Bhavani Tea And Produce Co. Ltd vs State Of Kerala And Ors.Andvice Versa on 20 February, 1991

Equivalent citations: 1991 SCR (1) 550, 1991 SCC (2) 463, 1991 AIR SCW 592, 1991 (2) SCC 463, (1991) 1 KER LT 666, (1991) 1 SCR 550 (SC), (1991) 1 JT 503 (SC)

Author: K.N. Saikia

Bench: K.N. Saikia, M. Fathima Beevi

PETITIONER:
BHAVANI TEA AND PRODUCE CO. LTD.

Vs.

RESPONDENT:
STATE OF KERALA AND ORS.ANDVICE VERSA.

DATE OF JUDGMENT20/02/1991

BENCH:
SAIKIA, K.N. (J)
BENCH:
SAIKIA, K.N. (J)
FATHIMA BEEVI, M. (J)

CITATION:
1991 SCR (1) 550 1991 SCC (2) 463
JT 1991 (1) 503 1991 SCALE (1)318

ACT:
Land Reforms: Kerala Private Forests (Vesting & Assignment) Act, 1971 (Act 26 of 1971): Sections 2(f), 3, 8-Private forests-Company engaged mainly in plantations of tea, coffee, cardamom, rubber etc.-Certain areas/plots not under plantation-Plantation abandoned-Whether this to be deemed 'reverted to nature'-Held no-Madras Preservation of Private Forest Act-Kerala Reforms Act, 1963.

Section 2(f), 3, 8-Private forests-Areas on the periphery of the Company's estate admittedly virgin-The same held vested in the State-Whether the provisions of the Vesting Act have been applied correctly to the facts as found by Courts below keeping in mind its objects and purposes.

HEADNOTE:

Bhavani Tea and Produce Co., a Public Ltd. Company is engaged mainly in plantations of Tea, Coffee, Cardamom, Rubber and some other plantions in the western ghats comprising R.S Nos 2,3, 3/1 and 5/1 in Sholyar village Mannarghat Taluk of Palghat District, Kerala known as Siruvani Group of Estate of four divisions namely, Siruvani, Varddymalai, Elamali and Halton with the total area in its possession being 3, 151.20 acres.

As the forest officials undertook survey over the Company's plantations under the Kerala Private Forests (Vesting & Assignment) Act, 1971, which had come into force on 10.5.1971, to locate and determine the forest area in the estate that would vest in the State, the Company moved an application under section 8 of the Act before the Tribunal asserting that no portion of the land in the estate as shown in the schedule to the application was liable to vest in the state. An advocate commissioner was appointed by the state as vested forests. The Advocate Commissioner in his final report found an area of 1397.60 acres indentified as plots nos. 1 to 69 claimed by the State as vested forests.

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The Company thereupon amended its application showing these 69 plots as schedule 'B' to the application. Out of the total 3,151.20 acres 1,753.60 acres are admitted not to have vested under the Act. Of the remaining 1, 397.60 acres, 609.91 acres are admitted to be private forest on the periphery of the Estate and hence vested under the Act. This covers plots Nos. 11, 18, 25, 28, 30 and 63. Out of the remaining plots, the Tribunal allowed 33 plots totalling 206.06 acres and declared total area of 1, 184.68 acres as vested forests. Both parties preferred appeals to the High Court which by its impugned judgment partly allowed the appeal of the company as well as of the State. Both side have again preferred appeals by special leave to this court.

The result of the High Court's judgment is that the dispute before this Court is now confined only to an area of 641.73 acres covered by plots nos. 12,13,14,15,16,26,27,29,33,36,37,38,39,40,41,44,46,50,51,55, 56,58,59,61,62,64, and 65. On behalf of the company it has been argued that these disputed plots must be held to have been principally used for cultivation of tea, coffee, rubbers and cardamom etc. and for purposes ancillary thereto; that if these plots are not exempted, the plantation will be broken down in unity, economy and contiguity and that the plantation must be taken as a whole and not piece by piece or plot by plot.

The argument on behalf of the State was to emphasise the objects and purposes of the vesting Act namely, to distribute agricultural land to landlords, agriculturists/labourers so as to reduce the scarcity of such land, and not to allow few individuals to remain in control. It was also contended that vesting Act did not use

the word 'plantation' and therefore private forest has to be determined on the basis of land where upon forest stands irrespective of its size.

Keeping in view the detailed findings of the Tribunal as well as the High Court this Court comes to the conclusion that out of the plots which are in dispute now as pointed out above, plot nos. 33,39,40,44,46,50,51,55,58,59 and 61 also have to be treated as not to have vested in the state under the vesting Act. As regards the existing roads falling within the vested areas these shall have such margins on either side of the road as required under the PWD rules of the state and shall be maintained and controlled by the company. But no construction of new roads by the company in or through the vested areas shall be permissible. Thus in partly allowing the rival appeals by modifying the judgment of the High Court to the extent indicated above, this Court,

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HELD: If the land was not private forest but plantation under the Madras preservation of Private Forest Act and was similarly not private forest but plantation on 10.5.1971, it could not, without anything more, become private forest thereafter even though it was not under the same efficient or successful plantation as it was earlier. Whether the plantation yielded any crop or not was not for the owners to decide and not by the authority under the Vesting Act, unless it did made specific provisions to cover such a situation. We have not been shown any such provision or any provision as to such land reverting to nature. Nature, according to Collins English Dictonary, means all natural phenomena and plant and animal life as distinct from man and his creations; a Wild primitive State untouched by man or Civilzation. According to Shorter Oxford English Dictionary, natural vegitation means self-sown or planted; land not cultivated; uncultivated or undomesticated plants or animals. There is no finding as to prevalence of such a condition in these plots.[570F-571A]

While, we are not inclined to agree that the entire estate of the Company was required to be taken as one whole, we find it difficult to agree that wherever some forest was found under the Company's estate the Vesting Act would apply. We find that M.P.P.F. Act, the Kerala Forest Act, the Kerala Reforms Act, considered the plantations as Units by providing that they would include the land used for ancillary purposes as well. Therefore while applying the Vesting Act to such plantations the same principle would be applicable. It is on record that the estate of the Company is divided into four divisions. In conformity with the idea of plantations, it would be reasonable to take each division as a Unit, subject, of course, to natural and geographical factors. [573 A-C]

Balmadies Plantation Ltd. & Anr. v. State of Tamil Nadu, [1972] 2 SCC 133; The Kannan Devan Hills Produce v.

The State of Kerala and Anr., [1972] 2 SCC 218; State of Kerala & Anr. v. The Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. etc., [1974] 1 SCR 671; V. Venugopala Verma Rajaa v. Controller of Estate Duty, Kerala, [1969] KLT 230; State of Kerala v. Anglo American Direct Tea Trading Co. Ltd., [1980] KLT 215; Malankara Rubber & Produce Co. & Ors. etc. v. State of Kerala & Ors., [1973] 1 SCR 399; State of Kerala & Anr. v. Nilgiri Tea Estate Ltd., [1988] (Supp) SCC 79; State of Kerala & Anr. v. K.C. Moosa Haji & Ors., AIR 1984 Kerala 149 and Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. The Custodian of Vested Forests, Palghat & Anr., AIR 1990 SC 1747, referred to.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 826 & 827-28 of 1991.

From the Judgment and Order dated 10.9.1986 of the Kerala High Court in M.F.A. Nos. 48 & 291 of 1991.

K. Sudhakaran, Attorney General, T.S. Krishnamurthy Iyer, A.S. Nambiar, T.R.G. Wariyar, P.S. Poti, P.K. Manohar, Shanta Vasudevan, K.R. Nambiar, P.K. Pillai and V. Jai Kumar for the appearing parties.

The Judgment of the Court was delivered by K.N. SAIKIA, J. Special leave granted.

Civil Appeal arising out of Special Leave Petition (Civil) No. 7314 of 1987 and Civil Appeals arising out of Special Leave petitions (Civil) Nos. 6837-38 of 1987 are from common Judgment of the High Court of Kerala dated 10.9.1986 passed in MFA Nos. 48 and 291 of 1981. The appellant Bhavani Tea and Produce Co. Ltd., hereinafter referred to as `the company' is a public limited company engaged mainly in plantations of Tea, Coffee, Cardamom, Rubber and other plantation crops over an extensive area in the Western Ghats close to the border of the States of Kerala and Tamil Nadu. On the basis of their title deeds, the company claimed to have purchased an extent of 3273.72 acres of land, but it and only 3, 151.20 acres in occupation. Bulk of the plantations were purchased by the company in 1946 from M/s. B.B. Rubber Estates Ltd., hereinafter called `the vendors', and the remaining estates acquired in 1955 and 1956. The vendors were in possession of 3151.20 acres of land situated in surveyed lands in R.S. Nos. 2,3,3/1 and 5/1 in Sholayar village, mannarghat Taluk of palghat district which belonged in `Jenmom' to mannarghat mooppil Sthanam and the vendors established the plantations taking the same on Verumpattam lease in the year 1935. The plantations are now known as Siruvani Group of Estates of four divisions namely, Siruvani, Varddymalai, Elamali and Halton.

The Kerala Private Forests (Vesting & Assignment) Act, 1971 (Act 26 of 1971), hereinafter referred to as `the Vesting Act' an Act to provide for the vesting in the Govt. private forests in the State of

Kerala and for the assignment thereof to agriculturists and agricultural labourers for cultivation, extending to the whole of Kerala State, received the assent of the President on 23.8.1971, and as provided in its Section 1(3) it was deemed to have come into force on the 10th day of May, 1971 which was also declared to be the appointed day. The preamble to the Vesting Act indicated that the 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 in the State and to promote the welfare of the agricultural population of the State. The statement of objects and reasons also said that the private forests as defined in the Kerala Land Reforms Act, 1963(1 of 1964) were exempt from the ceiling thereunder and that with high density of population there was scarcity of land and it was against the Directive Principles of State policy to allow a few persons to be in ownership and control of these agricultural lands. In other words, the object of the Vesting Act was to distribute the private forest lands among the agriculturists and agricultural labourers for agriculture.

The forest officials having commenced survey over the company's plantations' land from 28.6.1997, it approached the Tribunal under Section 8 of the Vesting Act for a declaration that no portion of the land in R.S. Nos. 2,3,3/1 and 5/1 in Sholayar Village, Nannarghat Taluk, Palghat District shown in the schedule to the application was liable to vest in the State under the Vesting Act.

The Company maintained that at the time of the Vesting Act coming into force out of the company's lands about 10 acres were covered by roads, 50 acres by buildings, 490.14 acres by tea plants, 700.00 acres by coffee plants, 798.56 acres by cardamom and 250 acres by rubber plantation. Besides an area of 60 acres was maintained as windbelts and an area of 189.50 was reserved for the purpose of firewood meant for the preparation of rubber for the market. The company claimed that the entire area was thus principally cultivated with tea, coffee, cardamom and rubber and for the purposes ancillary thereto and that total 2,338.70 acres were utilised for plantations by the end of 1969. The entire area having stated to have been principally cultivated, the company claimed that no portion thereof was covered by the exproprietory provisions of the Vesting Act. The respondent State of Kerala stated before the Tribunal that the plantation area in the schedule property had already been exempted, and that only such areas as fell within the definition of private forests in the Vesting Act, mainly areas full of forest trees aged 20 to 100 years were being surveyed and demarcated as vested forests. The state also disputed the area under plantations and the areas claimed to have been reserved for fuel and fire-wood etc. It was also stated that in favour of the fourth respondent which was a cooperative farming society 190.54 hectares of the area taken over as vested forests as already assigned and the society got possession of that area from out of uncultivated forest tracts for itself.

An Advocate Commissioner was appointed by the Tribunal to prepare a plan and report regarding the properties claimed as vested forests out of the schedule land and he submitted Exhibit C-1 plan, C-2 and C-3 interim reports and C-4 final report. On the basis of Exhibit C-4 report the company amended its application. The earlier Schedule was retained as `A' Schedule.

An area of 1397.60 acres (566.11 hectares) identified as plot Nos. 1 to 69 were located by the Commissioner as areas claimed by the respondent as vested forests and those 69 plots were included

in the `B' Schedule to the application after the amendment. The controversy thenceforth related only to some of the plots in `B' Schedule.

The company examined PWs. 1 to 3 and produced documents A1 to A24 in support of its claim, while the respondents examined RW-1 and marked Exhibit B-1 only.

On the basis of the evidence available before it and mainly depending upon the observation of the commissioner, the Tribunal held that plot Nos.

2,9,12,13,15,16,24,25,29,35,48,49 and 56 had been brought under cultivation prior to 14.12.1949, and therefore, did not fall within the purview of the Madras Preservation of Private Forests Act(hereinafter referred to as M.P.P.F. Act), and therefore, held to be outside the purview of the Vesting Act.plot Nos. 4, 5, 7, 10, 19, 20, 21, 27, 32, 34, 42, 43, 45, 47, 52, 53, 54, 57, 60, 66 and 67 were held to be used principally for the cultivation of tea, coffee, and cardamom and therefore were to be excluded from the purview of the Vesting Act in view of the provisions contained in Section 2(f) thereof. The remaining plots 1, 3, 6, 8, 11, 14, 17, 18, 22, 23, 25, 28, 30, 31, 33, 36, 37, 38, 39, 40, 41, 44, 46, 50, 51, 51A, 55, 58, 59, 61, 62, 63, 64, 65, 68, and 69 were found to be not excludable under Section 2(f) or to be exempted under Section 3 of the Vesting Act. The Tribunal thus allowed the company to retain 206.06 acres out of B Schedule lands as excluded/exempted from the provisions of the vesting Act and declared total 1,184.68 acres as vested forests under the Vesting Act.

From the Tribunal's order both the company and the State appealed to the High Court which by the impugned common Judgment dated 10.9.86 partly allowed the company's MFA No. 48 of 1981 to the extent of modifying the order of the Tribunal and declaring that plot Nos. 1, 3, 6, 8, 17, 22, 23, 31, 51A, 68 and 69 were to be excluded from vesting; and also partly allowed the State's MFA Nos. 291 of 1981 to the extent of declaring that plots Nos. 12, 13, 15, 16, 26, 27, &, 56 were to vest in the state. The result was that the company would be entitled to retain plot Nos. 1 to 10, 17, 19 to 24, 31, 32, 34, 35, 42, 43, 45, 47, 48, 49, 51A, 52 to 54, 57, 60 and 66 to 69 totalling 144.13 acres in B Schedule properties and the remaining plot Nos. 11 to 16, 18, 25, to 29, 30, 33, 36 to 41, 44, 46, 50, 51, 55, 56, 58, 59 and 61 to 65 would vest in the State. The High Court also observed that out of the excluded areas less than 70 acres alone were planted areas, meaning thereby lands which were principally used for the cultivation of tea, coffee and cardamom under Section 2(f) (B) of the Act and that the remaining area could be used for ancillary purposes. The reservation for roads, water sources etc. which were in use at that time were also allowed. The High Court also directed:

> "One existing road each to connect each of the different blocks of plantations along the shortest route lying along the vested areas will be allowed to be used and maintained by the applicant at its cost, but in roads passing through the vested forests will be under the control of the respondents. The existing roads providing access from the Estate to the public road will also be maintained by the applicant at its cost subject to the above reservation. the present case of water sources, streams and channels located within the vested forests for supply of drinking water or as source for irrigation and for supply for purposes of the factories etc. will be

preserved. The respondents will not interfere with any such user of these facilities."

Thus out of the total 3, 151.20 acres 1, 753.60 acres are admitted not to have been vested under the Act. Out of the remaining 1,397.60 acres 609.91 acres are admitted to be private forest and hence vested under the Act. This covers plot Nos. 11, 18, 25, 28, 30 and 63. Out of the remaining plots, namely, 1-10, 12-17, 19-24, 26, 27, 29-62 and 64-69, the Tribunal allowed 33 plot totalling 206.06 acres. The High Court by the impugned order allowed 36 plots totalling 144.13 acres. The result is that excluding the plots included in the peripheral area of virgin forests of 609.91 acres, the dispute is now confined only to following plots totalling 641.73 acres.

Plot 12 27.50 acres Plot 13 25.08 acres Plot 14 3.67 acres Plot 15 1.65 acres Plot 16 3.82 acres Plot 26 10.70 acres Plot 27 10.58 acres Plot 29 8.10 acres Plot 33 16.20 acres Plot 36 14.87 acres Plot 37 9.63 acres Plot 38 5.26 acres Plot 39 6.37 acres Plot 40 32.42 acres Plot 41 26.32 acres Plot 44 84.06 acres Plot 46 5.31 acres Plot 50 30.96 acres Plot 51 44.11 acres Plot 55 13.12 acres Plot 56 24.84 acres Plot 58 75.19 acres Plot 59 73.03 acres Plot 61 7.56 acres Plot 62 23.45 acres Plot 64 9.21 acres Plot 65 48.72 acres

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Total : 641.73 acres Both the company and the State of Kerala have filed Special Leave Petition from the common order of the High Court and are given special leave.

Both the company and the State having claimed these plots under the provisions of the Vesting Act and the Custodian and the Tribunal on the basis of the Commissioner's report and evidence adduced before it as also the High Court having already found the facts as regards these plots we are of the view that the scope of this Court in this Appeal under Article 136 of the Constitution of India is rather limited. Both Mr. Krishnamurthy Ayer for the company and Mr. P.S. Poti for the State have argued this case with dexterity presenting the meticulous details and explaining the relevant statutory provisions. Mr. Krishnamurthy emphasised that these disputed plots must be held to have been principally used for cultivation of tea, coffee, rubber, cardamom and cinnamon which are the crops envisaged under the Vesting Act and for purposes ancillary thereto. Counsel submits that if these plots were not exempted from vesting the company's plantations will be broken down in untiy, contiguity and economy, and that for deciding the area principally cultivated, the plantations owned by the company must be taken as a whole and not piece by piece or plot by plot as has been done in this case. Mr. Poti emphasises the objects and purposes of the Vesting Act, namely, to distribute agricultural land to the landless agriculturists and agricultural labourers so as to reduce the scarciy of agricultural land, and not to allow few individuals to remain in control thereof. Counsel submits that the Vesting Act even did not use the word `plantation' and therefore private forest has to be determined on the basis of land whereupon the private forest stands irrespective of its size and there could arise no question of the plantation of the company being treated as a whole, and that, at any rate it was the Custodian and the Commissioner who demarcated the plots and company has also been arguing on plot by plot basis. In deciding these appeals, therefore, this Court has to take the facts as found by the courts and authorities below and examine whether the provisions of the Vesting Act have been applied correctly to those facts keeping in mind its objects and purpose; and

so we proceed.

Some acquaintance with the relevant laws of the place may be instructive at this stage. The company's plantations are within erstwhile Malabar district. Baden Powell in Land Systems of British India, Vol. 1 page 95 described Malabar as "curious district on the west coast of India" and as "source of puzzled remarks from reporters on land affairs". Some of the unique facts about the district according to the author were that there "private property' in land had existed, while it could not be found anywhere else and it presented a unique history of land holding customs and the development. When the Mysore Sultan conquered the country the local military chiefs retained their rule over some territorial estates and the families of the chiefs clung to the land or part of it as landlords, calling themselves `Janmis' and claiming to be, in facts absolute landlord. The lower landholders acknowledged the `Janmis' as their superior. The reports compiled showed that "almost the whole of land in Malabar, cultivated and uncltivated, was private property and held by "Jemnum" (Janmam), right which conveys full absolute property in the soil....." Thus the janmis became the proprietors. We find mention of this `Jenmom' right in the sale deeds of the company.

The meaning of the words `Janmam' and Janmi' and their rights envisaged in Gudalur janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (24 of 1969) were considered in Balmadies Plantation Ltd. & Anr. v. State of Tamil Nadu, [1972] 2 SCC 133. The exclusive right to, and herditary possession of the soil in Malabar is denoted by word janmam which means birth right and the holder therof is Known as Janmi, Janmakaran or Mutalalan. In other words "Janmam" is a hereditary proprietorship in the freehold property in Kerala. Janmam interest has been described as proprietory interest of the landlords in lands and such a right is described as `estate' in the Constitution. This was followed in the Kannan Devan Hills Produce v. The State of Kerala and Anr., [1972]2 SCC 218.

The Statement of Objects and Reasons of the Vesting Act and the definition of private forests under the Act were examined in State of Kerala & Anr. v. The Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. etc. 1974 (1) SCR 671. It was observed by Palekar, J. that the Vesting Act purported to acquire forests land without payment of compensation for implementing a scheme of agrarian reform by assigning lands on registry or by way of lease to the poorer section of the agricultural pouplation. This was done after reserving certain portions of the forests as might be necessary for purposes "directed towards the promotion of agriculture for the welfare of the agricultural population or for purposes ancillary thereto. " It was observed that extensive areas of private forests were available in the Malabar district which could be acquired and distributed and that the private forest lands of Malabar district were contiguous and formed one long belt of a mountainous terrain now forming part of the State of Kerala. It was also observed that plantations of tea, coffee, rubber, cardamom, cinnmon and the like were grown on extensive scale in these forests and industries had taken leases of vast areas of these forests for those pruposes. This Court observed:

> "In recent years industrialists have taken leases of vast areas of these forests from their owners and a fraction of the same has been brought under cultivation by planting eucalyptus and other types of trees useful for paper and other industries. Large areas in these forests seem to be even now in their pristine form but are

> capable of being utilized by absorbing a large proportion of the population by setting them on the land. These forests, therefore, have attained a peculiar character owing to their geography and climate and the evidence available to us shows that vast areas of these forests are still capable of supporting a large agricultural population."

This Court quoted from paragraph 6 of the Judgment in V. Venugopala Varma Rajaa v. Controller of Estate Duty, Kerala, [1969] KLT 230: "It is well-known that the extensive areas of different varieties of plantations that we have got in this State were once forest land; and it is also equally well-known that year after year large areas of forest lands in this State are being cleared and converted into valuable plantations. In the absence of exceptional circumstances such as the land being entirely rocky or barren for other reasons all forest land in this State are agricultural lands in the sense that they can be prudently and profitably exploited for agricultural purposes." The scheme of the Vesting Act was also examined while upholding its validity.

The Madras Preservation of Private Forests Act 1949 (Madras ACt XXVII of 1949) which received the assent of the Governor General on the 10th December, 1949, hereinafter referred to as `the M.P.P.F. Act', was an Act to prevent the indiscriminate destruction of private forests and interference with customary and prescriptive rights therein. Under sub-section (2) of Section 1 thereof, that Act applied

(i) to private forests, in the districts of Malabar and South Kanara having a contiguous area exceeding 100 acres. By an Explanation added thereto by Section 2(a) of the Madras Preservation of Private Forests (Second Amendment) Act, 1954 (Madras Act XVIII of 1954), it was explained that nothing in this clause shall be deemed to apply to any land which was brought under fugitive or other cultivation prior to the 14th December, 1949 by an owner or any person claiming under him. Thus the company's plantations, if cultivated before that date would be excluded. The words `forest' is defined in Section 2 clause (a) of the M.P.P.F. Act: "forest includes waste or communal land containing trees and shrubs, pasture land and any other class of land declared by the State Government to be a forest by notification in the Fort St. George Gazette."

> "Communal' land meant any land of the description mentioned in sub-clause (a) or sub-clause (b) of clause (16) of section 3 of the Madras Estates Land Act, 1908. There is nothing in evidence in the case to shown that the company's plantations area was a forest under the M.P.P.F. Act.
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> The Kerala Forest Act, 1961 (Act 4 of 1962) was an Act to unify and amend the law relating to the protection and management of forests in the State of Kerala and it extended to the whole of the State of Kerala. This Act repealed the Travancore-Cochin Forest Act, 1951 (Act III of 1952) and the Madras Forest Act, 1882 (XXI of 1882) and the Madras Wild Elephants Preservation Act, 1872 (Act I of 1873) as in force in the Malabar district referred to in sub-section (2) of section 5 of the State Reorganisation Act, 1956. The M.P.P.F. Act in so far as it applied to Malabar district was not repealed. The Kerala forest Act did not itself define `privat forest'.

The Kerala land Reforms Act, 1963 (Act I of 1964) was a comprehensive legislation relating to land reforms in the State of Kerala and it extended to the whole of the State. Sub-section (7) of section 2 defined the word `cultivate'. Clause (15) of section 2 defined `garden' to mean land used principally for growing cocoanut trees, arecanut trees or pepper vines, or any two or more of the same. As defined in clause (38) `nilam' means land adapted for the cultivation of paddy. Under clause (34) `malabar' means the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956. Under clause (44) plantation means any land used by a person principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon (hereinafter in this clause referred to as:

`plantation crops') and includes(a) land used by the said person for any purpose ancillary to the cultivation of plantation or for the preparation of the same for the market.....(C) agricultural lands interspersed within the boundaries of the area cultivated by the said person with plantation crops not exceeding such extent as may be determined by the Land Board (or the Taluk Land Board) as necessary for the protection and efficient management of such cultivation. Under the Explanation, lands used for the construction of the office buildings, godowns, factories, quarters for workmen, hospitals, school and play grounds shall be deemed to be lands used for the purposes of sub- clause (a).

Thus under the Act `plantation' has been defined to include areas principally cultivated with plantation crops and the lands used for ancillary purposes.

As defined in clause (47) of the Land Reforms Act, `private Forest' means a forest which is not owned by the Government, but does not include-(i) areas which are waste and are not enclaves within the wooded areas; (ii) areas which are gardens or nilams; (iii) areas which are planted with tea, coffee, cocoa, rubber, cardamom or cinnamon; and

(iv) other areas which are cultivated with pepper, arecanut, cocoanut, cashew or other fruit-bearing trees or are cultivated with any other agricultural crop. Chapter III of the Act dealt with restriction on ownership and possession of land in excess of ceiling area and disposal of excess lands. Section 81 dealt with exemptions and said that the provisions of this Chapter shall not apply to, amongst others, (d) private forests; (e) plantations. Section 82 prescribed the ceiling area and sub-section (6) thereof provided that in computing the ceiling area, lands exempted under section 81 shall be excluded. Thus the private forests and plantations were excluded from ceiling area under the Land Reforms Act.

The provisions of the Vesting Act which was enacted in 1971 have, therefore, to be interpreted keeping in mind the relevant provisions of the above Acts in so far as plantations and private forests are concerned.

`Private forest' as defined in Section 2 (f) of the Vesting Act 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 19.19, applied immediately before the appointed day excluding-
>
> (A) lands which are gardens or nilams and defined in the Kerala Land Reforms Act, 1963 (1 of 1964) (B) lands which are used principally for the cultivator of tea, coffee, cocooa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such Crops or for the preparation of the same of the market.

Explanation: Lands used for the construction of office building, 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 baring 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 land notwithstanding the existence thereon of scattered trees or shrubs;"

> Section 3 of the Vesting Act whereunder private forests were to vest in the Government said:

"3. Private forests to vest in Government. -(1) Notwithstanding any thing 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-section (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 [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-section 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."

Section 4 of the Vesting Act provided that private forests after being vesting in the State were to be deemed to be reserved forests, and Section 5 provided for eviction of persons in unauthorised occupation of any such private forest. Section 6 provided for demarcation of boundaries of the private forests vested in the Government by the Custodian.

We may now take the areas in dispute as stated above with their location and plantation. In the sketch map Annexure D, the green coloured area is the planted area and it was not claimed by the State.The blue coloured plots were also excluded from vesting and were allowed to the company by the High Court; and the remaining plots are disputed ones and are coloured pink and violet. Mr. Poti points out that the original sketch map was not shaded and that the water tank and the dam were not shown therein. There is, however, no dispute as to the colouring indications which are helpful for identification.

The areas on the periphery, according to the Commissioner, are forest area namely plot Nos. 11 (76.70 acres), 18 (28.36 acres), 25 (11.88 acres), 28 (90.79 acres), 30 (77.93 acres) and 63 (324.25 acres). The total of this peripheral areas come to 609.91 acres. Admittedly, these areas are virgin forests which as per the Vesting Act vested in the State. We have no hesitation in confirming this finding.

According to Mr. Poti, to the entire North of the company's estates, there are vested forests, namely, LGB Estates, Kakkanampara Estates and Malikkal Estates which are vested forest areas. In the Eastern isolated estates, namely, upper Varadimullai Estates there is coffee plantation on plot Nos. 66, 67, 68, and 69 which have been rightly given to the company.

Regarding plots 12, 13, 15, 16, 26, 27, 29, and 56, Mr. Krishnamurthy submits that the Tribunal on the basis of the Commissioner's report, Ext. C-4, found these plots to have been cultivated prior to 1949. There were reminiscences of the old plantations in these plots, of course they became decayed. The Tribunal held that since these plots were brought under cultivation prior to 1949 and the provisions of the M.P.P.F. Act excluded these areas from definition of private forests, they could not be held to be forests as on 10.5.1971 under the Vesting Act. The High Court, it is submitted, has not been shown to have reversed the findings of the Tribunal. Mr. Poti submits that these plots are

contiguous to forest areas and have rightly been given by the High Court to the State, though the Tribunal gave those to the company. From the map it appears that on the other sides they are also contiguous to planted areas, excepting plot No. 56 which though connected with vested forests by a narrow strip, is almost surrounded by areas excluded from vesting by the High Court. The company claimed these areas as principally cultivated areas and not included in the peripheral area. The High Court has held that plots 12, 13, 15, and 16 are not principally planted as cultivation has been abandoned and the area "reverted to nature". The conclusion that the area reverted to nature is presumably based on the observation of the Commissioner that the plantations were abandoned about 40 years ago as evidenced by the presence of scattered old plants, of shade trees and fruit bearing trees here and there such as silver oak trees, orange trees, guava trees, dadap trees and albezia which could not be of natural growth. The Commissioner also observed that the condition of the estate was really miserable due to lack of proper maintenance and the plants were decayed or destroyed. The explantation that due to continuous labour trouble in the previous 4 or 5 years, the estate could not be maintained properly was not accepted. For this reason the Commissioner expressed that the forest department had treated these areas as abandoned plantations and so vested forest and not as areas principally cultivated for the purpose of the Act and as according to the High Court "the area had reverted to nature decades ago and such reversion was naturally as forest." The High Court did not record any finding that these areas were forests either in 1949 or on 10.5.1971. Its legal implication was not considered by the High Court. The Commissioner on the other hand found about plot Nos. 12 and 13 that these were old plantation areas and the plants were aged 40 to 50 years and that almost all the plants were senile due to old age and that there were 100 to 200 coffee plants per acre and there were old silver oak trees and dadap trees which were planted as shade trees. The Commissioner also found that from plot No. 13 old coffee plants were cut and removed by the cooperative society people who cleared the under-growth of the area whereafter new saplings were sprouted out of the old coffee plants cut by the society people and there were good growth of young plants which would start to yield. Similarly plot No. 15 was found to be an old coffee planted area with scattered coffee plants aged 30 to 40 years and similar shade trees. Plot No. 16 was also found to be coffee plantation. Similarly Plots 26 and 27 were found to be old coffee plantations. Plot no. 27 was found to be a pucca cardamom area with plants aged 15 years, and was allowed by the Tribunal as a cultivated area. The High Court, however, held that it reverted to nature. Similarly, plot No. 29 was excluded by the Tribunal as an area not covered by the M.P.P.F. Act since they were cultivated prior to 1949 which finding the High Court has not directly reversed. Plot no 56 was considered by the High Court with Plot No. 49, the extent of the plots being 24.84 acres and 0.89 acres, respectively, The Commissioner found 50 old rubber trees in Plot 49 and 600 older rubber trees in Plot 56 and both areas to have been neglected and abandoned and not used as a rubber plantation for a long time and definitely not on 10.5.1971. The High Court concluded that 500 rubber trees in an area of 25 acres would not make it "principally cultivated with rubber". since the average number of trees per acre, according to the publication of the Rubber Board, is from 140 to 160 per acre (vide Manual of Rubber Planting in India). The High Court exempted Plot No. 49, but held Plot No. 56 liable to vest in the State. Some of these plots having been planted and still containing old plants and shade trees the High Court applied the theory that the areas reverted to nature. This leads to the question as to the meaning of forest and when, if at all, a particular plantation may be said to have reverted to nature.

In Words and Phrases Legally Defined, Vol. 2, p. 269, `forest' means:

> "A certain territorie of woody grounds and fruitful pastures, privileged for wilde beasts and foules of forest, chase and warren, to rest and abide in, in the safe protection of the King, for his princely delight and pleasure, which territorie of ground, so privileged, is meered and bounded with unremovable marks, meeres, and boundaries, either known by matter of record, or else by prescription, and also replenished with wilde beasts of vererie or chase, and with great coverts of vert (i.e. green-leaved trees, bushes, etc.) for the succour of the said wilde beasts, to have their abode in:
>
> for the preservation and continuance of which said place, together with the vert and venison, there are certain particular laws, privileges, and officers belonging to the same, meete for that purpose, that are only proper unto a forest, any not to any other place."

The earliest of the Forest Laws in England is said to be the Charter of the forest which was issued in 1217 by Henry, as mentioned in Pollock and maitland's History of English Law, Vol. 1, p. 179. The forestal rights of the crown consisted essentially of the King's rights to use the land (forest) whether belonging to himself or another for hunting game and for preserving the game and for preserving the land in such a way as to give maximum shelter and free room for the game. The Forest Laws were applied to royal forests and were designed to protect these rights. The medieval forest law in England has now been abrogated except in so far as it relates to the appointments and functions of verderers. According to Mozley and Whiteley's Law Dictionary `forest' as a legal right is defined as a right of keeping, for the purpose of hunting, the wild beasts and fowls of forest, chase, park and warren, in a territory or precinct of woody ground or pasture set apart for the purpose. According to Black Law Dictionary, `forest' means:

> a tract of land covered with trees and one usually of considerable extent. It is said that in old English law a certain territory of wooded ground and frutiful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide in the safe protection of the prince for his princely delight and pleasure, having a peculiar court and officers. Thus, treatment of a certain extent of land as forest was implied. The fact that an extent of land has not been so treated or declared would, therefore, be relevant in determining whether that land constituted a forest. This rule is found to have been applied by the Kerala High Court. In State of Kerala v. Anglo American Direct Tea Trading Co. Ltd., [1980] K.L.T. 215 where the respondents were owners of tea estates, the areas planted with tea had been excluded from the operation of the vesting provision of the Vesting Act. There were portions of tea estates where there were eucalyptus plantations. It was claimed by the respondents that those were areas which were required for ancillary purposes of the tea plantations, ancillary in the sense that the Eucalyptus trees grown in the Eucalyptus plantations served as fuel for processing the tea for the market. There was also a plea that the lands having been converted into Eucalyptus plantations long before the

appointed day under the Vesting Act such areas could not be said to be forests as on 10.5.1971 and, therfore, there was no scope for vesting of such areas in the State. The latter plea having been accepted by the Tribunal and consequently the area where there were Eucalyptus plantations held not to have vested in the State, the Custodian challenged the findings in appeal before the High Court and the cases having related to lands outside the Malabar District to which Section 2(f) (2) of the Vesting Act was applicable, the State contended that Eucalyptus plantation was a forest. The question therefore arose whether the land which had been converted into eucalyptus plantations could be said to be forest within the meaning of the terms in Section 2(f) (2) of the Vesting Act. Subramonian Poti, J. speaking for the Division Bench consulted the dictionary meanings of forest as: "a large uncultivated tract of land covered with trees: a tract of woodland and open uncultivated ground","a large tract of land covered with trees and underbush; extensive wooded area." It was observed that the word `forest' was derived from latin foris meaning outside, the reference being to village boundary or fence, and must have included all uncultivated and uninhabited land. The World of the Knowledge Encyclopaedia Vol. 10 defines `forest' at page 2201 as "a circuit of wooded ground and pastures, known in its bounds and piviledged for the abiding of wilde beasts and fouls of forest, chase and carron to be under the King's protection for his princely delight." It was also found that the Abridged Glossary of Technical Terms published by Forest Research Institute and Colleges, Dehra Dun, page 52, the term forest was understood as an area set side for the production of timber and other forest produce, or maintained under woody vegetation for certain indirect benefits which it provided. For example, climatic or protective. It was further observed that in the context in which the term `private forest' had been used in the Act it was evident that it applied to lands other than those on which human skill, labour and resources had been spent for agricultural operations.

In Malankara Rubber & Produce Co. & Ors. etc. etc. v. State of Kerala & Ors., [1973] 1 SCR 399: (1972) 2 SCC 492, it was held that lands under eucalyptus or teak which were the result of agricultural operations normally would be agricultural lands and not forests, but lands which were covered by eucalyptus or teak growing spontaneously as in a jungle or a forest, would be outside the purview of acquisition under Kerala Land Reforms Act. In State of Kerala & Anr. v. Nilgiri Tea Estates Ltd. [1988](supp) SCC 79, the view taken by the High Court that eucalyptus trees planted in a tea estate for supply of fuel for the manufacture of tea, were not covered by the vesting provisions of the Vesting Act was upheld. There the eucalyptus trees were raised not for a forest but for supply of fuel necessary for the manufacture of tea which was the industry carried on by the respondent company.

In State of Kerala & Anr. v. K.C. Moosa Haji & Ors. AIR 1984 Kerala 149. A Full Bench of the Kerala High Court approved the observation of Poti, J. in State of Kerala v. Anglo American Direct Tea Trading Co. Ltd. [supra] that forest was not a term defined in the Act and that with reference to lands in the malabar area to which the M.P.P.F. Act applied on the appointed day the test for determination whether the land was private forest was different and that if the land was shown to be

private forest on the date the M.P.P.F. Act came into force it would continue to be a private forest even if it had actually ceased to be a forest unless one or other of the exclusions in clauses A to D in the definition applied. it was contended therein that the Vesting Act applied only to those lands which were forests under the M.P.P.F. Act immediately before 10.5.1971, inasmuch as the lands in question had ceased to be forest having been clear-felled and as such had gone out of the purview of the M.P.P.F. Act and consequently they were not private forests for the purpose of the Vesting Act also. Rejecting the contention the Full Bench held that if the M.P.P.F. Act was applicable to the land in 1949 and if it continued to apply to it up to 10.5.1971, that land would be a private forest for the purposes of the Vesting Act. The question was not whether there was a forest in existence in 1971; but was whether there was any land in 1971 to which the M.P.P.F. Act was applicable in 1949 and continued to be under its coverage till 1971. As the lands involved in that case were all private forests as definded in the Act, clear- felling and replanting were carried out with the permission of the District Collector. It was held that denudation could not be held to have put the land out of the purview of the Act and that once the Act was applicable to the area in 1949 nothing done by the owners of the area or others was capable of putting an end to such applicability to that area. We respectfully agree with this view.

The definition of private forest given in Section 2(f) of the Vesting Act and Section 2(47) of the Kerala Land Reforms Act were considered by K. Jagannatha Shetty, J. in Gwalior Rayons Silk Mfg.(Wvg.) Co. Ltd. v. The Custodian of Vested Forests, Palghat & Anr. AIR 1990 SC 1747: JT 1990 (2) SC 130. The lands involved in that case were all forests as defined in the M.P.P.F. Act, 1949 and continued to be so when the Vesting Act came into force in 1971. It was observed that the definition of private forests as was applicable to the Malabar district was not general in terms but limited to the area and lands to which the M.P.P.F Act applied and exempted therefrom land described under sub- clause (A) to (D). This significant reference to M.P.P.F. Act in the definition of private forests in the Vesting Act made all the difference in the case. The M.P.P.F. Act was a special enactment by the erstwhile Madras State to preserve the private forests in the district of Malabar and erstwhile South Kanara district. The scheme appeared to be that if the land was shown to be private forest on the date on which the M.P.P.F. Act came into force, it would continue to be a forest even if there was subsequent replantation. Accordingly it was held that the lands which were forests as defined M.P.P.F. Act and continued to be so when the Vesting Act came into force would continue as forests as under that Act.

The reverse question is involved in this case, namely if the land was not private forest but plantation under the M.P.P.F. Act and was similarly not private forest but plantation on 10.5.1971, it could not, without anything more, become private forest thereafter even though it was not under the same efficient or successful plantation as it was earlier. Whether the plantation yielded any crop or not was for the owners to decide and not by the authorities under the Vesting Act, unless it did make specific provisions to cover such a situation. We have not been shown any such provision or any provision as to such land reverting to nature. Nature, according to Collings English Dictionary means all natural phenomena and plant and animal life as distinct from man and his creations; a wild primitive state untouched by man or civilization. According to Shorter Oxford English Dictionary natural vegetation means self-sown or planted; and not cultivated. Uncultivated or undomesticated plants or animals. There is no finding as to prevalence of such a condition in these

plots.

Mr. Krishnamurthy submits that the Ordinance which preceded the Vesting Act promulgated on 10.5.1971 included the private forests as defined in the M.P.P.F. Act. We have seen that the Vesting Act gave two definitions of private forest; the first was 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). In that district private forest meant any land to which the M.P.P.F. Act applied immediately before the appointed day excluding the lands which were gardens or nilams as defined in Kerala Land Reforms Act, 1963 (Act 1 of 1964) and lands which were 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. It is accordingly argued that the company's plantations did not constitute private forest either under the M.P.P.F. Act or under the Kerala Land Reforms Act and as such the entire area of the company's plantations could not have come within the purview of the Vesting Act. We find force in the submission to this extent, but in view of the objects and purposes of the Vesting Act, it can not be said that there could never be a case of such plantation land being converted to a forest by natural growth or otherwise. It must necessarily depend on facts.

Mr. Krishnamurthy then submits that even assuming, the Vesting Act applied, the entire plantation area ought to be taken as a unit for the purpose of ascertaining whether there was private forest and not piece-by-piece or plot-by- plot as has been done in this case. If the entire area is taken as a whole, if major portion of the area was found to be cultivated, the whole area ought to be taken as principally cultivated area, small enclaves or patches meant to give rest by rotation should also have been treated as cultivated area. The entire method adopted by the respondents, counsel submits, was wrong and has immensely prejudiced the company's case, As regards the concept of reversion to forest, Mr. Poti submits that this applied to a land where Section 2(i) of the M.P.P.F. Act did not apply. According to him, it applied to two categories, namely, areas of less than 100 acres and areas of abandoned cultivation, in both cases when it was found to be forest on the appointed day i.e. 10.5.1971. There is no difficulty about the extent of less than 100 acres, but the difficulty is with abandonment. Mr. Poti submits that the Custodian judged by visual appearance but the Tribunal did not notice clause (2) at all. We are of the view that mere abandonment would not convert an area into a forest, unless the owner has decided to do so or the appropriate authority has notified it to be so. Mere visual test would not be enough. The decision of the owner could, of course, be expressed or implies.

Mr. Poti submits that the definition of forest as given in Section 2(a) is only an inclusive one. Forest includes waste or communal land containing trees and shrubs, pastural land and any other class of land declared by the State Government to be a forest by Notification issued in the St. George Gazette. Thus, according to counsel, forest has not been defined in the Act exhaustively nor has it been defined in the Kerala forests Act. Mr. Poti while admitting that the Kerala Land Reforms Act exempted all plantations, submits that the Vesting Act made drastic curtailments and that when historically interpreted principally planted did not mean with reference to the area but with reference to the crop only inasmuch as the word plantation has not been used at all in the Vesting Act and, therefore, the plantations can not be treated as a unit but only as land and the vesting Act is

prospective and not retrospective. Counsel relied on Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. The Custodian of Vested Forests, Palghat & Anr. (supra) and State of Kerala v. K. C. Moosa Haji (supra). According to Mr. Poti if the definition permitted, the area could be taken plot-by-plot inasmuch as there could be a forest of even 1 acre only. The size of the forest was not material, and the estate as a unit of management is also not material, the concept of plantation itself being absent. It is submitted that the expression used principally for cultivation in sub-clause (B) and "principally cultivated with" in sub clause (C) mean the same thing. It is further submitted that if the land which was not cultivated in 1949 might have already come under the M.P.P.F. Act. Division into plots was done by the Commissioner as he found these plots to have been different and the demarcation was of compact areas with few isolated areas, and such a demarcation was contemplated under the Act. It was pointed out that the company also contested the case on plot-by-plot basis. The Tribunal as well as the High Court also proceeded on that basis. It is pointed out the company objected to the principle of division before the High Court but did not question the correctness of the actual division made and hence the High Court could decide only on plot-by-plot basis. We have no difficulty in holding that the forest area is generally described or notified with reference to land in forest laws. But that does not mean that what stood on the land has to be ignored, particularly in case of plantations which were exempted under the M.P.P.F.Act.

While we are not inclined to agree that the entire estate of the company was required to be taken as one whole, we find it difficult to agree that wherever some forest was found inside the company's estate the Vesting Act would apply. We find that the M.P.P.F. Act, the Kerala Forest Act, the Kerala Land Reform Acts considered the plantations as units by providing that they would include the land used for ancillary purposes as well. Therefore, while applying the Vesting Act to such plantations the same principle would be applicable. It is on record that the estate of the company is divided into four divisions, namely, Siruvani Varadimulai, Elamali and Halton. In conformity with the idea of plantations, it would be reasonable to take each division as a unit, subject, of course, to natural and geographical factors. Considered in light of the above principles also we find that plots 13,15,16,26,27,29 and 56 form small portions of the respective divisions and can be taken to have been principally cultivated. We accordingly have no hesitation to exempt these plots from vesting. However, considering the scarcity of land and the location of plot No.12 and the fact that the Co-operative Society has already been formed, for the ends of distributive justice this plot should be taken to have vested in the State, so that the road will form the boundary of the company's plantations.

Plot No. 14 of 3.67 acres though a forest area has been claimed by the company as its wind-belt. Mr. Poti submits that this plot is of high elevation but the experts did not agree that it could serve as wind-belt. From the sketch map, however, it is found to have been projecting inside the plantations and that may be sufficient reason for its special consideration. It should accordingly be exempted from vesting.

After formulating the principles on the basis of the case law, at one stage we were thinking of remanding the case of the High Court for fresh determination in light of the observations made above. However, there was the consensus that in view of the detailed findings of the Tribunal as well as the High Court this old pending case may be decided by this Court itself instead of remanding it.

We, therefore, decided to do so on the basis of the materials on record.

Plot No. 33 admeasuring 16.20 acres (6.56 hectares) was claimed by the company as originally planted area. The Tribunal found that at the relevant time there was no evidence of any plantation but there were small forest trees aged 20 years and also wild bushes and shrubs. The High Court did not specifically referred to this plot. From the sketch map it is seen that on all sides it is covered by planted area and only to the north by forest. The company claimed it as an enclave. There is some building, and a road passing throughout it. It is a part of the Alamalai Division. There is nothing to show that this plot was not exempted under the MPPF Act as plantations. Considering all these factors this plot has to be left as a part of the plantation and exempted from vesting. Accordingly it is exempted.

Plot No. 36 admeasuring 14.87 acres (6.02 hectares) was found by the Tribunal to be an uncultivated grassy waste land with some scattered forest trees. As there is no evidence of it ever having been planted, having forests almost on three sides, this plot may be taken to have vested in the State.

Plot Nos. 37 & 38 have been claimed by the company as cardamom plantations. To the south of these plots there is a strip of plantations. Plot No. 37 admeasuring 9.63 (3.90 hectares) was found to have been newly planted with cardamom which the company claimed to have been replantation. Some scattered old cardamom plants aged nearly 15 years here and there were also found. Similarly Plot No. 38 admeasuring 5.26 (2.13 hectares) was claimed by the company as a cardamom plantation but there were no plants. Both the plots may, therefore, be treated together as cardamom planted area and as such not vested in the State.

Plot no.64 extending over 9.21 acres (3.72 hectares) contains, as found by the Tribunal, water channel through which water from the forest area was flowing to the water tank constructed at the end of the north channel and that the entire water supply to the tea factory and other residential areas of this building was through this channel.On both sides of this channel there were some scattered cardamom plants aged 10-15 years. The High Court dealt it with plot Nos. 62 and 63 but did not mention about the water channel and the plants. The findings of the Tribunal would justify exemption of this plot from vesting inasmuch as the water supply must be considered to be vital for the plantations and their administration.

Plot Nos. 39 and 40 extending over 6.37 acres (2.58 hectares) and 32.42 acres (13.12 hectares) are contiguous and through these plots passes a road. They are surrounded on three sides by planted areas and only on one side by LGB estates. The Tribunal found that plot No.39 was newly planted with coffee the plants being 6 months to 1 year old. The company stated this area to have been an old cardamom planted area and newly converted into coffee plantation. Plot No. 40 was claimed to have been a cardamom plantation and the plants to have been destroyed by wild fire the Tribunal found it to be a forest area with trees ages 30-40 years and 15 dadaps of equal age. There is nothing to show that this was not an exempted area under the MPPF Act or not included in the plantations when the Vesting Act came into force. The High Court did not find otherwise. These two plots accordingly have to be exempted from vesting.

The Tribunal found plot No. 41 extending over 26.32 acres (10.65 hectares) to be grassy land with only about 10 to 20 forest trees, wild bushes and undergrowth. The company said that this area was used for fugitive cultivation by the estate labourers. The High Court does not appear to have specifically dealt with this plot. There having been no plantation it was not shown to have been included as forests under the MPPF Act. In view of the objects and purposes of the Vesting Act it may be treated as to have vested in the State.

Plot No. 44 extending over 84.06 acres (34.62 hectares) was found by the Tribunal as mainly grassy hills with some scattered trees in some portion and not cultivated. In the High Court it was submitted by the company that there were no forest trees in this area, that there were old tree plantations which were destroyed, and that it was close to the bungalow of the Managing Director, Exhibit A-19 which was the preliminary Land Register showed that this plot was tea area and the same was included in a re-planting scheme sanctioned by the Tea Board. This was also said to be an enclave within the plantations. The High Court observed that re-planting scheme sanctioned by the Tea Board had not been put in evidence and that the recital in Ext. A-19 by itself could not entitle the applicant to claim exemption on he basis that the plot was a tea area and that Ext. A-19 could only be a record of representation of the company. It was not denied that this plot was close to the bungalow of the Managing Director and that there were no forest trees in that area. It is seen to be extending far inside the plantations in Siruvani division. There is no evidence to show that this area was not exempted as plantation under the MPPF Act or when the spontaneous growth of forest thereafter. This plot cannot, therefore, be taken to have vested in the State.

Plot No. 46 admeasuring 5.31 acres (2.15 hectares) was claimed by the company to be an old coffee plantation though the Tribunal found that there were no coffee plants but there were dadaps aged 30 to 40 years which were planted as shade trees and some scattered forest trees also. Neither the Tribunal nor the High Court found the area not to have ever been planted. The presence of the shade trees proved otherwise. It is also located to the north of plot No.65 and well inside the plantation and as such may be treated as an enclave. It has, therefore, to be exempted.

Plot No. 50 is extending over 30.96 acres (12.53 hectares). The company claimed that it was coffee planted area but subsequently the coffee plants were destroyed by wild fire. The Tribunal found this to have been a planted area as there were a good number of shade trees such as dadaps which were aged about 40 years and there were a few scattered forest trees aged 30 to 40 years and the area was covered with bushes and wild growth. The High Court did not exclude this area from vesting on the ground that there were no existing specified crops without considering whether this area was or was not excluded as plantation by the MPPF Act. This plot is located almost at the centre of Siruvani Division and hardly touched by peripheral plot No. 63. On north-eastern side of this plot, number of houses have been shown in the sketch map. This cannot, therefore, be taken as vested in the State.

Plot No.51 is described by the Tribunal as a thin forest area with scattered forest trees aged 15 to 20 years and no sort of cultivation or plantation seen. Plot No. 55 extending over 13.12 acres (5.31 hectares) described by the Tribunal as a forest area with trees aged 40 to 50 years and not cultivated. The High Court dealt with these two plots together. The company claimed that plot No. 55 was a part of rubber plantation alongwith plot No.56 which have been exempted and that both

these areas were covered by Registration No. 2 of 1964 under the Rubber Act. At the relevant time the High court observed that the registration survey had not been produced inspite of the statement that the document was available for production or verification and that neither in Ext. A-13 nor in Ext. B-1 the applicant have claimed to have any area to be planted with rubber. The Tribunal further observed that the balance sheet and profit and loss accounts attached to Ext. A-13 also did not disclose any income from rubber, and no other evidence was produced that there was any rubber plantation. The High Court did not arrive at any finding that this area was a forest area under the MPPF Act or at the time of the Vesting Act coming into force. It is surrounded on all sides by plantations and may be taken an enclave. From its location and the claim of registration under the Rubber Act these two areas cannot be taken to have been vested in the State.

The Tribunal treated plot No. 58 of 75.19 acres (30.43 hectares) and plot No. 59 of 73.03 acres (29.15 hectares) together. The company claimed that the two plots were regularly planted with cardamom but a good number of plants were destroyed by the wild animals which were frequently coming from the nearby Muthikulam Reserve Forest. But it found that there were only scattered cardamom plants which were 10 to 15 years. In some portions of the area there were cardamom plants at the rate of 200-250 per acre and in other portion only 100-150 plants per acre. There were regular forest trees also aged some 50 years but number was not stated. The Tribunal accordingly observed: "Though the area is planted with cardamom, this portion of the estate is not at all properly looked after or maintained."

The High Court dealt with plot 58,59 and 61 together and observed that it contained some cardamom plants which were found among regular forest trees aged about 50 years. The cardamom plants few in number, 100-150 in some places and 200-250 in other places and aged about 10-15 years as against about 1,000-2,000 per acre which according to PW-3 would be an ordinary number, did not justify the claim that these areas were exempted as cardamom plantation. Before the High Court it was submitted for the State that cardamom was only a plantation and it would not be found in forest, was only a misapprehension, and that cardamom was a wild plant found in profusion as natural growth in tropical forests. Encyclopaedia Britanica state that "native to the moist forests of Southern India, cardamoms may be collected from wild plants but most are cultivated in India, Sri Lanka and Guatemala." The High Court accordingly concluded that the presence of a few scattered cardamom plants in thickly wooded forests cannot, therefore, justify an asumption that the aera is a cardamom plantation. There was no finding to the effect that the area is a cardamom plantation. There was no finding to the effect that this area was private forest under the MPPF Act and when the vesting Act came into force. These two area are no doubt adjacent to the peripheral plot No. 63 but they extend far inside the plantation. They cannot be said to have been forests and never brought under plantation. The number of cardamom plants mentioned is enough to show that these areas were not private forests when the Vesting Act came into force nor they have become so thereafter. These two areas, therefore, have to be taken not to have been vested in the State.

The result is that plot Nos.33,39,40,44,46,50 51,55,58,59,& 61 also have to be treated as not to have vested in the State under the Vesting Act.

As regards the exiting roads falling within the vested areas those shall have such margins on either side of the road as required under the P.W.D rules of the State and shall be maintained and controlled by the company. No construction of new road by the company in or through the vested areas shall be permissible. Needless to say that there shall be no restriction as to roads on the company's own non-vested areas.

The result is that the High Court's Judgment stands modified only to the above extent. The appeals of the company and the State are partly allowed to the above extent. We leave the parties to bear their own costs of these appeals.

R.N.J. Appeals partly allowed.