Pioneer Rubber Plantation ... vs State Of Kerala And Anr on 24 August, 1992

Equivalent citations: 1993 AIR 192, 1992 SCR (3) 972, AIR 1993 SUPREME COURT 192, 1992 (4) SCC 175, 1992 AIR SCW 2886, 1992 (2) UJ (SC) 724, (1992) 5 JT 144 (SC), (1992) 2 KER LT 535, 1992 UJ(SC) 2 724, 1992 (5) JT 144, (1992) 3 SCR 972 (SC), (1992) 3 SCJ 271

Author: T.K. Thommen

Bench: T.K. Thommen, M.H. Kania, P.B. Sawant

PETITIONER:
PIONEER RUBBER PLANTATION NILAMBUR,KERALA STATE ETC. ETC.

Vs.

RESPONDENT:
STATE OF KERALA AND ANR.

DATE OF JUDGMENT24/08/1992

BENCH:
THOMMEN, T.K. (J)
BENCH:
THOMMEN, T.K. (J)
KANIA, M.H. (CJ)
SAWANT, P.B.

CITATION:
1993 AIR 192 1992 SCR (3) 972
1992 SCC (4) 175 JT 1992 (5) 144
1992 SCALE (2)231

ACT:
Kerala Private Forests (Vesting and Assignment) Act 1971, Section 2(f)(1)(i)(B).
`Private Forests'-Land set apart for Crowing Firewood trees used as fuel for purpose of manufacturing rubber or tea in smokehouses or factories or for personal use of estate employees-Whether excluded.
Statutory Interpretation.
Legislative intent-Aid to interpretation.

HEADNOTE:
The appellants in the appeals were owners of Tea,

Rubber and Cardamom estates in the State of Kerala. For a large umber of persons employed in the estates quarters were generally provided and it was in the best interest of the estates that such persons were supplied with sufficient firewood for cooking as well as for keeping themselves warm particularly in view of the high altitude at which many of the estates were located. As large quantities of firewood were essential as fuel certain areas in the estates where generally set apart for growing firewood trees like Eucalyptus or redgum.

The appellants approached the Forest Tribunal for granting them exemption under section 2(f)(1)(i)(B) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 for the lands which were used for construction of the quarters as well as for growing fuel trees for supply of fuel to the workers or for the smokehouses. The Tribunal granted the exemptions.

The State appealed to the High Court and the High Court held the lands on which firewood trees were grown for the purpose of fuel for either the smokehouses or factories or the employees in the estates were not lands used for purposes ancillary to the cultivation of the crops or for the

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preparate on of the same for the market so as to be excluded from the definition of `Private forests' under section 2(f) (1) (B) of the Act and accordingly vested in the State in terms of the Act.

Some of the earlier decisions of this High Court had been taken the view that lands set apart for growing firewood trees in the estates for the purpose of fuel did not qualify for exclusion from `private forests' so as to prevent their vesting in the State in terms of the Act and this view was also followed by the High Court in these judgements.

However, a Bench consisting of 5 Judges of the same High Court subsequently considered this very question in State of Kerala v. Moosa Haji, (1984) KLT 494, on the ground that the law laid down in the earlier decisions on this point was doubted, and this Bench expressed the view that it was essential for an estate to grow firewood trees for the purpose of fuel for the employees as well as for the smokehouses and factories. In regard to the requirement of the employees the High Court followed the observations of this Court in Chettiam Veettil Ammad and Anr. v. Taluk Land Board and Ors., [1979] 3 SCR 839 and held that no exemption could be claimed in respect of areas utilised for the cultivation of firewood trees to supply fuel to the employees, discarded the interpretation put on the section by earlier decisions and held that a reasonable areas set apart for growing firewood trees for the purpose of fuel in the smokehouses or factories could be excluded from `private forests' and such areas were held qualified as `lands used

for the preparation of the (crops) for the market'.

In the appeals to this Court on the common question: whether land set apart in estates for growing firewood trees such as eucalyptus or redgum to be used as fuel for the purpose of manufacturing rubber or tea in the smokehouses or factories or for the personal use of the employees in the estates are excluded from the definition of `private forests' as contained in Section 2(f) (1) (i) (B) of the Kerala Private Forests (Vesting and Assignment) Act, 1971.

Allowing the appeals, setting aside the judgment of the High Court and remanding the cases to the appropriate Forest Tribunals, this court

HELD : (Majority M.H. Kania, CJI, & Dr. T.K. Thommen, J. per Thommen, J.)

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1. The definition of `Private Forests' contained in clause (f) of Section 2 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 shows that 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 are excluded from the definition. [983D-E]

2. The entire purpose of exclusion of these items from the scope of the definition of `Private Forest' seems to be not to hinder or create any difficulty in the functioning of plantations of tea, coffee, cocoa, rubber, cardamom and cinnamon as viable commercial enterprises. In these circumstances, it appears reasonable that the minimum area required for the purpose of growing firewood trees for fuel in the factories and smokehouses as well as for supply to the employees of the estates for their domestic use should be excluded from the definition of the term `private forests. [983-G]

3. The burden is on the appellants to show that it has been their practice to supply firewood to the employees of the estates for their domestic use. As for the firewood required for the factories and smokehouses in the estates there seems to be no doubt about the claim of the appellants. [984-A]

4. However, where evidence had been led to show that firewood was steadily and adequately available in the market at reasonable rates for use of the factories or smokehouses as well as for supply to the workers of a particular plantation, in such a case no land could be excluded from the definition of the `private forest' on the ground that it was required for growing firewood trees for the purpose of the estate as well as for the workers. That, however, is not the position in the instant case. On the pleadings and evidence no further inquiry on the point is considered necessary. [984-B-C]

5. Section 2 (f) (1) (i) (B) should be so understood as to grant exception in respect of lands on which firewood

trees are necessary to be grown for steady supply of a reasonable quantity of fuel to the employees as well as to the smokehouses or factories in the estates. In the absence of satisfactory evidence to show that firewood is adequately and steadily available in the market at reasonable prices, such lands, qualify for exemption under section 2(f) (1) (i) (B) of the Act as "lands used for any purpose ancillary to the cultivation of such crops or for the preparation

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of the same for the market". This principle, must hold good in relation to all crops mentioned under the said provision. [984-D-E]

6. What exactly is the areas which can be reasonably regarded as required for growing firewood trees so as to qualify for exemption from vesting under the Act is a question of fact which has to be determined with reference to various factors. [984-G]

7. No final view is expressed as to what factors ar relevant in determining the reasonable area that qualifies for exemption under Section 2 (f) (1) (i) (B) of the Act. That is a matter for consideration by the concerned Forest Tribunals.

8. Ammad is an authority for the proposition that a reasonable extent of land can be set apart as fuel area for the purpose of smokehouses and factories in the estates and such area qualifies for exemption under Section 2 (f) (1) (i) (B) of the Act. The incidental observation of this Court in Ammad that supply of firewood to estate employees `cannot be said to be a purpose ancillary to the cultivation of plantation crops', cannot be taken as an authority to disqualify for exemption a reasonable area meant to supply fuel to the employees living in the estate quarters.

9. The Bench in Moosa Hali was right that it would not be in accordance with the legislative intent to read the provisions in question without regard to the purpose for which exemption is specially provided for lands principally used for the cultivation of certain cash-crops or for the preparation of such crops for the market. Bearing in mind that, in granting the exemption, it was the legislative intent not to disregard the legitimate interests of the estates, namely, their efficient functioning as an industry engaged in the production of cash-crops and the welfare of the concerned employees, it is necessary that a liberal and purposive construction should be put on the section.

[The Forest Tribunals to determine the extent of the land required, for fuel for the smokehouses or factories as well as for the employees in the estates].

State of Kerala v. Moosa Haji, (1984) KLT 494, approved.

Chettiam Veettil Ammad and Anr. v. Taluk Land Board and Ors., [1979] 3 SCR 839, explained and relied on.

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(Per P.B. Sawant, J., dissenting)

1. The land used for growing fuel - whether for

supplying it to the workers or for its use in the smokehouse - would not fall within the purview of Section 2 (f) (i) (B) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 as the said use cannot be said to be a purpose either "ancillary to the cultivation of the plantation crops" in question or "for the preparation of the said crops for the market".

2. From the preamble as well as from the other provisions of the Act, it is clear that the object in enacting the Act was to secure private forests and agricultural lands comprised therein to promote agriculture, the welfare of the agricultural population and purposes ancillary thereto, and also to assign lands to needy section of the society who were wither living on agriculture or who were willing to take up agriculture as the means of their livelihood.

In the instant case, the claim for exemption of a certain area of land is based on the plea that the same is required for growing trees the wood of which is needed for use as fuel for the domestic use of the workmen. There is nothing on record to show that unless the fuel-wood is locally grown on the estate and made available to the workmen, they will have no supply of fuel-wood or of any other fuel, making it impossible for them to live in the estates and work there. In the absence of such finding on record, it is not possible to concede the claim on the ground that the land is used for a purpose "ancillary to the cultivation of the crops" in question. Similar is the case with regard to the claim for exemption from the provisions of the Act, of land allegedly required for growing trees, the timber of which is used as fuel in the smokehouse, which smokehouse is needed for preparation of the crop for the market.

3. In the case of claim for land for growing trees for fuel for the workers, it is necessary to first prove that fuel- wood is actually grown in the estate and secondly, that but for the locally grown fuel, the workers will go without fuel of any kind making it impossible for them to work on the estate. In the case of land claimed for growing trees for fuel for smokehouses, it is likewise necessary to prove that fuel is being grown on the estate for the purpose and no fuel-wood is available from any other source or no substitute fuel are available to run the smokehouse. This is more particularly so when the respondent - State Government has pleaded

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that the fuel-wood as well as substitute fuel is available at cheaper price. Assuming further that fuel-wood available from other sources or the substitute fuel is costlier, it is no ground for claiming exemption of land from the Act for either of the two purposes. It would only lead to increase in the cost of production necessitated by appropriate increase in wages of the workers and by use of such fuel in

the smokehouses. Such higher cost if any, may be taken care of by the market or by suitable crops. That cannot be a consideration for exemption of the land from the provisions of the Act.

In the instant appeals, the question whether the land was needed for the purpose for which it was claimed viz., for growing fuel wood for supplying to the workers and to the smokehouse had not been considered and a finding recorded thereon. Further, in some, there was also no evidence that any land much less a specific area of land was in fact that it was the case of the respondent-State that there was alternative source of supply of fuel-wood and that there also substitute fuel available, the said contention of the State Government was not dealt with by the Forest Tribunal. The High court did not think it necessary to consider the said contention because of its finding that the land required for such purpose could not be said to fall within the scope of Section 2(f) (1) (i) (B) of the Act.

4. This Court in Ammad case had taken the view that the area required for growing fuel was not land used for purpose "ancillary to the cultivation of plantation crops" and that it would not fall within the definition of `plantation' as an "ancillary purpose". This is the view of the Court on what constitutes "ancillary purpose", though the view is under the relevant definition under the Kerala Land Reforms Act. It is not, therefore, correct to rely upon this decision to hold that this Court has taken the view that land used for growing fuel is land used for "ancillary purpose" under the 1971 Act. This is apart from the fact that even under the Kerala Land Reforms Act, the view taken is against such contention. It is, therefore, not possible to agree with the view taken by the large Bench of the Kerala High Court in Mossa Haji case.

5. The larger Bench of the Kerala High Court in Moosa Haji case rejected the claim for land for growing fuel for supply to workers

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relying on the decision of this Court in Ammad. However, it had incongruously enough accepted the claim for land for growing fuel for use in the smokehouse. The Judges themselves have described the view taken by them as "unorthodox" and which may" almost amount to re-reading of the latter part of Section 2(f)(1)(i)(B) of the Act differently".

6. The view taken by the earlier Benches, particularly by the Full Bench in State of Kerala v. Malayalam Plantations Ltd, (1980) KLT 976 (FB) is therefore preferable.

State of Kerala v. Malayalam Plantations Ltd., (1980) KLT 976 (FB), approved.

Chettiam Veettil Ammad and another, etc, etc. v. Taluk Land Board and others, etc. etc. AIR 1979 SC 1573, considered.

State of Kerala v. Moosa Haji, (1984) KLT 494, disapproved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 106- 107 of 1982.

From the Judgment and Order dated 4.1.1980 of the Kerala High Court in M.F.A. Nos. 169 and 226 of 1977.

WITH Civil Appeal Nos. 2050, 557-61 and 1214-18 of 1981. T.S. Krishnamurthi Iyer, G. Viswanatha Iyer, S. Sukumaran, J.B. Dadachanji, Baby Krishnan, K. Prabhakaran, Devan and E.M.S. Anam of the Appellants.

A.S. Nambiar and K.R. Nabiar for the Respondents. The Judgments of the Court were delivered by THOMMEN, J. A common question arises in all these cases. Are lands set apart in the estates in question for growing firewood trees such as eucalyptus or redgum to be used as fuel for the purpose of manufacturing rubber or tea in the smoke-houses or factories or for the personal use of the employees in the estates excluded from the definition of `private forests' as contained in section 2(f)(1)(i)(B) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (Act 26 of 1971) (hereinafter referred to as `the Act')? The Kerala High Court in the three judgments, which are impugned in these appeals, held that such lands fell within the expression `private forest' and accordingly vested in the State in term of the Act. The High Court rejected the contention of the appellants to the contrary.

We shall now read section 2(f)(i)(B):-

> "2. In this Act, unless the context otherwise requires,-
>
> (f) `private forest' means -
>
> (1) in relation to the Malabar district referred to in sub- section (2) of section 5 of the States Reorganization 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 appointed day excluding -
>
> (B) lands which are used principally for the cultivation of tea, offices, 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."

(emphasis supplied) The High Court held that the lands on which firewood trees were grown for the purpose of fuel for either the smoke-house or factories or the employees in the estates were not

lands used for purpose ancillary to the cultivation of the crops or for the preparation of the same for the market so as to be excluded from the definition of `private forests' which vested in the State.

It is not disputed that large quantities of firewood are essential as fuel for the manufacture of tea or rubber and certain areas in the estates generally set apart for growing firewood trees like Eucalyptus or redgum. It is also not disputed that large number of persons are employed in the estates where quarters are generally provided for them and it is in the best interests of the estates that such persons are supplied with sufficient firewood for cooking as well as for keeping themselves warm, particularly in view of the high altitude at which many estates are located.

Some of the earlier decisions of the Kerala high Court had taken the view that lands set apart for growing firewood trees in the estates for the purpose of fuel did not qualify for exclusion from `private forests' so as to prevent their vesting in the State in terms of the Act. This was the view that was followed in the impugned judgments. Significantly, however, a Bench consisting of five Judges of the Kerala High Court subsequently considered this very question in the State of Kerala v. Moosa Haji, (1984) KLT 494, apparently because the law laid down in the earlier decisions on the point was doubted. The larger Bench expressed the view that it was essential for an estate to grow firewood trees for the purpose of fuel for the employees as well as for the smoke-houses and factories. In regard to the requirement of the employees, the High Court felt constrained by the observations of this Court in Chettiam Veettil Ammad and Anr, v. Taluk Land Board and Ors., [1979] 3 SCR 839. It was accordingly held that no exemption could be claimed in respect of areas utilised for cultivation of firewood trees to supply fuel of the employees. However, discarding the interpretation put on the section in some of the earlier decisions of the High Court, the learned Judges of the larger Bench held that a reasonable area set apart of growing firewood trees for the purpose of fuel in the smoke-houses or factories could be excluded from `private forest's. Such areas, they held, qualified as `lands used for the preparation of the (crops) for the market'.

Referring to the need for growing firewood trees in an estate, the larger Bench of the High Court observed :-

> "A practice or custom had thus grown up with the industry where it was the obligation of the employers to provide the employees with drinking water, canteen, creches, umbrellas, blankets, rain- coats, foodgrains, provisions, fire-wood and the like, Fire-wood in particular was an important necessity in the cold climate on the high ranges. Most of the estate managements had been planting redgum for example, to ensure a steady supply of firewood to the community, and also for use in the smoke-houses and estate factories. `Any purpose ancillary to cultivation' in S.2(f)(1)(i)(B) of the Vesting Act was deliberate-
>
> ly kept wide by the legislature, because it knew that there were recognised `uses' other than those specifically enumerated in the Explanation. The object of the Act is to improve the lot of the rural population, and it should have been far from the mind of the legislators to deprive estate employees of the facilities they were enjoying at the commencement of the Act. Supply of fire-wood employees in accordance with the

> industry wide practice should therefore be taken as ancillary to the Cultivation of plantation crops....."

(emphasis supplied) However, the learned Judges felt constrained by the decision of this Court in Ammad (supra). They observed:-

> "These arguments of counsel are no doubt persuasive, but in paragraph (54) of its judgment in C. Veettil Ammad v. Taluk Land Board, AIR (1979) SC 1573, the Supreme Court has held that supply of fire-wood to estate employees `cannot be said to be a purpose ancillary to the cultivation of plantation crops'. That decision was rendered in a case arising from the ceiling provisions are almost identical. We cannot therefore permit ourselves to be swayed by the reasoning of counsel, and we are bound to hold that the claim under this sub-head is impermissible."

This observation indicates that the larger Bench of the High Court might have come to the opposite conclusion as regards fuel for the employees had it not been for a certain observation of this Court in Ammad [1979] 3 SCR 839.

However, the learned Judges felt no such constraint in regard to fuel for the smoke-houses and factories in the estates. Adopting what they refer to as a liberal and purposive interpretation, the learned judges of the larger Bench held that a reasonable portion of the jungle area set apart for purposes of firewood could be regarded as land used to facilitate preparation of the crops for the market.

We have referred to the decision of the larger Bench of the High Court at some length to show that the final view which the High Court has taken subsequent to the impugned judgments supports the contentions of the appellants' counsel as regards fuel for the smoke-houses and factories.

We shall now refer to the observation of this Court in Ammad [1979] 3 SCR 839. It is important to remember that the question regarding fuel was not one of the main point which arose for consideration in Ammad. The main points of controversy in that case are correctly summarised in the headnotes as follows :-

> "1. Whether lands concerted into plantations between April 1. 1964 and January 1, 1970 qualified for exemption under s.81(1)(e) of the Act.
>
> 2. Whether a certificate of purchase issued by the Land Tribunal under s. 72K of the Act was binding on the Taluk Land Board in proceedings under Chapter III of the Act.
>
> 3. Whether the validity or invalidity of transfers effected by persons owning or holding lands exceeding the ceiling limit could be determined with reference to the ceiling area in force on the date of the transfer or in accordance with the ceiling area prescribed by Act 35 of 1969 - whether sub-section (3) of s. 84 was retrospective in

operation".

These three points are in no way connected with the point in issue in the present cases. That judgment was rendered in a batch of cases and one of the questions which incidentally arose was as regards firewood trees grown in the estates. That question arose in C.A. No. 227 of 1978, and it has been discussed at page 870 of the judgment :

> (1979) 3 SCR 839, 870. This Court held that the `fuel area' claimed for the manufacture of tea was exorbitant. The High Court had allowed the entire claim of 924.01 acres as fuel area. Setting aside the High Court order, this Court restored the original order of the Land Board and thus limited the exemption to 200 acres as fuel area for the requirement of the factory. Ammad is thus an authority for the preposition that a reasonable extent of land can be set apart as fuel area for the purpose of smoke-houses and factories in the estates and such area qualifies for exemption under section 2(f)(1)(i)(B) of the Act. At the same time, the incidental observation of this Court in Ammad cannot be taken as an authority to disqualify for exemption a reasonable area meant to supply fuel to the employees living in the estate quarters.

We agree with the learned Judges of the larger Bench of the Kerala High Court that it would not be in accordance with the legislative intent to read the provisions in question without regard to the purpose for which exemption is specially provided for lands principally used for the cultivation of certain cash-crops or for the preparation of such crops for the market. Bearing in mind that, in granting the exemption, it was the legislative intent not to disregard the legitimate interests of the estates, namely, their efficient functioning as an industry engaged in the production of cash-crops and the welfare of the concerned employees, it is necessary that a liberal and purposive construction should be put on the section.

A perusal of the definition of Private Forests contained in clause (f) of section 2 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 shows that 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 are excluded from the definition. The observations of the five learned Judges of the Kerala High Court in State of Kerala v. Moosa Haji, (1984) KLT page 494 show that all the Judges considered that it was essential for an estate to grow firewood trees for the purpose of fuel for the employees as well as for the smoke-houses and factories. This view was taken particularly in the light of the fact that the estates concerned were at a considerable height where it was cold and it would not be feasible for the employees to secure heating material to keep warm and for domestic purposes.

The entire purpose of exclusion of the items set out in the foregoing paragraph from the scope of the definition of Private Forest seems to be not to hinder or create any difficulty in the functioning of plantations of tea, coffee, cocoa, rubber, cardamom and cinnamon as viable commercial enterprises. In these circumstances, it appears reasonable that the minimum area required for the purpose of growing firewood trees for fuel in the factories and smoke-houses as well as for supply to the

employees of the estates for their domestic use should be excluded fro1m the definition of the term `private forest'. We must, however, emphasise that the burden is on the appellants to show it has been their practice to supply firewood to the employees of the estates for their domestic use. As for the firewood required for the factories and smoke-houses in the estates, there seems to be no doubt about the claim of the appellants.

However, where evidence had been led to show that firewood was steadily and adequately available in the market at reasonable rates for use of the factories or smoke-houses as well as for supply to the workers of a particular plantation, in such a case no land could be excluded from the definition of the private forest on the ground that it was required for growing firewood trees for the purpose of the estate as well as for the workers. That, however, is not the position in the case before us. On the pleadings and evidence before us, we do not consider that any further inquiry on the point is necessary.

In our view, section 2(f)(1)(i)(B) should be so understood as to grant exemption in respect of lands on which firewood trees are necessary to be grown for steady supply of a reasonable quantity of fuel to the employees as well as to the smoke-houses or factories in the estates. In the absence of satisfactory evidence to show that firewood is adequately and steadily available in the market at reasonable prices, such lands, in our view, qualify for exemption under section 2(f)(1)(i)(B) of the Act as "lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market". This principle, in our view, must hold good in relation to all crops mentioned under the aforesaid provision. The Tribunal shall merely ascertain as to what is the minimum reasonable area of land required for growing firewood trees to be used as fuel in the factories or smoke-houses and for supply to the employees for their domestic purpose, if such supply to the latter is proved, and to exclude such area in demarcating private forest.

What exactly is the area which can be reasonably regarded as required for growing firewood trees for the aforesaid purposes so as to qualify for exemption from vesting under the Act is a question of fact which has to be determined with reference to various factors. Some of these factors are mentioned by the larger Bench of the High Court in the following words :-

> "32. The next point is what area of the jungle land could be excluded on the above basis? A precise assessment will almost be impossible, because the quantum of fire-wood needed for Smoking purpose will depend on the volume of rubber to be processed,the yield of the trees, the quality of the wood and other factors. The best solution seems to be to make an approximate assessment as was made by the Taluk Land Board in Ammad's case(supra)."

We do not express any final view as to what factors are relevant in determining the reasonable area that qualifies for exemption under section 2(f)(1)(i)(B) of the Act. That is a matter for consideration by the concerned forest tribunals.

In the circumstances, the judgments of the Kerala High Court impugned in these appeals are set aside and the cases are remanded to the appropriate forest tribunals : namely, the Forest Tribunal,

Manjeri with respect to Civil Appeal Nos.106-107 of 1982; the Forest Tribunals, Palghat with respect to Civil Appeal No.2050 of 1981; and the Forest Tribunal, Calicut with respect to Civil Appeal Nos. 557-61 & 1214-18 of 1981. The tribunals shall determine the extent of the land required, as aforesaid, for fuel for the smoke- houses or factories as well as for the employees in the estates.

The appeals are allowed in the above terms. We do not, however, make any order as to costs.

SAWANT,J. I have gone through the judgement of my learned brother Justice Thommen. Since I am unable to persuade myself to accept the view taken there, with due deference, I am pronouncing this separate judgement.

2. A common question which falls for consideration in all these appeals in the meaning of the expression "land used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market" in Section 2(f)(10(i)(B) of the Kerala Private Forests Vesting and Assignment Act, 1971 (hereinafter referred to as the "Act"). In order to appreciate the controversy, it is necessary to understand the scheme of the Act.

3. As the preamble of the Act state, private forests in the State of Kerala are agricultural lands and the Government considered that such agricultural lands should be so utilised as to increase the agricultural-

production and to promote the welfare of the agricultural population in the State. It is with a view to give effect to this objective that it was felt necessary that the private forests which are nothing but agricultural lands should vest in the Government. With this end in view, the Act was brought into force w.e.f.10th May, 1971 which is also the appointed day under the Act. Section 2(f) of the Actl defines "private forests" as follows:

> "2 Definitions. In this Act, unless the context requires,-
>
> (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 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 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 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 purposes of this Clause, a land shall be deemed to be a waste and nothwithstanding the existence thereon of scattered trees or shrubs."

Section 3 of the Act provides for vesting of the ownership and possession of all private forests [so defined] in the Government free from all encumbrances. However, sub-section (2) of this section excludes from the land to be so vested, so much extent of land comprised in private forests, which is held by the owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 or any building or structure standing thereon or appurtenant thereto. The explanation to sub-section (2) states that 'cultivation'would include cultivation of trees or plants of any species. Likewise, sub-section (3) of Section 3 excludes so much extent of private forests held by an owner which is held by him 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 does not exceed the extent of the ceiling area applicable to him under Section 82 of the Kerala Land Reforms Act, 1963.sub-section (4) of Section 3 states that for the purposes of sub-sections (2) and (3) private forests shall be deemed to be lands to which the Kerala Land Reforms Act,1963 is applicable and they shall be deemed to be 'other dry lands' for the purposes of calculating the ceiling limit under that Act.

Section 4 of the Act then States that the private forests shall be deemed to be reserved forests under the Kerala Forest Act so long as they remain vested in the Government. Section 8 provides for settlement of disputes which arise with regard to (a) whether any land is a private forest or not and (b) whether any private forest or portion thereof is vested in the Government or not. The said dispute is to be resolved by the Tribunal constituted under Section 7 of the Act. An appeal against the said decision of the Tribunal lies to the High Court under Section 8 A of the Act. Section 9 of the Act states that no compensation shall be payable for the vesting in the Government of any private forest or for the extinguishment of the-

right, title and interest of the owner or any other person in such private forest.

Section 10 then provides firstly, for reserving such extent of the private forests vested in the Government under sub-section (3) or the lands comprised in such private forests as may be necessary for purposes directed towards the promotion of agriculture or the welfare of agricultural population or for purposes ancillary thereto and secondly, for assigning on registry or lease, the remaining private forests or the lands comprised in private forests to (a) agriculturists, (b) agricultural labourers, (c) members of scheduled castes or scheduled tribes who are willing to take up agricultural as the means of their livelihood, (d) unemployed young persons belonging to families of agriculturists and agricultural labourers who have no sufficient means of livelihood and who are willing to take up agriculture as the means of their livelihood and (e) labourers belonging to families of agriculturists and agricultural labourers whose principal means of livelihood before the appointed day was income they obtained as wages for work in connection with or related to private forests and who are willing to take up agriculture as means of their livelihood.

Under Section 11, the assignment of the private forests has to be completed as far as may be within two years from the date of the publication of the Act. Section 13 bars jurisdiction of civil courts to decide or deal with any question or to determine any matter which is required to be decided or dealt with or to be determined by the tribunal, the custodian or any other officer. Section 15 provides for the constitution of an Agriculturists Welfare Fund to be utilised for the settlement and welfare of persons to whom private forests or lands comprised in private forests have been assigned. It is not necessary to refer to the other provisions of the Act.

Thus from the preamble as well from the other provisions of the Act, it is clear that the object in enacting the said Act was to secure private forests and agricultural lands comprised therein to promote agriculture, the welfare of the agricultural population and purposes ancillary thereto, and also to assign lands to needy sections of the society who were either living on agriculture or who were willing to take up agriculture as the means of their livelihood.

4. The aforesaid objectives and the provisions of the Act help us-

construe the provisions of Section 2(f)(1)(i)(B) of the Act which fall for consideration in the present case. What is meant by "ancillary to the cultivation" has been explained by the Explanation to sub-clause (B) which shows that the lands 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. No doubt, the Explanation contains a deeming provision and hence a purpose similar in nature to those mentioned therein may also be said to be included therein. But it is open to expand the meaning of the word "ancillary" beyond it,to include in it land which is not required directly for any such purpose, but for growing provisions needed by those who work to cultivate the crops? If yes, the land for growing which of the provisions is to be included in the meaning of the said word ? It is true that the Explanation deems land used for schools, hospitals and playground meant for the workers as land ancillary to cultivation of the crops. But precisely because the said purposes are remotely or mediately connected with the cultivation of the crops in question that they are specifically mentioned in the Explanation. It also further appears that the needs of education, medical facilities and sports cannot otherwise be satisfied locally where the workers are required to live. Food and clothing are more basic needs. It

cannot be suggested that the land needed for growing food grains and cotton should on that account be considered as land used for ancillary purpose, In the present case, the claim for exemption for a certain area of land is based on the plea that the same is required for growing trees the wood of which is needed for use as fuel for the domestic use of the workmen. There is nothing on record to show that unless the fuel-wood is locally grown on the estate and made available to the workmen, they will have no supply of fuel-wood or of any other fuel, making it impossible for them to live in the estates of and work there. In the absence of such finding on record, it is not possible to concede the said claim on the ground that the land is used for a purpose "ancillary to the cultivation of the crop" in question.

Similar is the case with regard to the claim for exemption, from the provisions of the Act, of land allegedly required for growing trees, the timber of which is used as fuel in the smoke-house, which smoke-house is needed for the the preparation of the crop for the market. The claim is based on the second leg of the same expression namely"....or for the preparation of the same (i.e. crops) for the market". There is again nothing on-

record to show that unless the trees for fuel are grown captively on the estates, no fuel-wood would be available or no other substitute fuel can be used for the purpose. The land needed for the smoke-house is admittedly exempted from the Act. The exemption sought is for the land needed to grow trees,the timber of which can be used as fuel in the smoke-house. The fuel, it is claimed is necessary for drying the crop to prepare it for the market. Apart from the fact that the relationship between the land required for growing fuel trees and preparation of crops for the market is remote, the absolute need for the land for the purpose as stated above, is not proved. It has further to be remembered in this connection that the Explanation while including in it land for such remote purposes as hospitals, schools and playgrounds has chosen not to include land required for fuel whether for the workers or for the smoke- house. What is further, while expressly exempting the land for the smoke-house, it has made not reference to the land needed for growing fuel for use in the smoke-house. By the normal rule of interpretation, therefore, it will have to be held that the what is not included is deemed to have been excluded.

Hence in the case of claim for land for growing trees for fuel for the workers, it is necessary to first prove that fuel-wood is actually grown in the estate and secondly,that but for the locally grown fuel, the workers will go without fuel of any kind making it impossible for them to work on the estate. In the case of land claimed for growing trees for fuel for smoke-houses, it is likewise necessary to prove that fuel is being grown on the estate for the purpose and no fuel-wood is available from any other source or no substitute fuel are available to run the smoke- house. This is more particularly so when the respondent- State Government has pleaded that the fuel-wood as well as substitute fuel is available at cheaper price. Assuming further that fuel-wood available from other sources or the substitute fuel is costlier, it is no ground for claiming exemption of land from the Act for either of the two purposes. It would only lead to increase in the cost of production necessitated by appropriate increase in wages of the workers and by use of such fuel in the smoke-house. Such higher cost if any, may be taken care of by the market or by suitable crops. That cannot be a consideration for exemption of the land from the provisions of the Act.

In Civil appeal Nos.106-107 of 1982, before the Forest Tribunal the applicant was the present appellant. The appellant had made two claims.

One related to the land allegedly planted with rubber which land was cut off from the rest of the plantation and which had been trespassed upon by the Survey authorities as having been vested in the Government. The second claim related to 25 per cent of the total area of plantation estimated at 44 acres which was required as "ancillary land". The Tribunal on the admission of the respondent-authorities granted the said claim although in the body of the judgement, it is observed that the claim except that for 5.50 acres of land was being accepted. As regards the second claim, the Tribunal found that no land had been specifically earmarked or allotted to the appellant as ancillary land; there was a play-ground, smoke-house and workers' quarters in the estate, though the accommodation required by the labourers was not sufficient for accommodating all the labourers. The Plantation Officer had issued a notice to provide quarters to all the labourers. The Tribunal, in the circumstances, found that the land for providing further quarters was necessary. The Tribunal thereafter granted an extent of land which would make up the total area of the plantation to 200 acres as being sufficient and necessary for the purpose. That came to, according to the Tribunal, in all 23.92 acres. What is necessary to note from the Tribunal's decision is that no claim for growing fuel trees either for supply of fuel to the workers or for the smoke-house was made before the Tribunal. The only claim was for more area for constructing sufficient number of quarters to accommodate all the labourers.

Against this decision of the Tribunal, both the present appellants and the respondent-State Government had preferred appeals to the High Court which in paragraph 3 of its judgment observed as follows:

> "The Forest Tribunal found on the plea for exclusion of 44 acres as ancillary land that so much extent of land was not required for the purpose of planting trees to be used as firewood and for construction of quarters of the labourers."

However, in the Tribunal's decision there is no mention of any claim for land required for firewood. It appears that the High Court while deciding the appeals had extracted the case of the petitioner from the petition and the statement accompanying the petition filed before the Tribunal. In that petition,the petitioner had made a claim for land for planting trees to use the timber thereof in due course as firewood in addition to the land for construction of workers' quarters in future. The-

High Court rejected the claim for both on the ground that the Act did not envisage exemption of land for the purpose of construction of quarters and for growing fuel trees in future. According to the High Court, the Act envisaged the exemption of the land which was being used for such purposes on the appointed day, viz., 10th May,1971. The High Court also gave an additional reason for rejecting the said claim pointing out that there was no claim for exclusion of any specific area of land but the exemption was claimed vaguely to the extent of 25 per cent of the plantation anywhere adjoining the plantation.

In Civil Appeal No. 2050 of 1981 the crop concerned again was rubber and before the Tribunal the exemption of land was sought on the ground that it was required for growing green manure for the crop and for growing fuel trees for collecting firewood for use in the smoke-house. There was no claim for growing fuel for supplying it to the workers. The stand of the Government was that the lands claimed were never brought under cultivation at any point of time and that since the lands were six miles away from the rubber estate, they did not form part of the estate. The Tribunal allowed the said claim. On appeal by the State Government, the High Court rejected the claim relying upon a decision of the Full Bench in state of Kerala v. Malayalam Plantations Limited, (1980) KLT 976 (FB).

In Civil Appeal Nos. 557-61 and 1214-18 of 1981 the crop involved is tea. These appeals arise out of the orders in original petitions filed before the Forest Tribunal, viz., Petition Nos. 3,4,5,6 and 26 of 1975. The facts are as follows:

> In the original petitions the petitioners'[appellants herein] claim was that the firewood was required for smoke- house because furnace oil was costly. Against this, the respondent-State Government's case was that firewood and other fuel were available elsewhere and secondly the claim for land was vague since no particular area was specified. The Tribunal allowed the claim of the petitioners. However, in appeal before the High Court by the State Government, the High Court relying upon a decision of this Court in Chettiam Veettil Ammad and another, etc. etc. v. Taluk Land Board and others, etc. etc., AIR 1979 SC 1573 pointed out that supply of fuel wood could not be said to be a purpose ancillary to the cultivation or plantation of crops. The High Court repelled the contentions of the present appellant that Eucalyptus trees were fruit bearing trees and therefore-
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> exempt under Section 2(f)(1)(i)(C) of the Act. The High Court thus allowed the appeals of the State Government and rejected the claim of the appellants. It also appears from the certificate granted by the High Court under Article 133(1) of the Constitution, that it was granted on the ground that a substantial question of law of general importance concerning the interpretation of Section 2(f)(1)(i)(C) of the Act was involved. It thus appears that the certificate was not asked for and granted on the ground that the land was required for a purpose mentioned in Section 2(f)(1)(i)(B) of the Act.
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> These are the facts in different appeals before us. It is, therefore, clear as far as the facts involved in the appeals before us are concerned, the question whether the land was needed for the purpose for which it was claimed viz., for growing fuel wood for supplying to the workers and to the smoke-house as stated earlier, had not been considered and a finding recorded thereon. Further, in some of the matters, there was no claim for land for growing fuel-wood for supplying to the workers. There was also no evidence that any land much less a specific area of land was in fact being used for growing fuel-wood. It must be noted that in spite of the fact that it was the case of the respondent-State that there was alternative source of supply of fuel-wood and

that there was also substitute fuel available, the said contention of the State Government was not dealt with by the Forest Tribunal. The High Court did not think it necessary to consider the said contention because of its finding that the land required for such purpose could not be said to fall within the scope of Section 2(f)(1)(i)(B) of the Act.

The High Court in support to its view that the land required for growing fuel-wood for supplying it to the workers or for using in the smoke-house did not fall within the scope of Section 2(f)(1)(i)(B) of the Act, as stated above, has also relied upon the decision of this Court in chettiam Veettil Ammad & Anr. etc. etc. v. Taluk Land Board & Ors. etc. etc., AIR 1979 SC 1573. It is necessary to briefly deal with the said decision and the observations made in the said decision which are relevant to the point before us since the appellants have also tried to take support from the very same decision to advance their contentions. The controversy in the said case related to the provisions of the Kerala Land Reforms Act, 1963. It was not a decision under the Act which falls for consideration before us. This Court by the said common decision had disposed of a large number-

of civil appeals arising under that Act. The controversy related to three main points which were as follows:

"1. Whether lands converted into plantations between April 1, 1964 and January 1, 1970 qualify for exemption under Section 81 (1)(a) of the Act?

2. Whether a certificate of purchase issued by the Land Tribunal under Section 72K of the Act is binding on the Taluk Land Board in proceedings under Chapter III of the Act?

3. Whether the validity or invalidity of transfers effected by persons owning or holding lands exceeding the ceiling limit should be determined with reference to the ceiling area in force on the date of the transfer or in accordance with the ceiling area prescribed by Act 36 of 1969- Whether sub-section (3) of Section 64 is retrospective in operation?"

The Court negatived the contentions of the appellants on Points 1 and 3 and then proceeded to examine the merits of each of the appeals with regard to Point No. 2 where the said point was raised. Only in two appeals, viz., C.A. No. 2811 of 1977 and C.A. No. 227 of 1978 dealt with in paragraphs 53 and 54 respectively of the decision, the claim for the exemption of land used for growing fuel fell for consideration under that Act and this is how the Court dealt with the said claim in the two appeals:

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53. Mr. Bhatt has argued that the High Court erred in not granting the exemption for the entire area as a coffee plantation; but the finding of fact in this respect is against

> the appellant. The conversion of the land has also been held to be illegal. On the claim that the land used for growing fuel was exempt as it fell within the definition of 'plantation' under S.2(44)(a) as it was an 'ancillary purpose' also, there is a finding of fact against the Company. The appeal has no merit and is dismissed.
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> 54. The controversy before us relates to exclusion of 'fuel area' and 'rested area'. The Company has claimed that it has planted red gum as fuel in 924.01 acres as it was required for the 'manufacture of tea'. The Taluk Board found it to be an exhorbitant claim and reduced it to 200 acres, but the High Court has restored the entire claim. The General Manager of the Company has stated that firewood is being supplied to the employees free of cost. So the claim to plant red gum all over is belied by its General Manager's statement. Moreover supply of fuel wood cannot be said to be a purpose 'ancillary to the cultivation of plantation crops'. The Land Board has disallowed the claim for exemption of 136.17 acres, but it has been allowed in full by the High Court. Here again the High Court was not justified in interfering with the Board's finding of fact for there was nothing to show that it was an area from which crop was not gathered at the relevant time.

If that had been so, it might have been an area within the plantation. In fact it appears from the order of the Board that no other estate had made any such claim. The appeal is therefore allowed to the extent that the Board's decision is restored in both these matters."

It will be apparent that in C.A. No. 2811 of 1977 the Court held that there was a finding of fact against the appellant-Company and that the land used for growing fuel was not exempt from the provisions of the said Act since such use of land was not for 'ancillary purpose' and did not,also, fall within the definition of 'plantation' under Section 2(44)(a) of the said Act.

Similarly, in C.A. No.227 of 1978 the controversy was whether "fuel area" among other areas, had to be excluded from the operation of the Act. The Company's claim was that it had planted red gum as fuel in 924.01 acres as it was required for the manufacture of tea. The General Manager of the Company, however, had stated that firewood was being supplied to the employees free of cost. This Court held that on the General Manager's statement the earlier claim for exemption, viz., that the area was required for manufacture of tea, stood belied. But the Court also further held "moreover supply of fuel-wood cannot be said to be a purpose 'ancillary to the cultivation of plantation crops." The Land Board, as is clear from the-

discussion, had disallowed the claim to the extent of 136.17 acres but the High Court had allowed the claim in full, i.e., 924.01 acres. This Court held that the High Court was not justified in interfering with the Board's finding of fact for "there was nothing to show that it was an area from which crop was not gathered at the relevant time...In fact it appears from the order of the Board that no other estate had made any such claim. The appeal is therefore allowed to the extent that the Board's decision is restored in both these matters". It would thus appear from the said discussion that after

having held that supply of fuel-wood could not be said to be a purpose ancillary to the cultivation of plantation crops, the Court merely proceeded to restore the finding of the Land Board on the ground that the High Court's interference with the Board's finding whereby the Board had disallowed the claim for exemption of certain acreage was not justified.

Thus from paragraphs 53 and 54 of the said decision it is obvious that this Court had taken the view that the area required for growing fuel was not land used for purpose "ancillary to the cultivation of plantation crops" and that it would not fall within the definition of 'plantation' as an "ancillary purpose". This is the view of the Court on what constitutes "ancillary purpose", though the view is under the relevant definition under the said Act. It is not, therefore,correct to rely upon this decision to hold that this Court has taken the view that land used for growing fuel is land used for "ancillary purpose" under our Act. This is apart form the fact that, as pointed out above, even under the Kerala Land Reforms Act, the view taken is against such contention.

In view of what I have discussed above, I am unable to agree with the view taken by the larger Bench of Kerala High Court in State of Kerala v.Moosa Haji, (1984) KLT 494. The Bench rejected the claim for land for growing fuel for supply to the workers relying on the decision of this Court in Chettiam Veettil Ammad's case [supra]. However, it has incongruously enough accepted the claim for land for growing fuel for use in the smoke-house. The learned Judges themselves have described the view taken by them there as "unorthodox" and which may "almost amount to re-reading of the latter part of Section 2(f)(1)(i)(B) of the Act differently". Instead, I prefer the view taken by the earlier benches, and particularly by the Full Bench of the High Court in State of Kerala v. Malayalam Plantations Ltd., (1980) KLT 976 (FB) which supports the interpretation that I have placed-

on the said provisions.

For the reasons indicated above,I am of the view that the land used for growing fuel-whether for supplying it to the workers or for its use in the smoke-house-would not fall within the purview of Section 2(f)(1)(i)(B) of the Act as the said use cannot be said to be a purpose either "ancillary to the cultivation of the plantation crops" in question, or "for the preparation of the said crops for the market". In the result, I dismiss all the appeals.

The appellants will pay cost to the respondent-State in separate sets.

V.P.R. Appeals allowed.