P. J. THOMAS

v.

TALUK LAND BOARD AND ORS.

MARCH 12, 1992

[M.H. KANIA, CJ, N.M. KASLIWAL AND M. FATHIMA BEEVI, JJ.]

Kerala Land Reforms Act, 1963 :

Sections 81 to 84—Ceiling area—Computation of—Cashew estate exempted from Ceiling—Exemption withdrawn from 1.1.1970—Conversion of Cashew estate into rubber plantation in 1967—Whether rubber plantation eligible for exemption.

Chapter III of the Kerala Land Reforms Act, 1963, containing sections 81 to 98A relating to restriction on ownership and possession of land in excess of Ceiling area, came into force on 1.4.1964. However, Section 82 came into force on 1.1.1970, the appointed day. Under this Section the Ceiling area of land which an individual or a family, as the case may be, was entitled to hold was fixed. In computing the ceiling area, the lands exempted under Section 82 was to be excluded. Sub-section (4) of the Section provided that where, after the commencement of the Act, any class of land specified in Schedule II had been converted into any other class of land specified in that Schedule or into a plantation, the extent of land liable to be surrendered by a person owning or holding such land should be determined, without taking into consideration such conversion.

Section 81(1)(f), as it originally stood, exempted cashew estates existing at the commencement of the Act, and having a contiguous extent of ten acres or more from the operation of Chapter III. This exemption was however, taken away by a subsequent amendment by Act. No. 35 of 1969, and, as on 1.1.1970, cashew estate, having an extent of ten acres or more was liable to be included in the computation of the ceiling area. Under Section 81(1)(e), 'Plantation', as defined under the Act was also exempted. Plantation was also specified in Schedule II.

Under Section 84, all voluntary transfers effected after the date of publication of Kerala Land Reforms Bill, 1963, by a family or any member

A thereof holding land in excess of the ceiling area were deemed to be transfers calculated to defeat the provisions of the Act and invalid.

On 1.1.1970, when Section 82 of the Act came into force, the appellant was holding 31 acres 6.5 cents of land, including 14.5 acres of rubber plantation, which was originally cashew estate. The appellant had con-
B verted the cashew estate into rubber plantation in 1967. His claim for exempting the rubber plantation from the computation under Section 81(1)(e) was rejected by the Taluk Land Board, in view of the provisions in sub-section (4) of Section 82, since cashew estate was not an exempted category on 1.1.1970. In revision, the High Court affirmed the Taluk Land
C Board's decision.

In the appeal before this Court, on behalf of the appellant, it was contended that a conversion of land falling under one exempted category to another exempted category did not come under the mischief of sub-section (4) of Section 82, and that the provisions of Chapter III did not apply
D to the lands specified in Section 81 and that since plantation was not included in sub-section (4) of Section 82 as it stood before 1.1.1970 and was included only with effect from 1.1.1970, the conversion of cashew estate into plantation before the amendment was not attracted by the said sub-section.

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Dismissing the appeal, this Court,

HELD : 1.1 The transfer falling under Section 84 cannot be equated to the conversion falling under Section 82(4). The ceiling provisions contained in sections 82 and 83 came into force on 1.1.1970. The computation of the
F ceiling area has to be made in accordance with the provisions contained under section 82 as it stood on 1.1.1970. Under sub-section (4) of section 82 where any class of land specified in Schedule II has been converted into a plantation after the commencement of the Act, the extent of land liable to be surrendered by a person owning or holding such land has to be determined without taking into consideration such conversion. Cashew estate is land
G specified in Schedule II as on 1.4.1964 as well as on 1.1.1970. Therefore, the conversion of cashew estate after 1.4.1964 and before 1.1.1970 into plantation would squarely fall under the mischief of this sub-section. The fact that cashew estate was an exempted category until 1.1.1970 does not make any difference so long as the exemption was not available as on 1.1.1970 when the
H computation was to be made. If the exemption continued on 1.1.1970, sub-

section (6) would entitle the holder to have the land excluded under the provisions of sub-section (6). Since the computation is made as on 1.1.1970 and the land held as on that date ignoring the conversion effected after 1.4.1964 is not exempted, the case has no analogy to the transfer of exempted land prior to 1.1.1970 falling under clause (1). At the time when the transfer was effected the land was exempted. The provision of section 82 was not applicable. It is for that reason that the transfer has to be held valid. So far as conversion is concerned, the land continues to be held by the owner and the law is clear that such conversion is to be ignored in computing the ceiling area. [153G-H, 154A-E]

1.2 In the instant case the land, in question, was cashew estate prior to 1.4.1964 and it has been converted into rubber plantation after that date and before 1.1.1970. As the conversion has to be ignored, the land could be treated only as cashew estate for the purpose of computation and not as plantation. Therefore, the exemption claimed by the appellant has been rightly rejected. [154F]

State of Kerala **v.** *Philomina*, **AIR 1976 SC 2363, distinguished.**

Chettiam Veettil Ammad **v.** *Taluk Land Board,* **[1979] 3 SCR 839, referred to.**

State of Kerala **v.** *Thomas*, **(1987) 1 KLT 530,** *Ramunni Nair* **v.** *State of Kerala*, **(1976) KLT 632 and** *Aleykutty John.* **v.** *Taluk Land Board*, **(1981) KLT 731, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2247 of 1992.

From the Judgment and Order dated 10.10.80 of the Kerala High Court in C.R.P.No. 3783 of 1977-A.

T.S. Krishnamurthy Iyer, N. Sudhakaran and Mrs. K. Prasanthi for the Appellants.

Joseph Vellapally, K.R. Nambiar and P.K. Pillai for the Respondents.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J. Leave granted.

A This appeal arising from proceedings under the Kerala Land Reforms Act, 1963 (Act 1 of 1964), as amended by Act 35 of 1969, raises the question of exemption provided under section 81 of the Act.

The Act is enacted as a comprehensive legislation relating to land reforms in the State of Kerala. The respective provisions of the Act came B into force on the appointed days as notified by the Government. Different days had been appointed for different provisions. Chapter III containing sections 81 to 98A relates to the restriction on ownership and possession of land in excess of ceiling area and disposal of excess lands. Except section 83, the other provisions in this Chapter came into force on 1.4.1964. C 1.1.1970 had been notified as the appointed day on which section 82 was to be enforced.

Under section 82, the ceiling area of land which an individual or family, as the case may be, is entitled to hold has been fixed. In computing the ceiling area the lands exempted under section 82 shall be excluded. D Section 82(4) reads -

> "S.82(4). Where, after the commencement of this Act, any class of land specified in Schedule II has been converted into any other class of land specified in that Schedule or into a plantation, the extent of land liable to be surrendered by a person E owning or holding such land shall be determined without taking into consideration such conversion."

Section 2(55) defines "standard acre" thus-

F "S.2(55). "standard acre" means in relation to any class of land specified in Scheduled II situate in the district or Taluk mentioned therein, the extent of land specified against it in that Schedule."

Schedule II specifies the class of land and the extent of land specified G for the purpose of conversion as standard acres. Dry land principally cultivated with cashew is specified under Schedule II as equivalent to two standard acres. Section 81(1)(f), as it originally stood, exempted cashew estates existing at the commencement of the Act and having a contiguous extent of ten acres or more from the operation of Chapter III. Thus at the H commencement of the Act cashew estates having a contiguous extent of ten

acres or more was an exempted category. This exemption was taken away by a subsequent amendment by Act 35 of 1969. Thus, as on 1.1.1970, cashew estate having an extent of ten acres or more was liable to be included in the computation of the ceiling area. "Plantation" has been defined in section 2(44) thus-

> "S.2(44). "Plantation" means any land used by a person principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon (hereinafter in this clause referred to as 'plantation crops') and includes -
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> (a) land used by the said person for any purpose ancillary to the cultivation of plantation crops or for the preparation of the same for the market;
>
> (b) land contiguous to, or in the vicinity of, or within the boundaries of, the area cultivated with plantation crops, not exceeding twenty per cent of the area so cultivated and reserved by the said person and fit for the expansion of such cultivation;
>
> (c) agricultural lands, interspersed within the boundaries of the area cultivated by the said person with plantation crops, not exceeding such extent as may be determined by the Land Board or the Taluk Land Board as necessary for the protection and efficient management of such cultivation.
>
> Explanation :– Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and play grounds shall be deemed to be lands used for the purpose of sub-clause(a)."

"Plantation", as defined in the Act, is exempted under clause(e) of sub-section(1) of section 81. "Plantation" is also land specified in Schedule II.

The appellant, as on 1.1.1970, was holding 31 acres 6.5 cents of land. This includes 14.5 acres of rubber plantation which was originally cashew estate. The appellant converted cashew estate into rubber plantation in 1967. The claim for exempting the rubber plantation from the computation was rejected by the Taluk Land Board in view of the provisions in sub-section (4) of section 82 on the ground that cashew estate was not an exempted

A category on 1.1.1970. The High Court in revision affirmed the decision of the Taluk Land Board on this point.

The appellant, while reiterating the claim for exemption under section 81(1)(e), has urged that a conversion of land falling under one exempted category to another exempted category does not come under the B mischief of sub-section(4) and, therefore, the impugned decision is wrong. Shri Krishnamurthy Iyer, the senior counsel for the appellant, maintains that the provisions of Chapter III do not apply to the lands specified in section 81 and if the provisions do not apply, section 82(4) in Chapter II can have no application to plantation. It is, therefore, argued that conver- C sion of any land into plantation is not attracted by sub-section (4) of section 82. Another limb of his argument is that sub-section (4) of section 82 has been amended from time to time and as it stood before 1.1.1970, plantation was not included in that sub-section. Since plantation has been included only with effect from 1.1.1970, the conversion of cashew estate into plan- D tation before the amendment is not attracted by the sub-section. The learned counsel also relied on the decision of this Court in *State of Kerala* v. *Philomina*, AIR 1976 SC 2363. That decision related to transfer falling under section 84(3). Kayal Padasekharams of Kuttanad area specified in Schedule IV so long as such padasekharams are used for the cultivation of paddy or such other crops as the Government may notify, had been E exempted under clause (I) of sub-section (1) of section 81. This clause was, however, omitted by Act 35 of 1964. Under section 84 all voluntary transfers effected after the date of publication of Kerala Land Reforms Bill, 1963 by a family or any member thereof holding land in excess of the ceiling area shall be deemed to be transfers calculated to defeat the provisions of F the Act and shall be invalid. In *State of Kerala* v. *Thomas*, (1987) 1 KLT 530, the question arose whether voluntary transfers of Kayal Padasekharams made between 15.9.63 and 1.1.70 were invalid. The High Court of Kerala held that such transfers were valid. That decision was affirmed by this Court in *State of Kerala* v. *Philomina* (supra). On the ratio of this decision it was maintained that the provision contained in section 84(3) did G not have any repercussion at all on the exemptions granted under section 81(1) was not effected. This Court stated thus -

> "So even though by virtue of section 84 of the Act all voluntary transfers effected after September 15, 1963 (date of publication H of the Kerala Land Reforms Bill, 1963 in the Gazette) were

invalid, the transfers made in respect of Kayal padasekharams in appeals No.907-909 could not be held to be invalid for the simple reason that they were exempt from the provisions of Chapter III. That exemption was no doubt withdrawn by section 65 of Act 35 of 1969 which amended the Act but it is not disputed before us that the section was not brought into force until January 1, 1970. The voluntary transfers made between September 15, 1963 and January 1, 1970 were therefore valid, and there is no force in the argument of the Advocate General that the amendment brought about by section 65 of Act 35 of 1969 should be given retrospective effect from April 1, 1964 as Sections 82 and 84 of the Act were brought into force from that date. There is also no force in the other argument of the Advocate General that Section 84 had the effect of invalidating the transfers effected after September 15, 1963 for that was the date of publication of the Kerala Land Reforms Bill in the gazette. The argument overlooks the fact that, as has been mentioned, Kayal lands were exempt from the provisions of Chapter III until as late as January 1, 1970.

....

It is well settled that a statute is not to be read retrospectively except of necessity. There is no such necessity in the cases before us, for the legislature decided to exempt the aforesaid Kayal lands from the operation of the restrictions and even though amending Act 35 of 1969 was promulgated on December 17, 1969. Section 65 thereof which withdrew the exemption, was not brought into force until January 1, 1970."

It is argued that the same principle should be applied in respect of exemption falling under clause(f) of sub-section(1) of section 81. Reliance has also been placed on Full Bench decision in *Ramunni Nair* v. *State of Kerala*, (1976) KLT 632 and *Chettiam Veettil Ammad* v. *Taluk Land Board*, [1979] 3 SCR 839.

The transfer falling under section 84 cannot be equated to the conversion falling under section 82(4). The ceiling provisions contained in sections 82 and 83 came into force on 1.1.1970. The computation of the ceiling area has to be made in accordance with the provisions contained

A under section 82 as it stood on 1.1.1970. Under sub-section(4) of section 82 where any class of land specified in Scheduled II has been converted into a plantation after the commencement of the Act, the extent of land liable to be surrendered by a person owning or holding such land has to be determined without taking into consideration such conversion. Cashew estate is land specified in Scheduled II as on 1.4.1964 as well as on 1.1.1970. Therefore, the conversion of cashew estate after 1.4.1964 and before 1.1.1970 into plantation would squarely fall under the mischief of this sub-section. The fact that cashew estate was an exempted category until 1.1.1970 does not make any difference so long as the exemption was not available as on 1.1.1970 when the computation was to be made. If the exemption continued on 1.1.1970, sub-section(6) would entitle the holder to have the land excluded under the provisions of sub-section(6). Since the computation is made as on 1.1.1970 and the land held as on that date ignoring the conversion effected after 1.4.1964 is not exempted the case has no analogy to the transfer of exempted land prior to 1.1.1970 falling under clause (1). At the time when the transfer was effected the land was exempted. The provision of section 82 was not applicable. It is for that reason that the transfer has to be held valid. So far as conversion is concerned, the land continue to be held by the owner and the law is clear that such conversion is to be ignored in computing the ceiling area. There is, therefore, no force in the contention advanced on the basis of aforesaid decision.

We shall also refer to the decision of the Kerala High Court in *Aleykutty John* v. *Taluk Land Board*, (1981) KLT 731 and *Ramunni Nair* v. *State of Kerala*, (1976) KLT 632. There has not been serious controversy on the fact that the land in question was cashew estate prior to 1.4.1964 and that it had been converted into rubber plantation after that date and before 1.1.1970. As the conversion has to be ignored the land could be treated only as cashew estate for the purpose of computation and not as plantation. The exemption claimed has been rightly rejected.

There is no merit in the appeal. It is accordingly dismissed.

N.P.V. Appeal dismissed.