KERALA HIGH COURT

State (Kerala)

Vs

Amalgamated Malabar Estates

M.F.A. Nos. 239 of 1977 and 346 of 1978

(Balakrishna Eradi, Chandrasekhara Menon and M.P. Menon, JJ.)

02.05.1979

JUDGEMENT

Crandrasekhara Menon, J.

1. M.F.A. No. 235 of 1977 is an appeal by the State of Kerala and the Custodian of Vested Forests, Palghat from a common decision passed by the Forest Tribunal, Calicut on two separate applications filed by two Companies, M/s. Amalgamated Malabar Estates (P) Ltd., and the Indian Timber and Plywood Corporation Ltd., wherein they had prayed for a declaration that the Eucalyptus Plantations raised by them (in the case of the first Company 180 hectares of land by name Panikara Malavaram situated in resurvey 1/1 of Puduppadi Village, Kozhikode Taluk and in the case of the second Company 340 hectares of land by name Poithana Malavaram of Pallperuvanna Village, Quilandy Taluk, Kozhikode District) have not vested in the Government under the Kerala Private Forests (Vesting and Assignment) Act, 1971, (hereinafter referred to as 'the Act'). Section 2(f) of the Act defines Private Forests. There is no dispute that the lands in respect of which the declarations were sought for in the two petitions are situated in the erstwhile Malabar District and that the provisions of the Madras Preservation of Private Forests Act, 1947, applied to these lands. The applicant- respondents in the applications pointing out that the Eucalyptus Plantations were raised by the applicants after obtaining the necessary permission from the District Collector under the Madras Preservation of Private Forests Act, had contended that such lands are not liable to be excluded from the provision of the Act because Eucalyptus is not an agricultural crop. Though under the definition of the term private forest, it would take in relation to the Malabar District (referred to in Sub-Section (2) of Section 5 of the States Reorganization Act, 1956), land to wh9.ch the Madras Preservation of Private Forests Act applied the definition clause makes specific provision for excluding lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crops. The Tribunal overruling the objections of the state and the Custodian allowed the applications declaring that the Eucalyptus plantations described in the petitions do not vest in the Government under Section 3(1) of the Act.

2. It might be pointed out here that only one appeal had been filed from the common order in the two applications though the appellants are challenging the decision in each of the two

applications. Two separate court fees of Rs. 100 each has been paid. A preliminary objection was taken to the maintainability of a single appeal in respect of two independent proceedings by Sri K.P. Kesava Menon, learned counsel for the respondents in the appeal. We felt that the objection is justifiable in view of the fact that the appellants are in effect questioning the decision rendered in two separate applications which are quite independent of each other though the same common question of law arises in both and hence decided in one common order. Before the hearing of the appeal was over, the appellants filed C.M.P. No. 4289 of 1979 to treat the common appeal as two separate appeals and to condone the delay in filing the appeal from the decision in O.A. No. 138 of 1974. We think in the interests of justice this application should be allowed. We are allowing the same. Any prejudice to the respondents in the matter could well be compensated by payment to them of costs. In the circumstances we are herewith directing that the appellants would pay the respondents' counsel in this court Rs. 500 as costs in the matter of allowing C.M.P. No. 4287 of 1979.

3. The question that arises in M.F.A. No. 235 of 1977 arises in M.F.A. No. 346 of 1978 also. There the appellant is M/s. Gwalior Rayon Silk Manufacturing (Weaving) Company, Limited, and the respondents are the Custodian of Vested Forests, Agricultural Forest (Special) Palghat and the State of Kerala. The appeal there arises out of the order dated 5th May 1978 of the Forest Tribunal, Manjeri and made in O.A. No. 124 of 1977 of that forum. The proceedings under Section 8 of the Act were originally initiated by the appellant in the Forest Tribunal, Palghat where it was numbered as O.A. No. 64 of 1974. On and after the notification of the Government for transfer of jurisdiction of that Tribunal over and in respect of the Private Forests in Nilambur area to the Forest Tribunal at Manjeri, O.A. No. 64 of 1974 was transferred to the file of the Manjeri Tribunal where it was numbered as O.A. No. 124 of 1977. The appellant in accordance with a Government approved working plan, had developed about 8000 acres into Eucalyptus Plantations for feeding, the Raw Material requirements of the Rayon Grade Pulp Factory of the appellant in Mavoor in Kozhikode District. Another extent of about 2000 acres was made ready even before that date to be planted with Eucalyptus. According to the appellant, this plantation was permitted by this Court as per orders passed on the Original Petition No. 1684 of 1977 filed to challenge the constitutional validity of Ordinance No. 14 of 1971 which was later replaced by the Act. The question before the Tribunal was whether the total 10,000 acre of Eucalyptus Plantations stood excluded under Section 2(f)(1)(C) from the vesting provisions in Section 3(1) of the Act. There was yet another matter in dispute between the parties, if the residential and non-residential buildings which were built before the Act came into force in the area and the appurtenant sites would stand excluded from the vesting provisions of the Act under Section 2(i)(1)(D). The respondents in this appeal also denied both the claims of the appellant for this exclusion from the vesting provisions in the Act.

4. The Tribunal overruling the contentions of the applicant Company held that Eucalyptus trees, though a forest crop, cannot be an agricultural crop. It found that the property concerned in the case where Eucalyptus is planted is not a land which is principally cultivated with an agricultural crop as contemplated in the exclusion mentioned in Section 2(f)(1)(c) in the Act and the property in dispute is a 'private forest'. It also observed that even if it be held that Eucalyptus Plantation is agricultural crop, the appellant Company would be entitled to get relief only in respect of the Plantation that existed as on 10th May 1971, which according to the Tribunal, was only in an extent of 7000 acres and not 10,000 acres as the appellant would have it. As regards building alleged to have been erected by the appellant and their appurtenant sites, the Tribunal held that

there was no proof of instruction of the buildings prior to 10th May 1971 and therefore the appellant was disentitled to claim exemption under sub-clause (D) of Section 2(f)(1) of the Act. The prime question, therefore, that arises for consideration in the two appeals is whether a Eucalyptus Plantation would stand excluded from the ambit of the word 'private forest' defined under Section 2(f) of the Act on the ground that they are lands principally cultivated with any other agricultural crop than cashew or other fruit bearing trees under Section 2(f)(1)(C) of the Act. We find that the two Forest Tribunals of Calicut and Manjeri have taken diametrically opposite views in matter.

5. The term 'private forest' has been defined in Section 2(f) of the Act as follows :

"2(f) private forest means –

(1) in relation to the Malabar District referred to in Sub-Section (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 39 of 1956)

(i) any land to which the Madras Preservation of Private Forests Act, 1945 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding -

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (Act 1 of 1964);

(B) lands which are used principally or the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.

Explanation :- Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for the purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.

(C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop, and

(D) sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use, at, such buildings;

(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forests Act, 1949, did not apply, including waste lands which are enclaves within wooded areas.

(2) in relation to the remaining areas in the State of Kerala, any forest not owned by the Government, including waste lands which are enclaves within wooded areas.

Explanation :- For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs", Under Section 3 of the Act notwithstanding anything contained in any other law for the time being in force, or in any contract or other document but subject to the provisions of Sub-Sections (2) and (3) with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of the Act, stand transferred to and vest in the Government free from all encumbrances and the right, title and interest of the owners or any other person in any private forest shall stand extinguished. But such vesting will not take place in respect of so much extent

of land comprised in private forests held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963, Act 1 of 1964, or any building or structure standing thereon or appurtenant thereto. Nor shall the vesting take place in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling area applicable to him under Section 82 of the said Act. Notwithstanding anything contained in the Kerala Land Reforms Act, 1683, private forests shall, for the purposes of Sub-Section (2) or Sub- Section (3) be deemed to be lands to which Chapter III of the said Act is applicable, and for the purposes of calculating the ceiling limit applicable to an owner, private forests shall be deemed to be 'other dry lands' specified in Schedule II to the said Act.

6. In holding against the contention that eucalyptus trees can be treated as 'any other agricultural crop', the learned Forest Tribunal, Manjeri, points out that the nature of trees referred to in sub-clause (C) of the definition in Section 2(f), before the expression 'any other agricultural crop' are cashew or other fruit bearing trees. The object of the enactment, the Forest Tribunal states, is found in the preamble of the Act, that the private forests in the State of Kerala (which) are 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. Therefore, the Act takes in agricultural lands also, but the point to be considered is whether Eucalyptus Plantation is an agricultural crop. Alter referring to the decision in *State of Kerala v. Gopalan Nair*[1], where it is expressed that it is no sound principle of construction to interpret expressions used in one Act with reference to their use in another Act and the meaning of words and expressions used in the Act must take from the context in which they appear, the Tribunal goes forward to state that if the Legislature had intention to exclude Eucalyptus Plantation the word 'Eucalyptus' could have been added after the word coffee, cocoa, etc., in the items excluded under sub-Clause (B) of Section 2(f)(1)(i) of the Act. In sub-clause (C) 'any other agricultural crop' is included after cashew tree or other fruit' bearing trees. So the other agricultural crop must have some relation to cashew tree and other fruit bearing trees. It must be one which would give a produce for human consumption. According to the Tribunal, the very wide meaning given to 'agricultural' in some of the decisions cannot be taken into consideration for deciding the scope of the expression 'agricultural crop' in sub-clause (C) of Section 2(f)(1)(i) of the Act. If every variety of crop cultivated in an agricultural land will be an agricultural crop there, was no necessity to mention in the Act about the cultivation of coffee, cocoa, rubber, cardamom, cinnamon, cashew, fruit-bearing trees, etc. Agricultural lands cultivated with anything and everything are not entitled to exclusion. Eucalyptus tree at the most might be a forest crop. The Tribunal would further state that it cannot, in its opinion, be an agricultural crop. In this view, the Tribunal found that the property concerned is the case where eucalyptus

[1]1966 Ker LT 975

is planted is not a lands which is principally cultivated with an agricultural crop as contemplated in the exclusion mentioned in sub-clause (C). So the property in dispute is a private forest under Act 26 of 1971.

7. The view taken by the Forest Tribunal, Kozhikode is just the opposite as pointed out earlier. That Tribunal would state that in considering the question whether a particular area is a forest or not, one will have to bear in mind that it is impossible to decide the same with reference to the

meaning of the term 'forest' as it is generally understood. In the Madras Preservation of Private Forests Act as well as in Act 26 of 1971 the word has a special significance. Act 26 of 1971 has application to all lands which are governed by Madras Preservation of Private Forests Act excluding those are governed forest Act, excluding those areas referred to in clauses A To D of Section 2(f)(1)(i) as well as those areas which are not governed by Madras Preservation of Private Forests Act including waste lands which are enclaves within wooded areas. An extent of 4 and 5 acres forming an enclave with in a wooded area is not strictly speaking a forest as understood in its original sense. Nevertheless, it is a forest within the meaning of Act 26 of 1971. Therefore the Forest Tribunal, Kozhikode, would state that in considering the question whether a particular area is a forest or not, we have to see whether that area has to be excluded under any provision of the Act. If no such exclusion is possible, the Tribunal goes on to point out that in a Government letter there is an admission to the effect that lemon grass can be considered as an agricultural crop of the Act. There can be no distinction on principle between and lemon grass as in both the basic and subsequent agricultural operations, human skill and energy are necessary. The Tribunal would sum up its discussion as follows :-

> (1) The term 'agriculture' has a wide meaning and is not confined to the raising of food crops for the consumption of man or beast.
> (2) Whenever anything is reaped of the soil by basic agricultural operations expending human labour and skill, the product is agricultural in nature.
> (3) The income from trees of spontaneous growth in respect of which there are only subsequent agricultural operations, will not be agricultural in nature.
> (4) The word 'crop' used in clause (c) of Section 2(f)(1)(i) means not only agricultural products subject to seasonal harvest but is wide enough to include collection reaped by basic agricultural operations expending human skill and energy. Therefore, according to the Tribunal, it follows that the terms 'agricultural crop' in (C) of Section 2(f)(1)(i) of Act 26 of 1971 is wide enough to include eucalyptus trees which were planted as a result of basic agricultural operations. It is not disputed that the eucalyptus trees in the property were so planted. Hence that Tribunal allowed the applications before it declaring that eucalyptus plantations described in the petitions do not vest in the Government under Section 3(1) of the Act.

8. The case has come before us on a reference by a Division Bench of this Court. The Reference Order in M.F.A. No. 346 of 1978, where the reasons are stated states :

> "There is considerable controversy as to whether the land cultivated with eucalyptus is land cultivated with agricultural crops. Both sides have addressed us on the question and counsel for the Appellant has brought to our notice the decision in Malankara Rubber and Produce Co. State of Kerala ((1972) 2 SCC 492) . According to counsel this supports his plea, for, it was found in that case in para 60 of the judgement that lands under eucalyptus or teak which are the result of agricultural operations would normally by agricultural lands and they would certainly not be forest. It is contended for the respondents that eucalyptus is planted for the purpose of use of the product of eucalyptus plantation cannot

be said to be a use for raising any agricultural crop. Since this question is raised in other cases also and is one of importance we think it appropriate that a Full Bench of this Court should consider this."

9. Mr. K.P. Kesava Menon, learned counsel for the appellant in M.F.A. No. 346 of 1978 and for the respondents in the other case pointedly brought to our attention paragraph 60 of the Supreme Court decision in *Malankara Rubber and Produce Co. v. State of Kerala*[2], where in dealing it is the question that 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 31A, the Supreme Court had said :

"Land under eucalyptus on teak which are the result of agricultural operations normally would be agricultural lands. They would certainly not be forests but the statements in the petitions seem to suggest that operations were carried thereon for the express purpose of growing these plants and trees. However lands which are covered, by eucalyptus or teak growing spontaneously as in a jungle or a forest would be outside that purview of acquisition".

10. Another decision to which our attention was drawn by the learned counsel for the company is that of *Income Tax Commr. v. Benoy Kumar*[3] We think it will be useful to refer to the facts of that case. The respondent therein held an area of about 8,000 acres of forest land assessed to land revenue and grown with Sal and Piyasal trees. The forest was originally of spontaneous growth, not grown to the aid of human skill and labour and it had been is existence for about 150 years. A considerable income was derived by the assessee from sales of trees from the forest. The question that arose in that case was whether the income from the forest was or was not assessable under the Indian Income-tax Act, whether it was agricultural income and was exempt under the provisions of the Income-tax Act. The I.-T. Authorities and the Income Tax Appellate Tribunal had held that the income was not agricultural income but was income derived from the sale of jungle produce of spontaneous growth and as such was not covered by Section 2(1) of the Act. At the instance of the assessee the Tribunal referred the matter to the High Court. The High Court held that the actual cultivation of the land was not referred and as human labour and skill were spent for the growth of the forest the income from the forest was agricultural income. The question referred was answered against the Revenue. The matter went up to the Supreme Court on a certificate of fitness for appeal from the High Court. The question before the Supreme Court was whether income derived from the sale of sal and piyasal trees in the forest owned by the assessee which was originally a forest of spontaneous growth

[2](1972) 2 SCC 492

[3](AIR 1957 SC 768)

not grown with the aid of human skill and labour but on which forestry operations described in the statement of case had been carried on by the assessee involving considerable amount at expenditure of human skill and labour, is agricultural income within the meaning of the provisions of the Indian Income Tax Act. Agricultural Income as defined under that Act concerned means :

"(a) any rent or revenue derived from land which is used for agricultural purposes, and is

either assessed to land revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such :

(b) any income derived from such land by -

(1) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii)"

The Supreme Court said that agriculture is the basic idea underlying the expressions 'agricultural purposes' and 'agricultural operations' and it is pertinent therefore to enquire what is the connotation of the term 'agriculture'. The primary in which the term agriculture is understood is ager, a field and culture, cultivation, i.e., the cultivation of the field and if the term is understood only in that sense, agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land. They mould be the basic operations and would require the expenditure of human upon the land itself. There are however other operations which have to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land They are operations to be performed after the produce sprouts from the land, e.g., weeding digging soil around the growth, removal of undesirable undergrowths and all operations which foster the growth and preserve the same not only from insects and pests but also from depradation from outside, tending, pruning, cutting, harvesting and rendering the product fit for the market. The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all. Then the Supreme Court pointed out that the mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations described above would not be enough to characterise them as agricultural operations. In order to invest them with the character of agricultural operations, these subsequent operations must necessarily be in conjunction with and in continuation of the basic operations which are the effective cause of the products being raised from the land. It is only if the products are raised from the land by the performance of these basic operations that the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations. The cultivation of the land does not comprise merely of raising the products of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar work done on the land but also includes the subsequent operations set out above all of which operations, basic as well as the subsequent, form one integrated activity of the agriculturist and the term "agriculture" has got to be understood as connoting this integrated activity of the agriculturist. One cannot dissociate the basic operations from the subsequent operations, and say that the 'subsequent operations even though they are divorced from the basic operations can constitute agricultural operations by themselves. If this integrated activity which constitutes agriculture is undertaken and performed in regard to any land that land can be said to have been used for "agricultural purposes" and the income derived therefrom can be said to be agricultural income derived from the land by

agriculture. The Supreme Court was of the opinion that the term agriculture cannot be confined merely to the production of grain and food products for human being and beasts but must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest product such as timber, Sal and Piyasal trees, caesarian plantations, tendu leave, horranuts, etc. The Supreme Court criticised decisions of Bhashyam Ayyangar, J. in *Murugess Chetty v. Chinnathambi Goundan*[4], and Sadasiva Ayyar, J. in *Raja of Venkatagiri v. Appayya Reddy*[5], Bhashyam Ayyangar, J. had taken agriculture to mean "that species of cultivation which is intended to raise grain and other field crops for man and beast", and horticulture to denote the cultivation of garden or orchards, a species of agriculture in its primary and more general sense. In ILR 38 Madras 738 : (AIR 1915 Madras 781 (2)), Justice Sadasiva Ayyar had said that the ordinary meaning of "agriculture" was taken to be "the raising of annual or periodical grain crops through the operations of ploughing, sowing, etc." The Supreme Court however pointed out that the mere fact that an activity has some connection with or is in some way dependent on land is not sufficient to bring it within the scope of the terms and such extension of the term "agriculture" is unwarranted. The term agriculture cannot be dissociated from the primary significance thereof which is that of cultivation of the land and even though it can be extended both in regard to the process of agriculture and the products which are raised upon the land, there is no warrant at all for expending it to all activities which have relation to the land or are in any way connected with the land. The use of the word agriculture in regard to such activities would certainly be a distortion of the term. Products which grow wild on the land or are of spontaneous growth not involving any human labour or skill upon the land are not products of agriculture and the income derived therefrom is not agricultural income. There is no process of agriculture involved in the raising of these products from the land. There are no agricultural operations performed by the assessee in respect of the same and the only work which the assessee performs is that of collecting the product and consuming and marketing the same. On the facts and circumstances of the case, the Supreme Court came to the conclusion that the High Court was right in holding that the income derived from the sale of sal and piyasal trees in the assessee's forest which was more than 150 years old and which was originally a forest of spontaneous growth not grown by the aid of human skill and labour but on which forestry operations described in the statement of the case had been carried on by the assessee for a number of years involving considerable amount of expenditure of human skill and labour was agricultural income within the meaning

[4](1901) ILR 24 Mad 421

[5] ILR 38 Mad 938 : (AIR 1915 Mad 781)

of Section 2(i) of the Indian Income-tax Act and as such exempt from payment of tax under Section 4(3) of the said Act. In the absence of any material on record to show how much of the income was attributable to forest of spontaneous growth and how much trees planted by the assessee, the Supreme Court said that it could not be said that the judgment of the High Court was wrong.

11. We have given at length the reasoning of the Supreme Court in that case because therein the Supreme Court has authoritatively dealt with the meaning of the expression agriculture and agricultural operations in its basic and primary sense. Considerable stress for support of his contentions was laid on this decision by Shri Kesava Menon.

12. Shri Kesava Menon also invited our attention to certain passages in a Text Book "The Eucalyptus" (Botany, Cultivation Chemistry and Cultivation by A.R. Penfold and J.L. Willis. It is

stated therein that some eucalyptus species are among the best honey plants in the world in regard to both the quality and quantity of honey produced (Pages 283 and 284). Many plants contain oils, either in the bark, flowers, fruit, leaves, roots or wood, which can be removed by distillation in a current of steam. Such oils are called volatile or essential oils, and occur in the leaves of all the eucalyptus (Pages 245 and 246). The honey from the eucalyptus is of first-class quality, varying in colour from amber to light amber, is of good density, and granulates with a medium grain of a light creamy colour (Page 299). The miscellaneous uses of eucalyptus are also mentioned at page 303 of the book. At pages 325 of the said book it is said :-

> "the eucalyptus were a valuable source of food and water to the aboriginals of Australia and to" the early explorers of the continent. Travellers often perished from thirst in the dry and inhospitable regions, being unaware of the copious store of water in the roots of the mallees upon which the aborigines were often dependent for survival".

There it is also said :-

> "The scales, which are white and conical, are often found in thick masses upon the buds and foliage of the eucalyptus. They fall to the ground beneath the trees, and are known by the popular name of 'Manna'. The aboriginals use them as food, and often make a sweet drink by steeping the tapioca like masses in water. Bush children also relish them as sweets".

13. Shri Kesava Menon was emphasizing on these aspects in support of his argument that eucalyptus tree is just another species of tree capable of bearing fruit, just like cashew tree or any other fruit bearing trees. He would contend that even though the purpose for development of any block of land by planting one and the same species of tree may vary from person to person and that one of the many purposes of eucalyptus plantation is to utilize it as raw material for making pulp for the appellant, it cannot be said that it is unsuited for human consumption. According to him, cultivation of the eucalyptus trees will be cultivation with an agricultural crop. It might be that in a basic and general sense, rearing of eucalyptus trees might be an agricultural operation. Eucalyptus trees are grown with human skill and labour upon the land itself. The cultivation of such trees might be agricultural taking the integrated activity of the cultivator as a whole. But the question in this case is, can the lands where the eucalyptus trees are grown be said to be principally cultivated with "any other agricultural crop" within the meaning of the term in the context in which it is used in Section 2(f)(1)(i)(C), of the Act. Mention of the fruit bearing trees in the clause, (lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop) should exclude what are generally understood as non-fruit bearing trees. There cannot be much dispute that as generally understood by the ordinary man eucalyptus trees are non-fruit bearing trees. We cannot construe expressions used in one Act with reference to the meaning at the expressions in another Act. To us, it would appear that the decision in AIR 1957 Supreme Court 768 could not have application here. The Supreme Court there was construing the meaning of certain words appearing in the Indian Income-tax Act in the context of the definition contained in that Act. We are not here concerned with the meaning of the expressions "agriculture" and "agricultural operations" in a basic sense. The raising of teak, the raising of caesarian, etc., as the raising of eucalyptus might be an

agricultural operation in the broad sense of that expression. But we find it difficult to say that lands cultivated with eucalyptus trees would be lands principally cultivated with an agricultural crop coming within the ambit of the term "agricultural crop" as used in the Act. One should not deviate from the normal rules of statutory construction and refuse to evaluate the meaning of the words 'any other' appearing before agricultural crop in Section 2(f)(1)(i)(C) of the Act. We find much force in the contention of the learned Additional Advocate General that the use of these words attracted the principles of ejusdem generis, according to which the words 'agricultural crops' in the Section can mean only a similar crop as cashew or other fruit bearing trees mentioned in the same clause.

14. In this connection we might refer to a decision of this Court in *R.C. Alexander v. State of Kerala*[6] The question arose in that case was whether the trees would come within the ambit of the expression any crop or other product raised on land occurring in Section 9 of the Travancore Land Conservancy Act of 109I. Section 9 there reads as follows :-

> "Any person unauthorisedly occupying any land for which he is liable to pay a fine under Section 6 and an assessment or prohibitory assessment under Section 7, may be summarily evicted by the Division Peishkar, and any crop or other product raised on the land shall be liable to forfeiture and any building or other structure erected or anything deposited thereon shall also, if not removed by him after such written notice as the Division Peishkar may deem reasonable, be liable to forfeiture. Forfeiture under this Section shall be adjudged by the Division Peishkar and any property so forfeited shall be disposed of as the Division Peishkar may direct."

A Division Bench of this Court (M.S. Menon, C.J. and P. Govindan Nair, J.) had held:

[6](AIR 1966 Ker 72)

> "Section 9 speaks of 'any crop or other product raised on the land'. Trees cannot possibly be considered as a 'crop or other product raised on the land'. What is meant by 'crop or other product raised on the land' must be what is familiarly known in the law as 'Emblements'. According to Black's Law Dictionary word 'Crop' or 'emblements' means : Such products of the soil as are annually planted, severed, and saved by manual labour, as cereals, vegetables, grass maturing for harvest or harvested etc., but not grass on land used for pasturage."

15. In the Interpretation of Statutes as Craies points out in his well-known work on 'Statute Law' (sixth edition page 133) the courts decline to consider other statutes proceeding on different lines and including different provisions, or the judicial decisions thereon. The Court of appeal held in Re Lord Gerard's Settled Estate (1893) 3 Ch. 252 that the Settled Land Acts learned a code applicable to the subject matter with which they dealt and that a decision on the Lands Clauses Act, 1845, was not applicable for their interpretation, because that Act was passed alio intuitu, and dealt with a different subject-matter. Lord Macnaghten in *Inland Revenue Commrs. v. Forrest*[7], at p. 353 observed that the two Acts differ widely in their scope; and even when they happen to deal with the same subject their wording is not the same. It was argued indeed, that the

language was 'practically identical'; but that expression involves an admission that the language is different. 'Lord Reid said in *London Corporation v. Cusacksmith*[8], that 'it does not necessarily follow that if Parliament uses the same words in quite a different context they must retain the same meaning.'. It could very well be said as the learned Additional Advocate General had argued that eucalyptus trees or teak trees cannot be considered as an agricultural crop, though in a wide sense they might be forest crops and as far as the words 'agricultural crops' in clause (C) of Section 2(f)(1)(i) are concerned, the intention of the Legislature had been made clear by giving specific illustrations as cashew and other fruit-bearing trees and these illustrations logically exclude any tree other than fruit-bearing trees from the ambit of that Section. If the intention of the Legislature would have been to include all trees in Section 2(f)(1)(i)(C), the phraseology used would have been entirely different. The words of statute are to be understood in the sense which they best harmonise with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use as in the subject, or in the occasion on which they are used and the object to attained. Grammatically, words may cover a case; but whenever a statute or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied.

16. We may also note here an approach to the interpretation of the provision made by the Additional Advocate General in the matter. Section 3 excludes from the vesting provisions, so much of land as is within the ceiling limit (under Act I of 1964) and which is under personal cultivation. The word 'cultivation' here is used in the general

[7](1890) 15 AC 334

[8]1955 AC 339

or broad sense in which the term "agricultural operations" was understood by the Supreme Court in Benoy Kumar's case. AIR 1957 Supreme Court 768. In this wider sense, planting of eucalyptus may be an agricultural operation, and any land planted with eucalyptus may qualify for being treated as land under personal cultivation, for the purposes of that Section. But when we turn to Section 2. the scheme is different. The exclusions there are :

(i) gardens and nilams :
(ii) tea, cocoa, coffee, rubber, cardamom and cinnamon plantation; and
(iii) lands cultivated with cashew and other fruit-bearing trees or other agricultural crops.

Every form of cultivation or agricultural operation is not within the scope of the exclusions here; the exclusions are limited to well-known classes. The first is garden lands and nilams, a class with its own characteristics. The second is plantations of the specified categories again a class with distinctive features. The third is land cultivated with fruit-bearing trees like cashew, or other agricultural crops. The very setting and the order in which the exclusions are enumerated indicate that it is not the intention of the legislature to include in category (iii) above the product of every kind of cultivation or agricultural operation. If "agricultural crops" were to be construed widely, the detailed enumeration of the classes and the different kinds of crops comprised therein, would have been unnecessary.

17. On an anxious consideration of the question, we are of the vie that the lands planted with

eucalyptus for the purpose of using its timber later or for other purposes will not come within the exemption contained in Section 2(f)(1)(i)(C) of the Act and therefore such lands are vested in the Government under Section 3 of the Act. The declarations sought for by the three Companies are therefore rejected. The view taken by the Kozhikode Forest Tribunal in the matter is not correct, while that taken by the Manjeri Forest Tribunal is right (quite apart from the reason which it has given). The only remaining question that is to be considered is whether the 75 acres of land which the appellant in M.F.A. No. 346 of 1978 contends are liable for exclusion as sites of buildings and lands appurtenant to and necessary for the convenient enjoyment and use of such buildings. The Forest Tribunal, Manjeri, had rejected the claim on the ground that specific details had not been made by the petitioner in the evidence. Shri Kesava Menon would contend that the Tribunal failed to notice that there was no dispute raised by the State or the Custodian about the point of time of the construction of the buildings and that the reason why no evidence was felt necessary to be adduced by the appellant regarding the date of erection of such building. He would contend that there was no serious controversy about it. We think this is a question which should be considered by the Forest Tribunal afresh after affording the parties a fresh opportunity to adduce any evidence in the matter, if they so require. There will be a remand of the case for this limited purpose to the Forest Tribunal.

In the result, we allow M.F.A. No. 235 of 1977, set aside the order passed by the Forest Tribunal, Calicut and dismiss the two applications O.A. Nos. 137 and 138 of 1974 filed by the respondents. M.F.A. No. 346 of 1978 will stand disposed of as above by remanding O.A. No. 124 of 1977 to the Forest Tribunal, Manjeri for consideration of the limited question relating to the appellant's claim for exclusion of 75 acres of land as constituting sites of buildings and lands appurtenant to and necessary for the convenient enjoyment and use of such buildings. The parties will bear their respective costs in both the appeals.
Order accordingly.