their Lordships said (at pp. 2502-3) :--"This view of ours is supported by the case of Clark v. Gaskarth (1818) 8 Tau 431. That was a case of a trespass for breaking and entering the closes of the plaintiffs and tearing up digging up, cutting down, and carrying away the plaintiff's trees, plants, roots and seeds, growing on the closes. Notice of this trespass was given to the defendant. At the time of the distress the sum of ?281.6s. was due from the plaintiffs to the defendant for rent in respect of the nursery ground. The question before the Court was whether the plaintiffs were entitled to recover against the defendant damages caused to them by cutting down and carrying away the plaintiffs' trees. It was contended that the defendant's action was justified under the Statute 11 G. 2. C. 19, Section 8, which after enumerating certain crops. empowered the landlord to seize as a distress any ""other product whatsoever which shall be growing on any part of the estate demised" and, therefore, the trees and shrubs in question came within that description. The Court rejected the contention that the trees and shrubs could be distrained and held that the word "product" in the eighth section of the statute did not extend to trees and shrubs growing in a nurseryman's ground, but that it was confined to products of a similar nature with those specified in that section, to all of which the process of becoming ripe, and of being cut, gathered made, and laid up when ripe, was incidental. In our view, therefore, trees are not in-eluded within the meaning of "other products raised on the land" in Section 9 of the Act and there is, therefore, no obligation on the Government to give notice of forfeiture under that section." The statute there had referred to

certain crops and also to "other product whatsoever," so that it was possible to argue that "product" was a term different from "crop" and wider; still the context was held to control the situation. Turning now to the policy or motive of the legislature, it may not always be conclusive; but as Jessel M. R. said, in *Holms v. Guv* (1877) 15 Ch. 901 :--

"Although the court is not at liberty to construe an Act of Parliament by the motives which influenced the legislature, yet when the - history of law and legislation tells the court, and prior judgments tell the present court, what the object of the legislature was, the court is to see whether the terms of the section are such as fairly to carry out that object and no other and to read the section with a view of finding out what it means, and not with a view to extending it to something that was not intended."

Reference has already been made to the history of the law. the Vesting Act was to supplement the ceiling provisions of the Land Reforms Act, in the matter of distribution of available agricultural land among the deserving classes. The object of the Act has also been explained by the Supreme Court in *State of Kerala v. Gwalior Rayon* (AIR 1973 SC 27341. And it is with the aid of these guidelines that we have to determine whether the language of Section 2 (f) (1) (i) (C) could be extended to include "fruit bearing trees" and "agricultural crop", in their widest sense.

15. The first exemption recognised in the definition clause is "'lands which are gardens and nilams". Garden lands include lands used principally for growing coconut and arecanut trees. Both these trees have fruits, nuts or seeds; and if the intention of the legislature in (C) was to exclude every type of tree with a fruit, nut or seed, their specific enumeration in (A) was unnecessary; the expression "other fruit-bearing tree" in (C) would have been sufficient. So also, the rubber tree in (B) has a fruit or seed: and for the same reason, a separate enumeration of that tree would also have been unnecessary. Obviously, therefore, "'other fruit-bearing trees" in (C) could not be understood in a very wide sense so as to take in every tree which has a nut or seed which may botanically or technically be called a "fruit."

16. Again, when we turn to the Explanation to Section 3 (2) of the Vesting Act, what is seen is that "trees of any species" are included in the concept of personal cultivation. Section 3 (2) excludes from vesting, lands comprised in a private forest under personal cultivation, within the ceiling limit applicable to its owner. That limit is small, and the legislature did not mind a limited extent of teak or eucalyptus plantations escaping from the vesting provisions, in the context of ceiling limits and personal cultivation. That is why "cultivation" has been defined to include cultivation of any species, of trees. But when we turn to Section 2 (f) (1) (i) (C) the legislature was careful, to exclude only fruit-bearing trees. When in the same Act, in two consecutive sections, both providing for exemption, the legislature speaks of only fruit bearing trees in one and of any species of trees in the other, it must clearly be inferred that trees grown for timber were not

intended to be covered by the former.

17. Teak plantations, eucalyptus plantations, cashew plantations and the like were not unknown to Kerala legislature. In fact, cashew estates or plantations were originally exempt from the ceiling provisions of the Land Reforms Act. But in enacting Section 2 (f) (1) (i) (B) of the Vesting Act, the legislature took care to specify only the types of plantations enumerated therein- Again, if there was any intention to exempt teak, eucalyptus and other well-known types of plantations, it is reasonable to think that the legislature would have included them in "(B)."

18. The same approach can be made to the meaning of the expression "agricultural crop" also. If the use of the expression in (C) was to denote everything that could be called an agricultural crop in a wide sense, the specific enumeration of other well-known types of agricultural crops like coconut, arecanut, paddy, plantation crops and cashew earlier was unnecessary. Therefore, "agricultural crop" in (C) has to be understood at least as the residue after what have been specifically and separately dealt with. That means that the con-text militates against any attempt to attribute the widest connotation to this expression also.

19. We are here concerned with an enactment of the Kerala legislature, and it will be interesting to enquire whether anyone in this State, except perhaps a few experts in botany, forestry or legal literature, would have thought of teak as a fruit bearing tree or an agricultural crop. It seems to us that no agriculturist in the State desirous of growing fruit-bearing trees would have plumped for the teak, and no farmer about to raise a crop would have thought of a crop of teak trees. That is why Chandrasekhara Menon J., speaking for the Full Bench in the State of Kerala Vs. Amalgamated Malabar Estates (P.) Ltd. and Another, had said (at pp, 145-146) :--

"The cultivation of such trees might be agricultural taking the integrated activity of the cultivator as a whole. But the question in this case is, can the lands where the eucalyptus trees are grown be said to be principally cultivated with "any other agricultural crop" within the meaning of the term in the context in which it is used in Section 2 (f) (1) (i) (C) of the Act. Mention of the fruit bearing trees in the clause, (lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop) should exclude what are generally understood as non-fruit-bearing trees. There cannot be much dispute that as generally understood by the ordinary man eucalyptus trees are non-fruit bearing trees. We cannot construe expressions used in one Act with reference to the meaning of the expression in another Act. To us, it would appear that the decision in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, could not have application here. The Supreme Court there, was construing the meaning of certain words appearing in the Indian Income Tax Act in the context of the definition contained in that Act. We are not here concerned with the meaning of the expressions "agriculture" and "agricultural operations" in a basic sense. The raising of teak, the raising of

casuarina, etc. as the raising of eucalyptus might be an agricultural operation in the broad sense of that expression. But we find it difficult to say that lands principally cultivated with eucalyptus trees would be lands principally cultivated with an agricultural crop coming within the ambit of the term "agricultural crop" as used in the Act."

Comparing the language used in the Explanation to Section 3 (2) with that in Section 2 (f) (1), his Lordship had added :--

"But when we turn to Section 2, the scheme is different. The exclusions there are :--

(i) gardens and nilams.

(ii) tea, cocoa, coffee, rubber, cardamom and cinnamon plantation; and

(iii) lands cultivated with cashew and other fruit-bearing trees or other agricultural crops.

Every form of cultivation or agricultural operation is not within the scope of the exclusions here; the exclusions are limited to well-known classes. The first is garden land and nilams a class with its own characteristics. The second is plantations of the specified categories, again a class with distinctive features.

The third is land cultivated with fruit-bearing trees like cashew, or other agricultural crops. The very setting and the order in which the exclusions are enumerated indicate that it is not the intention of the legislature to include in category (iii) above the product of every kind of cultivation or agricultural operation. If "agricultural crops" were to be construed widely, the detailed enumeration, of the classes and the different kinds of crops comprised therein, would have been unnecessary."

Speaking for the Second Full Bench also in *State of Kerala v. Malayalam Plantations* (1980 H LT 976) : (MR 1981 Ker 1) the learned Judge had observed (at p. 6) :--

"If the legislature had intended to use the expression "agricultural crop" in a wide sense so as to take within its scope trees which either bear fruits or yield good timber it was totally unnecessary for it to use in the first part of Clause "C" words "are principally cultivated with cashew or other fruit-bearing trees" since cashew and fruit-bearing trees also fall within the description "agricultural crops" when used in the wide sense, the purpose of the legislature would then have been fully served by enacting only the words now contained in second part of Clause "C" omitting therefrom the expression "any other." Such an interpretation which renders the first part of Clause "C" totally otiose does not appear to us to be correct or acceptable. The reasonable interpretation to be placed on Clause "C" is to understand the first part as dealing with lands cultivated with trees (excluding rubber, cinnamon etc. dealt with in Clause "B") the scope of the exclusion being expressly restricted to the case of such lands to those cultivated

with fruit bearing trees including cashew, and to understand the latter part of Clause "C" as dealing with lands cultivated with agricultural crops other than trees. In the context therefore cultivation of timber or eucalyptus trees cannot be equated to cultivation of any other agricultural crop, though in a wide sense such cultivation of non-fruit-bearing trees may also amount to agricultural operation."

It may be useful to notice two other lines of reasoning which appealed to the Bench in that case :--

"The reference to cashew or other fruit-bearing trees with the subsequent mention of other agricultural crops is positive indication of the fact that non-fruit-bearing trees are taken out of the term "other agricultural crops." Otherwise there was no necessity for the reference to cashew or other fruit-bearing trees. Cashew is taken by the statute as a fruit-bearing tree, as is clear from the word "other" used before "fruit-bearing trees."

XX XX X Looking at the matter in another way, it is significant that Sub-clause (A) which excludes nilams does not exclude all lands where paddy is grown. Only lands adopted for paddy cultivation are excluded. "Hill paddy" cultivation on the slopes of hills and forests is a well-known form of cultivation in the State, but those lands are not Nilams. Paddy being an agricultural crop. can it be said that the legislature excluded certain classes of paddy growing lands under Sub-clause (A), and left other types to be excluded by the latter part of Sub-clause (C)? If the intention was to exclude all lands used for paddy" cultivation that could have been served without specifically mentioning "nilam" in Sub-clause (A). This circumstance also indicates that the term "agricultural crop" in Sub-clause (C) should be understood in a restricted sense."

20. Mr. P. K. Kurien for the appellant in M. F. A. No. 426 of 1978 referred to Rule 2 of the M. P. P. F. Rules dealing with "thinning of private plantations of teak, casuarina and eucalyptus for silvicultural improvement of the crop," and contended that the rule-making authority had thought about a crop of teak. Rules under one enactment may not be of any assistance in understanding the meaning of the term used in another enactment, and it is possible to think that the Rule-makers were merely using a compendious expression to denote forest crops. In any event. Rule 2 of the M. P. P. F. Rules could not conclude the matter for the purposes of Section 2 of the Vesting Act.

21. Thus, the context and the policy of the statute, taken along with its history and its object as expounded by the Supreme Court, lead us to the conclusion that lands principally cultivated with teak trees cannot be considered as land cultivated with fruit-bearing trees or any other agricultural crop, within the meaning of Section 2 (f) (1) (i) (C) of the Vesting Act.

22. Mr. P. N. K. Achan, learned counsel for one of the parties in M. F. A. No. 337/78, attempted to put forward an argument that the Forest (Conservation) Act, 1980 (Central Act 69/80) has practically repealed the Vesting Act, and that consequently the Custodian cannot take possession of any part of the private

forests on the footing that such part has vested in the State-It was argued, with reference to the Preambles of the two, enactments and Article 254 of the Constitution, that while the Central Act provides for the conservation of forests, the Vesting Act provides for their destruction with a view to put them to agricultural use, and that in the light of the subsequent Central enactment, on a concurrent subject, the earlier State enactment should be deemed to have been repealed. Repugnancy, which is the subject-matter of Article 254, does not ordinarily arise from apparent inconsistency between preambles and object clauses alone: it arises when the provisions of one enactment say something totally opposed to the provisions of the other, and simultaneous compliance with both becomes impossible. An implied repeal may also be possible when a Central enactment covers the entire field earlier occupied by a State enactment. But, while the Vesting Act provides both for vesting and the distribution of forests among certain classes of people, the Central Act does not, in terms effect the vesting at all. Even as regards deforestation, there is no prohibition in the Central Act; all that it says is that before passing an order permitting use of forest land for non-forest purposes, the State Government should get the prior approval of the; Centre. The Central Act is thus not designed to ban all deforestation, but only to permit it in an orderly manner, with such control as the Central Government may seek to enforce. There is *prima facie* no repugnancy or repeal, either in a loose sense or in the strict constitutional and legal sense. We say "*prima facie*" because in the absence of specific pleadings and the raising of grounds with notice to the State, we were not inclined to call upon the Advocate General even to answer this point.

23. Three out of the four Appeals can be disposed of in the light of the above conclusions. M. F. A. 337/78 is against the common order of the Calicut Tribunal in O. A. Nos. 176/74 and 211/74, holding that the teak plantations involved in the two applications (894 acres in O. A. 176 and 343.95 hectares in O. A. 211) are eligible for exemption u/s 2 (f) (1) (i) (C) of the Vesting Act. In the view that we have taken on this question, the Tribunal's decision has to be set aside, this appeal has to be allowed, and we do so. The two Original Applications will stand dismissed with the declaration that the teak areas will form part of vested forest.

24. M. F. A. 97/79 and 380/79 are against the orders of the Manjori Tribunal holding that teak plantations are not eligible for exemption. We confirm the orders and dismiss the appeals.

25. M. F. A. 426/78 raises some other points also, but the claim for exemption in respect of 592.00 acres of teak plantations in N. S. Nos. 1041 and 1042 must be rejected. The same must be said about a similar claim in regard to 250 acres of clear-felled area in N. S. 1041-The findings of the Tribunal on these two points are confirmed.

26. It is common ground that 37.79 acres of land in N. S. 1042, principally planted with pepper, are eligible for exemption. It is also undisputed that an other 3 acres in the same survey number are eligible to be exempted as

"nursery." According to the State these areas were separately " demarcated, and have not been taken over. All that is necessary therefore is to clarify that the State will not be entitled to take possession of these two areas as vested forest, and that if any dispute arises in this regard the same will have to be resolved by the Tribunal on this basis.

27. The appellant had claimed ex-emption for 5 acres of lands, forming part of the 210 acres of ""New Teak Plantation" in N. S. 1042, and lying as a narrow strip towards its south, as "wind belt" necessary for the protection of the rubber plants/trees. This strip is separately identified in Ext A-1 plan. According to the appellant, this is a ridge with slopes on either side, and the teak trees standing thereon protect the rubber cultivation in that part of the estate from strong winds. The Tribunal Rejected the claim, on two grounds one, it was raised very late, as an after-thought and two, there was no need to have clear-felled the area and replanted it with teak, if it was necessary to have a permanent belt. Both these grounds appear to be untenable. After having allowed the appellant to amend the O. A. and adduce evidence on the point, the claim could not have been rejected solely on the ground that it was not there at the initial stage. And as for cutting and removing jungle trees/shrubs and planting teak in their place some time prior to 1971, that could not have been material, if there was slaughter tapping and replanting during the period. The only evidence on the point was that tendered by P.W. 1, and that was clear to the effect that the area around the ridge was susceptible to strong winds and that the trees were required to "break" them. Even the Tribunal was not prepared to record a finding that wind belts were altogether foreign to the cultivation of rubber trees and plants. The total rubber area involved was more than 2100 acres, and it was inconceivable that the appellant was attempting to put forward a false case just to save five acres of land in one part alone of the large estate. That he had claimed exemption for the whole of the 210 acres on a ground already noticed was no reason to reject the claim for a bare five acres on a different ground. Plantations are exempt from the ceiling provisions of the Land Reforms Act, and in a number of cases brought up from the decisions of Land Boards, this Court has been recognising the need for "wind belts" as ancillary to rubber cultivation. The learned Advocate General would no doubt suggest that the appellant's aim is to grab the valuable teak trees in the area, and counsel for the appellant would retort that the State too can have no other interest, because the ridge in question is unfit for any other agricultural operation or for distribution among the landless, and that by its very location, arrangements for its reservation or preservation as a forest is impossible. We are not interested in grabbing games, but we feel that on the materials on record, rejection of the claim by the Tribunal was not justified. Its finding is therefore reversed and it is held that the said five acres will be eligible for exemption as land used for purposes ancillary to the cultivation of rubber.

28. On behalf of the appellant, another claim for exemption was raised in the course of arguments, in respect of two "wooded areas", one extending to 28.40

acres in R. S. 1032 and another, 37.75 acres in R. S. 739. Going by Ext. A1 plan, the first is an enclave surrounded by rubber trees, and the other is on the boundary of the estate; and the contention is that there is no contiguous area of 100 acres, to be treated as private forest, within the meaning of the M. P. p. F. Act. As we have seen, if the loss of contiguity was after 1949, the Act would have continued to apply to these pockets also. Admittedly, the rubber area was also part of a private forest at some point of time in the past; and there is no evidence to show that the conversion was prior to 1949. The replanting particulars noted in Ext. A1 (between 1959 and 1966) can probably lead to an inference that the first planting was before 1949, but that will be a mere inference without satisfactory evidence and without even pleadings. Even in the appeal, no such specific point has been taken, and we are not disposed to go into this claim under the circumstances.

29. The last point in dispute is about the exemption claim relating to 594.78 acres of "uncultivated jungle" in N. S. Nos. 1041 and 1042. also separately marked in Ext. A1. The appellant's case before the Tribunal was that firewood from this area was required for free distribution among the staff and workers of the estate, and that it was also required for use in the smokehouse for converting latex into rubber sheets. Lands used for purposes ancillary to cultivation of rubber, and lands used for preparation of rubber for the market would be exempt u/s 2, (f) (1) (i) (8). Fire-wood needs of the staff and workmen were ancillary to cultivation, and the smoke-house needs related to preparation for the market, it was contended. The Tribunal rejected the claim under both those heads mainly for the reason that there was not enough evidence to establish that firewood from the whole area was being used for the two purposes, prior to 10-5-1971. It is difficult to agree with the view that the term "used" could be understood only in the past tense. It is well-known that rubber estates are periodically slaughter tapped and replanted in stages till the replanted trees reach the age of tapping, the smoke-house in the estate may not be used at all. Could the claim for exemption be rejected for the sole reason that immediately prior to the crucial date, or even for a few years prior to the date, no firewood was required for smoking purposes ? The provision for ancillary use or for use in connection with preparation to the market is designed to ensure that the normal working of estates existing on the crucial date is not adversely affected. It may probably be said that the planted area, for taking into account ancillary uses, could be restricted to the area in existence on 10-5-1971. and that exemption would not be available under this head for plans of future expansion. In this restricted sense, "used" could be understood in the past tense, but not in every other sense. Ext. A1 discloses that extensive areas of the rubber plantation adjacent to the jungle tracts in question were replanted in 1970 and 1971, and some other areas in 1965 and 1966. It is therefore possible that the smokehouse was being put to limited use during the relevant period: but that cannot be a consideration for holding that use of the jungle area as a source of firewood could not be recognised at all, on the facts of the case. The question

however remains whether supply of firewood to staff and workmen could be treated as satisfying a purpose ancillary to cultivation, and whether smoke-house needs are relatable to use of land in the preparation of rubber for the market. And even if the answer to these questions is in the affirmative, the further problem of fixing up the jungle area which could reasonably, be ear-marked for the purposes will also arise.

30. Can use of jungle land as a source of fire-wood supply be considered as use for a purpose ancillary to cultivation ? Counsel for the appellant was at pains to explain how fire-wood supply to the staff and labourers of the plantation industry had become a condition of their service, long before the introduction of the Plantations Labour Act in 1951. Cultivation and maintenance of the estates required a large labour force. The estates were all located in unpopulated hilly or forest areas, and local recruitment was impossible. "Estate gangs" were therefore being brought and settled in the estates with the aid of "kanganies". This required the construction of "lines" or quarters. And once the employees were so settled, they had to be provided with the bare necessities of life also, as nothing was locally available. Dispensaries for giving medical aid to the families and schools for the education of their children had to be started. Some kind of recreational facilities were also necessary. That is why the Explanation to (B) recognises use of land for quarters, buildings, hospitals, schools and playground as use ancillary to cultivation. But the Explanation is only illustrative, not exhaustive. For example, it does not take in estate roads. Can anyone say that roads are not ancillary ? They are required for movement of men, manure, pesticides, fertilizers and the products of the land. Now, if accommodation, medical and educational facilities are ancillary, so must be some arrangement for supply of foodgrains, provisions and firewood. The employees should not only have a roof over their head, and a dispensary and school nearby: their hearths should also be kept burning. Facilities for preparation of food are as much ancillary as medical and recreational facilities. A practice or custom had thus grown up with the industry where it was the obligation of the employers to provide the employees with drinking water, canteen, creches, umbrellas, blankets, rain-coats, foodgrains, provisions, firewood and the like. Fire-wood in particular was an important necessity in the cold climate on the high ranges. Most of the estate managements had been planting red gum, for example, to ensure a steady supply of firewood to the community, and also for use in the smoke-houses and estate factories. "Any purpose ancillary to cultivation" in Section 2 (f) (1) (i) (B) of the Vesting Act was deliberately kept wide by the legislature, because it knew that there were recognised "uses" other than those specifically enumerated in the Explanation. The object of the Act is to improve the lot of the rural population, and it should have been far from the mind of the legislators to deprive estate employees of the facilities they were enjoying at the commencement of the Act. Supply of fire-wood to the employees in accordance with the industry-wide practice should therefore be taken as ancillary to the cultivation of plantation crops. These arguments of counsel are no doubt

persuasive, but in para (54) of its judgment in Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, the Supreme Court has held that supply of fire-wood to estate employees "cannot be said to be a purpose ancillary to the cultivation of plantation crops". That decision was rendered in a case arising from the ceiling provisions of the Land Reforms Act, but the statutory provisions are almost identical. We cannot therefore permit ourselves to be swayed by the reasoning of counsel, and we are bound to hold that the claim under this sub-head is impermissible.

31. Use of land for supply of firewood for smoke-house purposes poses a still more difficult problem. It was faintly suggested that the planters could switch over to electricity, but electricity cannot yield smoke. The user referred to in the statute cannot also be related to use of a substitute. But the latter part of Section 2 (f) (1) (i) (B) speaks of two things, when grammatically construed :

(i) use of land for any purpose ancillary to cultivation of crops;

and (ii) use of land for the preparation of crops for the market.

Use for purposes, ancillary to cultivation will be covered by the first, but use for purposes ancillary to preparation will not be covered by the second. Apparently direct use of the land for preparation and not use of the product of the land for the purpose, is contemplated. That was the view taken by the Division Bench in the Anglo American case (1980 K LT 215) when it was said :--

"The lands used for any purpose ancillary to the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon or for the preparation of the said crops to the market are excluded by reason of Section 2 (f) (1) (i) (B) of the Act. What is said in regard to eucalyptus planted area is that Tea cannot be prepared for the market except after processing, such processing requires fuel and it is the timber of eucalyptus trees which serve as such fuel. Assuming that eucalyptus area serves the fuel requirements of the estate that would not be sufficient to exclude the land, for, what is excluded in the sub-clauses are lands used for the preparation of the crops for the market. The lands in which the eucalyptus trees are grown are not used for the preparation of the tea for the market. The timber of the trees standing in the lands are used for the preparation of the tea for the market and that would not entitle exclusion of the land on which such trees stand."

The question is whether we should adopt this strict, grammatical construction, or go in for the liberal, purposive method of interpretation. The choice is not easy, it has not been easy even for the masters of the law. Sir Carleton Kemp Allen notes "Law in the making" ;--

"Despite the most strenuous and ingenuous efforts, the principles of the "literal" and the "liberal" are never reconciled. Perhaps the most interesting feature of the case is the extraordinary fluctuation of a legal mind as clear and erudite as that of Lord Blackburn. In *Dennis v. Tovell* (1872) 27 LT 482, in a very short

judgment, he had been a party to a decision in favour of strict literal interpretation of the Section. In the second stage of the River Wear case (1877) 2 AC 743, he repented of *Dennis v. Tovell* and hoped that it will be overruled. In the House of Lords he again changed his mind and inclined to give a judgment in favour of the literal construction. Finally, he delivered judgment in the contrary sense. His speech is often quoted as a classical exposition of our principles of statutory interpretation, but it is no disrespect to one of the greatest Common Lawyers of the nineteenth century to say that it reads like .the writings of a soul in torment. When the mind of a Blackburn thus vacillates, it is not surprising if lesser lawyers suffer and struggle in the attempt to do justice according to statute law".

In our attempt to do justice through this tortuous process of interpretation, we notice that in *Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others*, referred to earlier, the Taluk Land Board had granted, exemption for 200 acres of red gum area as the fuel was required for manufacture of tea and that the Supreme Court had not chosen to disturb the finding. As for the policy underlying the exemption in (B), there could be no doubt that the intention of the legislature was to allow the existing plantations to survive, and show some latitude in the matter of using forest lands for the purpose. "Any purpose" in (B) is certainly wide, though when we turn to "preparation", the language is somewhat narrow. It can however be said that use of land in order to ensure a steady supply of its natural product is not really use of its product alone, and in this view, retention of a jungle area for fire-wood purposes can also be said to be a use of the land to facilitate preparation of the plantation crops for the market. We are aware that this approach is unorthodox and may almost amount to a re-reading of the latter part of Section 2 (f) (1) (i) (B) as :

"Lands used for any purpose ancillary to the cultivation of such crops and preparation of the same for the market";

but the context, the approach made by the Supreme Court and the circumstance that the Taluk Land Boards and Forest Tribunals in the State have been recognising such exemptions in appropriate cases, embolden us to adopt such a construction. It is significant that the Tribunal in this very case was of the view that the exemption claimed could have been upheld, if the claim was not exorbitant and was supported by enough evidence.

32. The next point is what area of the jungle land could be excluded on the above basis ? A precise assessment will almost be impossible, because the quantum of fire-wood needed for smoking purposes will depend on the volume of rubber to be processed, the yield of the trees, the quality of the wood and other factors. The best solution seems to be to make an approximate assessments as was made by the Taluk Land Board in *Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others*, . Taking into account the finding of the Tribunal that the yield in 1971 was lower, and that dry branches of rubber trees are also likely to be available for fire-wood purposes, we fix the extent as 75 acres.

33. M. F. A. 426/78 is therefore disposed of with the following directions, in modification of the order in the D. A.:

(i) the 5 acres of the "wind belt" referred to in para (27) above will stand exempted;

(ii) 75 acres of land forming part of the "uncultivated jungle" in N. S. 1041 and 1042 will also stand exempted, as a source -of fire-wood for smoke-house use;

(iii) the said 75 acres will be demarcated from the northern part of N. S. 1041 so as to be contiguous with the planted area to its west The demarcation can be by agreement, or if that is not possible, by resort to the Forest Tribunal.

and (iv) the nursery and the pepper area will also be eligible for exemption, as indicated in para (26).

Parties will bear their own costs in all the appeals.