Kunnathat Thathunni Moopil Nair

Vs.

The State of Kerala and Another (With Connected Petitions)

Petitions Nos. 13 to 24, 42 and 46 to 54 of 1958

(CJI B.P. Sinha, Syed Jafar Imam, A.K. Sarkar, K. Subha Rao, J.C. Shah JJ)

09.12.1960

JUDGMENT

SINHA, C.J. -

In this batch of 22 petitions under Art. 32 of the Constitution, the petitioners impugn the constitutionality of the Travancore-Cochin Land Tax Act, XV of 1955, as amended by the Travancore-Cochin Land Tax (Amendment) Act, X of 1957, which hereinafter will be referred to as the Act. The Act came into force on June 21, 1955, and the Amending Act on August 6, 1957. The petitioners are owners of forest areas in certain parts of the State of Kerala, which, before the reorganisation of States, formed part of the State of Madras. The respondents to the petitions are : (1) the State of Kerala and (2) the District Collector, Palghat :

These petitions are based on allegations, which are, more or less, similar, and the following allegations made in Writ Petition No. 42 of 1958 may be taken as typical and an extreme case, which was placed before us in detail to bring into bold relief the full significance and effect of the legislation impugned in these cases. The petitioner in Petition 42 of 1958 is a citizen of India, who owns forests in certain parts of Palghat Taluk in Palghat District, which was part of the State of Madras before the reorganisation of States. These forests are now in the State of Kerala. Up to the time that these forests were in the State of Madras, as it then was, the Madras Preservation of Private Forests Act, Madras Act XXVII of 1949, governed these forests. Even after these areas were transferred to the State of Kerala, the said Madras Act, XXVII of 1949, continued to apply to these forests. Under the said Madras Act the owners of forests, like the petitioner, could not sell, mortgage, lease or otherwise alienate any portion of their forests without the previous sanction of the District Collector; nor could they, without similar permission, cut trees or do any act likely to denude the forest or diminish its utility, as such. The District Collector, in exercise of the powers under the Act, does not ordinarily permit the cutting of more than a small number of trees in the forest. Thus the petitioner has not the right fully to exploit the forest wealth in his forest area and has to depend upon the previous permission of the Collector. In exercise of the powers given to the Collector under the Madras Act aforesaid, the petitioner's lessee was given permission to cut certain trees in his forest, which brings to the petitioner by way of income from the forest, a sum of Rs. 3,100 per year. Under the Act, a tax called land tax at a flat rate of Rs. 2 per acre has been imposed on the petitioner. In pursuance of the provisions of the Act, as amended as aforesaid, the District Collector of Palghat, purporting to act under the provisions of s. 5A of the Act, issued a notice to the petitioner provisionally assessing the petitioner's forest under the said Act to a sum of fifty thousand rupees per annum and informing the petitioner that, if no representation was made within thirty days, the said provisional assessment would be confirmed and a demand notice would be issued. As there has been no survey of the area of forest land in the petitioner's possession, the

District Collector has conjectured the said area to be twenty-five thousand acres. The Petitioner had made an application to the District Collector under the Madras Preservation of Private Forests Act for felling trees in an area of one thousand acres, but the Collector was pleased to grant permission to cut trees from 450 acres only in the course of five years at the rate of 90 acres a year. The petitioner has leased out that right to another person, who made the highest bid of Rs. 3,100 per year, as the landlord's fee for the right to cut and remove the trees, and other minor produce. Besides the demand aforesaid, the revenue authorities have levied about four thousand rupees as tax on the surveyed portions of the forest. The petitioner's forest has large areas of arid rocks, rivulets and gorges. The petitioner, in those circumstances, questions the constitutional validity of the Act, the provisions of which will be examined hereinafter.

These petitions have been opposed on behalf of the first respondent and the allegations and submissions made in the petitions are sought to be controverted by a counter affidavit sworn to by an Assistant Secretary to the Kerala Government in the Revenue Department. It is in similar terms, as a matter of fact printed in most of these cases. It is contended therein on behalf of the respondent that the petitions are not maintainable in as much as no fundamental rights of the petitioners have been infringed; that the allegations about the income from the forest lands are not admitted; and by way of submission, it is added, they are irrelevant for the purposes of these petitions. It is stated that the Act was passed with a view to unifying the system of land tax in the whole of the State of Kerala. It is submitted that the validity of the Act has to be determined in the light of Art. 265 of the Constitution and that Arts. 19 and 31 were wholly out of the way. It is denied that the tax imposed was harsh or arbitrary, or has the effect of violating the petitioner's right of holding property; and it was asserted that the allegations in respect of income from the forests are entirely irrelevant, as the tax was not a tax on income, but was an "impost on land". It is equally irrelevant whether the land is productive or not. It is also contended that, in view of the provisions of Art. 31(5)(b)(i) of the Constitution, Art. 31(2) could not be relied upon by the petitioners. The allegation of the petitioners that the Act is a device to confiscate private forests is denied. It is admitted that, except in certain cases, the entire area is unsurveyed and that steps are being taken for surveying those areas. It is also stated that the areas shown in the notices served on the petitioners are based on information available to the Collector of the District; and lastly, it is stated that only notice has been issued calling upon the petitioners to make their representations, if any, to the proposed provisional assessments. The assessments have not yet been made, and, therefore, there is no question of demand of tax being enforced by coercive processes. Finally, it is suggested that the Act has been enacted for the legitimate revenue purposes of the State.

Before entering upon a discussion of the points in controversy, it is convenient at this stage to indicate briefly the relevant provisions of the Act which is impugned by the petitioners as ultra vires the State Legislature. The preamble of the Act is in these terms :-

> "Whereas it is deemed necessary to provide for the levy of a low and uniform rate of basic tax on all lands in the State of Travancore-Cochin."

Basic tax has been defined as "the tax imposed under the provisions of this Act". Section 3 lays down that the arrangements made under the Act for the levy of the basic tax shall be deemed inter alia to be a general revenue settlement of the State, notwithstanding anything in any statute, grant, deed or other transaction subject to certain provisos not material for our present purposes. The charging section is s. 4, which is in these terms :-

> "Subject to the provisions of this Act, there shall be charged and levied in respect of

> all lands in the State, of whatever description and held under whatever tenure, a uniform rate of tax to be called the basic tax."

Section 5 lays down the rate of the tax which, by the Amendment, has been raised to Rs. 2 per acre (two pies per cent. of land per annum) and the basic tax charged and levied at that rate shall be the tax payable to the Government in lieu of any existing tax in respect of land. Section 6 lays down that any stipulation in any contract or agreement or lease or other transaction to pay land revenue assessment of any land shall be construed as stipulation for the payment of the amount of basic tax, as charged and levied under the Act. Section 7 is in these terms :-

> "This Act is not applicable to lands held or leased by the Government or any land or class of lands which the Government may, by notification in the Gazette, either wholly or partially exempt from the provisions of this Act."

Sections 8 and 9 provide for the continuance of the liability to pay certain dues in respect of existing tenures in addition to the basic tax in respect of lands covered by those tenures. Section 10 abolishes the irrigation assessment charged on certain tank beds and other water reservoirs named and described therein. Section 11 preserves the right of the Government to levy certain irrigation and water cesses and lays down that the Act shall not affect the power of the Government to levy any rate or alter any existing rate of irrigation or water cess on any land, as they deem fit. Cesses, other than those mentioned in s. 11, are also abolished by s. 12. Section 13 authorises the Government to appoint such officers as they deem necessary for the purpose of the Act. Section 14 lays down the bar of suits against the Government in respect of anything done or any other passed under the Act. Section 15 saves the right of the Government which accrued to it before the Act came into force as also the conditions of any agreement, grant or deed relating to any land, except to the extent indicated in the Act. Section 16 vests the Government with the power to make rules for carrying into effect the provisions of the Act, with particular reference to the power to make rules for the apportionment of the basic tax charged on certain kinds of holdings, for defining the powers and duties of the officers appointed under the Act and for determining the kist instalments and the due date for the payment thereof. These in short are the provisions of the Act. The Act, as indicated above, was amended by Act X of 1957, which substituted the words "State of Kerala" for the words "State of Travancore-Cochin" and made certain other consequential changes. The Amending Act introduced section 5A, which has been very much assailed in the course of the argument before us and it is, therefore, necessary to set it out in full. It is in these terms :-

> "S. 5A. Provisional assessment of basic tax in the case of unsurveyed lands. - (1) It shall be competent for the Government to make a provisional assessment of the basic tax payable by a person in respect of the lands held by him and which have not been surveyed by the Government, and upon such assessment such person shall be liable to pay the amount covered in the provisional assessment.
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> (2) The Government after conducting a survey of the lands referred to in sub-section (1) shall make a regular assessment of the basic tax payable in respect of such lands. After a regular assessment has been made, any amount paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment and when the amount paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the person assessed."

By s. 9, s. 3 of the Madras Revenue Recovery Act, 1864, has been substituted in these terms :

> "3. Landholder when and to whom to pay kist. - Every landholder shall pay to the Collector or other officer empowered by him in this behalf the land tax due from him on or before the day fixed for payment under the rules framed under s. 16 of the Land Tax Act, 1955."

From a review of the provisions of the Act, as amended as aforesaid, it will be clear that the provisions of the Act lay down in barest outline the policy to impose a uniform and, what is asserted to be, a low rate of land tax on all lands in the State of Kerala. Unlike other taxing statutes, it does not make any provision for issue of notice to the assessee, nor is there any provision for submission of a return by the assessee. By s. 5A, it authorises the Government to make a "provisional assessment" in respect of land, which has not been surveyed, and such provisional assessment is made payable by the person made liable under the Act. It does not make any provision for any appeals in cases where the assessee may feel dissatisfied with the assessment. The Act does contemplate the making of "a regular assessment of the basic tax". But it does not indicate as to when the regular assessment would be made, except indicating that it can be made only after a survey has been made in respect of the land assessed. The Act could not have been cast in more general terms and the proceedings under the Act could not have been more summary. It has thus the merit of brevity as also of simplicity, derived from the fact that a tax is levied at a flat rate, irrespective of the quality of the land and consequently of its productive capacity. Under the Act, the charge has to be levied, whether or not any income has been derived from the land. The Legislature was so much in earnest about levying and realising the tax that it could not even wait for a regular survey of the lands to be assessed with a view to determining the extent and character of the land.

Such are the provisions and the effect of the Act, which has been assailed on a number of grounds on behalf of the petitioners. It is contended, in the first instance, that inequality is writ large in the provisions of the Act, which is clearly discriminatory in character and effect and thus infringes Art. 14 of the constitution. As the Act does not have any regard to the quality of the land or its productive capacity, and a tax at a flat rate of Rs. 2 per acre is proposed to be levied under the Act, it is further contended, it imposes very unreasonable restrictions on the right to hold property and is thus an invasion on the rights guaranteed to the petitioners under Art. 19(1)(f) of the Constitution. The Act does not lay down any provision calling for a return from the assessee, for any enquiry or investigation of facts before the provisional assessment is made or for any right of appeal to any higher authority from the order of provisional assessment; in fact, there is no provision for hearing the assessee at any stage. The Act is of an arbitrary character and is thus wholly repugnant to the guaranteed rights of the petitioners. Section 7 quoted above gives uncanalised, unlimited and arbitrary power to the Government to pick and choose in the matter of grant of total or partial exemption from the provisions of the Act. It also suffers from the vice of discrimination. It has also been vehemently argued that the Act, though it purports to be a tax on land, is really a law relating to forests in possession of the petitioners and would not come within the purview of entry 18 read by itself or in conjunction with entry 45 of List II, but is law relating to forests under entry 19. If we tear the veil in which the real purpose and effect of the Act has been shrouded, it will appear that the true character and effect of the Act is not to levy a tax on land, but to expropriate the private owners of the forests without payment of any compensation whatsoever. Lastly, it has been urged that the whole Act has been conceived with a view to confiscating private property, there being no question of any compensation being paid to those who may be expropriated as a result of the working of the Act. This last argument is based on the assertion that the tax proposed to be levied on private property in the State of Kerala has absolutely no relation to the paying capacity of the persons

sought to be taxed, with reference to the income they could derive, or actually did derive from the property.

On behalf of the State of Kerala, the learned Advocate-General has argued that, though in most of the cases, that is to say, except in seven petitions (Petitions 21, 22, 47, 49, 50, 51 and 54) the lands have not been surveyed, the areas mentioned in the notices proposing provisional assessment have been ascertained through the local agencies of the Government. It was further contended that the State had only declared the liability to the payment of the tax at a flat rate of Rs. 2 per acre in respect of land, irrespective of the income to be derived therefrom. Hence there was no necessity for making provision for a detailed enquiry or investigation. The rate of the tax being known, and the area of the land to be taxed having been locally ascertained, even though without any regular survey, what remained was merely quantifying the tax, which was of a purely administrative character. The local agencies estimated the land in possession of particular persons. Those persons were called upon to pay provisionally at the rate fixed by the statute. The State has, by executive action, appointed authorities who are expected to act in accordance with the principle of natural justice. There was, therefore, no need for laying down any elaborate procedure as in other instances of taxing statutes. There is a presumption that the authority appointed by the Government would act bona fide and in a proper manner. If there was any case of unfair dealings, the matter could be brought to the Court. It was greatly emphasised that as a flat rate of taxation had been envisaged by the Act and as ultimately the tax at that rate would be realised from land found to be in possession of particular persons after a regular survey, the regular survey to be ultimately made would automatically determine the amount of tax to be paid and the adjustment of the taxes already paid could be made on that basis. On the legal aspect of the controversy raised on behalf of the petitioners, it was argued that the Act has its justification in Art. 265 of the Constitution, which was not subject to the provisions of Part III of the Constitution and that, therefore, Arts. 14, 19, 31 could not be pressed in aid of the petitioners. It was also contended that even if the Act is, in effect, confiscatory, it cannot be questioned, being a taxing statute. Finally, it was urged that the question of the amount of income derived by the petitioners from the property sought to be taxed is wholly irrelevant, because the Act was not a tax on income but it was a tax on the property itself.

The most important question that arises for consideration in these cases, in view of the stand taken by the State of Kerala, is whether Art. 265 of the Constitution is a complete answer to the attack against the constitutionality of the Act. It is, therefore, necessary to consider the scope and effect of that Article. Article 265 imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the Legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid down in Art. 13 of the Constitution. One of such conditions envisaged by Art. 13(2) is that the Legislature shall not make any law which takes away or abridges the equality clause in Art. 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Art. 14 of the Constitution, it must be struck down as unconstitutional. For the purpose of these cases, we shall assume that the State Legislature had the necessary competence to enact the law, though the petitioners have seriously challenged such a competence. The guarantee of equal protection of the laws must extend even to taxing statutes. It has not been contended otherwise. It does not mean that every person should be taxed equally. But it does mean that if property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent

of property. If the taxation, generally speaking, imposes a similar burden on every one with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the Legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Art. 14 will not be in the way of such a classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Art. 14, though the Courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in way that the Court might think more just and equitable. The Act has, therefore, to be examined with reference to the attack based on Art. 14 of the Constitution.

It is common ground that the tax, assuming that the Act is really a taxing statute and not a confiscatory measure, as contended on behalf of the petitioner, has no reference to income, either actual or potential, from the property sought to be taxed. Hence, it may be rightly remarked that the Act obliges every person who holds land to pay the tax at the flat rate prescribed, whether or not he makes any income out of the property, or whether or not the property is capable of yielding any income. The Act, in terms, claims to be "a general revenue settlement of the State" (s. 3). Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert. The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in Art. 14 of the Constitution. Furthermore, sec. 7 of the Act, quoted above, particularly the latter part, which vests the Government with the power wholly or partially to exempt any land from the provisions of the Act, is clearly discriminatory in its effect and, therefore, infringes Art. 14 of the Constitution. The Act does not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of the selection contemplated by s. 7. This Court has examined the cases decided by it with reference to the provisions of Art. 14 of the Constitution, in the case of Shri Ram

Krishna Dalmia v. Shri Justice S. R. Tendolkar and others [[1959] S.C.R. 279.]. S. R. Das, C.J., speaking for the Court has deduced a number of propositions from those decisions. The present case is within the mischief of the third proposition laid down at pages 299 and 300 of the Report, the relevant portion of which is in these terms :-

> "A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion of the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself." (p. 299 of the Report).

The observations quoted above from the unanimous judgment of this Court apply with full force to the provisions of the Act. It has, therefore, to be struck down as unconstitutional. There is no question of severability arising in this case, because both the charging sections, s. 4 and s. 7, authorising the Government to grant exemptions from the provisions of the Act, are the main provisions of the Statute, which has to be declared unconstitutional.

The provisions of the Act are unconstitutional viewed from the angle of the provisions of Art. 19(1)(f) of the Constitution, also. Apart from the provisions of ss. 4 and 7 discussed above, with reference to the test under Art. 14 of the Constitution, we find that s. 5(A) is also equally objectionable because it imposes unreasonable restrictions on the rights to hold property, safeguarded by Art. 19(1)(f) of the Constitution. Section 5(A) declares that the Government is competent to make a provisional assessment of the basic tax payable by the holder of unsurveyed land. Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher Civil Court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of s. 3 of the Madras Revenue Recovery Act, 1864, the land-holders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character. Again, the Act does not impose an obligation on the Government to undertake survey proceedings within any prescribed or ascertainable period, with the result that a land-holder may be subjected to repeated annual provisional assessments on more or less conjectural basis and liable to pay the tax thus assessed. Though the Act was passed about five years ago, we were informed at the Bar that survey

proceedings had not even commenced. The Act thus proposes to impose a liability on land-holders to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not requires a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the Assessing Authority; (3) there is no procedure prescribed for obtaining the opinion of a superior Civil Court on questions of law, as is generally found in all taxing statutes, and (4) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessees as may feel aggrieved by the order of assessment.

That the provisions aforesaid of the impugned Act are in their effect confiscatory is clear on their face. Taking the extreme case, the facts of which we have stated in the early part of this judgment, it can be illustrated that the provisions of the Act, without proposing to acquire the privately owned forests in the State of Kerala after satisfying the conditions laid down in Art. 31 of the Constitution, have the effect of eliminating the private owners through the machinery of the Act. The petitioner in petition 42 of 1958 has been assumed to own 25 thousand acres of forest land. The liability under the Act would thus amount to Rs. 50,000 a year, as already demanded from the petitioner on the basis of the provisional assessment under the provisions of s. 5(A). The petitioner is making an income of Rs. 3,100 per year out of the forests. Besides, the liability of Rs. 50,000 as aforesaid, the petitioner has to pay a levy of Rs. 4,000 on the surveyed portions of the said forest. Hence, his liability for taxation in respect of his forest land amounts to Rs. 54,000 whereas his annual income for the time being is only Rs. 3,100 without making any deductions for expenses of management. Unless the petitioner is very enamoured of the property and of the right to hold it, it may be assumed that he will not be in a position to pay the deficit of about Rs. 51,000 every year in respect of the forests in his possession. The legal consequences of his making a default in the payment of the aforesaid sum of money will be that the money will be realised by the coercive processes of law. One can easily imagine that the property may be sold at auction and may not fetch even the amount for the realisation of which it may be proposed to be sold at public auction. In the absence of a bidder forthcoming to bid for the offset amount, the State ordinarily becomes the auction purchaser for the realisation of the outstanding taxes. It is clear, therefore, that apart from being discriminatory and imposing unreasonable restrictions on holding property, the Act is clearly confiscatory in character and effect. It is not even necessary to tear the veil, as was suggested in the course of the argument, to arrive at the conclusion that the Act has that unconstitutional effect. For these reasons, as also for the reasons for which the provisions of ss. 4 and 7 have been declared to be unconstitutional, in view of the provisions of Art. 14 of the Constitution, all these operative sections of the Act, namely 4, 5A and 7, must be held to offend Art. 19(1)(f) of the Constitution also.

The petitions are accordingly allowed with costs against the contesting respondent, the State of Kerala.

SARKAR, J.

These petitions were filed under Art. 32 of the Constitution, challenging the validity of the Travancore-Cochin Land Tax Act, 1955, as amended by Act X of 1957. The principle Act was passed by the legislature of the State of Travancore-Cochin and the Amending Act, by the legislature of the State of Kerala, in which the State of Travancore-Cochin had been merged. The petitioners are owners of lands in the State of Kerala. The Act as amended and hereafter referred to as the Act, levied a certain basic tax on all lands in the State of Kerala. The petitioners say that the levy is illegal and violates their fundamental rights.

It appears from the preamble that the Act was passed as it was deemed necessary to provide for the levy of a low and uniform rate of basic tax on all lands in the State. The Act provides that the arrangement made by it for the levy of the basic tax is to be deemed to be a general revenue settlement of the State. Section 4 of the Act is the charging section and it lays down that there shall be charged and levied in respect of all lands in the State, of whatever description and held under whatever tenure, a uniform rate of tax to be called the basic tax. Section 5 fixes the rate to be called the basic tax. Section 5 fixes the rate of the tax at 2 n.P. per cent which works out at Rs. 2 per acre per annum. This section also provides that the basic tax shall be the tax payable to the Government in lieu of any other existing tax in respect of land. Section 12 abolishes all cesses on land except irrigation cess.

The first ground on which the validity of the Act is challenged is that it offends the provision as to the equal protection of the laws contained in Art. 14 of the Constitution. The Act applies to all lands in the State and it imposes an uniform rate of tax, namely, Rs. 2 per acre. It is said that all lands in the State have not the same productive quality; that some are waste lands and others, lands of varying degrees of fertility. The contention is that the tax weighs more heavily on owners of waste lands than on owners of fertile lands. It is said that it is bound to happen that some owners make no income out of their lands or make a small income and they would have to pay the tax out of their pocket while the owners of better classes of lands yielding larger income would be able to pay the tax out of the income from the lands. It is contended that the Act therefore discriminates between several classes of owners of lands in the State and is void as infringing the equality clause in the Constitution. It may be conceded that all lands in the State are not of the same degree of fertility. I am however unable to see that because of that, the Act can be said to discriminate between the owners of them.

What is really said appears to be that the Act makes a classification of the owners of lands according to areas. Assume that the Act does so. The question then is, is such a classification illegal ? The equal protection clause in the Constitution does not mean that there shall be no classification for the purpose of any law. It has been said by this Court in Budhan Choudhury v. The State of Bihar [[1955] 1 S.C.R. 1045, 1049.] : "It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out to the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question".

On the argument of the petitioners, the Act makes a classification between owners of lands using as the differentia, the area of the land held by them. The question then, is, is that differentia intelligible and has that differentia a rational relation to the object of the Act ? Now it seems to me that both the tests are satisfied in the present case. The tax payers are classified according to the area of lands held by them. That is quite an intelligible basis on which to make a classification; holders of varying areas of land can quite understandably be placed in different classes. Next, has such a basis of classification, a rational relation to the object of the Act ? The Act is a taxing statute. It is intended to collect revenue for the government business of the State. It says that one of its objects is to provide a low and uniform rate of basic tax. Another object mentioned is to replace all other dues payable to the Government in respect of the ownership of the land by a uniform basic tax. Why is it to be said that the use of the area of land held as the basis of classification has no rational relation to these objects. I find no reason. The object is to tax land held in the State for raising revenues. It is the holding of the land in the State that makes the owner liable to pay tax. It would follow that the

quantum of the tax can be reasonably linked with the quantum of the holding.

Why is it said that the classification on the basis of area is bad ? It is only because it imposes unequal burden of the tax on the owners of land; because owners of less productive land would have a larger burden put on them. Now if this argument is right, then tax on land can be imposed only according to its productivity. I have not been shown any authority which goes to this length. I am further unable to see how productivity as the basis of classification could be said to have a more rational relation to the object of a statute collecting revenue by taxing land held in the State. The tax is not levied because the land is productive but because the land is held in the State. Again if the tax which could be imposed on land had to be correlated to its productivity, then the State would have no power to tax unproductive land and the provision in the Constitution that it would have power to tax land would, to that extent, be futile. It seems to me that a contention leading to such a result cannot be accepted.

Reliance was placed for the petitioners on Cumberland Coal Company v. Board of Revision on Tax Assessments [76 L.Ed. 146.] in support of the contention that a tax on land not based on its productively, violates Art. 14. I am unable to hold that this case supports the contention. What had happened there was that a certain statute had imposed a tax ad valorem on all coal situated in a certain area and in assessing the tax, the coal of the Cumberland Coal Company had been assessed by the authorities concerned at its full value while the coal of the rest of the class liable to the tax had been assessed at a lower value. Thereupon it was held that "the intentional systematic undervaluation by State Officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed on the full value of his property." On this view of the matter the Supreme Court of America directed readjustment of the assessments. The statute with which this case was concerned had levied the tax ad valorem which, it may be, is the same thing as a tax correlated to productivity. The case had therefore nothing to do with the question that a tax on coal otherwise than ad valorem would be unconstitutional. In fact this case did not declare any statute invalid.

Then it seems to me that if the contention of the petitioners is right, and land could be taxed only on its productivity, for the same reason, taxes on all other things would have to be correlated to the income to be derived from them. The result would be far reaching. I am not prepared to accept a contention producing such a result and no authority has been cited to lead me to accept it.

It may be that as lands are not of equal productivity, some tax payers may be able to pay the tax out of the income of the land taxed while others may have to find the money from another source. To this extent the Act may be more hard on some than on others. But I am unable to see that for that reason it is unconstitutional. All class legislation puts some in a more disadvantageous position than others. If the classification made by the law is good, as I think is the case with the present Act, the resultant hardship alone cannot make it bad. It was said in Magonn v. Illinois Trust and Savings Bank [42 L.Ed. 1037, 1043.], "It is hardly necessary to say that hardship, impolicy, or injustice of state laws is not necessarily an objection to their constitutional validity."

It is then said that sub-sec. (1) of s. 5A, which was introduced into the Act by the Amending Act, offends Art. 14. The impugned provision is in these terms :

> S. 5A. (i) It shall be competent for the Government to make a provisional assessment of the basic tax payable by a person in respect of the lands held by him and which have not been surveyed by the Government, and upon such assessment such person

shall be liable to pay the amount covered in the provisional assessment.

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This section was enacted as at the date of the Act, all lands had not been surveyed and so the areas of all holdings were not known. In the absence of such knowledge the tax which was payable on the basis of the areas of the holdings could not be assessed on unsurveyed lands, so the section provides that pending the survey, the Government will have power to make a provisional assessment on unsurveyed lands. This provision was necessary as the survey was bound to take time.

The contention is that s. 5A(1) gives arbitrary power to the Government to make a provisional assessment on any person it chooses, leaving out others from the provisional assessment. I am unable to read the sub-section in that way. It may be that it leaves it to the Government to make a provisional assessment if it chooses. This does not result in any illegal classification. The surveyed lands and unsurveyed lands are distinct classes of properties and may be differently treated. Again, all unsurveyed lands would on survey have to pay tax from the beginning. It would follow that the holders of both classes of lands are eventually subjected to the same burden. As to the contention that under the this section the Government has the right to levy the provisional assessment at its choice on some and not on all holders of unsurveyed lands, I am unable to agree that this is a proper reading of the section. In my view, the expression "a person" in the section does not lead to that conclusion. That expression should be read as "all persons" and it is easily capable of being so read. The section says, "It shall be competent for the Government to make a provisional assessment of the basic tax payable by a person". Now the basic tax is payable by all persons holding land. So the provisional assessment, if made, has to be on all persons holding lands whose lands have not been surveyed. The Government cannot, therefore, pick and choose. A statute is intended to be legal and it has therefore to be read in a manner which makes it legal rather than in a manner which makes it illegal. If the Government did not make the provisional assessment in the case of all liable to such assessment, then the Government's action could be legitimately questioned. It has however not in fact been said in these petitions that in deciding to make the provisional assessment the Government has made any discrimination between the persons liable to such assessment.

Section 5A(1) is also attacked on the ground that it is against rules of natural justice in that it does not say that in making the provisional assessment, any hearing would be given to the person sought to be assessed or requiring a return from him or giving him a right of appeal in respect of the provisional assessment made. It is true that the section does not expressly provide for a hearing being given. It seems to me however that if according to the rules of natural justice the assessee was entitled to a hearing, an assessment made without giving him such a hearing would be bad. The Act must be read so as to imply a provision requiring compliance with the rules of natural justice. Such a reading is not impossible in the present case as there is nothing in the Act indicating that the rules of natural justice need not be observed.

It was said in Spackman v. Plumstead Board of Works [10 A.C. 229, 240.] where a statute requiring an architect to give a certain certificate which did not provide the procedure as to how the architect was to conduct himself, came up for consideration that, "No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated." Again in Maxwell on Statutes (10th ed.) p. 370 it has been said, "In giving judicial powers to affect prejudicially the rights of person or property, a statute is understood as silently implying, when it does not expressly provide, the condition or qualification that the power is to be exercised in accordance with the fundamental rules

of judicial procedure, such, for instance, as that which requires that before its exercise, the person sought to be prejudicially affected shall have an opportunity of defending himself." In so far as this Act confers a power on the Government to discharge the judicial duty of making a provisional assessment, which the petitioners say, it does, it must imply that the judicial process has to be observed.

As regards the return, that seems to me not to be of much consequence. If the assessee is entitled to be heard, the fact that he is not asked to make a return, would not constitute a departure from the rules of natural justice. Likewise, the absence of a right of appeal is not something on which the petitioners can rely. Rules of natural justice do not require that there must always be right of appeal. Under the Act it is the Government which makes the assessment and it would not be unreasonable to hold that in view of the high authority of the person assessing, the absence of a right of appeal is not likely to cause any miscarriage of justice. I am therefore unable to hold that in the absence of express provisions laying down the procedure according to which the provisional assessment is to be made, the Act has to be held invalid.

It may here be stated that in those instances where, in the present cases, provisional assessments had been made, the assessees had either themselves supplied the area of the lands held by them or the area had been determined after giving them a hearing. After the area has been determined, the amount of the tax payable is decided by a simple calculation at the rate of Rs. 2 per acre of land held and with regard to this, no hearing is required.

Then again sub-sec. (2) of s. 5A provides that the Government after conducting a survey of the lands mentioned in sub-sec. (1) under which provisional assessment is to be made, shall make a regular assessment and adjustments would have to be made in regard to tax already paid on the basis of the regular assessment. A point is made that there is no time limit fixed within which the regular assessment is to be made and so the Act leaves it to the arbitrary decision of the Government when to make the regular assessment. I do not think that this contention is correct. Properly read, the section in the absence of any indication as to time, means that regular assessment would have to be made as soon after the survey, as is reasonably possible.

It is also said that s. 7 of the Act offends Art. 14. This section gives power to the Government to exempt from the operation of the Act such lands or class of lands as the Government may by notification decide. This section does not indicate on what grounds the exemption is to be granted. It therefore seems to me that it gives arbitrary power to the Government and offends Art. 14. But the section is clearly severable from the rest of the Act. If the section is taken out of the Act, the operation of the rest of the Act will not in the least be affected. The only effect will then be that the Government will have no power to exempt any land from the tax. That will not in any way affect the other provisions of the Act. The invalidity of this section is therefore no reason for declaring the entire Act illegal. It may be pointed out that it is not alleged in the petitions that the Government has exempted any lands or class of lands from the operation of the Act.

It is contended that s. 8 of the amending Act also shows the arbitrary nature of the Act. That section provides that if any difficulty arises in giving effect to the provisions of this Act, the Government may by order do anything not inconsistent with such provisions which appeals to it to be necessary or expedient for removing the difficulty. This is a common form of provision now found in many Acts. The power given under it cannot be said to be uncontrolled for it must be exercised consistently with the Act and to remove difficulties arising in giving effect to the Act. In any event, this provision is contained in the amending Act only. Even if the section be held to be invalid that

would not affect the rest of the amending Act or any question that arises on these petitions.

The validity of the Act is also challenged on the ground that it infringes Art. 19, cl. (1), sub-cls. (f) & (g). This challenge seems to me to be wholly untenable. Apart from the question whether a taxing statute can become invalid as offending Art. 19, as to which the position on the authorities does not seem to be very clear, it is plain that Art. 19 permits reasonable restrictions to be put on the rights mentioned in sub-cls. (f) & (g). Now there is no dispute that the rate of tax fixed by the Act is a very low rate. It has not been said that the rate fixed is unreasonable. It clearly is not so. The restrictions on these rights under Art. 19(1), (f) & (g) put by the Act, if any, are clearly reasonable. These rights cannot therefore be said to have been infringed by the Act.

The lands of the petitioners are lands on which stand forests. It is said that under the Madras Preservation of Private Forests Act, (Act XXVII of 1949), which applies to the lands with which we are concerned as they are situated in an area which previously formed part of the State of Madras, the owners of the forests can work them only with the permission of the officer mentioned in that Act. It is said that the control imposed by the officer has been such that the income received from the forest is much less than the tax payable under the Act in respect of the land on which the forest stands. Taking by way of illustration Petition No. 13, it is pointed out that the income from the forest with which that petition is concerned was Rs. 8,477 for the year 1956-57 while the tax payable under the Act for more or less the same period was Rs. 1,51,000. I am unable to hold that because of this the Act offends Art. 19(1), (f) and (g). It is not stated that the land is not capable of producing any income other than the income from the forest standing on it. There is nothing so show that in all times to come the income from the land including the income from the forest, will be less than the tax imposed on it by the Act. The area of the land concerned in Petition No. 13 is enormous being about 75,500 acres. I am further unable to hold the impugned Act to be invalid because of action that may be taken under another Act, namely, the Madras Act XXVII of 1949.

The validity of the Act is challenged also on the ground that it offends Art. 31 of the Constitution. I am unable to see any force in this contention. If the statute is otherwise valid, as I have found the present Act to be, it cannot, even if it deprives any person of property, be said to offend Art. 31(1). It has been held by this Court in Ramjilal v. Income-tax Officer, Mohindargarh [[1951] S.C.R. 127, 136.] that "clause (1) of Art. 31 must be regarded as concerned with deprivation of property otherwise than by the imposition or collection of tax, for otherwise Art. 265, becomes wholly redundant." No question of cl. (2) of Art. 31 being violated arises here for the Act does not deal with any acquisition of property.

It is also said that the Act is a colourable piece of legislation, namely, that though in form a taxing statute it, in effect, is intended to expropriate lands, held by the citizens in the State by imposing a tax too heavy for the land to bear. As was said in Raja Bhairebendra Narayan Bhup v. The State of Assam [[1956] S.C.R. 303.] "The doctrine of colourable legislation is relevant only in connection with the question of legislative competency". In the present case, there being in my view, no want of legislative competency in the legislature which passed the Act in question, the Act cannot be assailed as a piece of colourable legislation. I may add that I do not accept the argument that the Act is in its nature expropriatory or that the tax imposed by it is really excessive.

I come now to the last argument advanced by the petitioners. It is said that the Act was beyond the legislative competence of the State Legislature. It is conceded that the State Legislature has power to impose a tax on land under entry 49 of List 2 in the Seventh Schedule to the Constitution, but it is said that land as mentioned in that entry does not include lands on which forests stand. It is

contended that the State Legislature has power to legislate about forests under entry 19 of that List and also as to lands under entry 18. There is however no power to impose a tax on forests while there is power under entry 49 of that list to tax land. Therefore, it is said, that there is no power to impose tax on lands on which forests stand and the Act in so far as it imposes tax on lands covered by forests, which the lands of the petitioners are, is hence incompetent.

It is not in dispute that a State Legislature has no power to impose a tax on a matter with regard to which it has the power to legislate but has been given no express power to impose a tax. Therefore, I agree, that a State Legislature cannot impose tax on forests. I am however not convinced that "land" in entry 49 is not intended to include land on which a forests stands. No doubt, a forest must stand on some land. In Shorter Oxford Dictionary, one of the meanings of "forest" is given as an extensive tract of land covered by trees and undergrowth, sometimes intermingled with pastures. The concepts of forest and land however are entirely different. The principal idea conveyed by the word "forest" is the trees and other growth on the land. Under entry 19 there may no doubt be legislation with regard to land in so far it is necessary for the purpose of the forest growing on it. It is well known that entries in the legislative lists have to be read as widely as possible. It is not necessary to cut down the plain meaning of the word "land" in entry 49 to give full effect to the word "forest" in entry 19. In my view, the two entries namely, entry 49 and entry 18 deal with entirely different matters. Therefore, under entry 49 taxation on land on which a forest stands is permissible and legal.

For these reasons I would dismiss these petitions.

BY COURT :-

In accordance with the opinion of the majority of the Court, these Petitions are allowed with costs against the contesting Respondent, the State of Kerala.

Petitions allowed.

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