

# KERALA HIGH COURT

Narayana Pattar

Vs

State (Kerala)

Civil Revn. Petn. No. 1234 of 1975

(V.P. Gopalan Nambiyar, V. Balakrishna Eradi and G. Bala Gangadharan Nair, JJ.)

03.12.1976

## JUDGEMENT

### **Gopalan Nambiyar, J.**

1. The question that squarely arises in this revision petition is whether in determining the validity of the alienation in excess of the ceiling area effected after 15-9-1968 (date of publication of Land Reforms Bill, 1963), and before 1-1-1970 (date of coming into force of Act 35 of 1969), the ceiling is to be reckoned with respect to the provisions of the Amending Act 35 of 1969, or with respect to the prior law. In *Joseph v. State of Kerala*<sup>1</sup> a Division Bench consisting of myself and Viswanatha Iyer, J. held that the validity of the alienation had to be judged with respect to the law as to ceiling area in force on the date of the transfers and not the law on the effectuation of the ceiling area by notification issued under Section 83 of the Act, viz., 1-1-1970. Viswanatha Iyer, J. who referred this case to a Division Bench recorded his view that although the learned Judge was a party to the decision in 1973 Ker LT 701 he had not expressed any opinion either agreeing or disagreeing with my judgment. The Division Bench (Eradi and Vishwanatha Iyer, JJ.) has not expressly doubted the correctness of the earlier ruling of ours, but has left it to be implicit from the reference to the Full Bench. This was made amply clear at the hearing of this revision petition. The judgment delivered by me in 1973 Ker LT 701 was not my individual judgment, but one on behalf of the Division Bench, and had been signed also by my learned brother Viswanatha Iyer, J. It would not be correct to state that the learned Judge had not expressed any view. That would, of course, not preclude him from doubting the correctness of the earlier view.

2. The scheme of the provisions of the Act regarding ceiling, may be briefly noticed. The expression "ceiling area" is defined in Section 2(3) of the Act, as the extent of land specified in Section 82 as the ceiling area. Chapter III is titled : "Restriction on ownership and possession of land in excess of ceiling area and disposal of excess land." Broadly stated, the scheme of the Sections in this Chapter is this. Section 81 provides for categories of lands exempted in reckoning the ceiling area. Section 82 lays down the ceiling area in the case of an adult unmarried person, family of two or more, family of more than five, and any other person. Section 83 makes unlawful the

<sup>1</sup>(1973 Ker LT 701)

holding or possession of lands in excess of the ceiling area with effect from such date as may be notified by the Government. The notified date is 1-1-1970. Section 84 provided that all voluntary transfers effected after the date of publication of the Kerala Land Reforms Bill 1963 (viz. 15-9-1963) in excess of the ceiling area shall be deemed to be transfers calculated to defeat the provisions of the Act and shall be invalid. Section 85 provided for surrender of excess lands to the Government, i.e. lands in excess of the ceiling area on the date notified under Section 83. The rest of the Sections are immaterial.

3. In the light of the above provisions, the question for decision, is, whether the invalidating Section viz. Section 84 is to be applied to an alienation effected prior to 1-1-1970 with reference to the determination of ceiling effected by the notification dated 1-1-1970, or whether the same is to be adjudged with respect to the ceiling area provided in Section 82 of the Act, as it stood on the date of the alienation. The Division Bench in 1973 Ker LT 701 held in favor of the latter. The correctness of the view has been canvassed.

4. The definition of the ceiling area in Section 2(3) as "the ceiling area specified in Section 82 of the Act" and the equitable principle that the validity of a transfer is to be judged with respect to the law in force at the time of the transfer seem to commend the view in 1973 Ker LT 701 . As against that, it was argued for the State that there was no law in force relating to ceiling area till the issuance of the notification on 1-1-1970 prohibiting transfers in excess of ceiling area; and therefore the validity of a transfer under Section 84 of the Act must be judged with respect to the law as to ceiling on 1-1-1970. The petitioner would state that the prescription of ceiling contained in Section 82 was meant to be effective immediately, as the provisions for resumption would show. Under Section 18(1) no application for resumption in respect of tenancies subsisting on the date of coming into force of the Act was to be made after a period of one year from the commencement of the Act. The ceiling provision was thus not an ineffective provision having nothing more than a "constitutional" existence in the Statute, but was real and effective for certain purposes of the Act. So ran the argument of Counsel for the petitioner.

5. There is another aspect of the matter. The object of Section 84 seems to be to prohibit and to invalidate transfers meant to defeat the provisions of the Act. The Section is categorical that it applies to transfers effected since the date of the publication of the Bill, i.e. 15-9-1963. The transfers are not made illegal as against Government or the tenant in possession alone, but generally. The motive for such transfers would be the strongest. immediately after the publication of the Bill on 15-9-1963 and before the ceiling area got crystallised by issuance of the notification on 1-1-1970. To hold that ceiling area got fixed only on 1-1-1970 would be to hold that transfers effected from 15-9-1963 to 1-1-1970 would get invalidated from and after 1-1-1970 and would remain in a state of suspended animation till then. These considerations are in favor of giving an interpretation to the Section in the same way as was done in 1973 Ker LT 701 . That was how my learned brother Poti J. also understood the Section in *Sivaramakrishnan v. State of Kerala*<sup>2</sup> The observations of the Full Bench in para 50 of Narayaman Nair's case (1970 Ker LT 659) (AIR 1971

<sup>2</sup>(1973 Ker LT 356)

Kerala 98) also are in support of this view. Observed the Full Bench (at p. 115 of AIR) :

"50. By Section 84 all voluntary transfers after a certain date made by persons holding

land in excess of the ceiling area (with certain exceptions as, for example, transfers by way of partition or in favour of a person who has been a tenant of the holding since the 27th July 1960, the date when the Agrarian Relations Bill was returned by the President) are declarer to be transfers made to defeat the provisions of the Act and accordingly invalid Sub-section (1) deals with transfers made after the publication of the Kerala Land Reforms Bill, 1963 (the Bill of the original Act) while Sub-section (2) deals with transfers effected after the 1st July 1969 on which date the report of the Select Committee on the bill of the amending Act was expected to be published. Having regard to the fact that Sub-section (2) is virtually a repetition of Sub-section (1) (excepting that transfers on account of natural love and affection come within the exceptions in the former but not in the latter) and that Sub-section (1) covers the period covered by Sub-section (2) we should think that the ceiling area referred to in the former is the ceiling area under the Bill of 1963, while the ceiling area of the latter is the ceiling area under the amended Act. However that might be - we are expressing no final opinion on the point-the effect of the Section is to deprive the transferee of his rights in the land (which land constitutes an estate) and make him eligible for such compensation as the Land Tribunal thinks fit to award out of the compensation payable for the land covered by the transfer in cases where the land has to be surrendered by reason of the transferor holding land in excess of the ceiling, the land having become once more the transferor's land. (It is said, on behalf of the State that, as far as possible, it will be the untransferred land that will be chosen for surrender under Section 85(5) and that Section 84 which only annuls transfers to the extent they defeat the provisions of the Act does not affect title as between the transferor and the transferee. With all this we are not here concerned). The Section is necessary for the scheme of land reform, since, obviously, persons holding land in excess of the ceiling must have been making transfers (mostly benami) to evade the legislation that was on the anvil. The Section therefore comes within the protection of Article 31A - the right affected thereby is the transferee's right in the land, namely, the estate, bought by him - and is saved from attack under Articles 14, 19 and 31; see in this connection *Raghubir Singh v. State of Ajmer*<sup>3</sup> and *State of Bihar v. Umesh Jha*<sup>4</sup> where like provisions for invalidating anticipatory transfers designed to defeat agrarian reforms were upheld on the ground that they were entitled to the protection of Article 31A."

The above view, no doubt was merely tentative and not final.

6. As against these consideration, the Learned Advocate-General argued that Sections 81 to 86 form an integrated scheme of provisions dealing with the ceiling area and the surrender of lands in excess of the same to the Government and that the law as to

<sup>3</sup> AIR 1959 SC 475

<sup>4</sup> AIR 1962 SC 50

ceiling area for working out these provisions became complete and effective only on the issuance of the notification dated 1-1-1970 under Section 83 of the Act. Till then it was said the ceiling provisions would have been effective as possession and ownership of lands in excess of ceiling area was tabooed only from 1-1-1970. For this purpose, the strongest reliance was

placed on the decision in *State of Orissa v. Chandrasekhar Singh*<sup>5</sup> We may extract para 5 of the judgment.

"5. Before the High Court it was urged on behalf of the land-holders that when the principal Act was enacted it became law in force, and the ceiling limit prescribed thereby became effective, even though Ch.IV was not extended by a notification under Section 1(3) of the Act, and since the subsequent legislation seeks to restrict the ceiling limit and to vest the surplus land in the Government. under Section 45 as amended, there is compulsory acquisition of land which may be valid only if the law provides for payment the land holder for extinction of his interest, the market value of that part of the surplus land which is within the ceiling limit under the principal Act. This argument found favor with the High Court. In their view the expression "law in force" must be "construed only in the constitutional sense and not in the sense of its actual operativeness", and on that account it must be held that "there was a ceiling limit already provided by the principal Act as it was 'law in force' within the meaning of that expression as used in the second proviso to Article 31-A" They proceeded then to hold that Section 47 of the Act as amended provided for payment of compensation at a rate which is less than the market value of the land falling within the ceiling limit as originally fixed under Act 16 of 1960, and the guarantee of the second proviso to Article 31-A of the Constitution is on that account infringed. We are unable to accept this process of reasoning. The right to compensation which is not less than the market value under any law providing for the acquisition by the State of any land in an estate in the personal cultivation of a person is guaranteed by the second proviso only where the land is within the ceiling limit applicable to him under any law for the time being in force. A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate empowered to bring it into operation. The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has, in our judgement no validity. The decision is undoubtedly helpful to the Government. But could it be said that the ceiling provisions in this case have existence only in a constitutional sense in view of the definition of "ceiling area" in Section 2(3) of the Act, and the provisions of Section 82(1) and 18(1) ? I think, not. The other decisions cited by the learned Advocate General are really distinguishable on the language of the Statutes considered. Thus, in the Ajmer Abolition of Intermediaries and Land Reforms Act case (AIR 1959 Supreme Court 475) there was no automatic invalidation of transfers as in our Section 84, but the cancellation was to follow an enquiry by the Collector and only if he was satisfied that the transfer was with the object of defeating the provisions of the Act. In *Pritam Singh v. State of Punjab*<sup>6</sup> the Section declared the transfers invalid not generally, but only as against the

<sup>5</sup>(AIR 1970 SC 398)

<sup>6</sup>(AIR 1967 SC 930)

Government.

7. I then come to the Full Bench decision in *Ayidru v. State of Kerala*<sup>7</sup> My learned brother Eradi J. in his judgement observed that Section 84 was enacted to render effective the provisions of Sections 83 and 85 and that the scheme of the Act is to peg down to the notified date the rights and obligations relating to the fixation of ceiling area and surrender of excess land. The view treats Section 84 as more a machinery Section than a substantive and independent provision by itself.

8. The question as to whether the quantum of the ceiling area has to be worked out with respect to the date of the transfer or with respect to the date when the ceiling provisions were enforced by notification issued on 1-1-1970 did not actually arise for consideration in 1973 Ker LT 701 . The question there was whether the alienations having been effected prior to 1-1-70 in respect of kayal lands which were then exempt from the ceiling area, the said alienations stood retrospectively invalid dated by the removal of the exemption of Kayal lands by Act 35 of 1969 passed on 1-1-70. It was in discussing this aspect that the observations were made. The question whether the quantum of the ceiling area had to be fixed with respect to the date of the transfer or 1-1-1970 was never discussed or considered.

9. The considerations against the view that we took in 1973 Ker LT 701 are presented in 1976 Ker LT 362. My learned brother Eradi J. observed :

"6..... From the setting in which Section 84 appears it is perfectly obvious that the legislature has enacted this Section only with a view to render the provisions of Sections 83 and 85(1) fully effective. This is the objective sought to be achieved by the Section by providing that for purposes of calculation of the ceiling are and the determination of the extent of excess land to be surrendered by a person account will be taken not merely of the land actually owned and possessed by him on the notified date (1-1-1970) but also of lands voluntarily transferred by him subsequent to the date of publication of the Kerala Land Reforms Bill, 1963 by transactions not falling within the excepted categories mentioned in that Section. When we look at Section 84 in its correct perspective there is absolutely no scope for interpreting or understanding its provisions as conferring on persons a right to transfer away their excess lands after the notified date by effecting transactions of the excepted categories specified in the said Section.

7. As already observed by us, the scheme of the Act is to peg down to a date certain, namely the notified date, the rights and obligations relating to the fixation of the ceiling area and the surrender of excess land. Section 83 lays down in unambiguous terms that with effect from the notified date no person shall be entitled to own or hold or possess under a mortgage, lands in the aggregate in excess of the ceiling area. The direct result of this provision is that the extent of land which a person is entitled to own or hold on the basis of the principles laid down in Section 82 became statutorily fixed on the notified date. Any land owned, held or possessed by him beyond the permissible extent automatically became 'excess land' in his hands with effect from the notified

<sup>7</sup>(1976 Ker LT 362)

date. Sub-section (1) of Section 85 creates a mandatory obligation that every person should surrender to Government all the 'excess land' which was being owned or held by

him on the date notified. This liability to surrender the excess land irrevocably accrued on the notified date on the basis of the state of things obtaining on that date. We find it impossible to construe Section 84 as a provision designed to enable persons who have already incurred the aforesaid statutory liability to surrender to Government the excess lands which were owned or possessed by them on 1-1-1970 to escape from that obligation by effecting voluntary transfers of such excess lands by transaction of the excepted types enumerated in Section 84."

10. In CRP Nos. 1269, 1503, 1642 of 1974 and 33 of 1976\* a Full Bench consisting of the Chief Justice, Narayana Pillai and Poti JJ, considered the meaning of the expression "commencement of this Act" in Section 82(4). There occurs the following observation :

"Counsel for the petitioners contended that there was no law prohibiting the holding of land in excess of the ceiling area at any time before 1-1-1970 when the notification under Section 83 of the Act prohibiting the holding or owning of land in excess of the ceiling area was issued. It has to be remembered that the ceiling area had been fixed by Section 82 with effect from 1-4-1964. The exemptions were also applicable with reference to the state of affairs as on 1-4-1964, Section 81 of the Act having come into force also on 1-4-1964." The above decision has, since been reported in 1976 Ker LT 632 (FB).

11. It is now necessary to notice the provisions of the amended Sub-section (3) of Section 84 which reads as follows :

"(3) :- For the removal of doubts, is hereby clarified that the expression "ceiling area" in Sub-Secs. (1) and (2) means the ceiling area specified in Sub-section (1) of Section 82 as amended by the Kerala Land Reform (Amendment) Act, 1969 (35 of 1959)."

Construing the amendment in the light of the well-known principle in Heydon's case (1584-76 ER 637), by having regard to the state of the previous law, the mischief disclosed by it, and the remedy devised to avoid the mischief, there is force in the contention that the amendment was declaratory and should have retrospective effect. The decision in 1973 Ker LT 701 contains no advertence to this aspect. Whatever be the feasibility of the two views discussed earlier, as to the time when the ceiling area becomes effective, it appears fairly reasonable and easy to hold Section 84(3) to be declaratory and retrospective, and thus to effectively resolve the controversy.

11A. It was while these considerations were agitating my mind that counsel sought a reposting of the case for further arguments. The matter was accordingly reposted and further arguments were heard on 8-11-1976. By that time the Full Bench decision in CRP. No. 1455 of 1974 on which counsel wanted to rely had been reported in 1976 Ker LT 427. The decision in CRP Nos. 1269, 1503, 1642 of 1974 and 33 of 1976 (referred to in para 10 Supra) had also been reported in 1976 Ker LT 632 (FB). Besides these, the decision of this Court in 1973 Ker LT 701 had been affirmed by the Supreme Court (vide *State of Kerala v. M.J. Thomas*<sup>8</sup>,. Supplemental arguments in the light of these decisions were addressed on 8-11-1976.

12. In the course of the judgement in 1976 Ker LT 566 the Supreme Court observed :

"It is not in controversy that the Kayal lands which are the subject matter of these appeals are of the category mentioned in clause (1) of Sub-section (1) of Section 81. They were therefore exempt from the restriction on ownership prescribed by the various Sections of Chapter III referred to above. So even though by virtue of Section 84 of the Act all voluntary transfers effected after Sept. 15, 1963 (date of publication of the Kerala Land Reforms Bill, 1963 in the Gazette) were invalid the transfers made in respect of Kayal padasekharams in Appeals Nos. 907-909 could not be held to be invalid for the simple reason that they were exempt from the provisions of Chapter III. That exemption was no doubt withdrawn by Section 65 of Act 35 of 1969 which amended the Act, but it is not disputed before us that the Section was not brought into force until Jan. 1, 1970. The voluntary transfers made between September 15, 1963 and Jan. 1, 1970 were therefore valid, and there is no force in the argument of the Advocate General that the amendment brought about by Section 65 of Act 35 of 1969 should be given retrospective effect from April, 1, 1964 as Sections 82 and 84 of the Act were brought into force from that date. There is also no force in the other argument of the Advocate-General that Section 84 had the effect of invalidating the transfers effected after Sept. 15, 1963 for that was the date of publication of the Kerala Land Reforms Bill in the Gazette. The argument overlooks the fact that, as has been mentioned, Kayal lands were exempt from the provisions of Chapter III until as late as Jan. 1, 1970. In this view of the matter *Pritam Singh Chahil v. State of Punjab*<sup>9</sup> cannot avail the appellants. The amendment cannot also be said to be curative or merely declaratory of the previous law." (pp. 569-570 of Ker LT) : (At p. 2367 of AIR SC).

My learned brother Eradi J. has dealt with the above decision of the Supreme Court in paras 9, 10 and 11 of his judgment. With respect, I feel difficulty in explaining the decision of the Supreme Court as inapplicable. The judgment of this Court in 1973 Ker LT 701 which was the subject-matter of the appeal to the Supreme Court had expressly held that Section 82(4) cannot be regarded as declaratory or retrospective. If it was retrospective, on that one ground the appeal before the Supreme Court should have been allowed and the judgment in 1973 Ker LT 701 should have been reversed. I find it difficult to explain away the decision on the ground that it related only to the question of the exemption in favor of kayal lands from the computation of ceiling area, and was not concerned with the scope of the expression 'ceiling area'. The fact of the matter is that if Section 82(4) were to be held to be retrospective, the conclusion of the Supreme Court would be unsustainable. In this view, I would hold, in agreement with the view previously expressed in 1973 Ker LT 701 that Section 82(4) is not retrospective in its operation.

<sup>8</sup>1976 Ker LT 566

<sup>9</sup>(1967) 2 SCR 536

13. I would therefore hold that the Land Board was wrong in determining the validity of the transfers by taking into account the ceiling limits under Section 82(1) of the Act as amended by Act 35 of 1969. I would therefore allow this revision and remand the matter back to the Land Board for re-fixation of the extent of land that the petitioners are liable to surrender, in accordance with law and in the light of the observations contained in this judgement. I would direct the

parties to bear their costs.

**Balakrishna Eradi, J.**

14. (On behalf of himself and Balagangadharan Nair, J.):-

This case has been referred to a Full Bench since it involves an important question concerning the interpretation and scope of Section 84 of the Kerala Land Reforms Act, 1963 (Act I of 1964), hereinafter referred to as the Act. The point arising for decision is whether in determining under Section 84(1) the validity of a transfer effected between 15-9-1963 (the date of publication of the Kerala Land Reforms Bill) and 1-1-1970 on which date Act 35 of 1969 came into force the ceiling area of the transferor is to be reckoned with reference to the provisions of Section 82(1) as amended by Act 35 of 1969 or it should be with reference to the terms of the said Sub-Section as they stood prior to the amendment.

15. Section 82 of the Act prescribes the ceiling area of land that may be owned or held, or possessed under mortgage by adult unmarried persons, families etc, with effect from the notified date, viz. 1-1-1970. Section 83 prohibits persons from holding land in excess of the ceiling area with effect from the notified date. Sub-Section (1) of Section 84 declares that all voluntary transfers effected by a family or any member thereof or by an adult unmarried person owning or holding land in excess of the ceiling area after the date of publication of the Kerala Land Reforms Bill, 1963 in the gazette otherwise than in the modes specified in the Section shall be invalid. Sub-Section (2) of the said Section contains a similar provision invalidating voluntary transfers effected by persons other than those covered by the description in Sub-Section (1) owning or holding land in excess of the ceiling area after the 1st July, 1969 otherwise than in the modes specified in that Sub-Section.

16. Section 83 of the Act was brought into force only with effect from 1-1-1970 on which date the Kerala Land Reforms (Amendment) Act, 1969 (Act 35 of 1969) came into force. By Section 66 of the amending Act which came into force on 1-1-1970 Sub-Section (1) of Section 82 which prescribes the ceiling limits applicable to different categories of persons was amended by substituting a new provision in the place of the original Sub-Section and as a result thereof there was a substantial reduction in the ceiling areas specified in respect of the different categories of persons. During the period between 1-4-1964 (the date of commencement of Section 82 as originally enacted) and 1-1-1970 there have been several transactions of voluntary transfer not falling within the excepted varieties specified in the Section. On the terms of Section 84 the validity of those transfers would depend upon whether the transferor was "owning or holding land in excess of the ceiling area". The question raised before us is whether for the purpose of such determination the ceiling area of the transferor is to be reckoned with reference to the provisions of Section 82 as they stood on the date of the transfer or whether the calculation should be on the basis of the reduced ceiling limits prescribed by the substituted provisions of Sub-Section (1) of Section 82 which were operative on 1-1-1974 on which date alone Section 83 of the Act was brought into force.

17. Before we proceed to discuss the question of law aforementioned it is necessary to set out in brief the facts which have given rise to the said question of law. The revision petitioner had filed a statement dated 12-1-1973 before the Land Board intimating the location, extent and other

particulars of the lands owned and held by him under Sub-Section (1) of Section 85-A of the Act. In accordance with the provision contained in Sub-Section (3) of the said Section the papers were forwarded by the Land Board to the Taluk Land Board, Ottapalam for disposal in accordance with law. After conducting a verification and holding an enquiry, in the course of which the petitioner was afforded a hearing through counsel, the Taluk Land Board by its order dated the 29th May, 1975 directed the petitioner to surrender an extent of 3.89 acres from survey Nos. 47/4 and 47/5 as excess land held by him and declared that the ownership and possession of the said land shall vest in the Government free from all encumbrances with effect from the date of the said order. In passing that order the Taluk Land Board had treated as invalid certain transfers effected by the petitioner in respect of an extent of 4.27 acres during the period between 15-9-1963 and 1-1-1970. According to the petitioner, on the dates of those transfers he was not "a person owning or holding land in excess of the ceiling area" since the total extent of land owned or held by the petitioner was well within the ceiling limit prescribed by Section 82(1) of the Act as it then stood. It is contended by the petitioner that the Taluk Land Board went wrong in adjudging the validity of the transactions of transfer entered into prior to 1-1-1970 on the basis of the altered ceiling limits prescribed by the amended provisions of Section 82(1) which came into force only on 1-1-1970. The question therefore arises whether for determining the validity of the transfers effected by the petitioner between 15-9-1963 (the date of publication of the Kerala Land Reforms Bill) and before 1-1-1970 the petitioner's ceiling area is to be reckoned with reference to the provisions of Section 82(1) as amended by Act 35 of 1969 or whether the ceiling area is to be calculated on the basis of the provisions of Section 82(1) as they stood at the time of the transfers.

18. The legislature seems to have considered it necessary to clarify the position in regard to the aforesaid matter and for that purpose it amended Section 84 by the Kerala Land Reforms (Amendment) Act, 1972 (Act 17 of 1972) by inserting Sub-Section (3) which is in the following terms :-

"For the removal of doubts, it is hereby clarified that the expression 'ceiling area' in Sub-Sections (1) and (2) means the ceiling area specified in Sub-section (1) of Section 82 as amended by the Kerala Land Reforms (Amendment) Act, 1969 (35 of 1969)."

It is, however, contended on behalf of the petitioner that since Sub-section (3) of Section 84 came into force only with effect from the 2nd Nov. 1972 it cannot have any application in respect of transactions of transfer effected prior to the said date. We see no merit in this argument. The provision contained in Sub-Section (3) of Section 84 is clearly declaratory in nature and the very object and purpose sought to be achieved by the legislature by the insertion of this new Sub-Section is to clarify and explain the true scope of Sub-Sections (1) and (2) by removal of doubts as to the meaning of the expression 'ceiling area' used in those Sub-Sections. As held by Coleridge, C.J. in *Jones v. Benmet*<sup>10</sup>,

"A declaratory Act means to declare the law, or to declare that which has always been the law, and there having been doubts which have arisen, Parliament declares what the law is and enacts that it shall continue what it then is."

Where a statutory provision is in its nature declaratory it will be presumed to be retrospective

unless a contrary intention is clearly indicated by the legislature, the reason being that its underlying purpose of explaining or clarifying the existing law will be effectively served only by giving it such a retrospective construction. The effect of Sub-Section (3) of Section 84 is that in every case where subsequent to the coming into force of the said Sub-Section a question as to the validity of a transaction of voluntary transfer comes up for determination under Sub-Section (1) or Sub-Section (2) of that Section the said question will have to be decided on the basis of the clarification given by the legislature in Sub-Section (3) regarding the meaning of the expression 'ceiling area' occurring in Sub-Sections (1) and (2); in other words, the ceiling area of the transfer will have to be reckoned on the basis of the revised limits prescribed by Sub-Section (1) of Section 82 as amended by Act 35 of 1969 and not with reference to the terms of the said Sub-Section as they originally stood prior to 1-1-1970.

19. In support of his contention that Sub-Section (3) of Section 84 cannot have retrospective effect the petitioner's learned advocate relied strongly on certain observations contained in the judgment of a Division Bench of this Court in *M.T. Joseph v. State of Kerala*<sup>11</sup>, at p. 34. In the passage relied on by the counsel there is no doubt an observation by the Division Bench to the effect that Sub-Section (3) of Section 84 "cannot be regarded as really declaratory or clarificatory of the law" and that it cannot have retrospective effect. But on a careful reading of the whole judgement it becomes clear that the question regarding the scope and effect of Sub-Section (3) of Section 84 had not directly arisen for consideration before the Division Bench and that the observations relied on by the petitioner's advocate which were made only by way of passing remarks could not have been intended as a final pronouncement on the said question. However that may be, in order to place the matter beyond doubt we consider it necessary to state, with respect, that the observation contained in that judgement that Section 84(3) is not a declaratory provision and that it has no retrospective effect is not a correct statement of the legal position. We hold that Sub-Section (3) of Section 84 is a declaratory provision intended to explain and clarify the existing legal position regarding the meaning of the expression 'ceiling area' occurring in Sub-Sections (1) and (2) of Section 84 and that it has, therefore, to be given retrospective operation. The provisions of Sub-section (3) have therefore to be applied in determining the question of validity of

<sup>10</sup>(1890) 63 LT 705

<sup>11</sup>1973 Ker LT 701 at p. 711 : (AIR 1974 Ker 28)

voluntary transfers effected subsequent to 15-9-1963 whenever such a question arises for consideration subsequent to the coming into force of the Kerala Land Reforms (Amendment) Act, 1972 which introduced the new Sub-section (3) in Section 84 of the Act.

20. The arguments in this case were originally closed on 29-6-1976 on which date judgment was reserved. Shortly hereafter, counsel appearing for the petitioner filed a memo submitting that on 8th July, 1976 another Full Bench of this court has pronounced a judgment wherein the question relating to the scope and effect of Section 84 has been elaborately considered and requesting that an opportunity may be given to counsel to address some further arguments in the case in the light of the said judgment rendered by the Full Bench. We considered this request to be reasonable and accordingly we gave directions for reposting the case for further arguments. The Full Bench decision referred to in the memo filed by the counsel has since been reported in *Kesavan Namboodiri v. State*<sup>13</sup>, Another decision by the same Full Bench which was unreported at the time when the arguments were originally heard has also since been reported in *Ramunni Nair v. State of Kerala*<sup>14</sup>, Before this case could be reposted for further arguments the Supreme Court

has also rendered its decision in Civil Appeals Nos. 1354 and 1355 of 1975 : (reported in AIR 1976 Supreme Court 2363) confirming the judgment of the Division Bench of this Court reported in *M.T. Joseph v. State of Kerala*<sup>15</sup>, This decision of the Supreme Court has been reported in *State of Kerala v. M.J. Thomas, 1976 Ker LT 566(Supra)* . The case was reposted before us on 8-11-1976 and further arguments were addressed by both sides in the light of the aforementioned pronouncements by the Supreme Court and by another Full Bench of this court.

21. It was strongly contended for the revision petitioner that since the decision of the Division Bench in *M.T. Joseph v. State of Kerala, 1973 Ker LT 701(Suupra)* , has been confirmed by the Supreme Court the observation contained in the judgement of the Division Bench that Sub-Section (3) of Section 84 of the Act is not declaratory in nature and that it has no retrospective effect must be regarded as having been accepted as correct by the Supreme Court. We have carefully gone through the judgment of the Supreme Court in *State of Kerala v. M.J. Thomas 1976 Ker LT 566(Supra)* , and we find nothing therein which supports the above argument of the counsel for the petitioner. Counsel pressed before us that the Supreme Court has upheld the view expressed by the Division Bench that in determining the question of validity of a transfer under Section 84 of the Act what is material is the law relating to ceiling area as it existed on the date of the transfer and not the law relating to ceiling area that is in force on any subsequent date. Counsel contended that it must automatically follow from the above dictum that the question whether the person who made the transfer was owning or holding land in excess of the ceiling area at the time of the transfer has also to be decided only with reference to the provisions of Section 82 prescribing the ceiling limits as they stood at the time of the transfer. We are unable to accept this contention. In *State of Kerala v. M.J. Thomas, 1976 Ker LT 566(Supra)* , the Supreme Court had no occasion at all to consider the effect of Sub-Section (3) Of Section 84 of the Act. The point that arose to be decided by the

<sup>13</sup>1976 Ker LT 427

<sup>15</sup>1973 Ker LT 701

<sup>14</sup>1976 Ker LT 632

Supreme Court in that case was only whether transfers of kayal lands that had been effected at a time when kayal lands stood totally exempted from the purview of the provisions contained in Chapter III of the Act could subsequently be treated as invalid under Section 84 by reason of the fact that the exemption in favor of kayal lands that was originally contained in clause (1) of Sub-section (1) of Section 81 was later deleted by the amendment brought about by Section 65 of Act 35 of 1969. It was in the said context, while dealing with the question of validity of transfers of lands belonging to a category which stood wholly exempted from the purview of the ceiling provisions contained in Chapter III at the time when the transfers were effected, that the Supreme Court upheld the view taken by the Division Bench of this Court that the validity of such alienations had to be judged with reference to the law relating to the ceiling area that was in force on the date of the transfer. It has to be remembered that in the case of kayal lands Section 84 of the Act had no application at all till the amending Act 35 of 1969 came into force on 1-1-1970. The position is entirely different in regard to the lands involved in the present case since they were governed by the provisions of Section 84 with effect from 1-4-1964 itself. It has been held in the Full Bench decision of this court in *Ayidru v. State of Kerala*<sup>16</sup>, as also in the recent pronouncement of the Supreme Court in Civil Appeal No. 1177 of 1975 : (reported an AIR 1977 Supreme Court 311) that Section 84 is only a machinery Section, the purpose of which is to render the provisions of Sections 83 and 85 fully effective and that under the scheme of Chapter III of the Act the rights and liabilities regarding the extent of land that may be owned and

possessed by a person and the quantum of land to be surrendered to Government by way of excess land were to become crystallised only on 1-1-1970.

22. All that the Supreme Court has held in *State of Kerala v. M.J. Thomas*, 2976 Ker LT 566(*Supra*) , is that the amendment brought about in Section 81 of the Act by Section 65 of Act 35 of 1969 as a result of which the exemption in favour of kayal lands was withdrawn had no retrospective effect and that hence the transfers of kayal lands effected prior to 1st Jan. 1970 on which date alone the said amendment came into force could not be invalidated under Section 84. We do not see how the said decision is of any assistance to the revision petitioner in this case. It is worthy of notice that in the judgment of the Supreme Court it is specifically mentioned that the only question that was pressed before their Lordships for their consideration was the one relating to the validity of transfers of kayal lands and that there was no controversy before the Supreme Court regarding the scope of the expression 'ceiling area'. This is what the Supreme Court has stated (at p. 2365) :

"The only question which has been passed for our consideration by the Advocate-General, on behalf of the appellants, is that relating to the validity of the transfers of Kayal lands between Sept. 15, 1963 and Jan. 1, 1970. The writ petitioners in the High Court urged that they were exempt under Section 81(1)(1) of the Act and could not be held to be invalid with effect from Jan. 1, 1970 because of the subsequent amendment to the Act, and included in their ceiling area.

<sup>16</sup>1976 Ker LT 362

The term 'ceiling area' has been defined in Section 2(3) of the Act to mean 'the extent of land specified in Section 82 as the 'ceiling area' and there is no controversy about its extent or content."

In the force of these observations it is futile for the petitioner to contend that the Supreme Court has pronounced upon the content of the expression 'ceiling area' occurring in Sub-Secs. (1) and (2) or about the scope and effect of Sub-section (3) of Section 84.

23. Sub-section (3) of Section 84 only lays down that the expression 'ceiling area' occurring in Sub-Secs. (1) and (2) of the said Section should be understood to mean the ceiling area specified in Sub-section (1) of Section 82 as amended by Act 35 of 1969. The provision contained in Section 84(3) does not have any repercussion at all on the exemptions granted under Section 81(1) of the Act. There is nothing in the Sub-Section which affects, to any extent, the operation and effectiveness of the exemption that had been granted under clause (1) of Section 81(1) in favour of Kayal lands in respect of the period prior to the deletion of the said clause by the amendment brought about by Act 35 of 1969. Hence it was held that there was no occasion or necessity for the Supreme Court to deal with the scope or effect of this Sub-Section on the decision aforesaid.

24. The following observations made by the Supreme Court at page 569 of the report 1976 Ker LT 566 while dealing generally with the intendment, scope and effect of Section 84 of the Act are

of great relevance for deciding the present case :-

"So even if a transfer was found to have been made after Sept. 15, 1963 but before January 1, 1970 (date notified under Section 83 prohibiting the owning or holding or to possessing under a mortgage lands in the aggregate in excess of the ceiling area) the ceiling area for purposes of Section 83 and bringing about the surrender of the excess land under Section 85 had to be as on Jan. 1, 1970 as that was the date notified under Section 83. The reason is that the prohibition of Section 83 applied with reference to that date and that in turn, required a surrender of the excess land as on that date" (underlining is ours). These observations clearly go to demolish the theory propounded by the counsel for the petitioner that in the decision aforesaid the Supreme Court has impliedly laid down that in determining the validity of transfers effected even in respect of lands not covered by any of the exemptions granted under Section 81 of the Act, the ceiling area of the transferor has to be calculated with reference to the provisions of Section 82 as they stood at the time when the transfer was effected. The fact that the above observations were made by their Lordships even without reference to the provision contained in Sub-Section (3) of Section 84 goes to substantiate the correctness of our conclusion that the said Sub-Section is only declaratory in nature and merely explains or clarifies the existing legal position. It will thus be found that far from being of any assistance to the revision petitioner for sustaining his contentions, the indications such as are contained in the judgment of the Supreme Court in *State of Kerala v. M.J. Thomas, 1976 Ker LT 566(Supra)*, in respect of the points raised before us go to support the stand taken by the Advocate-General that the provision contained in Sub-section (3) of Section 84 is declaratory in nature.

25. In *Kesavan Namboodiri v. State*<sup>17</sup>, the Full Bench was concerned only with the question whether a transfer hit by Section 84 is invalid in toto or whether it is invalid only to the extent to which it operates to defeat the provisions of the Act. We find nothing in that judgment which is of any material relevance for deciding the questions arising in the present case regarding the scope and effect of Sub-section (3) of Section 84.

26. In view of our having come to the conclusion that Sub-section (3) of Section 84 of the Act is applicable to the present case it is unnecessary for us to consider the larger question whether even on the terms of Sub-Secs. (1) and (2) of Section 84 the validity of the transfers is to be determined with reference to the ceiling limits specified in Sub-section (i) of Section 82 as amended by Act 35 of 1969 which became operative on 1-1-1970 when alone the provisions of Section 83 prohibiting the holding of land in excess of the ceiling limits were brought into force.

27. In the result, we hold that the Taluk Land Board acted rightly in determining the validity of the transfers effected by the petitioner by taking into account the ceiling limits applicable to him under Section 82(1) of the Act as amended by Act 35 of 1969. Though counsel for the petitioner attempted to urge certain other minor points on the ground that they had been omitted to be properly considered by the Taluk Land Board they relate to pure questions of fact and do not, therefore, properly arise for consideration before this court in a revision petition filed under

Section 103 of the Act.

28. The revision petition accordingly fails and it is dismissed but in the circumstances we do not make any order as to costs.

### **ORDER OF THE COURT**

29. In the light of the conclusion recorded in the majority judgement the civil revision petition is dismissed. The parties will bear their respective costs.

Petition dismissed.

<sup>17</sup>1976 Ker LT 427