KERALA HIGH COURT

Essa Ismail

Vs

State of Kerala

(M Menon, C.J. M M Nair, J.)

30.06.1965

JUDGMENT

M Menon, C.J.

1. These writ appeals are directed against the dismissal of 0. P, Nos. 2378 and 2379 of 1963 Writ Appeal No. 57 is from the decision in O. P. No. 2379 of 1963 and Writ Appeal No. 60 is from the decision in O. P. No 2378 of 1963. The common judgment for both the petitions reads as follows: In view of the decision reported in 1963 Ker LJ 1193: (AIR 1064 Ker 141) I dismiss the above petitions."

2. The sole question for determination is whether the Kerala Plantations (Additional Tax) Act, 1960, is ultra vires of Article 14 of the Constitution which provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. *Thuttampara Planting Co. v. Tahsildar, Chittur*[1]*,* is to the effect that the statute does not violate Article 14 of the Constitution.

3. Every difference in treatment is not an act of discrimination. It is not the lack of uniformity but the absence of an intelligible differentia that offends the article and abregates the statute.

4. The taxation provided by the Kerala Plantations (Additional Tax) Act, 1960, was additional to the taxation provided by the Land Tax Act, 1955. That Act was struck down by the Supreme Court in *Thathunni Moopil Nair v. State of Kerala*[2]*,* as violative of Article 14 of the Constitution. Subsequently the Kerala Land Tax Act, 1961, was passed and inserted in the Ninth Schedule to the Constitution by the Constitution (Seventeenth Amendment) Act, 1964.

5. The insertion of the Kerala Land Tax Act, 1961, in the Ninth Schedule placed it beyond the pale of the fundamental rights embodied in Part III of the Constitution. This is evident from Article 31B which occurs in that Part of the Constitution:

> "Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act. Regulation or provision is inconsistent with, or takes away or abridges any of the

> rights conferred by any provisions of this Part and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

6. The decision in 1901 Ker LT (SC) 11: (AIR 1961 SC 552) embodies the principles by which the validity of an Act like the one before us should he tested; and it is unnecessary to go beyond that decision for the determination of the cases before us. In that case the Supreme Court said:

> "The guarantee of equal protection of the laws mast extend even to taxing statutes, 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. Article 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."

7. The Kerala Plantations (Additional Tax) Act, 1960, as we read it. survives the test enunciated above. What it has done is to tax land comprised in plantations not on the basis of its productivity but on the basis of its user. This is clear from the definition of the expression "plantation" which occurs in Section 2(6) of that Act. According to that definition "plantation" means "land used for growing one or more of the following:
(i) cocoanut trees:
(ii) arccanut trees;
(iii) rubber plants;
(iv) coffee plants;
(v) tea plants;
(vi) cardamom plants;
(vii) pepper vines."

8. It has also to be noted that every attempt has been made to eliminate inequality in the incidence of the tax. Section 3(4) of the Act, for example, provides that for the purposes of assessment the extent of the plantations held by an assessee shall be determined in the manner specified in Schedule II; and Schedule II says:
"For the purposes of the assessment ot plantation tax payable by a person, the extent of plantations held by him shall be deemed in 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;
(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:
(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."

9. This method of calculating the extent of the plantations for the purposes of taxation is certainly fair and equitable; it is also indicative of the fact that the base of the tax is not the extent of the land possessed, but a specified type of user for specified types of crop.

10. It is true that the yield will vary from crop to crop and place to place. But as we have indicated above, it is not the productivity of the soil that forms the foundation of the tax but its user in a specified way for a specified purpose, that is, as a plantation for the cultivation of the seven items mentioned in the definition of the expression "plantation" in Section 2(6) of the Act.

11. It may also be true that there are other items which could have been brought, within the purview of the Act. But that does not mean that there has been a violation of Article 14 of the Constitution. As staled by Willis:

> "A state does not have to tax every thing 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." (Constitutional Law of the United States, Page 587).

12. To the same effect is the statement of the Supreme Court in *Sakhawant Ali v. State of Orissa*[3], *(S)* The Supreme Court said:

"It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution."
13. In the light of what is stated above we have no hesitation in holding that the Act impugned is not violative of Article 14 of the Constitution, that the decision in the O. Ps. has to be sustained, and that these writ appeals have to be dismissed. Judgment accordingly No Costs.

Cases Referred.

11963 Ker LJ 1193: (AIR 1964 Ker 141)
21961 Ker LT (SC) 11: (AIR 1961 SC 552)
3AIR 1955 SC 160