SUPREME COURT OF INDIA

Divisional Forest Officer

Vs.

Tata Finlay Ltd.

C.A.No.2529 of 1997

(S.N.Variava and S.S.M.Quadri JJ.)

10.07.2001

JUDGMENT

Syed Shah Mohammed Quadri, J.

1. The State of Kerala and the Divisional Forest Officers of two divisions are in appeal, by special leave, against the judgment and order of the High Court of Kerala at Ernakulam in O.P.No.1156 of 1981 dated January 31, 1984. The High Court held that the *Kerala Grants and Leases (Modification of Rights) Act, 1980* (for short 'the 1980 Act') was not applicable to the lands held by the respondents under lease and quashed the impugned demand notices issued by the appellants demanding seigniorage rates from the lessees for all the produce cut and removed from the demised lands, as per sanction given, including produce consumed inside the concession area by them. The dispute centres round the validity of demand of seigniorage rates raised by the appellants in respect of cutting and removing eucalyptus trees grown and used by the respondents on the land held by them as lessee. To make the controversy intelligible, it will be necessary to note the relevant facts. The first respondent is the successor-in-interest of the lessee of Poonjar concession land. It carries on the business of plantation and manufacturing tea. On July 11, 1877, Poonjar Chief granted concession by way of lease of large extent of land in the erstwhile Travancore State, in favour of one John Daniel Munro for consideration of Rs.5000/- and yearly rent of Rs.3,000/-. The grant was ratified by Maharajah of Travancore under a deed executed on November 28, 1878. On a request made by the said Munro, a further concession was granted in respect of the same land with some extended rights on July 26, 1879. That land which comprises of Kannan Devan Hills was later transferred by him in favour of North Travancore Land Planting and Agricultural Society Ltd. on December 8, 1879. With regard to reduction of the tax liability under the said deed an agreement was entered into between the society and the Poonjar Chief on August 2, 1886. By a Royal Proclamation dated September 24, 1899 made by the Maharaja the territory of Poonjar Chief including the lands in question was made part of the State of Travancore reserving the right of Poonjar Chief to receive the annual rent of Rs.3000/- under the aforementioned concession. The first respondent also holds as lessee 'Malki Marai Estate' which was leased out by the Maharaja of the erstwhile Government of Cochin in favour of its predecessor-in-interest. The land in dispute encompasses both

Kannan Devan Hills area as well as Malki Marai Estate. The second respondent is the Regional Officer of the first respondent (hereinafter they will be referred to as 'the respondent'). After States re-organization the *State of Travancore and Cochin became part of the State of Kerala. In 1971,* the State of Kerala passed the *Kannan Devan Hills (Resumption of Lands) Act, 1971* (for short 'the 1971 Act') which came into force on January 21, 1971. By Section 3(1) of the 1971 Act the possession of the entire extent of the land situated in the Kannan Devan Hills village in the Devicolam taluk stood transferred to and vested in the Government of Kerala free from all encumbrances Clause (a) of sub-section (2) of Section 3 provides that sub-section (1) shall not apply to plantations other than plantations belonging to tresspassers. Under Section 4 of the said Act possession of the land which had vested in the State under Section 3(1), was restored on the application of the respondent on the same terms and conditions on which it was holding before the appointed day. Thereafter, the State of Kerala passed the aforementioned 1980 Act. Section 3 of the 1980 Act specifies the grants and leases of lands to which that Act applies. Section 4 which is in the nature of charging section imposes an obligation on the grantees and lessees to pay seigniorage rates in force for the time being for the timber cut and removed from any land held by him under the grant or lease. It is under that section that the appellants raised demand against the respondents. In O.P.No.1156-H of 1981, filed in the High Court of Kerala at Ernakulam, the respondent challenged the constitutional validity of the Act, the legality of the demand and sought a writ prohibiting the appellants from interfering with felling of eucalyptus and other trees for the use of the respondent and from levying seigniorage on such trees and firewood under the Act. The High Court by judgment dated January 31, 1984, under challenge, declared that the provisions of the 1980 Act did not apply to the lands in question, quashed the demand raised under various letters and issued a writ prohibiting the appellants from interfering with the cutting of eucalyptus and other trees for the respondents own requirement and from levying seigniorage on such trees and firewood under the Act. Having regard to the nature of real controversy which arises in this appeal, we consider it unnecessary to refer to the various contentions urged by Mr.P.Krishnamurthi, the learned senior counsel appearing for the appellants and Mr.Ashok H.Desai, the learned counsel appearing for the respondents. The respondent is primarily aggrieved by levy of seigniorage rates under Section 4 of the 1980 Act on the eucalyptus and other trees which were cut and utilised in the factories which are situated within the boundaries of the lands in question. This issue can be resolved with reference to the provisions of Section 4 of the 1980 Act which reads as under :

> "4. Grantees and lessees to pay current seigniorage rates - (1) Notwithstanding anything contained in any law for the time being in force, or in any grant, lease deed, contract or agreement, or in any judgment, decree or order of any court, with effect on and from the commencement of this Act, every grantee and every lessee shall be bound to pay to the Government the seigniorage rates in force for the time being for the timber cut and removed from any land held by him under the grant or lease."

2. The section, quoted above, commences with a non-obstante clause and gives an overriding effect to the provisions of that section over anything contained in any law for the time being in force, or in any grant, lease deed, contract or agreement, or in any judgment, decree or order of any court, with effect on and from the commencement of that Act (June 25, 1980).

The impost -- seigniorage rates in force for the time being -- is payable by every grantee and lessee to the Government for the timber cut and removed from any land held by him under the grant or lease. Thus, it is clear that every grantee and every lessee is made liable to pay the Government seigniorage at the rates in force for the time being in force for the timber cut and removed from any land held by him under the grant or lease. Since the liability to pay seigniorage is cast on the grantee and the lessee, it may be necessary to notice the meanings of the terms 'grant, grantee, lease and lessee' defined in clauses (b), (c) (d) and (e) respectively of Section 2. They are as follows :

> "(b) "grant" means any grant to which this Act applies.
>
> (c) "grantee" means the person in whose favour a grant has been made and includes his heirs, successors and assigns;
>
> (d) "lease" means any lease to which this Act applies;
>
> (e) "lessee" means the person in whose favour a lease deed has been executed and includes his heirs, successors and assigns."

3. A perusal of the definition of terms 'grant' and 'lease' indicates that the liability under Section 4 extends to only those grants and leases which satisfy the requirements of Section 3 of the 1980 Act. The High Court, as noted above, held that the 1980 Act would not apply to subject 'leases'. In our view, as alluded, without touching upon that aspect, the appeal can be decided on the terms of Section 4 of the 1980 Act, referred to above. Now, reverting to Section 4 of the 1980 Act, Mr.Ashok Desai would contend that a claim for seigniorage implied ownership of a share in the property in respect of which it would be payable; that word is equivalent of Malyalam term "kuzhi kanam" which means owner or shareholder and as the eucalyptus trees were grown by the respondent and the appellants had no share in them, the impugned demand was unsustainable and was rightly so held by the High Court. The first point that is required to be examined is the import of the expression "seigniorage". It is not defined in the Act. It is not a term of art. It has to be understood in the meaning it bears in English. The relevant meaning of that expression "seigniorage" given [in the New Shorter Oxford English Dictionary] is : Profit made by a government by issuing currency; the difference or margin between the face value of coins and their production costs; the Crown's right to charge a percentage on bullion brought to a mint for coining; the amount charged, something claimed by a monarch or feudal lord as a prerogative. From the above meaning, it may be seen that the expression "seigniorage" has two distinct meanings (i) profit made by a Government by issuing currency, the Crown's right to charge a percentage on bullion brought to a mint for coining; and (ii) something claimed by a monarch or feudal lord as a prerogative. We are unable to accept that seigniorage is used in Section 4 synonymous with "kuzhi kanam" because the legislature has used the said expression in clause (d) of Section 3 in the sense of conferment of right of ownership by the State on payment of royalty, kuzhi kanam. The distinction between kuttikanom and seigniorage is explained by a *Kerala High Court in Leslie vs. State of Kerala*[1] in the following words :

> "We do not think that 'kuttikanom' is either a fee or tax. A tax or fee is levied in the exercise of sovereign power. We think that in the context 'kuttikanom' means the Government's share of the value of the reserved trees."

4. And it has been approved by this Court in *State of Kerala vs. Kanan Devan Hills Produce Co.*[2] in paragraph 20 which reads as under:

> "It was further held by Mathew, J. that kuttikanom being the Government's share of the value of the trees owned by the Government it has the power to fix the value of the trees. We agree with the reasoning and conclusions reached by Mathew, J. Since the ownership over the tree growth and timber in Concession Area vests with the Government it has a right to impose kuttikanom on the removal of the trees from within the Concession Area."

5. In Section 4(1), the expression "seigniorage" is employed to enforce a prerogative of the State de hors the right of ownership in the property. Therefore, the contention of Mr.Desai cannot be accepted. The second point for consideration is : whether eucalyptus trees fall within the meaning of timber. This term is also not defined in the Act. Its ordinary meaning in English may be gathered from : The Concise Oxford Dictionary, Eight Edition, 1990 at p.1277 Timber : wood prepared for building, carpentry etc. a piece of wood or beam, esp. as the rib of a vessel large standing trees suitable for timber; woods or forest a warning cry that a tree is about to fall Halsbury's Laws of England, Fourth Edn. Vol.19 at p.21 Timber : At common law oak, ash and elm are timber if over twenty years old, but not so old as to have no usable wood in them. Other trees may be timber by the custom of the country. Thus beech is timber by the custom of Buckinghamshire and parts of Gloucestershire. Aspen and horse-chestnut are timber in some countries. Trees less than six inches in diameter have been said not to be timber.

6. Agricultural usages between landlord and tenant also frequently define the species of trees which are regarded as timber in the localities where the usages subsist. In a contract for the sale of standing timber, "timber" may be synonymous with "trees" and so include lops and tops as well as trunks. By statute, "timber" includes all forest products.

7. In New Webster's Dictionary, the meaning of the word 'timber' is

> "Building material, timber..... wood suitable for building or for use in carpentry; the wood of growing trees suitable for structural uses; growing trees themselves; a single beam or peace of wood forming or capable of forming part of a structure.....
>
> Corpus Juris Secundum, Vol.54 at p.1

8. The word "timber" has an enlarged or restricted sense, according to the connection in which it is employed, and may refer to standing trees or wood suitable for the manufacture of lumber to be used for building and allied purposes.

9. Thus, it is seen that the word 'timber' may be used in a restricted as well as enlarged sense. In the restricted sense it means specified trees like oak, ash, elm, teak, blackwood, abony, karumthali etc. and in the enlarged sense it means woods suitable for building, furniture and carpentry etc. and includes standing trees. Its true meaning has to be determined from the context in which it is employed. In this connection it will be appropriate to refer to Section 3 of the 1980 Act which specifies the terms and conditions of the grants and leases of lands to which the Act applies. A perusal of clause (a) in the light of the meaning of 'timber', noted above, shows that the word 'timber' is used in Section 4 of the 1980 Act, in the enlarged sense to mean trees other than teak, blackwood, ebony, Karumthali etc. and in that sense it includes standing eucalyptus trees. The last aspect that needs to be addressed is whether felling of eucalyptus trees and taking them to the factory of the respondent situate on the land in dispute, amounts to removal of timber cut from any land held by it under the lease. In our view, the words 'cut and removed from any land' used in Section 4 do not suggest felling of the trees and removing the wood from one part to another on the land. They would indicate cutting the trees and removing them out of the limits of the land held by the grantee or the lessee under the grant or lease. Admittedly, in this case, the eucalyptus trees which are felled are taken to the factory of the respondents which is on the lands in question. Therefore, by cutting and taking the wood of the felled eucalyptus trees from the place where they are cut to the factory on the demised land where they are consumed, the respondent does not incur liability to pay seigniorage rates under Section 4 of the 1980 Act. On this ground alone, the impugned demand is liable to be quashed and to that extent we confirm the impugned judgment of the High Court. Inasmuch as the High Court had held that the letters of demand were unsustainable in law and quashed them, it was not necessary for the High Court to go into the question as to whether the provisions of the 1980 Act would apply to the leases of the lands in question. In this view of the matter, we are not inclined to go into the question as to whether Section 3 of the 1980 Act applies to the leases of the land in question and leave the question open to be decided in an appropriate matter. We, therefore, vacate the findings recorded by the High Court on this point. In the result we dismiss the appeal and direct the parties to bear their own costs.

[1]*AIR 1970 Kerala 21*
[2]*1991 (2) SCC 272*