

(1998) 03 MAD CK 0186
In the Madras High Court

Tata Tea Ltd., Regional Office

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-03-1998

Acts Referred:

Constitution of India, 1950 — Article 265

Tamil Nadu Patta Pass Book Act, 1983 — Section 3

Tamil Nadu Preservation of Private Forests Act, 1949 — Section 3

Citation : (1998) 3 MLJ 306

Hon'ble Judges : K. Sampath, J

Bench : Division Bench

Judgement

K. Sampath, J.—The prayer in the writ petition is for the issue of a writ of certiorari to call for the records before the second respondent ending with the order C.L.A.D. Dis T.I.5273/84, dated 29.3.1988 and quash the same.

2. The facts leading to the filing of the writ petition are as follows:

An extent of about 1056.06 acres of disafforested area in Anamalai Hills was assigned by the then Government of Madras in G.O.Ms. No. 932 on 10.5.1929 to M/s. Anglo American Direct Tea Trading Company Ltd.

3. The material terms of the grant are as follows:

(i) The land shall be used only for the cultivation of coffee, tea, cocoa, chilnchona, cardamoms, pepper, rubber or any other product that the Government may by special orders recognise as a plantation product, or for the erection of any buildings or constructing any roads thereon, which may be necessary for effecting and supervising such cultivation and preparing the produce for markets.

(ii) In areas where forest growth is cleared, the grantee shall plant plantation crops within such reasonable time as may be fixed by the Collector of Coimbatore in each case.

(iii) The grantee shall pay the cost of surveying the land. He shall keep the boundaries clear of forest growth and maintain the survey marks in accordance with the provisions of the Madras Survey and Boundaries Act.

(iv) Except on the area occupied by public roads or branch roads declared as public, the grantee shall pay assessment at the rate of Rs. 3 an acre on lands developed by the cultivation of the plantation products or the erection of buildings and at the rate of 10 annas as acre on undeveloped lands. The rates of assessment will be subject to revision at resettlement.

(v) The grantee shall pay all general taxes and local rates payable by law or custom.

(vi) ...

(vii) The Government reserve to themselves their right to a share in mines and quarries subjacent to the land. They also reserve to themselves or to persons authorised by them the powers necessary for the proper working of the minerals such as the full and free liberty and right of ingress, egress and regress, etc. as detailed in Part-II of the model form of mining lease at pages 170-171 of the Madras Mining Manual, subject to the payment or rendering of compensation to the surface owner for all damages that he may sustain by the exercise of such rights.

(viii) The grantee shall not alienate the land without the sanction of the Government to a person other than a British subject or the subject of an Indian State.

(ix) The grantee shall not export or sell the trees or timber which grow on the land.

[Italics supplied]

(xii) The grantee shall bring under cultivation 60% of the area including in the grant with the plantation crops specified in Cause (1) within a period of fifteen years from the date of the grant. The Assignment was issued by order of the Governor-in-council by the then Secretary to Government, Revenue Department. The assignment was for cultivation of plantation products.

4. It may now itself be noticed that the area assigned was to be clear of forest growth. There was no prohibition for growth of trees or timber, but the only restraint was that the grantee should not export or sell the trees or timber which grew on the land. This assignment was followed by a letter from the Collector dated 30.9.1929. The letter among other things stated that the Bombay Burma Trading Corporation Ltd. might consider itself a ryotwari pattadar, that a pattadar was not a tenant nor was Government a lessor of land and that a patta recognized the full ownership by the pattadar of the land stated in its patta subject to the regular payment of Governments dues and subject to the conditions if any attached to the patta. The patta was issued to the original

assignee. The lands were transferred in the name of M/s. Tata Finlay Ltd. and there was a reincarnation as Tata Tea Ltd. from 28.2.1983, which is the writ petitioner. The Tahsildar, Valparai, also issued patta passbook to the petitioner u/s 3 of the Tamil Nadu Patta Passbook Act, 1986.

5. The petitioner had planted in the area set apart in their estate for fire-wood cultivation in Pacchamalai, Uralikal, Velonie, Valparai and Pannimade in Tamil Nadu Eucalyptus trees at considerable expenses for firing of tea drivers in the factories of the company. They had also incurred considerable expenditure in the upkeep and fertilization of the trees, which were grown solely for the petitioner's own requirement of firewood. The petitioner submitted necessary proposals to the appropriate authority by letter dated 29.11.1982 for grant of permission to cut down. E. Grandis trees on 10 years rotation basis from the year 1982 to 1991 in Valparai Sub Taluk area in Coimbatore District for their personal consumption in their own tea factories situated within the area owned by them. The permission was contemplated because Valparai Township had been brought within the purview of the Tamil Nadu Hill Area (Preservation of Trees), Act, 1955 under which the Committee constituted had to accord permission for felling the fuel trees. Only matured and over-matured trees were felled after due inspection by the forest authorities. The other requirements in concomitance with the felling of trees, raising of new trees, protection of the crops against fire and grazing and trampling by cattle were scrupulously followed.

6. Orders were issued on 4.2.1983 in G.O.Ms. No. 121 by the Collector of Coimbatore, the third respondent herein, stating inter alia as follows:

The company has to utilize the firewood obtained by felling the plantations in their own factories and will not transfer them outside the area under any circumstances. The Estate Authorities should apply in the prescribed form to the Collector of Coimbatore for according sanction on merits by the District Committee constituted under the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955 (Tamil Nadu Act 17 of 1955) and the Tamil Nadu Preservation of Private Forests Act, 1949 (Tamil Nadu Act 27 of 1949). The District Committee will have to impose a condition specifically that the fuel wood should be utilized for their factories in the estate area itself and should not be transported outside the estate limit and under no circumstances such a request would be entertained. The estate authorities have to make a security deposit of Rs. 1,000 per hectare, which would be refunded after two years, after inspection of the natural regeneration by coppice growth in the estate concerned by the Wildlife warden, Pollachi, and if the natural recreation is not satisfactory in any area, the estate authorities should take up artificial regeneration of forest species only and such areas should not be diverted for non-forestry purpose.

7. The Collector of Coimbatore passed an order on 3.9.1983 in reference No. 160265/82-A2 permitting the writ petitioner to fell E. Grandis in their estates. The permit among other things stated that the firewood should be utilised by the permit holder for their factories in their estate area itself and should not be

transported outside their estate limits. This was followed by a memorandum dated 27.12.1983 to the following effect:

The Tahsildar, Valparai, in his letter cited (Ref. No. 7438/83, dated 22.9.1983) had sought clarification whether seigniorage fees had to be collected in the case of the writ petitioner. As the use of trees for firing the heater in the tea factories was treated as commercial purpose, the Tahsildar, Valparai, was to collect appropriate seigniorage fees from the writ petitioner.

8. This was challenged before the Special Commissioner the second respondent herein. The Special Commissioner, by his order dated 29.3.1988, stated that seigniorage fee was otherwise than tree tax when auction was not resorted to and it was covered by Timber Transit Rules and according to condition No. 5 of the grant, the grantee should pay all general taxes and local rates payable by law or custom, which included seigniorage fee also. The second respondent held that the seigniorage fee levied by the third respondent was in order and dismissed the; revision petition by the writ petitioner. Aggrieved the present writ petition has been filed.

9. The Joint Commissioner (Miscellaneous) and the Collector of Coimbatore have filed separate counters justifying the orders passed by the authorities.

10. The Joint Commissioner has stated as follows: Since Valparai Township comes under the purview of Tamil Nadu Preservation of Private Forests Act, 1949 and the Tamil Nadu Hills Areas (Preservation of Trees) Act, 1955, every owner of the estate should get the prior permission of the Forest Committee constituted under the above Act for cutting and transporting of trees. According to the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955 no person shall, without getting prior approval of the District Forest Committee, cut a tree. Since the assignee are responsible to regenerate trees by planting in case of felling trees, the version of the writ petitioner stating that they had incurred considerable expenditure in the upkeep of trees is not logical. The revision petition was dismissed after examining all the aspects of the case. The order is in accordance with law and principles of natural justice. The writ petitioner's contention that the firewood obtained from the trees planted by them in tea factories cannot be commercial purpose is not acceptable. The removal and transport of trees attracted the provisions of Tamil Nadu Preservation of Private Forests Act and levy of seigniorage fees is in order. The Government order of grant does not mention anything about raising E. Grandis otherwise commonly known as teak. As such the writ petitioner cannot claim concession or relaxation of rules for felling and removal of trees. In the event of violation of any condition of assignment, the Government are at liberty to resume or re-enter. The seigniorage fee is exempted only if the trees are used for non-commercial purpose. The use of firewood, cut in the estate, for firing the heater in the factory cannot be treated as one of the domestics purposes. This aspect was considered in Writ Appeal No. 219 of 1974, dated 24.9.1975 and a Division Bench of this High Court has also observed that commercializing trees or timber which grow on the land and which

the assignees cut and carry away for commercial purposes is not within the scope of the grant. This has been upheld by the Supreme Court in Civil Appeal No. 2843 of 1977, dated 3.1.1977 and the Supreme Court dismissed the appeal in its judgment dated 7.2.1991. There are no merits in the writ petition.

11. The more elaborate counter filed by the Collector has referred to the rejection of the similar contention raised, by this Court and the same having been upheld by the Supreme Court. It further states as follows: The matter was considered by the District Forest Committee at the meeting held on 31.3.1988 and permission was granted imposing the conditions as instructed by the Government. The felling of trees for firing the heaters in the tea factories is treated as a commercial purpose and hence the levy of seigniorage fee is correct. The exemption from seigniorage fees can be allowed only if the planters cut trees for domestic purpose such as construction of houses for labourers, firewood for the house of owners and labourers, etc. The contention therefore of the writ petitioner that the firing of heater in tea factories in non-commercial, is not correct. Anything done on behalf of the factory has to be considered and termed as commercial purpose. The Government. Order of the year 1929 does not mention about raising E. Grandis for fuel purpose. So the writ petitioner cannot claim any concession or relaxation of rules for felling and removal the eucalyptus trees. The Government have customary rights over the land assigned and are at liberty resume or re-enter on any part of the land in the event of violation of any condition of assignment. Since tea cannot be manufactured or made as a product of sale without firing the heater and as the firewood is absolutely necessary for firing the heater, the use of firewood is termed as Commercial purpose. The claim was in order and the writ petition is liable to be dismissed.

12. A reply affidavit has been filed and it is stated therein as follows:

Pursuant to the grant of ryotwari patta the writ petitioner had been issued with patta passbook by the Tahsildar, Valparai, u/s 3 of the Tamil Nadu Patta Passbook Act, 1986, The petitioner as successor in interest of the original assignee was entitled to possess and enjoy the land as well as what went with the land including trees and more importantly what was grown on the land as the ryotwari pattadar. The grant permitted the petitioner to use the land for the cultivation of the plantation crop mentioned therein. The petitioner was also entitled to use the land for purpose ancillary to the main plantation crop raised, viz., tea. For manufacture of tea in its factory, the petitioner required a continuous and regular supply of firewood. The petitioner had raised on available lands 472.67 hectare of E. Grandis to meet the firewood requirements of the petitioner. The trees were normally mature for felling after 8-10 years from planting or coppicing. The petitioner had to rely on its own firewood supply. The fuel plantation was used for purposes ancillary to the cultivation and manufacture of tea and such use amounted to use of the land for the cultivation of tea as contemplated by the grant. There was no commercial exploitation of the fuel trees. The fuel trees felled on 8-10 year cycle were used exclusively within the petitioner's

plantations for captive consumption and no part of it was old or otherwise disposed of by the petitioner. In the past permission for felling such trees for fuel requirements was granted by the respondents. *E. Grandis* was an exotic species which was used mainly for fuel wood requirements and for pulp. It had nothing to do with teak (*Tectona grandis*). There had been no violation of the condition of the grant in planting of eucalyptus for purposes ancillary to cultivation and manufacture of tea by the petitioner. No part of the petitioner's lands had been duly declared as the forest for the application of the Tamil Nadu Preservation of Forests Act and the petitioner's estate did not find a place in the Notification dated 30.6.1981 issued by the Government, even assuming that the said Notification had been validly issued. If at all, only the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1951 was applicable to the petitioner's land. Clause 5 of the grant relied on by the respondents did not in any way authorize the levy of seigniorage. No general or local taxes could be levied by the State under a contract. Such levy would be unconstitutional in view of Article 265 of the Constitution of India, according to which tax should be levied or collected except by authorities of law. The judgment of this Court in *Bombay Burma Trading Corporation Ltd.* would not apply to the facts of the present case. There was no commercial exploitation of timber in the present case. Only the cutting costs incurred by the petitioner for obtaining firewood from the fuel trees had been included in the cost of manufacturing tea. The assignment order dated 10.5.1929 did not reserve the trees on the assigned land in favour of the Government. The trees passed to the assignee in any event subsequent to the issue of patta in favour of the petitioner's predecessor in title. It was not open to the respondents to contend otherwise. Since the Government did not retain any title over the trees no seigniorage could be levied on such trees. The stand of the petitioner had legal authority in view of the decision of the Supreme Court in *Civil Appeal Nos. 1049-1050 of 1972*. The petitioner deserved to be accepted.

13. Mr. R. Subramaniam, learned Counsel for the writ petitioner, submitted as follows:

The writ petitioners are the absolute owners of the property. They are not liable to pay any tax. Ryotwari patta also was issued to them. The terms of the patta are also clear. The authorities were under a wrong and erroneous impression that the trees felled were used for commercial purpose overlooking that the actual usage was only domestic within the premises of the tea estate and no profit was derived by the petitioner. The condition imposed by the Coimbatore District Forest Committee to the effect that the firewood obtained by felling trees should be used only for the petitioner's own domestic purpose as also the tea factory and on no account should they be taken out of the estate. Inasmuch as the conditions imposed were complied with by the writ petitioner, there was no question of any liability to pay any seigniorage. Again, the tree in respect of which seigniorage fee was sought to be levied was not actually lost as it was regenerated by the writ petitioner at its own cost was in its own land and was protected and taken care of by it until it became mature for the next felling. The

authorities were clearly wrong in seeking to apply the provisions of the Tamil Nadu Preservation of Private Forests Act. The condition imposed by the Coimbatore District Forest Committee regarding regeneration of cut trees had been accepted by the writ petitioner and the authorities had also collected security deposit for due compliance of the condition imposed. The authorities also overlooked that the levy of seigniorage fee would mean double the expenditure for the petitioner who had already expended for planting, growing, nurturing, felling, regeneration and proper upkeep, protection, etc. There was no commercial purpose involved. The levy of seigniorage fee was without authority of law. The Government had no right or title and therefore they could not demand any seigniorage fee. The learned Counsel relied on several decision of this Court, the Kerala High Court and the Supreme Court, which will be referred to at the relevant places.

14. The learned Counsel for the respondent submitted that the provisions of the Tamil Nadu Forest Act, Sections 3 and 5 would apply. They raising of trees was in violation of assignment condition 2 Clause 5 and what had been levied was perfectly in order and it had the sanction of the decision of this Court in Writ Appeal No. 219 of 1974 as confirmed by the Supreme Court in Civil Appeal No. 3843 of 1977. The learned Counsel particularly referred to paragraph 7 of the Government's counter in support of his argument.

15. In the case before the Bench in Writ Appeal No. 219 of 1994 the terms of the grant were identical. The company-assignee sought the permission of the Collector to and remove the trees. In that case, grevilla trees were planted by the assignee for the purpose of giving shade to the tea plantation. As already stated, permission was sought of the Collector to cut and remove 20,000 such trees measuring 10 lakhs cubic feet out of the trees so planted in the developed area. The Collector demanded seigniorage fees in a sum of Rs. 80,000 as a condition for the permission asked for. The writ petitioner in that case approached the Board of Revenue and the Board said that,

G.O.Ms. No. 948, Revenue, dated 10.5.1928 (concerned in that case) merely permitted the grantee to grow plantation crops and that condition No. 9 of the B.P. Press 62, Revenue, dated 30.6.1928 was imposed as making of money through the sale of the trees was not contemplated.

The Board therefore issued instructions to the Collector to collect the seigniorage fees as the trees were sought to be cut and cleared for commercial purposes. In the writ petition, the learned single Judge (Ramaprasada Rao, J. as he then was) quashed the demand holding that the trees in question were not spontaneous growth, but planted by the assignee, which made all the difference. But the Bench set aside the order of the learned single Judge holding that the word "grow" in that context was common to, both spontaneous as well as planting of trees and that reading of all these clauses together, the "commercialising on trees or timber" which grow on the land and which the assignee sought to cut and carry away for commercial purposes was not within the scope of the grant.

The purpose of the grant was to assign land for cultivation of coffee, tea, cocoa, cinchona, pepper, rubber or any other product that the Government may by special orders recognize as a plantation product. It is clear therefore that when anything different from the enumerated kind of plantation is sought to be planted, previous permission of the Government is required. It is no good saying that the trees in question were planted for the purpose of giving shade to the tea plantation. Nobody would deny that such trees were required to be planted for the purpose of protecting the tea plantation. But on that ground we cannot read into the condition of the grant that cultivation of coffee, tea, etc. would also include plantation of shade trees, because the plantation of such trees can by no stretch of imagination be brought under the word "cultivation". We are not told that any such permission of the Government for planting such trees was obtained. Clause 7 reserves to the Government their right to a share in mines quarries adjacent to the land. The implication of this clause is that what is part of the land had not been assigned. The next Clause 8 makes it further clear that alienation of land without the sanction of the Government to a person other than a British subject or the subject of Indian State is inhibited and a land normally carries with it the trees standing on the land, irrespective of how they grow. The sense underlying this clause as also the purpose of the grant, namely, that the assignment was only to enable the grantee to cultivate plantations, should be borne in mind before approaching Clause 9, which is so clear that the inhibition there extends to all trees or timber "which grow on the land".

16. In my view, the decision of our Bench will not apply to the facts of the present case. The trees were not sought to be cut for sale. There was no commercialising on trees or timber.

17. In an unreported decision of the Supreme Court dated 8.9.1981 in Civil Appeal Nos. 1049 and 1050 of 1972 a three Judges Bench agreed with the conclusions reached by the High Court of Kerala in *State of Kerala v. The Amalgamated Tea Estates Company Ltd.*, Munnar A.S. Nos. 32 of 1967 and 267 of 1969, dated 4.1.1971, for the reasons given by the High Court, which the Supreme Court felt it was not necessary to reiterate. The question that arose for consideration before the Kerala High Court was whether the State was entitled to collect seigniorage for the trees cut and removed by the respondent in that case. Seigniorage and sales tax were already paid by the respondent under protest on several occasions and the respondent filed suits, which gave rise to the appeals for refund of the amounts paid. The lower court decreed the suits. After referring to the various clauses in the grant and the schedule the High Court of Kerala held that the lease included all timber and trees standing on the land, particularly in the absence of reservation regarding trees similar to the reservation of minerals and stones in Clause 6 were sure indications that the trees also passed to the company. The grant in that case was in 1922 and till 1959 the company was clearing portions of the land and also planting them. There was no demand all those 37 years for collecting seigniorage. The demand was only after the formation of the Kerala State when the company wanted free pass to transport

the timber cut. The Kerala Bench held that the State would be entitled to collect seigniorage only when the State still retained its title to or ownership of the trees. In other words, if the trees were also the subject matter of the lease and title thereto also passed to the company, the State could not collect seigniorage for the trees. Ultimately the Kerala High Court confirmed the decision of the trial Court directing return of the seigniorage amounts collected. The amount collected as sales tax was not directed to be refunded and this decision of the trial court was confirmed by the Bench and as already stated, affirmed by the Supreme Court. In my view, this decision will apply to the facts of the present case.

18. The only condition imposed in the grant in this case regarding the trees and timber is Clause 9 already referred to, which runs as follows:

The grantee shall not export or sell the trees or timber which grow on the land.

As long as the grantee did not export or sell the trees or timber, which grew in the land, the Government had absolutely no hegemony over what" the company did. As already stated, there was no commercialising on trees or timber.

19. State of Kerala and Another etc. Vs. K.C. Moosa Haji and Others etc., was a case under Kerala Private Forests (Vesting and Assignment) Act 26 of 1971) Sections 2(f) and 3 and Madras Preservation of Private Forests Act (27 of 1949) Sections 1 and 2. The purpose for which this case was cited appears to be this:

A Full Bench of the Kerala High Court in State of Kerala v. Anglo American D. T.D. Co. 1980 K.L. T. 215 had taken the following view while interpreting Section 2(f) (1)(i)(B) which runs as follows:

(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 (General Act 37 of 1956)

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

(A)...

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

Explanation: Omitted.

The view taken by the Division Bench of the Kerala High Court in Anglo American case 1980 K.L.T. 215 is as follows:

The lands used for any purpose ancillary to the cultivation of tea, coffee, coco, 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.

This was a strict grammatical construction, which did not find favour with the Full Bench of the Kerala High Court. The Full Bench adopted a more liberal and unorthodox view, which was as follows:

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 products is not really use of its produce alien and in this view, retention of a jungle area for firewood purpose can also be said to be a use of the land to facilitate preparation of the plantation crops for the market.

20. In *State of Kerala and Another Vs. Nilgiri Tea Estates Ltd.*, while interpreting Section 2(f) of the Kerala Private Forests (Vesting and Assignment) Act (26 of 1971), the Supreme Court relied on its earlier decision in *The Malankara Rubber and Produce Co. and Others, etc., etc. Vs. The State of Kerala and Others, etc., etc.*, and affirmed the decision of the Kerala High Court to the effect that the land in which eucalyptus has been planted in the tea plantations would be outside the purview of the vesting provisions in Act 26 of 1971. Its reasoning was that in that case it had been found that eucalyptus trees in the area concerned under dispute were raised not for a forest, but for supply of fuel necessary for the manufacture of tea.

21. In *Pioneer Rubber Plantation, Nilambur Vs. State of Kerala and another*, the question posed for decision was,

Are lands set apart in the estates in question for growing firewood trees such as eucalyptus or redgum to be used as fuel for the purpose of manufacturing rubber or tea in the smokehouses or factories or for personal use of the employees in the estates excluded from the definition of "Private forests" as contained in Section 2(f)(1)(i)(B) of the Kerala Private Forests (Vesting and Assignment) Act 1971) Act 26 of 1971?

It was held by the Supreme Court by a majority of two to one that the lands on which firewood trees were grown for reasonable supply of fuel to factory employees, smoke-houses and rubber or tea factories, were outside the definition of Section 2(f)(1)(i)(B) of the Kerala Act. The Supreme Court referred

to its own earlier decision in Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, as an authority for the proposition that a reasonable extent of land could be set apart as fuel for the purpose of smoke-houses and factories in the estates and such are qualified for exemption u/s 2(f)(1)(i)(B) of the Kerala Vesting Act. The Supreme Court approved the decision of the Full Bench of the State of Kerala and Another etc. Vs. K.C. Moosa Haji and Others etc., , already referred to. The Supreme Court further observed that as far as the firewood required for the factories and smoke-houses in the estates was concerned, there to be no doubt about the claims of the appellant. In the course of the judgment, the Supreme Court approved the decision of the Kerala High Court in the following terms:

However, the learned Judges felt no such constraint in regard to fuel for the smoke-houses and factories in the estates. Adopting what they refer to as a liberal and purposive interpretation, the learned Judges of the larger Bench held that a reasonable portion of the jungle area set apart for purposes of firewood could be regarded as land used to facilitate preparation of the crops for the market.

Thus the uniform view of the Supreme Court is that a reasonable portion of jungle area set apart for purposes of firewood would be regarded as land used to facilitate preparation, of the crops for the market. It has also been held by the Supreme Court in Civil Appeal Nos. 1049 and 1050 of 1972 agreeing with the conclusions reached by the High Court of Kerala regarding seigniorage fees that the lease included all timber and trees standing on the land, particularly in the absence of reservation regarding trees similar to the reservation of minerals and stones.

22. The contention of the contesting respondents presupposes that the Tamil Nadu Forest Act would apply. From the various documents made available contents of which have already been referred to, it would be abundantly clear that the estate in question will be outside the purview of the Tamil Nadu Forest Act. The letter from the Collector of Coimbatore under Reference No. 6941/28-A5, dated 30.9.1929 addressed to the then Manager of the then grantee, Bombay-Burma Trading Corporation Ltd., is particularly significant. A pattadar is not a tenant nor is Government a lessor of land. A patta recognizes the full ownership by the pattadar of the land stated in his patta subject to the regular payment of Government dues and subject to the conditions, if any, attached to the patta. This is only in accord with the legal position as enunciated in Karimbil Kunhikoman Vs. State of Kerala, :

The holders of ryotwari pattas used to hold lands on lease from Government. The basic idea of ryotwari settlement is that every bit of land is assessed to a certain revenue and assigned a survey number for a period of years, which is usually thirty and each occupant of such land holds it subject to his paying the land revenue fixed on that land. But it is open to the occupant to relinquish his land or to take new land which has been relinquished by some other occupant or become

otherwise available on payment of assessment (see Land Systems of British India by Baden-Powell, Vol. III, chap. IV S. II, P. 128). Though, the theoretically, according to some authorities, the occupant of ryotwari land hold it under an annual lease (see Maclean, Vol. I Revenue Settlement, p. 104), it appears that in fact the Collector had no power to terminate the tenant's holding for any cause whatever except failure to pay the revenue or the ryot's own relinquishment or abandonment. The ryot is generally called a tenant of Government, but he is not a tenant from year to year and cannot be ousted as long as he pays the land-revenue assessed. He has also the right to sell or mortgage or gift the land or lease it and the transferee becomes liable in his place for the revenue. Further, the leasee of a ryotwari pattadar has no rights except those of conferred under the lease and is generally a sub-tenant and will liable to ejectment at the end of each year. In the Manual of Administration, as quoted by Baden Powell in Vol. III of Land Systems of British India at p. 129, the ryotwari tenure is summarised as that, "of a tenant of the State enjoying a tenant right which can be inherited, sold or burdened for debt in precisely the same manner as a proprietary right, subject always to payment of the revenue due to the State.

Though therefore the ryotwari pattadar is virtually like a proprietor and has many of the advantages of such a proprietor, he could still relinquish or abound on his land in favour of the Government.

and Metla Venkataratnam and 62 Ors. v. Nadimpalli Sitammaraju and Ors. (1995) 1 L.W. 36 (J.S.).

An ordinary ryotwari patta contains an exact list of the survey numbers in each ryot's holding with other area and the land revenue payable. It is not a document of title but it does amount to a declaration on the part of the Government that at some time or other those items of ryotwari land were assigned to that particular pattadar or his predecessors-in-title. And every year if the pattadar likes he can have those fields which he had parted with deleted from his patta and those fields added to it which he had acquired either from another pattadar or by direct assignment from the Government. A patta therefore, while its primary object is to place on record the fields in a ryot's holding and the land revenue which he is bound to pay to the Government in respect of each field whether he is the actual owner or not, is to a certain extent an index of ownership and ryot does in point of fact use expressions like "land in my patta" or "land assigned to me or granted to me on patta" in the sense that he is the absolute owner of the land, as indeed, he is, unless the title had been legally transferred to someone else without being deleted from his patta or without any mutation of names in the revenue accounts.

23. One other thing to be noticed is that there was a Notification issued by the State Government with regard to forest lands on 30.6.1981. This notification does not show the petitioner's lands as forest lands. This itself shows that even according to the respondents, The Tamil Nadu Preservation of Private Forests Act,

1949 would not apply to the petitioners estate.

24. The other objection raised by the respondents that raising of eucalyptus trees is in violation of Clause 5 of the grant has only to be stated to be rejected. We have already noticed that under the assignment there is no embargo for raising other trees. There can also be no two opinions about the purpose for which the petitioner had planted and raised eucalyptus trees. The objections raised by the respondents have therefore to be rejected in toto and the writ petitioner is entitled to succeed. The writ petitioner will not be liable to pay seigniorage fees for the E. Grandis trees raised in the estate for the purpose of using the same as firewood in the factory belonging to the writ petitioner. The order of the second respondent confirming the demand for seigniorage charges made by the third respondent will stand quashed and the writ petition will stand allowed. The Rule nisi already issued is made absolute. There will, however, be no order as to costs.

25. In view of the orders passed in the main writ petition, no orders are necessary in the stay petition W.M.P. No. 11691 of 1988.