KERALA HIGH COURT

Thuttampara Planting Co

Vs.

Tahsildar, Chittur

O.P. No. 168 of 1962

(P. Govindan Nair, J.)

18.07.1963

JUDGMENT

P. Govindan Nair, J.

1. "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 petitioners, 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 fate 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". So said the Chief Justice of India in *K.T. Mooppil Nair v. State of Kerala*[1], This passage has been relied on by counsel for the petitioner in this case and he contends, that for the same reason for which the Supreme Court struck down the Travencore-Cochin Land Tax Act (15 of 1955 as amended by Act 10 of 1957), the statute impugned in this petition, the Kerala Plantations (Additional Tax) Act, 1960 must also be removed from the statute book.

2. It is necessary to refer to the arguments advanced in support of this contention. They were mainly two-fold. Firstly, it was urged that the State Legislature had no legislative competency to pass the Act impugned. Secondly, it was argued the statute, the Kerala Plantations (Additional Tax) Act, 1960, is discriminatory and violative of Article 14 of the Constitution.

3. in support of the first of these contentions, counsel referred to Item 45 in List II of the Seventh Schedule to the Constitution. He said that the Act does not purport to be a tax on agricultural income and would not, therefore, fall under Item 46 of the same List. His contention is that it would not fall under Item 45 either, for, according to him, the tax imposed is not on land, but, if it amounts to anything, it can only, be termed to be a tax on trees. In order to understand the scope of this contention, it is

[1] AIR 1961 SC 552
necessary to refer to some of the provisions of the statute. The preamble of the statute says :

> "Whereas it is expedient to provide for the levy of an additional tax on plantations in the State of Kerala". And "plantation"is defined in Section 2(6) thus :
> "Plantation"means land used for growing one or more of the following :
> (i) cocoanut trees;
> (ii) arecanut trees;
> (iii) rubber plants;
> (iv) coffee plants;
> (v) tea plants;
> (vi) cardamom plants;
> (vii) pepper vines."

The charging section, Section 3, reads as follows :

> "3. Charge of plantation tax : (1) Subject to the other provisions contained in this Act, for every financial year commencing on and from the first day of April, 1960, there shall be charged in respect of the lands comprised in plantations held by a person on the corresponding valuation date an additional tax (hereinafter referred to as plantation tax) at the rates specified in Schedule 1; and, the person holding such plantations shall be liable to pay the plantation tax.
> (2) The plantation tax assessed under this Act shall be payable by the assessee for every financial year until the extent of plantations held by him is revised and the plantation tax is assessed on the basis of the revised extent under Sub-Section (3), and from the financial year immediately following the revision the plantation tax assessed on behalf of such revision shall be payable.
> (3) The extent of plantations held by a person determined under Section 5 shall ordinarily be revised at the end of five years, but the assessing authority may, either suo motu or on application by an assessee, revise the extent so determined, before the expiry of five years; and where such extent has been revised as aforesaid, the plantation tax payable thereon shall be assessed on the basis of the revised extent.
> (4) For purposes of the assessment of plantation tax payable by a person under this Act, the extent of plantations held by him shall be determined in the manner specified in Schedule II.
> (5) The tax charged under this section shall be in addition to the basic tax payable in respect of those lands under the Land Tax Act, 1955."It will be seen from Sub-Section (1) of Section 3 that tile rate of tax is that specified in Schedule I. A glance at that schedule reveals that there is no tax on plantations which are below five acres in extent."And the tax on plantations above five acres in extent is :
> (a) on the first two acres

Nil

(b) on the remaining extent Eight rupees per acre.

Sub-Section (4) of Section 3 is significant. It provides that the extent of plantations held by a person shall be determined in the manner specified in schedule II. Schedule II is as under :

> "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 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".

4. From the provisions extracted above, it is clear that the tax levied is on land. This is not a tax on income. There is nothing in the Act or the Schedule to indicate that the tax imposed is geared to the income though the potentiality of the land and its productivity is taken into consideration for the impost. The argument, as I mentioned earlier, is that it is related to the number of trees on the land. This is so. But it is a matter of which. I think, judicial notice can be taken, that every acre of land would not contain the same number of trees; be it cocoanut trees or arecanut trees. The basis adopted is 85 cocoanut trees for an acre, 600 arecanut trees for the same extent and 400 pepper vines. The fixation of the extent with reference to the number of trees, it appears to me, is a just method. And the impost has thus been related to the potentiality of the land. It is based on the possible yield and therefore the argument that was advanced before the Supreme Court in the case quoted above cannot apply. Even so, counsel proceeded, the trees in this state cannot be of uniform yield and therefore there is an element of arbitrariness in the impost which would attract the dictum laid down by the Supreme Court. It is impossible to insist that the State Legislature should weigh the possible income from every cocoanut tree on a golden balance and impose a tax related to that exact income. In fact, an attempt to tax on that basis may result on imposition not of land tax but tax on income. This is not what is sought to be done. The tax levied is a tax on land, the quantum of which is fixed with reference to the potentiality of the land. Neither am I able to agree with counsel for the petitioner that this is a tax on trees and not a tax on land. The trees are taken into consideration so that the impost may not be arbitrary being neither related to the nature and type of the land nor the possible yield therefrom. I therefore negative the first of

the contentions advanced by counsel before me that this is a legislation without legislative competence. This falls fairly under1 Item 45 of List II of the Seventh Schedule to the Constitution.

> "I am also advised that the tax that is sought to be levied by the Act is unconstitutional inasmuch much as it offends Article 14 of the Constitution. The impugned Act has grouped out owners of certain lands to be subjected to the burden of a heavy and recurring tax. The classification for the purpose of the Act is unreasonable and it is not founded on any intelligible differentia between lands that are left out of the scope of the Act and that are made to bear the burden of taxation under the Act. Nor does the basis, if any, of the classification has any rational relation to the object sought to be achieved by the Act".

From this paragraph what I understand is that there is an attempt to tax only the plantations and not other types of land which, perhaps, might yield income too. But in the argument, counsel suggested that only seven types of plantations are mentioned in the definition of "plantation"in the Act, and this has left out some plantations which are same as or are similar to those included and, therefore, there is an application of law inequally to persons who are similarly situated. He suggested, for instance, the exclusion of cashew, lemon grass and tapioca cultivation, which, according to him, will also come within the term "plantation" in its normal sense and he said there is no reason why these must be left out and only the seven mentioned in the definition of the term "plantation"in the Act must be included.

5-6. In the first instance, this is an argument I should not consider for the reason that no such averment has been made in the affidavit and no opportunity has been given to the State to counter it. Secondly, it is not correct to say that there is no difference between the seven plantations mentioned in the definition and those referred to by counsel. Those mentioned in the section are very well known plantations and the main activity of the people in the State in relation to plantations centre round what are included in the definition of the term "plantation". Apart from this, two passages referred to by the Advocate General in two of the cases decided by the Supreme Court, I think, are apposite and covers the point. And they are reported in *Jagannath Baksh Singh v. State of Uttar Pradesh*[2], and the other in *East India Tobacco Co. v. State of Andhra Pradesh*[3], and the extracts are :

> "A taxing statute can be held to contravene Article 14 if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. There is no doubt that it is for the Legislature to decide on what objects to levy what rate of tax and it is not for the Courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also true that the Legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is

[2]AIR 1962 SC 1563

[3] AIR 1962 SC 1733

> rational, the taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects. But, if in its

operation, any taxing statute is found to contravene Article 14, it would be open to Courts to strike it down as denying to the citizens the equality before the law guaranteed by Article 14".

And in AIR 1962 SC 1733 it is said :

> "But in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14."

7. I may refer to a passage extracted in the judgment of the Supreme Court in AIR 1962 SC 1733 from Willis on "Constitutional Law"page 587 :

> "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 ....."

And in page 1147 of the Constitution of the United States of America, 1952 Edition, it is said :

> "The power of the State to classify for purposes of taxation is of wide range and flexibility". The Constitution does not prevent it 'from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes-upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow'them. All such regulations and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature'."

8. It is unnecessary to refer to more cases that have been adverted to at the bar, but I will refer to one of them relied on by counsel for the petitioner and that is the decision in *Khandige Sham Bhat v. Agricultural Income-tax Officer, Kasara-god*[4]*,* Subba Rao, J. said :

> "The law has been neatly and succinctly summarised in *Ram Krishna Dalmia v. Sri Justice S.R. Tendolkar*[5]*,* thus :
> "It is now well established that while Article 14 forbids class legislation, it

[4]1963 Ker LJ 196: AIR 1963 SC 591

[5]1959 SCR 279 at p. 296-297: (AIR 1958 SC 538 at p. 547)

> 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 of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established, that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure".

9. I do not think anything in the statute impugned violates the principle so succinctly, if I may say so with great respect, and clearly stated in this decision.

10. I dismiss this writ application with costs, Advocate's fee Rs. 200/-.
Application dismissed.