KERALA HIGH COURT

Gwalior Rayon Silk Mfg. (Wvg.) Co., Ltd

Vs

State of Kerala

O.P. Nos. 3771, 4018, 3858, 3868, 3902, 4036, 4131, 3897, 4014, 4101 and 3795 of 1971

(T.C. Raghavan C.J., V.P. Gopalan Nambiyar and G. Viswanatha Iyer, JJ.)

21.06.1972

JUDGMENT

Gopalan Nambiyar, J.

1. These writ petitions attack the constitutional validity of the Kerala Private Forests Vesting and Assignment Act 26 of 1971 passed into law on 23-8-1971 replacing an earlier Ordinance 14 of 1971. The Act is sought to be saved only under Article 31-A of the Constitution : and bereft of the protection of that Article, it was conceded that it would be unconstitutional. The only question therefore is whether the Act qualifies for the protection of Article 31-A.

2. The provisions of the Act are briefly these : The preamble states that private forests in Kerala are agricultural lands and that the Government consider that such agricultural lands should be so utilised as to increase the agricultural production in the State and to promote the welfare of the agricultural population in the State; and that to give effect to this, it is necessary that the private forests should vest in the Government. Section 2 is the definition section. Clause (f) thereof defines "Private forests" in relation to the Malabar area of the State, (where the bulk of the private forests are situated) as any land to which the Madras Preservation of Private Forests Act, 1949 applied, excluding : (A) lands which are garden or nilam, (B) lands which are principally used for cultivation of tea, coffee etc., (C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crops, and (D) sites of buildings and lands appurtenant to buildings. Section 3 provides that notwithstanding anything contained in any other law or in any contract etc., from the appointed day (10th May 1971) the ownership and possession of all private forests in the State shall stand transferred to and vest in the Government, free from all encumbrances, and the right, title and interest of the owner or any other person thereof shall stand extinguished. Under sub-section (4) of the Section, notwithstanding anything contained in the Kerala Land Reforms Act, 1963, private forests are to be deemed to be lands to which Chapter III of the Land Reforms Act 1963 is applicable, and for the limited purpose of sub-sections (2) and (3). (Sub-section (2) exempts private forests within the ceiling limit under the Land Reforms Act from the vesting provision in sub-section (1) ; and sub-section (3) exempts so much of private forests as are held under a registered document executed before the appointed day, which, together with other lands to which Chapter III of the

Land Reforms Act is applicable, does not exceed the ceiling limit prescribed by that Act). Section 4 enacts that all private forests vested in the Government shall, so long as they remain vested in the Government, be deemed to be reserved forests and be governed by the provisions of the Kerala Forests Act 1961. Section 6 provides that the boundaries of the private forests shall be demarcated as soon as possible. Section 9 enacts that no compensation is payable for the vesting. Under Section 10, the Government, after reserving such extent of private forests vested in it, as may be necessary for the promotion of agriculture or the welfare of the agricultural population, shall assign on registry or on lease, to the classes of persons mentioned therein, the remaining private forests on such terms and conditions as may be prescribed. By Section 11 the assignment under Section 10 shall, as far as may be, be completed within two years from the date of publication of the Act. Section 15 provides for the constitution of the Agriculturists Welfare Fund to be utilized for a settlement and welfare of persons to whom private forests are assigned under Section 10. The Fund shall consist of grants or loans from the Government and monies received by the Government by the sale of trees on private forests. Such, in substance, are the provisions of the Act.

3. In order to qualify for the protection of Article 31-A of the Constitution, the two essential conditions to be satisfied are : (1) Does the law relate to the acquisition of any "estate" or any rights therein or the extinguishment or modification of such rights (2) If so, does the law relate to agrarian reform? The learned Advocate-General claimed that forest lands in the Malabar area of this State would fall under Article 31-A (2) (i) of the Constitution as being comprehended in the expression "Janmam right." These words were introduced by the Constitution Fourth Amendment Act 1955, which came into force on 27-4-1955. At the time when they were thus introduced by the amendment, the constitutional validity of the Malabar Tenancy Act, (Madras Act 14 of 1930) had provoked a difference of opinion between two Judges of the Madras High Court in R. C. No. 86 of 1954 and other cases, and the matter was actually pending reference before the third. The differing judgments had been delivered on 13-3-1955 and the third Judge's opinion was given on 27-9-1955. Shortly after the Constitution Fourth Amendment, a Division Bench of the Madras High Court (Rajagopalan and Rajagopala Ayyangar JJ.) had occasion, in Writ Petition Nos. 556, 570, 571 etc. of 1955 (Mad.) to point out the difficulty of fixing the expression "Janmam right" into either of the two categories then comprised in the definition of the term "Estate." The learned Judges observed :

> "2 (a) : The expression 'estate' in relation to any local area, has the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include "any jagir, inam or muafi or other similar grant." This definition comprises two classes : the first might be termed the primary class namely "an estate" or its local equivalent in the existing law relating to land tenures in any local area. The second comprises Jagir, inam or muafi or other similar grants. The fourth amendment to the Constitution added the following at the end of this clause "and in the States of Madras and Travencore-Cochin, any Janmam right." The difficulty is in fixing the addition into either of the two previously existing classes. There is no land tenure known in Madras or Travencore as an estate held in Janmam right, nor is it correct to say that Janmam right is in the nature of a grant and that is how the difficulty in the construction of the words introduced by the Fourth Amendment arises. One thing is clear, that some

meaning must be attributed to these words, and in the context in which it occurs the only significance it can have is to designate the land in regard to which any person has a janmam right in the State of Madras or Travencore-Cochin. The emphasis therefore is not so much upon the tenure as on the land in respect of which a person might be said to be a janmi. So understood, and that is the only way in which it could be understood it is clear that the relationship between the janmi and the verumpattamdar is comprehended within the definition of an estate within Article 31-A (2) fa). Despite the reference to 'tenure' and 'grant' what is common to all the three classes is land : the definition of 'estate' thus covers land held as an estate, land held under the jagir etc. grant, and land held on janmam right." These observations were cited with approval by a Division Bench of this Court in *Lekshmikutty Neithiar v. Ammu*[1] and affirmed again in *Mahaganapathy Devaswom v. State of Kerala*[2], Without fixing "Janmam right" into either category, it was perhaps appropriately regarded as sui generis and included in the definition.

4. Further difficulties arise after the insertion of the various sub-clauses in Article 31-A (2) (a) by the Constitution Seventeenth Amendment. "Janmam right" in sub-clause (i) may relate to all kinds of land, arable, waste, forest, pasture etc. : and the separate treatment of "forest lands" under sub-clause (iii), might well indicate that this special category is excluded from the general. At the same time, after the Full Bench decision of this Court in Sukapuram Sabayogam's case, 1962 Ker LT 924 : AIR 1963 Kerala 101 (FB) holding that after the 2nd Revenue Settlement, janmies in Malabar have all become ryotwari pattadars, and exist in that name only in relation to the vast unsurveyed tracts in that area (See paragraphs 63 to 65 of the judgment of Vaidialingam J., and paragraph 16 of the judgment of the Chief Justice in 1962 Ker LT 924 : AIR 1963 Kerala 101 (FB)) the word "Janmam right" in sub-clause (1) appears to have been specially tailored for private forests, as far as the Malabar area of this State is concerned. But then, to segregate forest lands in Malabar for treatment in sub-clause (i) would mean that the limitation in sub-clause (iii), (as explained by the Supreme Court in *State of U. P. v. Anand Brahma Shah*[3], that they also should be "held or let for purposes of agriculture"), would have no application to them. However, this anomaly - if such it be - can be postulated also in regard to forest lands comprised in inam, jagir, muafi or other similar grant. We draw attention to these aspects to show that a harmonious construction of the sub-clauses so as to avoid overlapping or anomalies seems well nigh impossible.

5. We shall proceed on the premise accepted by the learned Advocate-General and by the Supreme Court in the Gudalur case Balmadies Plantations Ltd.'s case W. P. 373 of 1970 : (Reported in AIR 1972 SC 2240), that forest lands held in janmam right fall within sub-clause (i) of Article 31-A (2) (a) and not within sub-clause (iii) thereof.

[1] 1959 Ker LJ 863 [3] AIR 1967 SC 661

[2] 1960 Ker LJ 34

The Full Bench decision of this Court in Narayanan Nair's case 1970 Ker LT 659 :
AIR 1971 Kerala 98 (FB) on a consideration of the provisions of Article 31-A laid down that a law under the said Article for the purpose of agrarian reform, must relate to agricultural land in the sense of lands held or let for purposes of agriculture or purposes ancillary thereto. (See paragraphs 12 to 15 of 1970 Ker LT 659 : AIR 1971 Kerala 98 (FB)). The decision was affirmed by the Supreme Court (See 1972 KLT 353 : (AIR 1972 SC 2097.))

6. The learned Advocate-General contended that there was no warrant for the proposition that agrarian reform must relate to lands let or held for purposes of agriculture or for purposes ancillary thereto, and that the same was opposed to the current of decisions of the Supreme Court. The proposition was clearly laid down by the Full Bench of this Court in Narayanan Nair's case 1970 Ker LT 659 : AIR 1971 Kerala 98 (FB), by which we are bound, and which we see no reason to reconsider. It was said that the recent pronouncements of the Supreme Court in the Kannan Devan Hills Resumption of Management Act (1971) case the *Kannan Devan Hills Produce Co. Ltd. v. State of Kerala*[4] and in the Gudalur Janman Estates Abolition and Conversion into Ryotwari Act 1969 case *Balmadies Plantations Ltd. v. State of Tamil Nadu*[5]. give the lie direct to the proposition that agrarian reform must generally relate to agricultural lands. We are unable to agree. For the one thing the proposition was not specifically or pointedly debated or put in issue in either of these cases. In the Kannan Devan Hills Produce Company's case 1972 Ker LT 377 : AIR 1972 SC 2301 the preamble to the impugned Act, and the terms of the original lease by the Poonjar Chief whose rights were acquired by the Government, show that the acquisition by the Government was of an area of agricultural lands not converted into plantations or utilised for purposes of such plantations, and there was enough indication on the face of the proceedings themselves that the lands in question were agricultural lands. In the Gudalur Janmam Estates Abolition and Conversion into Ryotwari Act case Balmadies Plantations Co. Ltd. WP No. 373 of 1970 : AIR 1972 SC 2240 having found that the forest lands dealt with by the Act would fall within "janmam right" in Article 31-A (2) (a), the Act was struck down in so far as it related to forest lands, on the ground that its provisions disclosed no scheme for distribution of the lands after they were taken over by the Government, and therefore the Act could not be regarded as a measure of agrarian reform. Were the Act a measure of agrarian reform, whether the same should relate generally to agricultural lands, did not obviously arise for consideration before the Supreme Court, nor was it dealt with by it? Neither of these decisions therefore run counter to the principle clearly laid down by the Full Bench of this Court in Narayanan Nair's case 1970 Ker LT 659 : AIR 1971 Kerala 98 (FB). That decision was affirmed by the Supreme Court in 1972 Ker LT 353 : AIR 1972 SC 2097. The principle that agrarian reform must relate generally to agricultural lands was restated again by two Full Benches of this Court in Govinda Pillai's case 1971 Ker LT 87 : AIR 1971 Kerala 295 (FB) and in *Narayanan Damodaran v. Narayanan Panicker Parameswara Panicker*[6]*,*

7. The questlon then is : Are forest lands agricultural lands in the sense explained by this Court in Narayanan Nair's case 1970 Ker LT 659 : AIR 1971 Kerala 98 (FB) we

[4](O. P. No. 44 of 1971 etc. reported in 1972 Ker LT 377 : AIR 1972 SC 2301)

[5] W. P. No. 373 of 1970 etc. (reported in AIR 1972 SC 2240)

[6]1971 Ker LT 484 : AIR 1971 Ker 314 (FB)

were pressed with a number of decisions given under the Wealth Tax Act, or with respect to one or the other entries in the Constitution or the Government of India Act 1935 referring to agricultural land. (See for instance Entries 87 and 88 of List I of the Constitution), or under the provisions of the Indian Income-tax Act dealing with the concept of agricultural income, and so on. We do not think that these decisions or the principles laid down therein can wholesale be transplanted so as to furnish a working definition of agricultural land. In regard to constitutional entries for instance, it is well accepted that they should be interpreted in the widest possible sense. That was the principle followed in *A. Swaminatha Mudaliar v. S. V. Ramaswami Mudaliar*[7]*,* The discussion of the concept of agricultural land by the Federal Court in *Megraj v.*

Allah Rakhia[8]*,* and by the Privy Council on appeal, in AIR 1947 PC 72, is quite instructive. A purely subjective test, depending on the use to which an owner or occupant desires to put the land, would make the concept fluctuate with the person's changing mind. Equally, to stress the potential user of the land for agricultural purpose would be to unduly enlarge the concept. For, almost any type of land can be put to some agricultural use or purpose by intensive methods of farming and irrigation. A safe test to go by, seems to have been propounded by a Division Bench of this Court in the decision in the Kollengode case, viz. *Venugopala Varma Raja v. The Controller of Estate Duty Kerala, Ernakulam*[9]*,* The test is : Is the land one, on which a prudent owner would undertake any of the processes of farming in its widest sense? More or less the same test was laid down in *Rasiklal Chimanlal Nagri v. Commissioner of Wealth Tax. Gujarat*[10] and by a Division Bench of this Court in *C. I. T. v. Ananthan Pillai*[11] We do not understand any contrary view to have been taken in the Full Bench decision in *Officer-in-charge (Court of Wards) Paigah, Sir Vicar-ul-Umra, Hyderabad v. The Commissioner of Wealth Tax, Andh. Pradesh, Hyderabad*[12]*,* That Full Bench only cut down the rather wide observations claimed to have been made in a prior Division Bench ruling (reported in AIR 1967 Andhra Pradesh 189) that the capability of the land for agricultural use is not a criterion for deciding the nature and character of the land, and ruled that it is one of the important factors to be taken into account.

8. Proceeding to apply the test as to the essential character of the land and as to whether a prudent owner will undertake the processes of farming in the widest sense on the land, we find it impossible to accept the categoric statement in the preamble of the Act that "the private forests in the State of Kerala are agricultural lands which can be put to cultivation." This should, we think, essentially depend upon a cumulative assessment of various circumstances, such as, the nature of the land, its situation, its accessibility and adaptability for carrying on the processes of farming, and the purpose for which the land is held. As representative of the type of land involved in these writ petitions we may refer to ground A in O. P. No. 3795 of 1971 where it is stated that the areas involved are uncultivated and uncultivable tracts, that they abound in steep ascents in forbidding heights where ordinary agricultural operations are impossible, and that the areas are situated in ranges of nearly 1600 ft. 3000 ft. 4950 ft. etc. in height. In dealing with an Act which regards all private forests in this State generally as agricultural lands, and proceeds to legislate on that basis. It is no answer to say that the individual cases of some, if not all, the petitioners, could

[7] AIR 1944 Mad 401 [9] 1966 Ker LT 1149 [11] 1972 Ker LT 160
[8] AIR 1942 FC 27 [10] AIR 1965 Guj 259 [12] AIR 1969 And Pra 345 (FB)

answer the description. As was pointed out by a Full Bench of this Court in Govinda Pillai's case 1971 Ker LT 87 : AIR 1971 Kerala 295 (FB) to uphold the constitutionality of a legislation according to the varying facts of each case, would introduce into the administration of justice, a disconcerting unpredictability, usually associated with gambling, and that is a reproach, which the judicial system, should scrupulously endeavor to avoid.

9. The provision in sub-clause (iii) of Article 31-A (2) (a) itself seems to contain sufficient indication that forest lands cannot be regarded as agricultural lands. The clause reads :

> "(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural laborers and village artisans."

If the inclusive part of the above clause was not sufficient to hold, that but for forest lands being

shepherded in, they would stand outside the fold of the category of lands dealt with by it, we have the authority of the Supreme Court in Anand Brahma Shah's case AIR 1967 SC 661 that the qualification "held or let for purposes of agriculture" should apply also to forest lands. That qualification itself conveys the idea that all forest lands cannot automatically be regarded as so "held or let." This is what the Supreme Court said in Anand Brahma Shah's case AIR 1967 SC 661 :

> "15. We must therefore, hold that forest land or waste land in the area in dispute cannot be deemed to be an estate within clause (a) (iii) unless it was held or let for purposes ancillary to agriculture. There is no dispute that the cultivated portion of Pargana Agori would fall within Clause (a) (iii)."

(underlining ours)

We find it difficult, if not impossible, to perpetuate any subtle distinction between lands held or let for purpose of agriculture under sub-clause (iii) of Article 31-A (2) (a), and agricultural lands, so as to postulate that even if lands cannot fall under sub-clause (iii) they can still be agricultural lands for purpose of agrarian reform.

10. But it was said that the decisions of this Court in the Kollengode case - *Venugopala Varma Rajah v. The Controller of Estate Duty, Kerala Ernakulam*[13] and the later Division Bench ruling in the same case reported in 1969 Ker LT 320 : AIR 1969 Kerala 304 accepted that forest lands are agricultural lands and that the Act only gave legislative sanction to the principle of these decisions. The legislature, it was said, had the power to enact a definition or a declaration in regard to agricultural land, and the Act had done no more. Such definition or declaration by the legislature, the argument proceeded, was to be respected by the courts, though not to be regarded as conclusive. We are unable to appreciate these arguments. What the Act has done is not to make a declaration, much less a definition, in regard to agricultural land, but to state axiomatically that all private forests in the State of Kerala are agricultural lands.

[13] 1966 Ker LT 1149

We do not understand the two Division Bench rulings of this Court rendered in connection with the Kollengode case 1966 Ker LT 1149 and 1969 Ker LT 320 : AIR 1969 Kerala 304 as going the full length of the learned Advocate-General's arguments. The earlier of these Division Bench rulings formulated, what we regard as a safe and satisfactory test, for determining what is agricultural land in the following words :

> "10. "Agricultural land", as we understand it, is land on which a prudent owner will undertake any of the processes of farming in its widest sense. The fact that a particular area is being used for agriculture may indicate that the land is agricultural in character. But a current user is by no means conclusive. During a period of food shortage a building site which a prudent owner may never use for purposes of husbandry may be brought under cultivation because the need is great, the prices are high, and the expense is of no consideration. Similarly, during days of national peril a scorched earth policy may be followed and farming land deprived of its vegetation. That too cannot necessarily mean that the land had lost its agricultural character.

11. The test, as we have already indicated, should be whether a prudent owner would embark on an adventure in agriculture in respect of the lands concerned. The prudent owner is the common man of the common law, sane and sensible, reasonable and responsible, averse to gambling and speculative experiments : but none the less prepared for normal risks and legitimate expenditure." With these observations, the Division Bench called for a finding in regard to the precise nature of the lands involved. This was found, and the matter again came up before this Court and was dealt with in the second Division Bench ruling in *Venugopala Varma Raja v. Controller of Estate Duty, Kerala*[14], After quoting paragraph 11 of the earlier Division Bench ruling which we have extracted above, the second Division Bench answered the question referred in the negative, and against the Controller of Estate Duty, except regarding 5000 acres of rocky land, which was found as non-agricultural. We were informed that the matter is now pending in appeal in the Supreme Court. We shall therefore be careful not to say anything which would in any manner prejudice the hearing of the appeal in the Supreme Court. But we cannot understand the second Division Bench rulings as anything more than the expression of a conclusion that the lands involved in that particular case were agricultural lands. The earlier Division Bench ruling formulated a test, and the latter one applied it. True, in coming to a conclusion the later Division Bench observed in paragraph 6, somewhat too widely, that all forest lands in this State are agricultural lands in the sense that they can be prudently and profitably exploited for agricultural purposes : but we cannot, read these wide observations as unrelated to the actual facts, the conclusion come to, and the test applied. Nor can we ignore the decision of the Supreme Court in Anand Brahma Shah's case AIR 1967 SC 661 which we have discussed earlier. 11. We may finally notice the decision in the Malankara Rubber and Produce Co's case (W. P. Nos. 117, 132 to 134, 149, 166, 168, 209 and 516 of 1970 : (reported in AIR 1972 SC 2027) Mitter J. who delivered the judgment of the Supreme Court has surveyed the position and summed up the law in the form of certain propositions. We shall extract the following passages from the judgment.

[14]1969 Ker LT 320 : AIR 1969 Ker 304

> "Lands which are held or let for the purpose of agriculture - as undoubtedly most of these lands are, being covered with rubber, coffee etc., if held under a single tenure which could be said to be equivalent to an estate - would come under Article 31-A (2) (iii), but waste lands, forest lands, land for pastures or sites of buildings and other structures occupied by cultivators of land etc. would only be out of the purview of Article 31-A (2) if they are held on independent tenures and are not parts of land held or let for purposes of agriculture or for purposes ancillary thereto. This is the result of the decision of this Court in *U. P. State v. Raja Anand*[15], In that case it was held that in the case of a grant of the nature of a jagir or inam its acquisition for the purpose of agrarian reform would be protected under Article 31-A in spite of the fact that hundreds of square miles of forest land were comprised therein. The Court also held that forest lands or waste lands etc. would not be deemed to be estates within clause (iii) (2) of Article 31-A unless the same were held or let for purposes ancillary to agriculture.
>
> x x x x x x x

No doubt in its counter-affidavit the State has made a case that "in Kerala within cities and municipalities there are tracts of cultivated lands" and merely because the Act was applied to the lands situated within cities and municipalities it did not detract from its essential character as a

measure of agrarian reform. It was also submitted in the said affidavit :

> "Lands are agricultural lands unless they are put to non-agricultural uses like the construction of buildings which alters the physical character of the land, rendering it unfit for agricultural purposes. Neither the principal Act nor the Amendment Act concerns themselves with commerce trade or industries or buildings." We find ourselves unable to accept the above submission. Whether lands are agricultural or not may depend also on their physical properties and situation. There may be rocky lands, sandy lands, hill sites, unculturable lands, forests etc., which by their very nature are not agricultural lands. So also lands comprised within a municipality specially in towns and cities cannot be styled agricultural lands because agricultural operations can be carried on there.
> x x x x x x x

Mr. Chagla also contended, apart from his submission on pepper and areca gardens which have already been noted that a jungle was not held for agricultural purposes and could not be acquired under Article 31-A (2). A jungle unless it is included within an estate consisting inter alia of lands held for agricultural purposes cannot be acquired so as to have the protection of Article 31-A; if the holding or tenure in which the jungle lies consists only of jungle it cannot be so acquired. The same would hold good of dairy farms, pastures etc.

> x x x x x x x

Our conclusions therefore are as follows :
1. x x x x x x
[15]1967-1 SCR 362 : AIR 1967 SC 661
2. x x x x x x
3. x x x x x x
4. x x x x x x
5. x x x x x x

6. Forest lands and jungles would be exempt from the operations of the Act only as already indicated. Private forests are however specially exempted from acquisition under the Act." We do not therefore feel that the learned Advocate-General's argument as to the force to be given to the legislative declaration contained in the preamble to the Act as to the character of forest lands is either well founded or of any assistance in this case.

12. We are also of the view that the provisions of the Act, properly scrutinised, cannot be regarded as a measure of agrarian reform. Under Section 9 of the Act, the Government is to assign the lands on registry or on lease to the classes of persons enumerated. What is the effect of assignment by way of lease? The lessee in such a case does not get any fixity of tenure as the lease is exempt from the provisions of Chapter III (conferring fixity of tenure), both by reason of Section 3 (vii) (which exempts leases of private forests) and by reason of Section 3 (i) of the Land Reforms Act (which exempts leases of lands belonging to, or vested in, the Government). An exception to the rule of no fixity is carved out in a limited class of cases by the proviso at the end of clause 3 (vii). One of the modes of the contemplated assignment is therefore illusory.

Sections 3 (i) and 3 (vii) of Act 1 of 1964 are left intact, what is done by sub-sections (2) to (4) of Section 3 of the impugned Act being to include forest lands also in reckoning the ceiling limit for the purpose of Act 1 of 1964, contrary to the provisions of Section 81 of the latter Act. And when is the assignment contemplated by Section 9 of the Act to be made? Only after reserving such extent of lands as the Government may deem necessary as reserved forests and, no doubt within two years, as far as possible. One is left guessing as to what is the extent of lands to be treated as reserved forests and the balance if any, left for assignment and how these are to be determined. Now, what is to happen to the valuable timber trees on these lands? (To form an idea of the value of the timber trees in these forests, see for instance the averments in paragraphs 2 and 3 of O. P. No. 4018 of 1971, where it is said that a single log of rosewood was sold two years back for Rs. 40,000/- and that the timber value of the forests would be about Rs. 1 crore). Presumably, the Government cannot cut them while the lands remain as reserved forests; and probably, at the time of assignment under Section 9, the lands are to be denuded of the timber, the price going to constitute the Agriculturists Welfare Fund under Section
15. If so, it seems to be hardly within the reach of the classes of persons in Section 9
to pay the fabulous price of the trees on the lands assigned. From all of which, the argument that the scheme was only a device to get at the valuable trees on the land, assumes force. And how are these lands to be parcelled out and assigned to the different classes of persons? Private forests in the Malabar area of this State are vast unsurveyed tracts of land; and to assign them without demarcation and survey seems not only to be impracticable, but to be productive of strifes, and disputes as to title, and scramble for possession as between the assignees. When Tathunni Moopil Nair's case AIR 1961 SC 552, relating to the validity of the Land Tax Act 1955 was heard by the Supreme Court, hopes and promises of effecting a survey of these lands had been dallied before the courts. In the later Land Tax Act of 1961, Section 7 (6) made a promise of surveying unsurveyed lands, in any case, before the expiry of five years from the publication of the Act, but nothing was done. In 1964, the Kuttikrishna Menon Committee on Hindu Religious Endowments recommended an expeditious survey and settlement of forest lands to tackle the problems of encroachments on these lands. In *Muhammed Kunhi v. Tahsildar, Hosdrug*[16] this Court while giving directions regarding the exaction of land tax, reminded the Government of its obligations inter alia to conduct a survey of the unsurveyed forest tracts. Even now, the survey operations have not made any progress worthy of note; and the promise to assign the Forest lands, held out in the Act without a demarcation and survey, and with the other infirmities noted, seems to be a mere "teasing illusion", and a promise of unreality. The Government have not even prescribed the terms and conditions for assignment required to be done by Section 10. We are not prepared to pass the provision as a real and genuine measure of agrarian reform.

13. The learned Advocate-General argued that the scheme of distribution sanctioned by Section 10 of the impugned Act, is exactly the same as what was sanctioned by Section 9 of the Kannan Devan Hills Resumption of Management Act 1971, which was upheld by the Supreme Court. It is impossible to agree. In the Kannan Devan Hills case 1972 Ker LT 377 : AIR 1972 SC 2301 the preamble to the Act and the terms of the lease deed showed clearly that the lands dealt with were agricultural lands. In the impugned Act the definition of "private forests" in Section 2 (f) excludes all cultivable portions and agricultural lands in the forests, and takes in only the rest, for the scheme of distribution. Again, under the impugned Act assignment both by way of registry and by way of lease is contemplated, and the latter mode of assignment would confer no fixity by reason of Sections 3 (i) and 3 (vii) of Act 1 of 1964, except in the limited class of cases covered by the proviso after Section 3 (vii). The Act, in the Kannan Devan case 1972 Ker LT 377 : AIR

1972 SC 2301, contemplated assignment only on registry, and the scheme of distribution envisaged thereby was a real and genuine one.

14. On the plea of equitable estoppel, raised on behalf of the petitioner in O. P. No. 3771 of 1971. We are of the view that it cannot operate against the provisions of the Act. The case of equitable estoppel was put thus. The petitioner company, having initially established itself for the production of rayon grade pulp, and the Government having bound itself to supply the raw material by Exts. P-2 and P-3 agreements, the parties came together later on, and by Exts. P-8 and P-9 G. Os. the Government permitted the company to purchase, and the company did purchase, thirty thousand acres of private forests from the Nilambur Kovilakam estate for Rupees Seventy Five Lakhs for the supply of bamboos to the factory; agreed that there should be a pro tanto reduction of the Government's liability to supply raw materials under Exts. P-2 and P-3 : and further agreed that the thirty thousand acres purchased by the Company be immune from acquisition by the Government under the proposed legislation for acquisition of private forests for a period of sixty years, subiect to certain conditions (vide Exts. P-8 dated 5-3-1965). We could not but raise our eyebrows as we scanned the clause in Ext. P-8 by which, in the year of grace 1965, the Government bartered away its right and conferred wholesale immunity against acquisition for sixty years in

[16]1966 Ker LT 1022

respect of thiry thousand acres of Nilambur forest land. A reversal of their policy and an awareness of their obligation to effect agrarian reform seems to have come about before the ink was dry on the agreement. But the law is clear that the surrender by the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel. The decisions which have recently surveyed the field are too many. It is enough to refer only to *Sankaranarayanan v. The State of Kerala*[17], confirmed by the Supreme Court in 1971 Ker LT 422 : AIR 1971 SC 1997, to the Full Bench decision in *Achuthan Pillai v. State of Kerala*[18], and to the further decisions in Ramanathan Pillai's case, 1970 Ker LT 1008 and the Ernakulam Mills' case 1971 Ker LT 318. In the light of the principle laid down by the above decisions the plea of equitable estoppel must fail.

15. It was argued that the legislation in question invades the field mapped out by Entry 52 of List I of the Seventh Schedule to the Constitution and is bad for repugnancy. A like argument was rejected in the Kannan Devan Hill Produce's case, 1972 Ker LT 377 : AIR 1972 SC 2301 and there is no force in it.

16. Having regard to our conclusions that forest lands in the State of Kerala, cannot generally be regarded as agricultural lands and therefore cannot be the subject of agrarian reform, and that the scheme of agrarian reform envisaged by the impugned Act is not real or genuine but only illusory, we are of the opinion that the provisions of the Act are not protected by Article 31-A of the Constitution. We therefore declare the Kerala Private Forests Vesting and Assignment Act 26 of 1971 unconstitutional and void. These writ petitions are allowed to the extent of the above declaration. We make no order as to costs.

Petitions allowed.

[17] ILR (1968) 2 Ker 664

[18]1970 Ker LT 838 AIR 1972 Ker 39