

(1997) 11 KL CK 0014
In the High Court Of Kerala
Case No : A.S. No. 229 of 1975

State of Kerala and Others

APPELLANT

Vs

Kannan Devan Hills Produce Co. Ltd.

RESPONDENT

Date of Decision : 04-11-1997

Acts Referred:

Travancore-Cochin Forest Act, 1951 — Section 93(2)

Citation : (1998) 1 KLJ 78

Hon'ble Judges : N. Dhinakar, J;K.K. Usha, J

Bench : Division Bench

Advocate : K. Jayakumar, for the Appellant; Harish N. Salve (Sr.), S.V.S. Ayer and Pathrose Mathai, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Usha, J.—The genesis of this case is in the early history of plantations in the former princely State of Travancore. The first clearing for coffee in Travancore was made by Mr. D. Munro in the Hope Estate in 1862. It was followed immediately by General Stevenson on Woodlands, by Rolent Backer on Stag Brooke and by F.G. Richardson on Twyford. These were the pioneers of coffee planting in Travancore.

See Travancore State Manual by T.K. Velu Pillai, 1996 Edition, Volume III, page 370).

The issue involved in this appeal relates to the claim of the State for seigniorage or "Kuttikanam" in respect of trees planted by the plaintiff - a successor in interest of the original grantee, J.D. Munro - in its tea and coffee estates.

State of Kerala, Chief Conservator of Forests and the Divisional Forest Officer, Munnar Division, Devicolam who were defendants 1 to 3 in O.S. 40/73 before the Sub Court, Kottayam, are the appellants. Suit was filed by the respondent herein seeking a decree to recover from the defendants an amount of Rs. 69,448.97 with interest thereon which amount, according to the plaintiff, represents illegal

and unauthorised collection of seigniorage from the plaintiff. The suit was decreed and the appeal filed by the defendants before this Court was originally dismissed under judgment dt. 5.3.1980. Further appeal filed by the defendants before the Supreme Court was disposed of under order dt. 18.1.1996 as follows: Learned counsel for the parties are agreed that this appeal deserved to be allowed on the strength of the decision of this Court in *State of Kerala and Another Vs. Kanan Devan Hills Produce Co. Ltd.*, but the matter would have to be remitted back to the High Court for deciding those questions which have been left undecided, in particular to one pertaining to trees which are claimed to have been planted by the respondent. On statement of learned counsel, we allow this appeal, set aside the judgment of the High Court and effect a remand for the purpose of aforesaid. No costs.

Pursuant thereto, the appeal is coming up for hearing on merits before us.

2. Kannandevan Anchanatu Mala or Anjanad and Kannandevan Hills was a tract of hilly forest area owned by Poonjar Chief was later subjected to the sovereignty of Maharaja of Travancore. One John Daniel Manro obtained a grant in respect of a portion of the above area called Kannan Devan Hills Concession under a deed dated 11.7.1877 (29.11.1052 ME) executed by the Poonjar Chief. This document is known as First Poonjar Concession. The purpose of the grant was expressed in following terms:

You shall clear and remove the jungles, and reclaim the waste land within the said boundaries, and cultivate them with coffee.....

As per the terms of the deed, the grantee had to pay an amount of Rs. 5,000/- in cash immediately and deferred perpetual annual payment of Rs. 3,000/- from 1059 ME onwards. A further deed was executed between the parties on 26th July, 1879 corresponding to 12.12.1054 ME called Second Poonjar Concession, under which the terms and intent of the First Poonjar Concession Deed were further confirmed and clarified inter alia to the effect that the said grant was in favour of the said J.D. Munro and his heirs, executors, administrators and assigns to be held absolutely and for ever with right to make all kinds of cultivations and improvements thereon, and to take all produce, profit and income therefrom.

3. In the meantime, the grantee had applied to the Government of His Highness the Maharaja of Travancore through the British Resident for permission to hold the land which was granted under the First Poonjar Concession. The First Poonjar Concession was thus ratified under a deed of ratification dt. 28th November, 1878 executed by the then Diwan on behalf of the Maharaja of Travancore 5th paragraph of the above deed, which is relevant for the issue involved in this case, reads as follows:

Fifth: The grantee can appropriate to his own use within the limits of the grant all timber except the following and such as may hereafter be reserved, namely, teak, cole-teak, black-wood, ebony, karoonthaly, sandal-wood. Should be carry any timber without the limits of the grant, it will be subject to the payment of

kootookanam, or customs duty, or both, as the case may be, in the same way as timber ordinarily felled. In the case of the excepted timber, the grantee is required to pay seigniorage according to the undermentioned scale: teak, rupees ten per candy, ebony, black-wood, rupees ten per candy; karoonthaly, rupees eight per candy, sandal-wood, rupees twenty five per candy. The grantee is bound to deliver to the Pooniat Chief, to enable him to make over to the Sirkar, all ivory, cardamoms, and other Royalties produced in the land and all captured elephants, and he will be paid by the said Chief, according to agreement with him, the regulated price for the articles of produce and the regulated reward for the elephants.

4. The grantee conveyed his entire rights in the Kannan Devan Concession to North Travancore Land Planting and Agricultural Society Ltd., a Company incorporated under the Indian Companies Act, 1866 under an indenture dt. 8.12.1879. Thereafter, an agreement dt. 28.11.1878 was entered into between the above mentioned Society and the Government of His Highness the Maharaja of Travancore for modification of the terms imposed by the deed of ratification. The conditions regarding felling of trees and transport of the timber were contained in paragraph 7 of the above document, which read as follows:

7. The Society, its successors and assigns may use and appropriate to its own use within the limits of the said tract of land all timber except the following (and such as may hereafter be reserved) namely. Teak, Kole-teak, Black-wood, Ebony, Karunthaly and Sandal-wood, but such Society, its successors and assigns shall not fell any timber beyond what is necessary for clearing the ground for cultivation and for building furniture and machinery within the limits of the grant. No unworked timber or articles manufactured therefrom shall be carried outside the limits of the grant except in conformity with the Rules of the Forest and Customs Department for the time being in force. In the case of excepted timber, the Society for itself, its successors and assigns agrees to pay seigniorage according to the under-mentioned scale. Teak, ten rupees per candy, Ebony five Rupees per candy, Kole-teak, four rupees per candy, Black wood, ten Rupees per candy, Karunthaly, eight Rupees per candy and sandal-wood, twenty five rupees per candy. The Society for itself, its successors and assigns, agrees to deliver to the said Pooniat Raja or Chief to enable him to make over the same to the said Government of Travancore all ivory, cardamoms and other Royalties produced in the land and all captured elephants on payment by the said Pooniat Raja or Chief according to the Agreement with him the regulated prices for such articles of produce and the regulated reward for the said captured elephants.

5. Pursuant to an arrangement made by the Government of Travancore with the Poonjar Chief for surrender of certain proprietary rights which he had been exercising over the tract known as Anjanadu and Kannan Devan Hills, a Royal Proclamation was made on 24.9.1899 by which it was declared that the above-mentioned area forms an integral portion of the territory of Travancore. The Poonjar Chief was permitted to continue to receive payment of Rs. 3,000/- p.a.

by the successors in interest of J.D. Manro. The plaintiff in this case is a successor to the interest of grant originally given in respect of Kannan Devan Concession.

6. The Dispute regarding the limit of grantee's right in the concession area had arisen from time to time. Such a dispute between the Government and Kannan Devan Hills produce Company regarding Company's right to the water flowing through the lands in their possession, was settled during the regime of Maharani Sethulekshmi Bayi (Regent) (1100-1107 ME)

According to the settlement the free right of the company to use the water for cultivation, irrigation, domestic and all other everyday use was admitted and confirmed, but the Government reserved to themselves the right to levy royalty on the water used by the Company for purposes other than those specified above". The Company was also granted full right and liberty to use the water for generating hydraulic or electric power on payment of a stipulated royalty.

(See Travancore State Manual by T.K. Velupillai, Vol. II, Page 713, 1996 edition).

7. Series of litigations arose between the grantee and State Government when the grantee started clearing the land for cultivation. In about May, 1963, plaintiff felled jungle trees from about 150 acres in the concession area for the purpose of clearing the land for cultivation. When it applied for free passes for transporting the timber outside the concession area, it was directed to pay seigniorage or "kuttikanam" for all timber to be transported. Plaintiff then filed O.S. 1/68 for a declaration that the plaintiff had full and unqualified ownership and title over and right of removal of the timber concerned and that the 1st defendant-State had no right to claim seigniorage or Kuttikanam or any other payment in respect of the timber. Defendants contested the claim of the plaintiff over the timber and tree growth in the concession area. The suit was dismissed by the trial court holding that plaintiff was not entitled to get free passes for transit of timber beyond the limits of the concession area and that the State has the right to levy seigniorage on transit of royal trees as well as non-royal trees beyond the limits of concession area. Plaintiff filed an appeal before this Court as A.S. No. 640 of 1971. During the pendency of the above appeal, plaintiff felled "exotic trees" like *Alnus*, *Macrocarpa* and *Grevillea* from the pruned tea fields of certain estates of the plaintiff in the concession area. It is claimed, and not disputed, that these trees were planted by the plaintiff for shade in tea plantations. 3rd defendant refused to give passes for transporting the timber outside the concession area without payment of seigniorage on the logs and sales-tax due on such seigniorage. Since the logs were likely to deteriorate, if not removed quickly, plaintiff paid seigniorage and sales-tax as demanded by the 3rd defendant under protest, to get the requisite permits. It is the above amount which is sought to be recovered from the defendants in the present suit.

8. It is contended by the plaintiff that the concession lands are held by it with permanent, perpetual, heritable and alienable rights and it is absolutely entitled

to the timber and trees in the concession land. The species of exotic trees planted by the plaintiff as shade trees in tea estates are different from the forest species and they belonged absolutely to the plaintiff. It would not come within the category of reserved trees mentioned in clause 5 of the deed of ratification dt. 28th November, 1878 or clause 7 of the agreement for modification of Taxes dt. 2nd August, 1886. Therefore, according to the plaintiff, defendants have no right to levy seigniorage or kuttikanam on the trees planted by the plaintiff in its tea estates as shade trees.

9. Defendants contended that as per the conditions stipulated in the deed of ratification as well as agreement for modification of taxes, the trees standing in the concession area belonged to the Government and the lessees have no right to trade with the same. Transit of timber is governed by the conditions stipulated in the deed of ratification and agreement for modification of taxes which clearly provide for payment of seigniorage at specified rates for certain species of timber and such other restrictions and levies that may be made by Government under the Forest Act and Rules from time to time. Government have, by virtue of notification dt. 9.7.1958, issued Rules under clauses (d), (dd) and (2) of sub-section 93(2) of the T.C. Forest Act, 1951 ((111) of 1952) and published in the Gazette dt. 15.7.58. It provides that Government may, in the absence of any provisions to the contrary in the title deed, sanction the sale of timber which is the property of the Government to the holder of the land in which such timber is standing, on payment of kuttikanam or seigniorage or such other rates as may be specified by the Government in each individual case. In cases where title deed specified the rate at which timber will be sold to the holder of the land, only such rates will be levied. The above rule continued even after coming into force of Kerala Forest Act. In regard to six varieties of timber used in the concession area, the seigniorage is fixed in clause 7 of the agreement of modification of taxes itself. According to the defendants, in respect of such reserved trees, when they are taken outside the concession area and in respect of other species of timber, both for use inside and outside the area, the rates specified by Government from time to time, would prevail. Rule 1 of the above Rules provided that all trees standing on land temporarily or permanently assigned and the right of Government over which has been expressly reserved in the deed of grant or assignment of land, shall be absolute property of the Government. In view of the above provisions of law, it was contended by the defendants, that Government have every right both under the conditions of the lease and under the provisions of Forest Act and Rules to levy seigniorage in respect of timber taken out of concession area.

10. Trial court, after elaborate consideration of the terms of the deed of ratification and the subsequent agreement, came to the conclusion that trees which were in the contemplation of the parties were only trees which were standing in the concession area at the time of the agreement. Trees planted by the plaintiff cannot become the absolute property of the Government so as to fall within the ambit of the notification dt. 9.7.1958. It also took the view that since

there was no express reservation in the deed of grant of the trees to be planted by the lessee in future, the rules cannot have any application in respect of those trees. Trial court also took note of a Bench decision of this Court in A.S. 326/67 where this Court took the view that no seigniorage and sales tax thereon can be collected in respect of silver oak trees planted by M/s. Talliar Coffee Estates Ltd., as assignee from the plaintiff, this in case. Ultimately, trial court held that plaintiff was entitled to cut and remove the shade trees planted by it in the concession area and Government have no right to impose seigniorage or sales tax thereon in respect of timber of such trees for being transported outside the concession area.

11. Appeal filed by the plaintiff as A.S. 640/71 from the judgment in O.S. 1/68 was allowed by this Court holding that plaintiff-Company had full rights over the timber clear felled from the concession area and it had the right to remove all timber with necessary free passes issued under the Timber Transit Rules. It was further held that State of Kerala had no right or claim for seigniorage or Kuttikanam or any other payment in respect of such timber. State took up the matter successfully in appeal before the Supreme Court. The judgment is reported as State of Kerala and Another Vs. Kanan Devan Hills Produce Co. Ltd., . The apex Court took the view that absolute rights over the concession area had not been conveyed to the plaintiff-Company under the documents of conveyance/ ratification and the right to enjoy the land was subject to the terms and conditions declared in the ratification deed and the agreement for modification of taxes. It was also held that the rules regulating the levy of kuttikanam of trees in government lands issued under the Travancore Cochin Forest Act, 1951 as per notification dt. 9.7.1958 read with cl. 7 of the agreement for modification of taxes dt. 2.8.1886, empowered the State Government to levy and demand kuttikanam from the Company in respect of the timber taken out of the limits of concession area. This appeal was originally dismissed by judgment dt. 5.3.1980 in view of the judgment of this Court in A.S. 640/71, which was later reversed by the Supreme Court as detailed above. The purport of the order of remand has to be understood in the above background.

12. We are of the view that except for the question whether seigniorage can be claimed by the State in respect of trees which are planted by the plaintiff-Company, in respect of all other matters, the decision in (1991) 2 S.C.C. 272 has to be applied. Before we go into the merits of the contentions raised by both sides, on the only issue which is open for consideration in the appeal, namely, the exigibility of seigniorage in respect of trees planted by the plaintiff Company, we have to consider a contention raised by learned Govt. Pleader on behalf of the appellant. Referring to an order passed by the Apex Court in Civil Appeal No. 4109/84 decided on the same day on which the decision reported in State of Kerala and Another Vs. Kanan Devan Hills Produce Co. Ltd., was rendered, learned Govt. Pleader submits that this Court has to hold that even in respect of the trees planted by the plaintiff, the State is entitled to collect "kuttikanam." The above-mentioned order is reported as State of Kerala and Others Vs. Kannan

Devan Hills Produce Co. Ltd., . According to the learned Govt. Pleader, even though this Court is bound to consider the question of claim for seigniorage in respect of trees planted by the plaintiff, in view of the terms of the order of remand, this Court has to follow the order dt. 7.2.1991 in Civil Appeal No. 4109/84 as a binding precedent and allow the appeal filed by the State. On the other hand, learned counsel for the respondent-Company would contend that the above-mentioned order cannot be treated as a precedent. It cannot be taken that Supreme Court was not aware of the above order when it directed this Court to consider the question regarding the seigniorage on the trees planted by the plaintiff, on merits. Since an argument is built upon the above order, we feel that it is necessary to quote the entire order, which reads as follows:

We have today pronounced judgment in State of Kerala and Another Vs. Kanan Devan Hills Produce Co. Ltd., . For the reasons given in the said appeal this appeal has to be allowed. Mr. Nariman, learned counsel appearing for the respondent-company raised an additional point in this appeal. He contended that Kuttikanam cannot, in any case, be charged in respect of such timber which was planted by the grantee in the Concession Area. We do not agree with the contention of the learned counsel. The suit out of which this appeal has arisen was decreed by following the judgment of the Kerala High Court from which Civil Appeal No. 1277 of 1979 arose. This appeal has to be dealt with in the same manner as Civil Appeal No. 1277 of 1979. We allow the appeal with costs. The suit of the respondent is dismissed with costs. We quantify the costs as Rs. 5000/-.

It is true that an additional point was sought to be raised by the learned counsel for the respondent-Company that no "kuttikanam" can be charged in respect of timber which was planted by grantee in the concession area. The contention was rejected. May be, since no reason is seen given in the order, Supreme Court though it necessary for this Court to go into the merits of the contention while remanding the present appeal. We are therefore not inclined to accept the contention raised by learned Govt. Pleader that the appeal is only to be dismissed following the order of the Supreme Court in State of Kerala and Others Vs. Kannan Devan Hills Produce Co. Ltd., , without further examination into the merits of the case.

13. We will now refer to a decision of this Court relied on by the plaintiff-Company and which was accepted by the trial Court. The judgment of this Court in A.S. 326/67 has been produced as Ext.A4. Appellant therein got assigned a coffee estate from Kannan Devan Company which formed part of the large tract of land leased out to J.D. Munro by Poonjar Chief. The suit was filed for declaration that the plaintiff, who had absolute and exclusive ownership over silver oak trees planted in the plaint schedule property, was entitled to cut, remove and sell them without payment of any seigniorage to the State. The Division Bench of this Court allowed the appeal filed by the plaintiff and decreed the suit. This Court came to the above conclusion by interpreting cl.7 of the

agreement for modification of tax dt. 2.8.1886 to the effect that under the terms of that agreement, it was not open to the State to call upon the appellants to pay seigniorage in respect of trees other than excepted trees. It took the view that payment of seigniorage is restricted to the excepted trees and species which were mentioned in the lease deed. The provision for payment of kuttikanom or customs or other dues with regard to trees other than excepted trees found in clause 5 of the deed of ratification dt.28.11.1878, according to learned Judges, was not available in the agreement for modification of taxes dt. 2.8.1886. It was for the above reason, Division Bench came to the conclusion that State has no claim for seigniorage or kuttikanom in respect of trees grown by the grantee. It has come out from the evidence of DW1, addl. Forest Officer that SLP filed from the above judgment before the Supreme Court by the State was dismissed. But, in view of the later decision of the Supreme Court in State of Kerala and Another Vs. Kanan Devan Hills Produce Co. Ltd., , where the matter has been elaborately discussed with reference to the terms of forest grants and rules, it has to be taken that the reasoning given by this Court in upholding the claim of the appellant in Ext.A4 judgment is no longer sustainable. As mentioned earlier, Supreme Court has taken the view that State Government is empowered to levy and demand kuttikanom from the respondent-Company in respect of trees other than excepted category also. Therefore, Ext.A4 judgment is of no help to the respondent-Company in this case.

14. The issue that has to be considered in this appeal is whether the trees which are planted by the grantee as shade trees in its tea plantations can be treated on a par with the trees which were standing in the concession area at the time of grant and which do not come within the excepted timber and thus liable to pay seigniorage or kuttikanom.

15. In view of the authoritative pronouncement of the Apex Court in State of Kerala and Another Vs. Kanan Devan Hills Produce Co. Ltd., , there cannot be any dispute that State can trace its right to claim kuttikanam to the Rules Regulating levy of Kuttikanam of Trees in Government lands issued under notification dt. 9.7.1958 in exercise of the powers conferred under sub-section (2)(d)(dd) and (e) of Section 93 of the Travancore Cochin Forest Act, 1951. Relevant rules read as follows:

1. All trees standing on land temporarily or permanently assigned, the right of Government over which has been expressly reserved in the deed of grant or assignment of such land, shall be the absolute property of Government.

2. It shall not be lawful to fell, lop, cut or maim or otherwise maltreat any tree which is the property of Government without proper sanction in writing granted by an Officer of the Forest Department not below the rank of an Assistant Conservator:

Provided that in cases where the holder of the land is allowed under the title deed to lop or fell any such tree, such lopping or felling may be done by such

holder in the manner and subject to such conditions and payment as may be specified in the title deed in that behalf. Any lopping or felling of such trees otherwise than in accordance with the conditions and limitation specified in the deed of grant shall be unlawful.

3. Government may, in the absence of any provision to the contrary in the title deed, sanction the sale of timber which is the property of Government to the holder of the land on which such timber is standing, on payment of Kuttikanom or Seigniorage or such other rates as may be specified by Government in each individual case. In cases where the title deed specifies the rate at which the timber will be sold to the holder of the land, such rates only will be levied.

Explanation: "Kuttikanam" means the seigniorage rate that may be in force in the Forest Department from time to time and notified by Government.

4. The Collector of each District shall forward to the Chief Conservator of Forests a statement showing the full details of the trees standing on such lands at the disposal of Government as may hereafter be granted for permanent cultivation, under the Land Assignment Act and the rules framed thereunder. On receipt of such statement, the Chief Conservator of Forests will take appropriate action for the disposal of such tree growth within the period allowed u/s 99 of the Forest Act.

Supreme Court took the view that the above rule read with clause 7 of the agreement dt. 28.11.1878 would empower the State Government to levy and demand kuttikanam from the grantee in respect of the timber of trees other than royal trees specially mentioned in clause 7 also when it is taken out of the limits of the concession area. But, as mentioned earlier, Supreme Court was not dealing with the timber of the shade trees cultivated by the grantee, in its tea and coffee estates. What we have to consider is whether such trees also would come within the purview of the 1958 rules.

16. As per Rule 3, payment of kuttikanam is contemplated only in case of sale of timber which is the property of the Government. What are the trees treated as absolute property of the Government can be ascertained from Rule 1. They are trees standing in the land assigned, the right of Government over which has been expressly reserved in the deed of grant or assignment. Thus, we have to go back to the provisions contained under clause 5 of the deed dt. 28.11.1878 and clause 7 of the deed dt. 8.12.1879. The wording of these clauses would indicate that the trees intended to be covered by those provisions are trees which were standing on the concession land at the time of the grant or, at any rate, trees which can be treated as forest growth. The grant itself is for clearing the jungle for various cultivation. There is a mandate in clause 7 that the grantee shall not fell any timber beyond what is necessary for clearing the ground for cultivation and for making permits etc., within the limits of the grant. The trees which are to be planted by the grantee as part of its cultivation activity are not referred in the different deeds. There is nothing to show that right of the Government over such

trees are exclusively reserved under the deeds. On the other hand, there is specific reference in cl. 17 of the deed dt.8.12.1879 to the duty of the grantee, its successors and assigns to preserve forest trees growing on the banks of the principal streams running through the said tract of land to the extent of 50 yards in breadth on each side of the stream. Clearing of only under-wood is permitted in this area and the grantee has to plant coffee instead. So also, there is a specific direction to preserve the forest trees on the crest of all hills to the extent of quarter of a mile on each side of such hills. If the Government had intended to claim ownership on the trees which are to be cultivated by the grantee, specific reference would have been made to such trees also in the documents.

17. Rule 4 of 1958 Rules also refers to collection of data regarding trees standing on lands at the disposal of the Government for being granted in future for permanent cultivation in order to take appropriate action for the disposal of such tree growth. We get an indication about the difference between the trees which are grown by the grantee and the reserved trees of forest species from the judgment of the Full Bench of this Court in *George A Leslie v. State of Kerala*, 1969 KLT 378 also. Referring to the provisions of a similar grant made under the Travancore Regulation II of 1040 and the Rules for the sale of Waste Land on the Travancore Hills dt. 24.4.1865, it was observed as follows:

8. Looking at the terms of Ext.P1, we are not satisfied that the title to the reserved trees passed to the grantees. The grant under Ext.P1 was for the purpose of coffee cultivation. The purpose of the grant is relevant to show whether under the grant the reserved trees standing on the property were intended to be conveyed to the grantees. We are not concerned in this case with the title to the reserved trees which grew up after the grant, the petitioners have no case that any of the reserved trees in the estates was planted or grew up after the grant and that such a tree would stand on a different footing from the trees which stood on the property on the date of the grant. So, we are not called upon to consider any such case.

In the present case, we are not concerned with trees of forest species which had grown on its own after the grant in the concession area. We are concerned only with certain species or trees which are different from the forest species available in the concession area and which were grown by the grantee as shade trees in its tea estates as part of cultivation activities. The Full Bench has interpreted "Kuttikanam" as Government share of the value of the reserved trees. The above interpretation has been approved by the Supreme Court in the decision in *State of Kerala and Another Vs. Kanan Devan Hills Produce Co. Ltd.*, . So long as the State has not reserved any right of ownership over the produce obtained on cultivation of the property, we are of the view that it cannot claim any proprietary right over the shade trees planted by the grantee in its tea and coffee estates also. If that be so, there is no justification in claiming seigniorage or kuttikanam in respect of timber of such trees.

18. Learned counsel for the respondent put forward a contention that any part of

the concession land which have been cleared and developed into an estate, cannot be treated as forest and therefore the provisions contained in the rules issued under Travancore Cochin Forest Act, 1951 would have no application in the matter of utilisation or transportation of the timber of the shade trees planted by the grantee in its tea estates. Reliance was placed by learned counsel on two decisions of the Supreme Court in support of his contention. In *State of Kerala and Another Vs. Nilgiri Tea Estates Ltd.*, , Supreme Court considered the question whether forest lands planted with eucalyptus by employing agricultural operations would be forest coming within the definition of the term in Kerala Private Forests (Vesting & Assignment) Act (26 of 1971). In the above case, eucalyptus trees were raised for supply of fuel necessary for the manufacture of tea, which was the industry carried on by the Company which owned the estate. Supreme Court agreed with the view taken by this Court that the eucalyptus plantation within a tea estate or adjoining a tea estate cannot be treated as forest. In *Pioneer Rubber Plantation, Nilambur Vs. State of Kerala and another*, , a similar question arising under the Kerala Private Forests (Vesting & Assignment) Act, came up for consideration by the Supreme Court. It was held that the minimum area required for the purpose of growing firewood trees and fuel in the factories and smoke-houses as well as for supply to the employees of the estates for their domestic use should be excluded from the definition of the term "Private Forest". We do not think that it is necessary for us to express any opinion on the above contention raised by the respondent, since we have already taken the view that the shade trees planted by the grantee in its tea estate are not owned by the State and therefore the grantee is not liable to pay any seigniorage or kuttikanam in respect of timber of those trees. We, therefore, uphold the judgment and decree in O.S. 40/73 and dismiss the appeal. There will be no order as to costs.