KERALA HIGH COURT

State (Kerala)

Vs

Malayalam Plantations Ltd

M.F.A. Nos.209, 211, 212, 233, 234, 264 to 268 of 1979 and 303, 304 and 328 of 1978

(V. Balakrishna Eradi, C.J., T. Chandrasekhara Menon and M.P. Menon, JJ.)

29.09.1980

JUDGEMENT

Chandrasekhara Menon, J.

1. These appeals have come before us on three separate orders of references by a Division Bench of this Court passed on the same date/-30-10-1979. Reference Order in M.F.A. Nos. 209, 211, 212, 233 and 234 of 1979, reads as follows:

> "In these appeals by the State one of the main questions we are called upon to decide is that covered by the decision of a Full Bench of this Court in *State of Kerala v. Amalgamated Malabar Estates (P)Ltd*[1]. Whether eucalyptus plantation falls outside the purview of the term 'private forest' as defined in the Kerala Private Forests (Vesting and Assignment) Act 26 of 1971 is the question that so arises. Relying on the Full Bench decision the learned Additional Advocate General contends for the position that the orders of the Forest Tribunal have to be reversed. But counsel Sri P.K. Kurien appearing for the respondents in these cases canvasses the correctness of the decision of the Full Bench. Elaborate arguments have been addressed by counsel before us on the scope of the term "land which are principally cultivated with any other agricultural crop" appearing in Section 2 (f) (1) (i) (C) of Act 26 of 1971. In the case before the Full Bench adverted to earlier it was contended by counsel for the respondents that eucalyptus tree was just another species of tree capable of bearing fruits just like cashew tree or any other fruit bearing tree. It was also contended that the terms "agriculture" and "agricultural operations" could be appropriately applied in the case of a eucalyptus plantation. Dealing with this the Full Bench said that as generally understood by the ordinary man eucalyptus trees are non-fruit bearing trees. The raising of teak, the raising of casuarina etc, as the raising of eucalyptus might be an agricultural operation in the broad sense of that expression. But the Full Bench found it difficult to say that lands cultivated with eucalyptus trees would be lands principally cultivated with agricultural crop coming within the ambit of the term "agricultural crop" as used in the Act. The Full Bench

proceeded further to

[1] ILR (1979) 2 Ker 525

state thus: "One should not deviate from the normal rules of stututory construction and refuse to evaluate the meaning of the word "any other" appearing before agricultural crop in Section 2 (f) (l) (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."Learned counsel Sri P.K. Kurien relies on the above passage in support of his case. According to him applying the principle stated by the Full Bench in the above passage he is entitled to succeed as the application of the principle should lead to the logical conclusion that eucalyptus is an agricultural crop. Applying the rule of ejusdem generis the term "agricultural crop" should mean crop similar to cashew and other fruit bearing trees. It is further said that the Full Bench had not indicated what exactly would be the class which would be covered by the application of the rule of ejusdem generis. Eucalyptus, it is said, besides yielding fruit and honey, yields eucalyptus leave used for extraction of oil, bark which again is said to be a commercial product and the trunk which is used for pulp. It is said that the rule of ejusdem generis should be so read as to take in such crops as sugarcane, tapioca and eucalyptus. In short, the contention of learned counsel Sri P.K. Kurien is that though the Full Bench has indicated that the term 'any other' appearing before the words 'agricultural crop' is to be read ejusdem generis there is no guidance for application of this principle. It is further said that on a plain application of the rule of ejusdem generis it is not shown that eucalyptus will be out, though that is the conclusion reached by the Full Bench. The learned Additional Advocate General submits that the rule of ejusdem generis is to be applied not in relation to the term "any other" appearing before 'agricultural crop' but to the term 'other' appearing before fruit bearing trees in Section 2 (f) (1) (i) (C). In other words "other fruit bearing trees" are to be understood as belonging to the same class as cashew and once so understood the latter class "principally cultivated with any other agricultural crop" should be understood as any crop other than trees. Of course, this is not the approach in the Full Bench case.

2. Since the question is of considerable importance and would be recurring before us we think that in the circumstances it would be appropriate to refer these cases to a Full Bench despite the earlier decision of the Full Bench. Possibly the Full Bench which decided the case earlier may be able to give an appropriate explanation for the passage we have extracted.

In the result the appeals are referred to a Full Bench for hearing".

M.F.A. Nos. 264, 265, 266, 267 and 268 of 1979, are also appeals from orders against which the State has filed appeals in M.F.A. No. 209, 211, 212, 233 and 234 of 1979. Therefore, they were also referred to the Full Bench to be heard along with the State appeals. In M.F.A. Nos. 303, 304 and 328 of 1978 one of the questions that arise is whether eucalyptus plantation would come within the term 'private forest' under the Kerala Private Forests (Vesting and Assignment) Act,

1971, hereinafter referred to as 'the Act'. In view of the reference of that question in the other cases aforementioned, these three appeals were also referred to the Full Bench to be heard along with those appeals.

2. We think before going into the detailed facts of the cases referred to, in the nature of the order of reference it would be necessary to explain the basis of our decision in *State of Kerala v. Amalgamated. Malabar Estates (P) Ltd*[2]*.,* This same bench had rendered that decision wherein it was held that lands cultivated with eucalyptus trees cannot be considered to be lands principally cultivated with an agricultural crop coming within the ambit of the term 'agricultural crop' as used in Section 2 (f) of the Act.

3. Elaborate arguments were advanced before us in these appeals particularly with reference to the doubts or difficulties noted by the reference order, but even after a most anxious consideration of all the points raised, we find no reason to depart from the conclusion that non-fruit-bearing trees do not come within the purview of "other agricultural crop" in Section 2 (f) (1) (i) (C), though some clarification may be necessary.

4. It might be stated in this connection that in the case reported in ILR 1979 (2) Ker 525 (FB) arguments had been advanced before us on the basis of the Supreme Court decisions in *Malankara Rubber and Produce Co. v. State of Kerala*[3]*, Commr of Income-tax v. Benoy Kumar*[4]*,* that the term 'agriculture' had to be understood as connoting the integrated activity of the agriculturist in a wider sense so that lands yielding all kinds of products which are the result of the agricultural operations would be agricultural lands, and that every such product would be an agricultural crop. It was urged that the cultivation of land does not merely comprise of raising the produce of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting and similar work done in the land which are basic operations but also includes operations by the agriculturist for the purpose of effectively raising the produce from the land. They are the operations to be performed after the produce sprouts from the land, viz. weeding, digging the 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. These all would be agricultural operations when taken in conjunction with the basic operations at first described. This integrated activity which constitutes agriculture when it 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 from the land by agriculture. The term 'agriculture' cannot be confined merely to the production of grain and food products for human beings 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, casuarina plantations, tendu leaves, horranuts etc. So ran the arguments and on the basis thereof it was contended that the cultivation of eucalyptus on a systematic and scientific basis was an agricultural operation as understood by the Supreme Court and that the trees so grown were agricultural crops though used for non-agricultural purposes. The alternative contention was that eucalyptus trees yield edible fruits and that the trees were therefore to be treated as fruit-bearing trees. It was further contended that even though the purpose underlying the development of any block of

[2] ILR (1979) 2 Ker 525 (FB)
[3](1972) 2 SCC 492 (AIR 1972 SC 2027)
[4](AIR 1957 SC 768)

land by planting one and the same species of tree may vary from person to person and one of the

many purposes of eucalyptus plantation is to utilise it as a raw material for making pulp for the party concerned, it cannot be said that it is unsuited for human consumption. In short, the cultivation of eucalyptus trees will be cultivation with an agricultural crop. We met these contentions in the following manner (quoting from para 13 of the judgment) :-

> "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 of 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 casuarina, 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 word "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."

5. Section 2 (f) of the Act defines 'private forest'. As per that 'private forest' means :-

> "(1) in relation to the Malabar district referred to in sub-section (2) of Section 5 of the States Re-organisation Act, 1956 (Central Act 37 of 1956) -
> (i) any land to which the Madras Preservation of Private Forests Act, 1949 (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 (1 of 1964);
> (B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber,

cardamom or cinamon 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 play-grounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops;

(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 of, 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 purpose of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs;"

6. We are here concerned with lands to which the Madras Preservation of Private Forests Act, 1949 applied immediately before the appointed day, as pointed out in the Act namely 10th May, 1971. Lands which are excluded from the term as explained in the definition in respect of such lands are indicated in sub-clauses (A), (B), (C) and (D) of clause (1) (i) of the provision (Section 2 (f)). We might leave out sub-clause (D) which refers to sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of such building. It might be noted that sub-clauses (A), (B) and (C) deal with cases in which one agricultural crop or other is raised. There is to some extent therein a detailed enumeration of the agricultural crops, the raising of which in such lands entitles those lands to be excluded from the definition of 'private forest'. Sub-clause (A) deals with gardens and nilams as defined in the Kerala Land Reforms Act, 1963 (Act 1 of 1964). 'Garden' means lands used principally for growing coconut trees, arecanut trees or pepper vines or any two or more of the same. Nilam means lands adapted for the cultivation of paddy. Sub-clause (B) deals with what may be called plantation crops, cultivation of which in the general sense would be cultivation of agricultural crops. Such agricultural crops are by name specified. Then comes sub-clause (C). The reference to cashew or other fruit bearing trees, with the subsequent mention of other agricultural crops is positive indication of the fact that non-fruit bearing trees are taken out of the term "other agricultural crops." Otherwise there was no necessity for the reference to cashew or other fruit bearing trees. Cashew is taken by the Statute as a fruit bearing tree, as is clear from the word "other" used before "fruit bearing trees."

7. If the legislature had intended to use the expression 'agricultural crop' in a wide sense so as to take within its scope trees which either bear fruits or yield good timber it was totally unnecessary for it to use in the first part of clause 'C' words "are principally cultivated with cashew or other fruit-bearing trees" since cashew and fruit-bearing trees also fall within the description 'agricultural crops' when used in the wide sense, the purpose of the legislature would then have been fully served by enacting only the words now contained in second part of clause 'C' omitting therefrom the expression 'any other'. Such an interpretation which renders the first part of clause

'C' totally otiose does not appear to us to be correct or acceptable. The reasonable interpretation to be placed on clause 'C' is to understand the first part as dealing with lands cultivated with trees (excluding rubber, cinnamon etc. dealt with in clause 'B') the scope of the exclusion being expressly restricted to the case of such lands to those cultivated withfruit- bearing trees including cashew, and to understand the latter part of clause 'C' as dealing with lands cultivated with agricultural crops other than trees. In the context therefore cultivation of timber or eucalyptus trees cannot be equated to cultivation of any other agricultural crop, though in a wide sense such cultivation of non-fruit bearing trees may also amount to agricultural operation. And as we said in the earlier Full Bench decision -- ILR (1979) 2 Ker 525 - in the interpretation of statutes the courts decline to consider other statutes proceeding on different lines and including different provisions, or the judicial decisions thereon. Lord Reid said in *London Corporation v. Cusack Smith*[5] "It does not necessarily follow that if Parliament uses the same words in quite a different context they must retain the same meaning."

8. As pointed out by the Division Bench which referred these cases to the Full Bench, the following passage contained in our Judgment in the earlier case is likely to create an impression that we have laid down in that (case) that on the principle of ejusdem generis the test of edibility of the crop is the criterion to be applied for determining whether a case falls within the scope of the expression "lands which are principally cultivated with any other agricultural crop".

> "One should not deviate from the normal rules of statutory construction and refuse to evaluate the meaning of the word "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."

The above passage contains only a passsing observation incidentally made by us with reference to one of the contentions put forward by the Additional Advocate General and it does not form part of the main reasoning on which the conclusions recorded in the judgment are rested. We must however state that on a re-examination of the said aspect relating to the applicability of the principle of ejusdem generis to the present context we now consider that the said principle may not have any application in interpreting the scope of the words contained in the second part of clause 'C'. As already indicated by us, the first part of clause 'C' must be understood as dealing with lands cultivated with trees and second part with agricultural crops other than trees. Hence irrespective of the correctness or otherwise of the application of the rule of ejusdem generis, there cannot be any doubt that the expression "cashew and other fruit bearing trees" used in the first portion of the sub- clause concerned rules out trees being included in the latter class - "principally cultivated with any other agricultural crop". As Pollock C.B. said in *Attorney General v. Sillem*[6]

[5]1955 AC 337 (HL) [6](1863) 2 HandC 431 at 515

> "in order to know what a statute does mean, it is one important step to know what it does not mean; and if it be quite clear that there is something which it does not mean, then that which is suggested or supposed to be what it does mean must be in harmony and

consistent with what it is clear that it does not mean. What it forbids must be consistent with what it permits." We have therefore no difficulty in reiterating what we said in the earlier decision that "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."

9. In the words of Justice Frankfurter words should be taken not as self contained phrases but with a history and part of a serial (*Romero v. International Terminal Operating Co*[7]. A sentence should be construed in its entirety in order to grasp its true meaning. As aptly put by Lord Green, M.R. in *Bidie v. General Accident, Fire and Life Insurance Corporation*[8]

> "The first thing one has to do in construing words in a section of an Act of Parliament, is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural and ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of *prima facie* meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question:
> 'In this state, in this context, relating to this subject-matter what is the true meaning of that word'."

Sir Robert Collier said in *Robertson v. Day*[9], at p. 69):

> "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them."
> Therefore it will be quite proper to rule out "any trees" as coming within the ambit of the term "other agricultural crop" in view of the earlier mention of "cashew and other fruit bearing trees."

10. We might here also point out to the principle behind the maxim "Expressio unius est exclusio alterius" - Express mention of one person or things implies the exclusion of other person or things. This maxim is a product of logic and common sense - Sutherland on Statutory Construction. No doubt this rule is neither conclusive nor of universal application and is to be applied with great caution. It may be applied only when in the natural association of ideas the contrast 'between what is provided and what is left out leads to an inference that the latter was intended to be excluded; it

[7](1959) 358 US 354
[8](1948) 2 All England Reporter 995 at 998
[9](1879) 5 AC 63

may accordingly be held inapplicable if there exists a plausible reason for not including what is left out. (See *C.W. Co-operative Transport Society v. Punjab State*[10] However in the context of the statute with which we are here concerned we find no difficulty in concluding that the specific reference to fruit bearing trees in the clause excludes other trees to be taken in by

the term 'other agricultural crop'. Looking at the matter in another way, it is significant that sub-clause (A) which excludes nilams does not exclude all lands where paddy is grown. Only lands adapted for paddy cultivation are excluded. "Hill paddy" cultivation on the slopes of hills and forests is a well-known form of cultivation in the State; but those lands are not nilams. Paddy being an agricultural crop, can it be said that the legislature excluded certain classes of paddy-growing lands under sub-Clause (A), and left other types to be excluded by the latter part of sub-clause (C)? If the intention was to exclude all lands used for paddy cultivation, that could have been served without specifically mentioning "nilam" in sub-clause (A). This circumstance also indicates that the term 'agricultural crop' in sub-clause (C) should be understood in a restricted sense.

11. The word "crop" is of such a nature that its real meaning in a Statute will have to be found out from the context in which the word is used. In its more general signification it means all the products of the soil that are grown and raised annually and gathered during a single season. In this sense the term includes both fructus industriales and fructus naturales. "Fructus naturales" are crops that are produced by the powers of nature alone. They are within the classification of real property or land unless severed from the land. "Fructus Industriales" are annual crops that are obtained by yearly labour and cultivation. (See Corpus Juris Secundum Vol. 25 under the title "Crops" - 1954 Edition Pages 1 to 3). However in a decision of an *American Court Story v. Christin*[11] it is stated that the word "crop" taken in its most comprehensive sense, includes fruits grown on trees, but trees themselves capable of producing fruit, never have been included in that term. Trees attached to soil by roots in order to keep them ready for sale and transplantation are not profit of land in the same sense as annual crop, matured from seed planted in ground and harvested within year, and do not constitute "crop" within the legal meaning of such term. (Corpus Juris Secundum - Vol. 25 Page 2). In another American Case - *Bagley v. Columbus Southern Railway Company*[12] - referred to on page 3 of Corpus Juris Secundum - Vol. 25 p. 3 - it was said that the question has become involved in a mystic maze of uncertainty and contradiction", the only conclusion deducible from the authorities being that a "growing crop is a sort of legal species of chameleon". The meaning is to be found from the context. For example, Black L.J. said in *MyAvoy v. Down County Council*[13] at 184 (quoted in "Words and Phrases Legally Defined" Vol. I at page 381:-

> "The first thing which presents itself to one's mind when the word 'crop' is used is a cereal or agricultural crop, whether it be one grown for food, such as corn or potatoes or turnips, or an agricultural crop not grown for food, such as flax or hemp or cotton. Those are the kinds of thing one naturally thinks of, and if this phrase had occurred in a statute of 100 or 150 years ago, I think I would have regarded it as meaning something of that sort. Mr. O' Donnell (counsel for the respondent) however, contends.....that at the present day the

[10](AIR 1962 Pun 94 at p. 98)
[11](125 Am LR 1402)
[12](25 SE 638:34 LRA 286)
[13](1958) N.I. 183

> growing of trees and the art of forestry have developed to such an extent that trees are planted for the purpose of producing timber, and are treated systematically as a crop to be out at a definite future time, just as cereals or other crops are, and that they are therefore a growing crop. At first sight this sounds to be a strong proposition, but when one thinks of the meaning of 'crop' it is hard to find a distinction between the systematic growing of

trees for timber and the systematic growing of corn or potatoes; each is sown or planted and cultivated with the intention that it should be harvested in the future." The Court was interpreting there Section 2 of the Criminal Injuries Act (Northern Ireland), 1956 which provides that compensation may be obtained under the Act when damage has been maliciously or wantonly caused to any fruit-bearing trees or growing 'crops'.

12. The 'explanation' to Section 3 (2) of the Act affords another clue. Under Section 3 (1), private forests vest in Government. Sub-section (2) however excludes from such vesting lands within the ceiling limit applicable to an owner if they are under his personal cultivation. Cultivation for this purpose "includes cultivation of trees or plants of any species". That is, lands used for the cultivation of any kind of tree, fruit-bearing or otherwise, are excluded. The legislature had obviously addressed itself twice to the question of excluding lands cultivated with trees. For exclusion from vesting under Section 3 (2), it was prepared to consider trees of every variety; but for exclusion from the definition clause, it was prepared to consider only fruit- bearing trees, and not others. The wider language used in Section 3 (2) would become meaningless if all trees are even otherwise covered by the term 'agricultural crop' in the definition clause. We had briefly referred to this aspect in paragraph (16) of the judgment in the Amalgamated Malabar Estates case, (AIR 1980 Kerala 137) (FB).

13. After considering all aspects, we see no mason to revise our view in the matter as stated in ILR (1979) 2 Ker 525:(AIR 1980 Kerala 1371 (FB); 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. A priori lands cultivated with teak also should vest in the Government.

14. We will now go into the various facts and other pleas raised in these cases. As noted earlier, M.F.A. Nos. 209, 211, 212, 233 and 234 of 1979 are appeals flied by the State against the common order in five applications (O.A. Nos. 3, 4, 5, 6 and 26 of 1975) filed before the Forest Tribunal by the Malayalam Plantations Ltd., in respect of their estates, Chundale Estate, Achoor Estate, Arrapetta Estate, Tournamulla Estate and Sentinel Rock Estate, all in South Wynad Taluk and comprising areas to which Madras Preservation of Private Forest Act had applied. The order was passed by the Forest Tribunal, Calicut on 13th March, 1979, by which the applications were allowed declaring the lands included therein are not falling under the Act. M.F.A. Nos. 264, 265, 266, 267 and 268 of 1979, are appeals by the Company.

15. The contentions of the Company in the five petitions are that the Company is a Sterling Company incorporated in England having its principal office in India at Willingdon Island, Cochin-3. Cultivation and processing of tea for the purpose of marketing on a commercial scale is the main line of activity pursued in its Estates. Apart from the area covered actually by the tea garden, there are substantial areas planted with red gum (Eucalyptus grandis). Besides there are wooded areas and waste land. In some of the estates there are small extents of wet lands and arecanut gardens. There are rocky areas also. In one of the estates besides the staff quarters and labour lines, there are mosque, church, temple, clubs, lying scattered over the area. The processing of tea for the market constitutes a manufacturing process involving the use of enormous quantities of fire wood as fuel throughout the year which in turn makes it imperative to ensure that there is an unfailing source of supply of the same. It is with this end in view that

substantial areas have been planted with red gum trees. Production and processing of tea requires the retention in reserve of a considerable extent of wooded area in order to ensure a perennial supply of fire wood which is the sole source of fuel necessary to keep the wheels of the tea industry moving. Furnace oil is scarce and costly and therefore it is not an alternative fuel to fire wood. It is also alleged that even if the area concerned is a vested forest, that will have to be assigned to the agriculturists after excluding lands liable to be exempted from the scope of ceiling area as provided in the Kerala Land Reforms Act. According to the petitioner-company it has no lands in excess of the ceiling limit and hence entitled to lands in their possession.

16. The State of Kerala and the Custodian of Vested Forests have refuted these contentions. They would state that the applicant is not entitled to the claims set up. The area claimed consists of four classes of forest land (1) area alleged to be not governed by Act 26 of 1971, (2) area clear-felled and planted with eucalyptus, (3) area planted with eucalyptus tree which are enclosures in the tea estate and (4) thickly wooded virgin forest. The M.P.F. Act applied to this area. There is no provision in the Act, to exclude or exempt eucalyptus plantation from the operation of the Act. Such plantation area would therefore come within the purview of the Act. Though the tea industry may require some fuel, it does not mean that vast areas of forest land are to be left with the petitioner-Company for the supply of firewood. The Act does not exclude forest lands for the purpose of collecting firewood in industry. Firewood and other fuel material will be available even without reserving forest land. The claim is not ancillary purpose and in any event the claim is exorbitant. Buildings etc., are really in the excluded areas.

17. In holding in favour of the Company, the forest Tribunal pointed out that the Tahsildar South Wynad had demanded as per a letter of 8-3-1972 basic land tax for 1970-71, 1971-72 from the petitioner-Company in respect of all the properties held by it in various villages of South Wynad Taluk. The total amount of revenue thus claimed was Rupees 40,266.42 which included tax in respect of the areas in dispute in all the petitions. The Tribunal concluded that the very fact that revenue has been collected for the property after 10-5-1971, would go to prove that these lands do not come within the ambit of the Act, for if they are forest lands which had vested in the Government with effect from 10-5-1971, there was no question of collecting revenue in respect of these lands after that date, Lands which had not vested in the Government under the Act would be subject to the liability for land tax. Hence the Tribunal concluded that the areas in dispute in the petitions have to be excluded from the operation of the vesting provision in the Act.

18. In regard to eucalyptus plantation the Tribunal was of the view that apart from the ground of exclusion of these lands from vesting in the Government on account of the action of the revenue authorities in collecting basic tax after 10-5-1971, Eucalyptus was planted for being used as firewood for the purpose of processing tea. Planting an area with eucalyptus for the purpose of firewood will be, according to the Tribunal, using the land for a purpose ancillary to the cultivation and the preparation of the same for market coming under Section 2 (f) (1) (i) (B) of the Act. Therefore, for that reason also eucalyptus plantation is liable to be excluded. The Tribunal would further state eucalyptus plantation is an agricultural crop because it was planted by using "agricultural methods spending money and utilizing labour" and therefore liable for exemption under Section 2 (f) (1) (i) (C) of the Act.

19. The Tribunal also held that the area occupied by labour lines, kitchen garden of labourers and cattle sheds have to be excluded. So also, areas occupied by Schools, Madressa, Pump house,

well, over-head tanks for water supply, wet lands, temple, church and mosque and their premises, burial grounds, fire belt, bungalows, staff quarters, playgrounds and roads. But the Tribunal also found that but for the fact of demand and acceptance of revenue no area could be excluded on the ground that it is necessary as grazing land for the cattle belonging to the workers as recommended by the Commissioner, Grazing according to the Tribunal is not an ancillary purpose coming under the Act. So also area claimed as fuel area for future need, rockey patches or areas used for collection of leaves, bamboos or thorns. The Tribunal points out none of these are ancillary purposes under the Act. However as stated earlier the petitioners were entitled to exclusion of all lands included in the applications on the ground of demand and acceptance of revenue.

20. It is in these circumstances the Company and the State have come up in appeals from the order questioning the findings in so far as they are against them. First we shall consider how far the Tribunal was right in holding that demand and acceptance of the basic land tax after the coming into force of the Act would exclude the lands from being vested in the State. The only reason given by the Tribunal is that there is no question of collecting revenue for the lands after 19-5-1971, as it is only lands which are not vested in the Government under the Act which are liable for payment of the said tax. That is so. But we are not able to see the logic behind the conclusion the Tribunal reaches on that factor, that lands in respect of which such tax was paid got themselves excluded from the vesting provisions. Suppose by mistake or even by design, the revenue collecting authority accepts basic tax for lands which by the Statute had vested in the Government. By what process do they cease to be lands vest in the State? Section 3 of the Act reads:-

> "3. Private forests to vest in Government :-
> (1) 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 this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished.
> (2) Nothing contained in sub-section (1) shall apply 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.
> Explanation :- For the purposes of this sub-section, "cultivation" includes cultivation of trees or plants of any species.
> (3) Nothing contained in sub-sec (1) shall apply 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.
> (4) Notwithstanding anything contained in the Kerala Land Reforms Act, 1963, 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."

Minus the extent that may stand excluded by view of sub-sections (2), (3) and (4) of Section 3, private forests as defined in the Act (which definition in its turn excludes certain categories of land) stood statutorily transferred and vested in the Government on the date the Act came into force free from all encumbrances. The right, title and interest of the owner or any other person in such private forest stood extinguished also. It is inconceivable that such vesting will stand cancelled or the right, title and interest of the owner will be revived by any acceptance of basic tax. As the learned Additional Advocate General contended it is not possible for any one to plead estoppel on the part of the Government and custodian relying upon any action taken by an officer of the Government. There can be no waiver of compliance with statutory provisions enacted in the public interest, nor estoppel against setting up non-compliance with them. It will be useful here to quote the observations of Lord Maugham in *Maritime Electric Co. Ltd. v. General Dairies Ltd*[14]*.,* at 620 :

> "Where, as here, the statute imposes a duty of a positive kind, not avoidable by the performance of any formality, for the doing of the very act which the plaintiff seeks to do, it is not open to the defendant to set up an estoppel to prevent it. This conclusion must follow from the circumstances that an estoppel is only a rule of evidence which, under certain special circumstances, can be invoked by a party to an action; it cannot therefore, avail, in such a case, to release the plaintiff from an obligation to obey such a statute, nor can it enable the defendant to escape from a statutory obligation of such a kind on his part. It is immaterial whether the obligation is onerous or otherwise to the party suing. The duty of each party is to obey the law."

21. Similarly, a statement made by an officer of a planning authority that certain land has an existing user-right does not estop the authority from subsequently exercising

[14]1937 AC 610

its statutory discretion to serve an enforcement notice in respect of the user - *Southend-on-Sea Corporation v. Hodgson (Wickford), Ltd*[15]*.,* The following passage in Bindra's Interpretation of Statutes - 6th Edition 1975 at page 338 based on two decisions. *P.H. Avari v. State of West Bengal*[16]*,* and *Federal Crops Insurance Corporation v. A.A. Merrill*[17] is of relevance in this context :

> "Reliability of official advice cannot alter the construction of the statutes and the Rules made thereunder. There can be no estoppel against the Government on a point of law and construction of statute. Neither the Government nor the Court will be bound by the interpretation of the Act and the Rules made by an Administrative Officer. The law of the country is what the statute and Rules thereunder say and how the Courts of the land interpret them and not what a particular Government or Administrative officer says :

'If the Government officer's interpretation is wrong, the party acting on it takes the risk'".

22. We are of the view that the decisions relied on by Mr. Kurien, learned counsel for the Company cannot have any application in the matter. He referred to the decision of and Division Bench of the Bombay High Court in *Secy. of State v. Tatyasaheb*[18] In that case as a result of the proceedings under the Land Acquisition Act, there was an adjudication by the High Court that a certain sum was payable by the Government to a particular person and the Government as a result of those proceedings became entitled to take possession of the land in question under the provisions of the Land Acquisition Act. The Government subsequently filed a suit against that person saying that the defendant was not entitled to the land for which he was paid, but that the land in fact all the time belonged to the Government. The payment of the amount was under a mistake. The money paid was sought to be recovered under Section 72 of the Contract Act. The Bombay High Court in appeal on the matter held that the Government's claim cannot lie on account of estoppel. Beaumont C.J., said that having regard to the terms of the Government notification which described the land in such a manner as to negative the suggestion that it was Government land, and having regard to the whole course of the land acquisition proceedings which were utterly inconsistent with the land being Government land the Government must be taken to have represented that the land did not belong to the Government. In reply to the contention raised by the Advocate General in the matter that there was no evidence that the defendant altered his position as a result of the said representation, the Chief Justice said that the defendant clearly did alter his position. If the Government had said in 1906 that the land was their land, there would never have been any proceedings under the Land Acquisition Act and the defendant therefore would never have made the claim and would not have given up possession under the Act. He could have said :-

> "I am in possession of the land and if Government claim it they must bring a suit against me."

[15](1962) 1 QB 416
[16](AIR 1958 Cal 203 at 205)
[17](1947) 332 US 380 : 92 L. ed 10
[18](AIR 1932 Bom 386)

The Chief Justice further observed that the whole course of conduct by the defendant was altered by the fact that the Government represented that the land was not their land and they should not be allowed now to contradict that representation on which the defendant had acted to his detriment.

23. The true position is as stated by Poti J., speaking for the Bench in *State of Kerala v. Chandran*[19]:-

> "The State has necessarily multifarious activities and it functions through its officers at various levels. What an officer does in the usual course at one end of the administration cannot normally operate as estoppel against the proper stand another officer or authority may take. When Kerala Private Forests (Vesting and Assignment) Act came into force, the officers of the Forest Department had necessarily to exercise themselves to find out the lands through the length and breadth of the State that are seen to have vested under the Act in the State. That called for enquiry, assessment and determination by the officers

before they could take action. This naturally took time. In the meanwhile the fact that for such lands, which were ultimately claimed as vested in the State, tax was paid by a citizen and was received by the Village Officer, would not in any way disclose a stand of the Government that it is land which had not vested in the Government. There would have been no occasion for the Government to consider whether such land was vested or not when tax was offered to the Village Officer and was received by him, or even when the tax was collected by the village officer by employing the official process. There is no question of any waiver or relinquishment in such conduct. There is no question of any estoppel for estoppel would operate only where one party acts upon a representation by the other party. Therefore, to say that the receipt of tax after 10th May 1971 is by itself conclusive proof or even a material circumstance, would be erroneous".

We wholly agree with this statement of law. Nor does a question of application of the principles of "approbate and reprobate" arise. The Supreme Court in *Nagubai v. Shama Rao*[20] quotes the following observations of Scrutton L. J., and then the statement of the law on the matter in Halsbury's Laws of England :-

"A plaintiff is not permitted to 'approbate and reprobate'. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election - namely, that no party can accept and reject the same instrument : *Ker v. Wauchope*[21], *Douglas-Menzies v. Umphelby*[22] The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction"

[19](ILR (1980) 1 Ker 609)
[20](AIR 1956 SC 593)
[21](1819) 1 Bligh l (21)
[22]1908 AC 224 (232)

It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in Halsbury's Laws of England. Volume XIII, p. 454, para 512:

"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e. g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it".

The action on the part of a Village Officer in collecting the revenue cannot by any stretch of reasoning be regarded as a representation made or stand taken on behalf of the

Government that it is a land which has not vested in the Government. The statutory vesting under Section 3 with effect from 10-5- 1971 and the Tribunal's power under Section 8 to decide disputes relating thereto cannot certainly be subject to what a Revenue official might or might not have done after the aforementioned date.

24. Now we shall consider the contention raised by the applicant-Company whether the entire extent of land planted with red gum and other trees are to be excluded as ancillary area to the cultivation of plantation crops and manufacture of plantation crops. The relevant provision in the Act to which attention has to be drawn is Section 2 (f) (1) (i) (B) "lands which are used principally for 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".The meaning of 'ancillary' is 'sub-serving; ministering, auxiliary'; We are in complete agreement with the following observations made by a Division Bench of this Court in *State of Kerala v. Anglo-American D.T.T. Co. Ltd*[23]. *(*at p. 220):-

> "What is said in regard to eucalyptus planted area is that Tea cannot be prepared for the market except after processing, such processing requires fuel and it is the timber of eucalyptus trees which serve as such fuel. Assuming that eucalyptus area serves the fuel requirements of the estate that would not be sufficient to exclude the land, for, what is excluded in the sub-clauses are lands used for the preparation of the crops for the market. The lands in which the eucalyptus trees are grown are not used for the preparation of the Tea for the market. The timber of the trees standing in in the lands are used for the preparation of the Tea for the market and that would not entitle exclusion of the land on which such trees stand."

The Supreme Court also said in *C. Ceettil Ammad v. Taluk Land Board*[24] that supply

[23]1980 Ker LT 215
[24](AIR 1979 SC 1573)

of fuel wood cannot be said to be a purpose "ancillary to the cultivation of plantation crops."

25. We see no reason to differ from the view taken by the Forest Tribunal that forest land with bamboo clusters and tree growth, such land used as grazing land and also rocky areas are not entitled to be excluded on the basis of the provisions of Act 26 of 1971. No doubt the Tribunal has exempted such lands on the ground that the Government has collected revenue for that. In view of what we have stated earlier, that will not be a ground for exclusion.

26. There cannot be any dispute that lands occupied by staff quarters, labour lines, mosque, church, temple and clubs are liable to be excluded under the provisions of the Act. It might be noted that under Explanation to Section 2 (f) (1) 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 purposes ancillary to the cultivation of such crops. Lands where there are mosques, churches, temples and clubs intended for the use of the staff and workmen of the estate could well be considered to be lands used for the purpose ancillary to the cultivation. So also, lands occupied by buildings used for some purposes connected with the cultivation and processing of tea for the market. Lands used as nursery, pump-house etc, are also properly

excluded.

27. Mr. Kurian raised one or two minor contentions based on the provisions of the Land Reforms Act (Act 1 of 1964). Section 82 (1) of that Act fixes the ceiling area and sub-section (6) provides that in computing the said area, lands exempted under Section 81 shall be excluded. Private forests are exempted under Section 81 (1) (d); and so are lands set apart for industrial use by an industrial undertaking, as on 1-4-1964, under Section 81 (1) (k). The first contention based on the above provisions is that for arriving at the 'ceiling limit' fixed by Section 3 (2) of the Vesting Act (Act 26/71), private forests have to be excluded. This overlooks Section 3 (4) which provides that notwithstanding anything in Act 1 of 1964, private forests are to be treated "as other dry lands" for the purposes of Section 3 (2). The second is that fuel areas have to be excluded as lands set apart for industrial use: but those areas are also private forests and vest in the Government under Section 3 (1), subject to sub-section (2) for the purposes of which, they are to be treated as 'other dry lands'. Section 2 (44) of Act 1 of 64 defining "plantation" takes in agricultural lands interspersed within the boundaries of the area cultivated by plantation crops; and the third contention is that such "interspersed lands" have to go out of the reckoning in view of section 81 (1) (c). The simple answer is that they do so only for the purposes of Act 1 of 64 and not for the purposes of Act 26/71, as the latter does not contain any such saving provision.
28. In this view we dismiss the appeals flied by the applicant-Company M.F.A. Nos. 264, 265, 266, 267 and 268 of' 1979. Appeals filed by the State -M.F.A. Nos. 209, 211, 212, 213 and 214 of 1979 are allowed to the extent indicated above. In view of this it is necessary that the matter should go back to the Forest Tribunal so that in these cases the Tribunal might on the basis of our decision specify the lands which vest in the Government and those which stand excluded.

29. M.F.A. No. 303 of 1978 is an appeal filed by the Roman Catholic Diocese of Calicut in respect of the Chellotte Estate belonging to it. The Roman Catholic Diocese is a religious and charitable Society registered under the Societies Registration Act. Out of the total area of 858.17 acres in South Wynad Taluk belonging to the appellant, 768.17 acres are covered by plantations such as tea, coffee and cardamom etc. According to the appellant, the remaining 90 acres of land is used for purposes ancillary to the plantation such as fire- wood for tea factory, reserved land for construction of building etc. It is also stated that out of the 90 acres, nearly 50 acres are rocky area and 16.83 acres are used for firewood in the factory. The Forest Tribunal, Calicut rejected the appellant's contentions that the aforesaid 90 acres are private forest. For the reasons we have given earlier, we see no reason to differ from the decision of the Forest Tribunal. Mr. Karunakaran Nambiar sought to raise a contention that teak plantation should be excluded as agricultural crop. This is taken for the first time here and it will not be proper to allow the counsel to take such a plea. Apart from that, as is clear from our earlier discussion of the matter, teak plantation would not be agricultural crop. The appeal is dismissed. We make no order as to costs.

30. M.F.A. No. 304 of 1978 is an appeal by the Kurcharmala Plantations Ltd. which arises from the order of the Forest Tribunal, Calicut passed in O.A. No. 85 of 1975. The appellant-Company has extensive plantation. According to them the plantation needs large quantities of firewood for various purposes. The Company claimed 92 acres in R.S. No. 175/1A1B in Achooranam Village in South Wynad as firewood area and contended that the said area should be excluded from the operation of Act 26 of 1971. The Tribunal by its order allowed the claim of the appellant to the extent of 42 acres and rejected the claim with regard to the remaining 50 acres. The said area was

planted with trees which could be used for firewood and therefore, the Tribunal holds it should be considered as lands for purposes ancillary to the plantation. So far as the remaining 50 acres are concerned, according to the Tribunal, the user of the land for any purpose ancillary to the cultivation of plantation crops in relation to firewood would not take in reserving an area for the purpose of firewood. Therefore it rejected the claim of the appellant to the extent of 50 acres and the appellant has come up in appeal. In the view which we have explained in detail earlier, the appeal has to fail. We dismiss the appeal. There will be no order as to costs.

31. But there is an appeal from the same order (common order in O. A. Nos. 85 of 1975 and 9 of 1976) - M.F.A. No. 328 of 1978 in the matter filed by the State wherein it is contended that the Tribunal erred in holding that 36.8 hectares and 1.2 hectares are ancillary areas liable to be exempted under the provisions of the Act. According to the State, the Tribunal has ignored the specific provisions of the Act under which the land cannot be exempted when the claim is only that the land is used for collecting firewood for the purpose of rubber and tea estates. The State also contends that the Tribunal erred in holding that eucalyptus grandis and red gum trees will constitute agricultural crops coming under Section 2 (f) (1) (i) (C) of the Act. The State further contends that the Tribunal ignored the evidence that the firewood requirements, if any, of the applicants can be met from the large extent of cardamom plantations by shade regulations and cutting of excess trees in the cardamom plantations. In the light of the earlier discussion we have made on the questions concerned, the State is entitled to succeed in the matter. We allow the appeal. Here also, there will be no order as to costs. The appeals are disposed of as above.

32. Immediately after the pronouncement of the judgment counsel appearing for the appellants in M.F.A. Nos. 264 to 268 of 1979 and 303 and 304 of 1978 and the learned advocates appearing for the respondents in M.F.A. Nos. 209, 211, 212, 233 and 234 of 1979, and 328 of 1978 orally prayed for the grant of certificates under Article 133 (1) of the Constitution to enable them to carry this matter in appeal to the Supreme Court. Consideration of the said request was deferred to this day. Accordingly both sides were heard today. These cases involve a substantial question of law of general importance concerning the interpretation of Section 2 (f) (1) (i) (C) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (Act 26 of 1971) on which, we consider, a pronouncement by the Supreme Court is necessary and hence we direct that certificates under Article 133 (1) of the Constitution will issue as prayed for.

Order accordingly.