The Twyford Tea Co. Ltd. and Another

Vs

The State of Kerala and Another

Writ Petition Nos. 135, 137 of 1969

(CJI M. Hidayatullah, J. M. Shelat, C. A. Vaidialingam, A. N. Grover, A. N. Ray JJ)

15.01.1970

JUDGMENT

HIDAYATULLAH, C.J. -

1. These are three petitions by Twyford Tea Company and one of its directors under Article 32 of the Constitution seeking appropriate writ, order or direction to declare the Kerala Plantation (Additional Tax Act), 1960, (Act XVII of 1960) and the Kerala Plantation (Additional Tax) Amendment Act, 1967 (Act XIX of 1967) unconstitutional and void. In addition the petitioners ask that the notices Annexures B, C and D demanding payment of the tax be also quashed and a sum of Rs. 1,02,106.02 already paid as tax to the Kerala Government be ordered to be refunded. They further seek a mandamus restraining the State of Kerala and Tehsildar Peermade from using the two Acts against the petitioners.

2. The petitioner company is incorporated in India and the majority of its shareholders are Indians. It owns a tea estate in Kuttikanam area in the Peermade hills in Kerala State. The estate consists of 1,006 hectares equal to 2,486 acres of which 491 hectares equal to 1,214 acres are tea plantations. According to the petitioners Peermade hills are in the Western Ghats and are divided into two main parts. Kuttikanam area roughly 35 sq. miles is situated at an altitude of 3,400 to 3,700 ft. and receives 150 to 200 inches of rainfall annually. The Periyar valley area roughly 60 sq. miles is situated at an altitude of 2,800 to 3,200 ft. and receives 100 to 150 inches rainfall annually. The Periyar valley area is more fertile than the Kuttikanam area. According to the Petitioners' statements M/s. Parkins Private Ltd. are the Managing Agents of Twyford Tea Company and also the Haileyburia Tea Estate. The former is in Kuttikanam and the latter in Periyar area. The extent of produce from these two areas is very different. Between the years 1963 to 1967 Twyford Tea Company produced 959 to 1,211 kgs. per hectare while Haileyburia produced 1,451 to 1,845 kgs. per hectare. The other tea-estates disclosed the same differences in production. Examples are given of Pershurst, Karimtharuvi estates under the same management and of Stagbrook and Cheenthalaar and other estates. The Twyford Tea Company's net profits have declined from Rs. 2,28,222 (1963) to Rs. 59,938, (1967). The net profits of Twyford Tea Company after taxation per hectare ranged from Rs. 122.00 (1967) to Rs. 465.00 (1963) with loss in 1966; while the profits of Heileyburia ranged from Rs. 909.00 (1963) to Rs. 770.00 (1967) with Rs. 245.00 in 1966. This difference is attributed to the differences in fertility between the Kuttikanam and Periyar areas. The petitioners state that similar differences exist in the Vandiperiyar and Nelliampathy areas. The petitioners point out that for purposes of excise duty these areas have been formed into different zones and different rates of excise duty are leviable in these zones.

3. The two statutes which are impugned here imposed a tax on plantations. In the Act XVII of 1960

there is a levy of "additional tax" on plantations. The Act came into force on April 1, 1960. "Plantations" mean land used for growing seven kinds of crops. They are : (1) Cocoanut, (2) Arecanut, (3) Rubber, (4) Coffee, (5) Tea, (6) Cardamom and (7) Pepper. Section 3 of Act XVII of 1960 is the charging section. Under that section for each financial year a plantation tax additional to the basic tax charged as land tax under the Land Tax Act, 1955 is payable at the rate mentioned in Schedule I of the Act. This Schedule states that no tax is payable if the aggregate extent of plantations held by a person is below five acres. But if the plantations held by a person is 5 acres or more, a tax of Rs. 8/- per acre is payable with exemption for the first two acres. For purposes of finding out the extent of the plantations in acres held by a person a method of calculation is added in Schedule II. It is not necessary to quote this schedule because it has been amended by Act XIX of 1967 and that Schedule will be quoted presently. By the Amended Act the name of the tax is changed. The word "additional" is removed in all places and it is declared that the tax is additional to land revenue or any tax in lieu thereof, if any, payable in respect of such land. The rate of tax is altered in Schedule I to Rs. 50/- per hectare which is payable in respect of plantations of two hectares or more with an exemption for the first hectare. The method of calculation of the extent of plantation in hectares is restated in Schedule II as follows :

> "Schedule II.
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> For the purposes of the assessment of plantation tax payable by a person, the extent of plantations held by him shall be deemed to be the aggregate of the following, expressed in hectares, namely :-
>
> (i) the quotient obtained by dividing the total number of bearing cocoanut trees standing on all lands held by him by 200;
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> (ii) the quotient obtained by dividing the total number of bearing arecanut trees standing on all lands held by him by 1,500;
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> (iii) the quotient obtained by dividing the total number of yield rubber plants standing on all lands held by him by 450;
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> (iv) the quotient obtained by dividing the total number of yielding coffee plants standing on all lands held by him by 1,500;
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> (v) the quotient obtained by dividing the total number of yielding pepper vines standing on all lands held by him by 1,000;
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> (vi) the extent of lands on which tea plants are grown which have begun to yield crops;
>
> (vii) the extent of lands on which cardamom plants are grown which have begun to yield crops :
>
> Provided that where the total extent of land held by a person, which is cultivated with the aforesaid crops, is less than the aggregate calculated as above, the actual extent alone shall be deemed to be the extent of plantations held by him."

4. The petitioners paid tax under the old Act without objection. They state that they did so without realising their rights. They were issued three demands for the assessments year 1960-61 to 1968.

They had already paid between April 10, 1961 and October 18, 1968 a sum of Rs. 1,02,106.02. It is because of this additional demand arising from the increase in the rate of tax from Rs. 8/- per acre or Rs. 20/- per hectare to Rs. 50/- per hectare that they have challenged the constitutionality of the two Acts.

5. The contention of the petitioners is that there is no rational classification of plantations; that unequals have been treated as equals and that a flat rate imposed upon all the plantations irrespective of their yield is arbitrary. According to them some of the plantations cannot make enough profit to be able to pay tax and in their case the tax became confiscatory. They also complain of discrimination and question the legislative competency of the Kerala Legislature to impose plantation tax in the absence of a specific entry in the 7th Schedule to the Constitution either in List II or III enabling the State Legislature to impose it. They also say that the land tax imposed under the Land Tax Act was successfully challenged before this court in Kunnathat Thathunni Moopil Nair v. The State of Kerala and Another ((1961) 3 SCR 77) and the change making it additional land revenue imposed an obligation upon the State Legislature to make assessment on the basis of the produce from the land in much the same way as land revenue is calculated after taking into account the fertility of the soil, its yield and such other factors.

6. Stated simply there are three contentions. The first is that the State Legislature lacks competence to impose this tax and even if it did have the competence it has followed a wrong method in imposing additional land revenue without effecting proper settlement. The next contention is that the Act is discriminatory in that it takes no account of difference in situation, fertility and yield between the plantation belonging to the same category. Lastly it is contended that it is discriminatory inasmuch as it seeks to treat plantations of different kinds as if they were equal in all respects by reducing them to a common measure of hectares when it is not possible to do so regard being had to the different incomes derived from these plantations. We shall take up these questions one by one.

7. The first question is of the competence of the State Legislature. There is no specific entry in the legislative List Nos. 2 and 3 in the Seventh Schedule to the Constitution. The Land Tax Act, 1955, as amended by the Travancore-Cochin Land Tax (Amendment) Act, X of 1957, was declared unconstitutional in its operative sections in K. T. Moopil Nair's case (supra) ((1959) SCR 279) Immediately afterwards the Kerala Land Tax Act, 1961 was passed following an Ordinance and that Act is now included in the 9th Schedule to the Constitution at No. 38 and receives the protection of Article 31-B. The competency to impose land tax thus is no longer open to dispute. The present Act is challenged on the same lines as the former Act and the argument is rested upon the principles accepted in K. T. Moopil Nair's case (supra) ((1959) SCR 279). It is, therefore, necessary to recall what was decided there. Under the Land Tax Act, 1955 all lands of whatever description and held under whatever tenure were to be charged and levied an uniform tax per acre known as the basic tax. Section 7 of the Act, however, conferred a power on Government to exempt wholly or in part any land. This Court considered the tax to be discriminatory because it paid no heed to quality or productive capacity of land and the tax was also held to be confiscatory since owners of unproductive land were liable to be eliminated by slow stages. The power of exemption was also considered unreasonable because it enabled Government to pick and choose lands arbitrarily for grant of exemption. The lack of classification was considered to create inequality. Sarkar, J., who dissented, held that there was an attempt at classification according to area, and the tax was levied because land in the State was held, and nor because of its productivity.

8. In dealing with this case the argument have been moulded round the observations in that case. In

support of his contention that yield of tea varies from estate to estate and district to district (of which figures are already quoted in the petition) the Tea Statistics (1967-68) compiled by the Tea Board of India are also cited. It is hardly necessary to refer to the findings of the Tea Board because it may be assumed without discussion that there are differences. It may also be conceded that the uniform tax falls more heavily on some plantations than on others because the profits are widely discrepant. But does that involve a discrimination ? If the answer be in the affirmative hardly any tax direct or indirect would escape the same censure for taxes touch purses of different lengths and the very uniformity of the tax and its equal treatment would become its undoing. The rich and the poor pay the same taxes irrespective of their incomes in many instances such as the sales-tax and the profession tax, etc. It may be remembered that in K. T. Moopil Nair's case (supra) the majority accepted the observations of S. R. Das, C.J. in Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and Others ((1959) SCR 279) at page 299 to the following effect :

> "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 by 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."

We have always to see what the statute does to make for equality of treatment.

9. The contention here is that there is an uniform rate of tax per hectare which every owner of a named plantation has to pay irrespective of the extent or value of the produce and, therefore, the law imposes an uniform tax burden on unequals. In our opinion this is a wrong way to look at the provisions of the Act.

10. The Act, no doubt, deals with seven different kinds of plantations and imposes an uniform rate of Rs. 50/- per hectare but it lays down principles on which a equal treatment is ensured. In the case of cocoanut, arecanut, rubber, coffee and paper plantations, plants capable of yielding produce are to be counted and then the hectares are determined by dividing the total number of plants by a certain figure. This is intended to equalise the different plantation for purposes of taxability. In the remaining two case the extent of land yielding crop is itself taken as the measure for the tax because it is considered fair and just to treat one actual hectare of crop yielding plantation as equal to the other areas converted into hectares on the basis of the number of plants or trees. Differences in yield between one plantation and another having the same crop, on doubt, arise from situation, altitude and rainfall but they are not the only factors. Otherwise how is it that the same areas give different yield in different years. The respondents have given the figures of yield of Glenmari estate contiguous to Twyford estate. The produce in that estate ranges from 1,427 to 1,571 kilograms per hectare which is almost equal to the estates in Periyar area. The yield of Cardamom also varies similarly. In the Highland Produce Co. Ltd. the per acre yield varies from 5,770 lbs. in 1965 to

26,690 lbs. in 1962. In 1961 the per acre yield was 91 lbs. and in 1962, 254 lbs. It is obvious that there are circumstances other than situation, rainfall etc. which have made the yield almost 2 1/2 times as much.

11. The Legislature thinks that Rs. 50/- per hectare in the case of Cardamom and Tea is reasonable levy and this is equal to other plantations. Where the crop yielding plants and trees have to be converted into hectares according to a formula. It is obvious that the legislature has made an attempt at equalisation of tax burden for different plantations. This is not a case where barren lands have been subjected to equal tax with productive lands. The tax is only levied on crop yielding land in some cases where the crop may be scattered over a wide area, there is an elaborate machanism to determine the extent of the crop yielding plantation. The differences which have been pointed out may be the result of some fortuitous circumstances and even bad husbandry. The Court cannot regard the law to be discriminatory on the evidence produced in the case.

12. Before we state the principles on which we have proceeded we may refer to a few cases which were also brought to our notice. In State of Andhra Pradesh and Another v. Nalla Raja Reddy and Others ((1967) 3 scr 28), the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act (No. 22 of 1962) was held to offend Article 14. That Act was passed to bring uniformity in assessment of Land Revenue in the Telangana and Andhra areas of the State of Andhra Pradesh. An additional assessment at the rate of 75% of the yearly assessment was imposed on dry land and the total assessment was not to be less than 50 P. per acre. On wet lands the additional assessment was to be 100% for lands irrigated from a Government source and 50% in the case of other wet lands and a minimum total demand was also prescribed. This Act was considered to be discriminatory as the minimum had on relation to the fertility of land, there was no relationship between the land and the ayecut to which it belonged and the procedure for determining the applicable rate was arbitrary. This Court examined the matter critically and came to the conclusion that the assessment was left to the arbitrary discretion of an officer without any opportunity to question his findings. This Court compared the procedure for assessment at proper settlements and found that those equitable and reasonable methods of assessment were abandoned. That case is peculiar to itself and cannot be called in aid since in this case there is a reasonable attempt to make the burden equal.

13. Two other cases were referred to but they bear upon a different topic. In New Manek Chowk pinning and Weaving Mills Co. Ltd. and Others v. Municipal Corporation of the City of Ahmedabad and Others ((1967) 2 SCR 679) and The State of Kerala v. Haji K. Kutty Naha and Others (AIR 1969 SC 378), the question was one of rating. The proposition laid down was that taking only the floor area of a building as the basis for determination of the tax was on arbitrary method when buildings must have different rental values depending upon the nature of the construction, the kind of building and the purpose for which they can be used. These were held vital considerations in the rating of buildings and could not be ignored. These cases were decided on different principles and no analogy can be found merely because equal tax was imposed in diverse conditions.

14. As against these cases the other side relies upon Thuttampara Planting Co. v. Tahsildar, Chittur (1964) Ker LT 47.) and Essa Ismail and Another v. State of Kerala and Others (ILR (1965) Ker 619) where this tax was upheld. In the second of these cases it was held that the tax was not related to the productivity of the land but to its user and the method of calculation was found to be fair and equitable.

15. We may now state the principles on which the present case must be decided. These principles

have been stated earlier but are often ignored when the question of the application of Article 14 arises. One principle on which our Courts (as indeed the Supreme Court in the United States) have always acted, is no where better stated than by Willis in his "Constitutional Law" page 587. This is how he put it :

> "A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably .... The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation."

This principle was approved by this Court in East Indian Tobacco Co. v. State of Andhra Pradesh ((1963) 1 SCR 404), at page 409. Applying it, the Court observed :

> "If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation."

This indicates a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable. If production must always be taken into account there will have to be a settlement for every year and the tax would become a kind of income-tax.

16. The next principle ins that the burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack. This was also observed in the same case of this Court at page 411 approving the dictum of the Supreme Court of the United States in Madden v. Kentucky: ((1940) 309 US 83; 84 L Ed. 590)

> "In taxation even more than in other fields, Legislatures possess the greatest freedom in classification The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

As Rottschaefer said in his Constitutional Law at p. 668 :

> "A statute providing for the assessment of one type of intangible at its actual value while other intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax. The decisions of the Supreme Court in this field have permitted a State Legislature to exercise an extremely wide discretion in classifying property for tax purposes so long as it refrained from clear and hostile discrimination against particular persons or classes."

> "The burden is on a person complaining of discrimination. The burden is proving not possible 'inequality' but hostile "unequal" treatment. This is more so when uniform taxes are levied. It is not proved to us how the different plantations can be aid to be 'hostilely or unequally' treated. An uniform wheel tax on cars does not take into account the value of the car, the mileage it runs, or in the case of taxis, the profits it makes and the miles per gallon it delivers. An Ambassador taxi and a Fiat taxi give different outturns in terms of money and mileage. Cinemas pay the same show fee. We do not take a doctrinaire view of equality. The Legislature has obviously thought of equalising the tax through a method which is inherent in the tax scheme. Nothing has been said to show that there is inequality much less 'hostile treatment'. All that is

said is that the State must demonstrate equality. That is not the approach. At this rate nothing can ever be proved to be equal to another.

17. There is no basis even for counting one tree as equal to another. Even in a thirty years' settlement, the picture may change the very next year for some reason but the tax as laid continues. Siwai income is brought to land revenue on the basis of number of trees but not on the basis of the produce. This is worked out on an average income per tree and not on the basis of the yield of any particular tree or trees.

18. What is meant by the power to classify without unreasonably discrimination between persons similarly situated, has been stated in several other cases of this Court. The same applies when the Legislature reasonably applies a uniform rate after equalising matters between diversely situated persons. Simply stated the law is this : Differences in treatment must be capable of being reasonably explained in the light of the object for which the particular legislation is undertaken. This must be based on some reasonable distinction between the cases differentially treated. When differential treatment is not reasonably explained and justified the treatment is discrimination will be found. To be able to succeed in the charge of discrimination, a person must establish conclusively that persons equally circumstanced have been treated unequally and vice versa. However, in Khandige Sham Bhat and Others v. The Agricultural Income Tax Officer, ((1963) 3 SCR 809) at page 817 it was observed :

> "If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine : vide Purshottam Govindji Malai v. Shree B. N. Desai, Additional Collector of Bombay ((19550 2 SCR 887) and Kunnathat Thathunni Moopil Nair v. State of Kerala ((1961) 3 SCR 77) But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of 'wide range and flexibility' so that it can adjust its system of taxation in all proper and reasonable ways."

19. Taking these principles into consideration we are satisfied that the law does not single out any particular plantation for hostile or unequal treatment. In fact it is nowhere proved in this case that tea has been discriminated against deliberately. As between different tea gardens, it is not possible to say that the differences in the yield is entirely due to natural circumstances and no other cause. It is, therefore, not possible to say that there is discrimination notwithstanding the uniform rate for each plantation based on the actual crop yielding area.

20. The petitions must therefore fail. They will be dismissed with costs

SHELAT, J. �

Petition No. 1, a public limited company, of which the second petitioner is a shareholder, owns the Twyford Estate situate in Kuttikanam area in Kerala State. The estate is a tea plantation admeasuring 1,006 hectares (2,486 acres), out of which 491 hectares (1,214 acres) have tea plants. In these petitions, the petitioners challenge the constitutional validity of the Kerala Plantations

(Additional Tax) Act, XVII of 1960, as amended by the Kerala Plantations (Additional Tax) Amendment Act, XIX of 1967 (hereinafter referred to as the Act). The challenge is on the ground that the Act violates the petitioners' guaranteed rights under Articles 14, 19 (1) (f) and (g) and 31 (i).

22. Before we set out the facts and the contentions based thereon, it is necessary to recite briefly the history of the legislation pertaining to land taxation in the State.

23. In 1955, the Legislature of the then State of Travancore-Cochin passed the Travancore-Cochin Land Tax Act, XV of 1955 which by Sections 4 and 5 imposed in respect of all lands, of whatever description and tenure, a uniform rate to be called the basic tax at the rate of pies 3 per cent. per annum in lieu of any existing tax in respect of the said land. With the formation of the present State of Kerala under the reorganisation of States, the State Legislature passed the Travancore-Cochin Land Tax (Amendment) Act, X of 1957, by which the expression "the State of Kerala" and "the Land Tax Act" were substituted for the words "the State of Travancore-Cochin" and "the Travancore-Cochin Land Tax Act" respectively. The amendment Act also added a new section, Section 5-A; which inter alia, provided for provisional assessment of the basic tax for lands so far not surveyed. The constitutional validity of Act XV of 1955, as amended by Act X of 1957, was challenged in this Court in Moopil Nair v. The State of Kerala ((1961) 3 SCR 77). The Act was struck down by this Court, inter alia, on the ground of its being violative of Articles 14 and 19 (1) (f). The judgment of this Court striking down the Act was pronounced on December 9, 1960.

24. Before the case of Moopil Nair (supra) was decided, the Kerala Legislature passed the impugned Act, XVII of 1960, which on receiving the Governor's assent, was published in the Gazette Extraordinary of August 24, 1960. Section 2 (6) of the Act defined a "plantation" to mean land used for growing one or more of the seven categories of trees or plants set out therein, Category 5 thereof being tea plants. Thus, the land used for growing any trees, plants or crops other than these seven categories is not subject to the additional tax under the Act. Section 3 provides that there shall be charged, in respect of the lands comprised in plantations held by a person, an additional tax or plantation tax at the rate specified in Schedule I and the person holding such plantation shall be liable to pay the plantation tax. Schedule I to the Act lays down that the additional tax would not be payable if the aggregate extent of the plantation held by a person is below 5 acres. But if it is 5 acres or more, the first two acres thereof would be exempt from the tax, and the remainder would be chargeable at the rate of Rs. 8/- per acre. Sub-section 4 of Section 3 provides that for purpose of the assessment of plantation tax payable by a person under this Act, the extent of plantation held by him shall be determined in the manner specified in Schedule II. Section 3 (5) declares that the tax charged under this section shall be in addition to the basic tax payable under the Land Tax Act, 1955. Sections 4 and 5 deal with the returns relating to the plantations, the determination of the extent of plantation and the assessment of the tax. The rest of the provisions of the Act provide for such subjects as the provisional assessment, notice of demand, appeal and revision against assessment orders, recovery of the tax, refund etc. Schedule II provides that the extent of plantation held by a person shall be deemed to be the aggregate of the following expressed in acres, namely :-

> (i) the quotient obtained by dividing the total number of bearing cocoanut trees standing on all lands held by him by 85;
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> (ii) the quotient obtained by dividing the total number of bearing arecanut trees standing on all lands held by him by 600;

(iii) the quotient obtained by dividing the total number of yielding rubber plants standing on all lands held by him by 180;

(iv) the quotient obtained by dividing the total number of yielding coffee plants standing on all lands held by him by 600;

(v) the quotient obtained by dividing the total number of yielding pepper vines standing on all lands held by him by 400;

(vi) the extent of lands on which tea plants are grown which have begun to yield crops; and

(vii) the extent of lands on which cardamom plants are grown which have begun to yield crops :

Provided that where the total extent of land held by a person, which is cultivated with the aforesaid crops, is less than the aggregate calculated as above, the actual extent alone shall be deemed to be the extent of plantations held by him. Tough the Schedule lays down different quotients in respect of lands cultivated with cocoanut and arecanut trees, rubber and coffee plants and pepper vines, they cannot achieve equality of the burden of the tax as yields of even the same crop cannot be equal or approximately equal by reason of differences in the lands in one area from those in other areas depending on their soil, situation and a number of other such factors. Furthermore, no explanation is forthcoming about the principle, if any, on which the quotient for each of the said categories was fixed and whether they inter se work out reasonable equality among the plantations cultivating the said trees and plants. In the case of tea plants, the holder is liable to pay tax on the extent of lands on which they are grown irrespective of the number of tea plants which are or can be grown, their quality or their possible yield.

25. The Act was amended, as aforesaid, by Act XIX of 1967 by which the expression 'additional tax' was substituted by the word 'tax', and in Section 4 instead of the measure for charging the tax being 5 acres or more, the measure now adopted was 2 hectares and more. The two new Schedules, which were substituted for those in Act XVII of 1960 provided by Schedule I that no tax would be payable if the aggregate extent of plantation was below 2 hectares, but where it is 2 hectares or more, there would be no tax on the first one hectare but the rest of the land would be taxed at Rs. 50/- per hectare. With the substitution of hectare as the measure in place of acre, the quotients were suitably modified in proportion of a hectare being equal to 2.475 acres. Thus, under the Act, as amended by Act XIX of 1967, a holder of land, whose land is plantation, is now required to pay Rs. 50/- per hectare instead of Rs. 20 per hectare over and above the basic tax payable by him under the Land Tax Act, 1955, as amended in 1957. The petitioner-company thus is liable to pay Rs. 24,500/- as additional tax on its 491 hectares cultivated for tea plants over and above the basic tax payable by it. It will be noticed that notwithstanding the reason on which in Moopil Nair's decision (supra) the Land Tax Act, XV of 1955 was struck down, no changes in the light of that decision were made in Act XVII of 1960 even when it was amended in 1967.

26. In consequence of Act XV of 1955 having been struck down as aforesaid, the Kerala Legislature passed a new Act, called the Kerala Land Tax Act, XIII of 1961, giving it a retrospective effect by Section 1 (3) thereof. The Act was obviously passed in the light of the observations made by this Court in Moopil Nair's case (supra). Section 5 provided that there shall be charged a tax called "basic tax" on all lands of whatever description and tenure. Sub-section 3 of that section provided

that the basic tax so charged shall be deemed to be public revenue due on lands within the meaning of the Revenue Recovery Act. Section 6 (1) laid down the rate of the basic tax. The basic tax was first fixed at Rs. 2/- per acre per annum, but subsequently changed to Rs. 4.94 P. per hectare. Section 6 (2) provided that notwithstanding anything contained in sub-section (1), where a landholder liable to pay basic tax proved to the satisfaction of the prescribed authority that the gross income from any land way less than Rs. 10 per acre per annum (now charged to Rs. 24.70 P. per hectare), the basic tax payable on such land shall be at a rate fixed by the prescribed authority calculated at 1/5th of the gross income from such land. The second proviso to sub-section 2 laid down that the Government may, having regard to the potential productivity of any land used principally for growing cocoanut, arecanut, pepper, tea, coffee, rubber, cardamom, or cashew or any other special crop, plant or tea that might be specified by the Government by notification, levy and collect basic tax at the rate of two rupees per acre per annum on such land notwithstanding the fact that such crops, plants or trees have not begun to yield or bear and that for the time being no income is made from the land or that the income made is less than ten rupees per acre per annum. Explanation (i) to Section 6 laid down that for the purpose of Section 6 gross income shall mean the actual gross income or the gross income that would be made from the land with due diligence, whichever was higher. Thus, Section 6 (2), the second proviso thereto and Explanations 1 and 3 to the section clearly disclose that this time the Legislature taxed the land on the standard of potential productivity instead of the ad hoc levy originally provided in the Act of 1955 and also removed the objection as to the absence of any remedy against assessment by providing appeal and revision. The position, therefore, is that whereas under the Kerala Land Tax Act, XIII of 1961, as amended in 1968 and 1969, the basic or land tax is levied on the basis of potential productivity and yield, the tax as imposed by the impugned Act as a tax in addition to the basic tax is a uniform tax at a flat rate without any regard to the productivity of the land, potential or actual.

27. According to the petitioners, Peermade Hills, where their estate is situate, falls roughly into two areas : the Kuttikanam area and the Periyar valley area. Though both these areas are situate in high ranges, they differ in the extent of their productivity and quality, the reason being that the Periyar valley area is the basin of Periyar river. The difference in the fertility and the quality of soil in these two areas is sought to be illustrated by showing that Twyford estate situate in Kuttikanam area and Haileyburia estate situate in Periyar valley area, though under common management, give different average yields. The average yield in 1967 per hectare in Twyford estate was 959 kgs. while that of Haileyburia estate was 1,542 kgs. To show such differences also in other areas in the State and elsewhere the petitioners have furnished various statistics. These statistics first show that the average annual yield per hectare in the tea-growing areas in Madras, Mysore and Kerala for the year 1967 was 1,394, 1,178 and 1,076 kgs. respectively. The all India average yield according to these figures was 1,100 kgs. per hectare per year. The average of tea production per hectare in Kerala State thus compares favourably with that of the other tea growing regions as also with the all India average. Therefore, the tea planters in Kerala cannot be said to be backward or lass forward-looking or less venture-some than those in the other regions. Secondly, these figures also show that the average yield in the different districts in Kerala itself varies from district to district ranging from about 350 kgs. for the district of Ernakulam to as much as 1,850 kgs. for Trichur district, The production figure for the whole of the Kerala State appears to have remained steady throughout 1965 to 1967 as it varies from about 43,000 kgs. to 44,000 kgs. These figures indicate that different areas in the State where tea is grown differ in a very large way in productivity and fertility. These figures are taken from the Reports of the Tea Board, and therefore, can be safely regarded as reliable.

28. In the counter-affidavit filed by the State these differences, no doubt, are not admitted. To show

that such differences do not exist only the example of one estate, Glenmari near Kuttikanam, is taken. It is urged that that estate has a larger production per hectare than the petitioners' estate though both happen to be situate in the same area. The respondents, however, have frankly conceded that the fertility of the land and the differences in productivity of estates in different areas are not relevant, for, the impugned tax is levied with reference to the specified user to which the land is put and not to its productivity, potential or actual.

29. Counsel for the petitioners contended that the tax charged under the Act is discriminatory and arbitrary, and therefore, violates Article 14. The argument was that the tax, being an ad hoc levy uniformly imposed, merely on the basis of the use of the land for any one or more of the seven kinds of trees and plants selected by Section 2 (6) of the Act, without any classification and without any consideration to the situation, the kind of land, its potential productivity, water-supply, natural or artificial, and geographical features, falls unequally on the holders of the land. It was submitted that this inequality arises as a result of the absence of any rational classification, and the Act, for that reason, suffers from the same infirmity for which in the Moopil Nair's case (supra) this Court struck down the Travancore-Cochin Land Tax Act, 1955, as amended by Act X of 1957. The contention urged, on the other hand, on behalf of the State was that by selecting the seven kinds of plantations in Section 2 (6), the Legislature has made an intelligible classification amongst holders of land, that classification has a reasonable nexus with the object of the Act, namely, to obtain additional revenue by imposing tax in addition to the basic tax, that the Legislature in the matter of taxation has a wide discretion in selecting persons and properties for imposing a tax, that in exercise of its power to tax, it was entitled to levy the tax based on certain kinds of user of land and was not bound to make a further classification of the land according to its potential productivity, its situation, its geographical features, income and other such considerations.

30. Before we examine these contentions we think it expedient to consider first the principles laid down by this Court in the matter of the power to levy taxes of the kind we have before us. In Moopil Nair's case (supra), this Court laid down the following principles : (1) that Article 14 read with Article 13 (2) applies to a taxing statute as much as to other statutes, and therefore, if the impugned statute, even though a taxing one, violates Article 14, it has to be stuck down as unconstitutional; (2) that the statute there impugned, namely, the Travancore-Cochin Land Tax Act, 1955, as amended by Act X of 1957, imposed an uniform tax on all lands, whether productive or not, and without any reference to their income, actual or potential; (3) that since the Act in terms claimed by Section 3 thereof to be a general revenue settlement of the State, the tax being one on land or land revenue had to be assessed and levied on the actual or potential productivity of the land sought to be taxed. In other words, such a tax has reference to the income actually made or which could have been made with due regard to its incidence; and (4) that the inequality writ large on the Act arose by reason of the absence of any classification of the land on which the tax was imposed. The argument which appears to have appealed to the learned dissenting Judge that the Act made a classification between holders of land according to the quantum of land held by them and that classification was reasonable linked with the object of the Act to raise revenue for the State, failed to receive the approval of the rest of the Court. The fact that a person holds a large area of land and is taxed according to the area he holds cannot by itself mean that in taxing him he is meted out equal treatment as compared to a person who holds a lesser quantity of land but of a better and more productive quality, merely on the ground that both hold land and are taxing according to the quantity each of them holds. A uniform tax without consideration of its incidence, when actually implemented must result in inequality of treatment amongst persons similarly situated, and therefore, would be violative of Article 14.

31. In The State of Andhra Pradesh v. Nalla Raja Reddy (1967 (3) SCR 28) the relevant facts were as follows : Originally two different revenue systems prevailed in Andhra and Telengana. In the former, the principles of Ryotwari system prevailed which meant that lands were classified under two principal heads, wet and dry. Lands of similar grain values were bracketed together in orders called "tarams", each with its own rate of assessment, which was further adjusted in the case of dry lands with reference to the nature and quality of water supply. This system prevailed since times immemorial and by reason of its being equitable had general approval. In Telengana, the relative scale of soils was classified in there of annas. The existing or former rates used to be taken as the basis for the purpose of resettlements and were adjusted having regard to altered conditions, such as the rise and fall prices, increase in population, etc. Besides, the settlement officers used to fix the rates after ascertaining what profit would be left to the cultivators. Thus, under the system of assessment which prevailed in both the areas, the land revenue fixed varied according to the classification of soil based upon productivity productivity. Later, the Andhra Pradesh Land Revenue Assessment (Standardisation) Act, 1952 and the Hyderabad Land Revenue (Special Assessment), Act 1952 were passed to standardise the rates on the basis of price level. These two Acts increased the rates by way of surcharge on the existing rates. In 1958, the State Government appointed a Committee to examine the existing system of rates of assessment. The Committee inter alia suggested that assessment should be based on the quality and productivity of soils, the nature of water supply and the princes. The State Legislature then passed the impugned Act, Andhra Pradesh Land Revenue (Additional Assessment) and Cell Revision Act, XXII of 1962, which was amended by Act XXIII of 1962. Under Section 3 and 4 of the Act, as amended, a new scheme was laid down in accordance with which an additional assessment at 75% of the earlier assessment was charged. But the proviso thereto laid down that the total assessment should not in any case be less than 50 nP. per acre per year, irrespective of the quality and productivity of the soil. Every acre of dry land had thus to bear a minimum assessment of 50 nP. per acre per year. For wet lands also, a scheme was adopted which took no account of the quality and productivity of the soil. The Act was challenged on the ground of discrimination arising from the absence of classification as in the case of Moopil Nair (supra). In considering the challenge the Court observed :

> "A statutory provision may offend Article 14 of the Constitution both by finding differences where there are none and by making no difference where there is one. Decided cases laid down two tests to ascertain whether a classification is permissible or not, viz., (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that the differential must have a rational relation to the object sought to be achieved by statute in question. The said principles have been applied by this Court to taxing statutes. This Court in Kunnathat Thathunni Moopil Nair v. The State of Kerala, [(1961) 3 SCR 77], held that the Travancore-Cochin Land Tax Act, 1955, infringed Article 14 of the Constitution, as it obliged every person who held land to pay the tax at the flat rate prescribed, whether or not he made any income out of the property, or whether or not the property was capable of yielding any income. It was pointed out that that was one of the cases where the lack of classification created inequality."

The Court observed that in the case before it the whole scheme of Ryotwari system was given up so far as the minimum rate was concerned. A flat rate was fixed in the case of dry lands without any reference to the quality or fertility of the soil, and in the case of wet lands, a minimum rate was fixed and it was sought to be justified by correlating it to the avacut. The Court held that that scheme of classification was adopted without any reasonable relation to the objects sought to be

achieved, namely, fixation and rationalisation of rates, and therefore, clearly offended the equal protection clause.

32. In Khandige Scheme Bhat v. The Agricultural Income-tax Officer (1968(3) SCR 809, 817), the Court reaffirmed the principles laid down in Moopil Nair's case (supra) and observed with regard to the provisions here impugned :

> "In order to judge whether a law was discriminatory what had primarily to be looked into was not its phraseology but its real effect. If there was equality and uniformity within each group, the law could not be discriminatory, though due to fortuitous circumstances in a peculiar situation some included in a class might get some advantage over others, so long as they were not sought out for special treatment. Although taxation laws could be no exception to this rule, the courts would, in view of the inherent complexity of fiscal adjustment of diverse elements permit a larger discretion to the Legislature in the matter of classification so long as there was no transgression of the fundamental principles underlying the doctrine of classification. The power of the Legislature to classify must necessarily be wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways."

The principle emerging from these decisions is thus fairly well-settled. While granting a fairly wide discretion to the Legislature in the matter of fiscal adjustment, the Court will at the same time insist that the statute in question, like any other statute, should not infringe Article 14 either by introducing unreasonable or irrational classification between persons or properties similarly situated or by a lack of classification. Further, in examining the objection under Article 14 the Court has not to go by the phraseology only of the provision under challenge, but its real impact on persons or properties.

33. The challenge urged on behalf of the petitioners may now be examined in the light of these principles. Both the title and the preamble of Act XVII of 1960 in clear terms call the tax one in addition, as Section 3 (5) declares it, to the basic tax, payable on lands falling under its purview, i.e., plantations, as defined by Section 2 (6). A plantation, as defined by Section 2 (6), means the land used for any one or more of the seven types of trees and plants set out therein. The tax is thus chargeable in respect of lands which are plantations and not the rest of the lands however much their income may be. Apart from that, as stated in the State's counter-affidavit, the tax is imposed on the ground of the particular use to which the land is put and not on the basis of its productivity or income, actual or potential. This is so, although it is a tax in addition to the basic or land tax levied under the Kerala Land Tax Act, XIII of 1961, and although that basic tax under Section 6 of that Act depends upon the gross income yielded by the particular land. It is true that under the second proviso to that section, if the land is used for growing any of the crops therein mentioned, the Government can impose, having regard to its potential productivity, the basic tax at Rs. 2/- per acre, even though the land has not yet begun to yield or bear the crop and no income has yet begun to be made therefrom. By subsequent amendment the rate was changed to Rs. 4.94 per hectare, but the principle of potential productivity was maintained. The additional tax imposed by Act XVII of 1960, on the other hand, is on the same land provided it is used for growing any one or more of the specified trees or plants, originally at the uniform rate of Rs. 8/- per acre but now enhanced by Act XIX of 1967 to Rs. 50/- per hectare, i.e., Rs. 20/- per acre. As already stated, the Amendment Act deleted the word 'additional' but the deletion makes no difference as the tax is still in addition to the basic or land tax and must, therefore, partake its character, both taxes being taxes in respect of the same land, where the land is plantation within Section 2 (6). Thus, so far as such lands are

concerned, the basic tax on them is assessed according to their productivity or income. But the tax under Act. XVII of 1960, as amended by Act XIX of 1967, is imposed in respect of them as an ad hoc uniform tax, irrespective of the kind of their soil or their capacity etc. and only for the reason of their particular user. Prima facie the incidence of such a tax by reason of its uniformity is bound to be unequal on persons similarly situated and would, therefore, be hit by the equality clause in Article 14. Even assuming that the basic tax is a revenue assessment and the additional tax is not, it would still make no difference in its unequal incidence on those whose lands by their particular user are plantations. In other words, the burden of the tax on persons situated in similar circumstances, i.e., those whose lands are plantations, would be unequal, depending upon the kind of soil, the geographical situation, water-supply, elevation and other relevant factors touching the lands they hold. The additional tax is by no means low as it is, after the passing of the amendment Act XIX of 1967, Rs. 50 per hectare, equivalent to Rs. 20 per acre. A person holding 1,000 acres of land of inferior soil would, by reason of such an ad hoc tax, be bound to be hit harder than the one holding 1,000 acres of superior land with higher fertility or productivity. Such a result would not occur if the land is classified and the incidence of the tax is graded according to its productivity and other relevant factors.

34. In support of the Act it was argued that the impugned Act not only makes a classification between those who hold lands which are plantations and those who hold lands which are not plantations, but also makes a further classification within that classification by the method provided for calculating the extent of plantations in Schedule II. That argument does not appear to be correct. The Schedule only provides the methods for calculating the extent of the plantations : (1) by means of quotients; and (2) where tea and cardamom plants are cultivated by the actual extent of the land used for those purposes. But the Schedule does not solve the difficulty. A piece of land in one area may have a certain number of trees or plants of one or more of the specified categories to make it a plantation. But the incidence of the tax in respect of it would be unequal as compared to another land situate elsewhere by reason of the latter's better situation or fertility even if the number of plants or trees of the specified kind are the same, depending upon the situation and the capacity of the two lands. In such a case the very uniformity of the tax is bound to result in discrimination on account of the relative potentiality of the two lands not being taken into account, and the lands not being classified accordingly. It is, therefore, difficult to say that the Schedule, intended only for calculating the extent of the plantations, seeks to achieve equality of treatment between one kind of plantation and another or between plantations of the same kind, if the principle of their yield or income, actual or potential, is not taken into account. How is it possible to say that the uniform burden of Rs. 50/- per hectare in the case, say of cocoanut, tea, coffee or cardamom plantations, is reasonably equal, when the potential yield of each such plantation is not taken into consideration ? The same result must also follow amongst holders of the same kind of plantations if the principle of yield or income is discarded. Thus, Schedule II only provides the two methods of calculating the extent of the plantation and does not make a classification within a classification as urged. The only classification made is between those whose lands fall under the definition of 'plantation' and those whose lands do not. All those who hold lands which are plantations are made liable to pay the tax at the uniform rate of Rs. 50/- per hectare, no matter what kind of crop, out of the seven kinds mentioned in the Act, is cultivated by them, without regard to the fact that one kind may be more valuable than the other and irrespective of their situation, their income-yielding capacity and other factors.

35. The result of such uniform imposition is that tea planters, who hold lands in Ernakulam, Trichur and Kottayam districts, would pay the same amount of tax per hectare although the average yield per hectare in these districts for the years 1965 to 1967 was about 350, 1825 and 1050 kgs.

respectively. The difference in yield in these different districts must clearly be due to the difference in the soil, situation and such other factors, for, it is nobody's case (at least not made out in the counter-affidavit of the respondents) that the cultivators in Ernakulam district use inferior seed or are less venturesome than those in Kottayam and Trichur districts. Such a difference in the average yield per hectare occurs also in other tea-growing districts, namely, Cannanore, Palghat, Kozhikode, Trivandrum and Quilon, whose average yield per hectare during the years 1965 to 1967 was 950, 1490, 1575, 975 and 650 kgs. respectively. Since these figures are from the statistics prepared by the Tea Board, they cannot be disputed. That such differences in the average yield occur also in the different districts of the States of Madras and Mysore is also clear. Surely, they cannot arise because the cultivators of one district are more adventurous or more technology-minded than those of the other districts. The differences in the yield must, therefore, be attributed to the differences in the soil, situation, water-supply, rainfall etc.

36. Imposing an uniform rate of tax in respect of lands where tea is grown, without classifying them on the basis of their productivity, actual or potential, and without differentiating the inferior from the superior kind of soil or without taking into consideration the fact of some of these lands being situated in more advantageous position than the rest, must, therefore, inevitably result in unequal incidence of the tax on those who hold those lands. Therefore, as in the case of Moopil Nair (supra), the present case is also one where inequality emerges as a result of imposing an ad hoc tax, uniformly levied without making any rational or intelligible classification. There is no indication in the Act and none was even sought to be shown as to how and on wheat basis the uniform rate of Rs. 50/- per hectare was fixed and whether if had any relation to the capacity of those who hold lands with different average yields ranging from 350 kgs. per hectare in Ernakulam to about 1850 kgs. per hectare in Trichur, in addition to the basic tax also payable by them. Obviously, the tax imposed in the manner pointed out above must result in inequality among the holders who use their lands for tea growing though they are similarly situated. The principles laid down in Moopil Nair's case (supra) approved and confirmed in subsequent decisions and which are binding upon us, apply to the impugned statute.

37. But in Thuttampara Planting Co. v. Tahsildar (1964 KLT 47) na learned Single Judge of the Kerala High Court repelled the Contention as to the invalidity of Act XVII of 1960 and held that the decision in Moopil Nair's case (supra) did not apply as by adopting the quotients in Schedule II the impost had been related to the potentiality of the land and its possible yield. As already pointed out, even the counter-affidavit filed by the State in the present petition, does not claim that the additional tax imposed under this Act taken into account the potentiality of the land or its possible yield. It, on the other hand, asserts in plain language that the tax is levied by reason only of the particular use to which the land is put and which makes it fall within Section 2 (6). If potentiality of the land and its possible yield had been taken into consideration, the amount of tax could not have been uniform as its quantum would have depended on its quality, situation and other factors. Indeed, in Essa Ismail v. State of Kerala, (ILR 1965 (2) kER 619) a Division Bench of that very High Court held that what Act XVII of 1960 did was to tax lands comprised in plantations, not on the basis of their productivity but on the basis of their user. But the Division Bench held that the Act was "just and equitable", and therefore, was not hit by Article 14. At page 623 of the Report, the learned Judges observed that the yield would vary from crop to crop and place to place, but "it is not the productivity of the soil that forms the foundation of the tax but its user in a specific way for a specific purposes". Though these two decisions cited Moopil Nair's case (supra), neither of them considered the result of the lands being uniformly taxed without classifying them according to their potentiality so that the incidence of the tax may be just and equitable. How a tax imposed uniformly without regard to the potentiality of the property taxed and without any classification on any other

just basis works inequality is illustrated by the scrutiny by this Court of the Kerala Buildings Tax Act, XIX of 1961 in the State of Kerala v. Haji K. Kutty (AIR 1969 SC 378). After noting the uniform rate of the tax levied according to the floor area of a building but without taking into account its kind or its potential yield, the Court observed :

> "For determining the quantum of tax the sole test is the area of the floor of the building. The Act applies to the entire State of Kerala, and whether the building is situate in a large industrial town or in an insignificant village, the rate of tax is determined by the floor area; it does not depend upon the purpose for which the building is used, the nature of the structure, the town and locality in which the building is situate, the economic rent which may be obtained from the building, the cost of the building and other related circumstances which may appropriately be taken into consideration in any rational system of taxation of building."

At page 380 the Court further observed :

> "But in enacting the Kerala Buildings Tax Act no attempt at any rational classification is made .... As already observed, the Legislature has not taken into consideration in imposing the tax the class to which the building belongs, the nature of construction, the purpose for which it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation. They have adopted merely the floor area, of the building as the basis of tax irrespective of all other considerations. Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality."

On this reasoning the charging section of the Act impugned in that case was held violative of Article 14 and therefore bad.

38. The same reasoning is, in our view, apposite so far as the impugned tax is concerned, for, the tax is uniformly levied merely on the footing of the land being used for growing tea, without any regard to its potentiality, situation, the kind of tea which can suitable be grown at a particular place, its geographical and other features etc. No doubt, the State in exercise of the taxing power can select persons and objects for taxation but if it is found that within the range of that selection the law operates unequally by reason either of classification or its absence, such a provision would be hit by the equality clause of Article 14. (See East India Tobacco Co. v. State of Andhra Pradesh. (1963) 1 SCR 404) Even amongst the selected plantations inequality as a result of uniformity of tax must result because it is possible that the user of the land for one specified purpose may give a better and a more valuable yield than the user of another land though situated in the same area for another specified purpose. This, in our view, has happened in so far as the tax on tea plantations, with which only we are concerned in these petitions, is concerned, and therefore, to the extent that Act XVII of 1960, as amended by Act XIX of 1967, imposes the tax on holders of tea plantations, it is violative of Article 14 and is, therefore, void.

39. Accordingly, the petitions are allowed with costs.

Order

40. In accordance with the opinion of the majority, the petitions are dismissed with costs.

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