Supreme Court of India
Hope Plantations Ltd vs Taluk Land Board Peermade & Anr on 3 November, 1998
Author: D Wadhwa
Bench: K.T. Thomas, D.P.Wadhwa, Syed Shah Quadri.

PETITIONER:
HOPE PLANTATIONS LTD.

Vs.

RESPONDENT:
TALUK LAND BOARD PEERMADE & ANR.

DATE OF JUDGMENT: 03/11/1998

BENCH:
K.T. THOMAS, D.P.WADHWA, & SYED SHAH MOHAMMED QUADRI.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

D.P. Wadhwa, J.

This is the second round of litigation. Earlier, it was the Taluk Land Board and the State of Kerala which had come to this Court in appeal [CA No. 227/78 decided in batch of appeals in Chettain Veetil Ammad & Anr. vs. Taluk Land Board & Ors. (1980 (1) SCC 499)] on the question of exclusion of 'fuel area' and 'rested area' from the plantation which is otherwise exempt from the limitation of "ceiling area" under the provisions of the Kerala Land reforms Act, 1963 (for short 'the Act'). Present appellant had purchased the estate mainly of tea plantation from South India Tea Estate Company Ltd. which was the respondent in the earlier appeal in this Court. (CA 227/78). The Act came into force on April 1, 1964. The Kerala Land Reforms (ceiling) Rules, 1970 (for short 'the Rules') have been framed under the Act, which prescribed the Form in which the return/statement is required to be filed by a person having land in excess of the "ceiling area" fixed under the Act or claiming

exemption of any land as not falling within the ceiling area at all.

Predecessor-in-title of the appellant (South India Tea Estate Company Ltd.) filed return on March 28, 1970 before the Land Board in relation to tea plantation held by it. (Hereinafter when we refer to the appellant it will mean and include its predecessor-in-title as well.) Total area of the land held by the appellant is 4251.19 acres. Out of this an area of 267.16 acres was sought to be surrendered. From the area held by the appellant it claimed exemption under four heads, namely, (1) Tea Plantation (2) Roads & Building; (3) Area for Fuel Trees; and (4) Other agricultural lands interspersed. By order dated June 25, 1976 Taluk Land Board disallowed substantial claims of thee appellant for exemption as 'fuel areas' and 'rested tea area'. Matter was taken up by the appellant to the Kerala High Court in revision which by order dated March 15, 1977 restored the claims made by the appellant under those two heads and under the heads 'Roads and Buildings' and 'Other Agricultural Land interspersed' and remanded the case to the Taluk Land Board for re-determination of the ceiling area. The Taluk Land Board and the State of Kerala which felt aggrieved appealed to this Court regarding the claims of exemption under the heads 'fuel area' and 'rested tea area'. This Court by judgment dated May 2, 1979 allowed the appeal and restored the orders of the Taluk Land Board. We will have occasion to refer to this judgment in detail at a subsequent stage of this judgment. No final orders, however, could be passed by the Taluk Land Board under the Act as it remained seized of the matter under the two heads on which High Court had remanded the matter. Analysis of the orders of the Taluk Board and of the High Court are best reflected as under:

On remand Taluk Land Board again took up the matter after judgment of this Court dated May 2, 1979 in Chettian Veeti Ammad & Anr. vs. Taluk Land Board and Ors. (1980 (1) SCC 499). In the proceedings pursuant to the remand the Taluk Land Board considered the question of interspersed agricultural land as the appellant had now pitched its claim on that basis as well. Equally the appellant claimed that there were cardamom plantation within the fuel area which existed and which dated back prior to April 1, 1964 and which would also be exempt. It also claimed that the rested tea area would, in fact, fall within tea plantation. Taluk Land Board by order dated July 26, 1980 decided the matter in favour of the appellant. Chairman of the Taluk Land Board, however, dissented as according to him stand of the appellant regarding 'rested tea area' and 'fuel area' stood concluded by the decision of the Supreme Court aforesaid. Aggrieved, now the State of Kerala challenged the order in the Kerala High Court in revision. By order dated November 6, 1984 High Court set aside the order of the Taluk Land Board as regards the 'fuel area' and 'rested area'. It negatived the plea of the appellant that there was any plantation of cardamom within the fuel area existing earlier to April 1, 1964. High Court also set aside the finding of the Taluk Land Board as regards the claim of exemption for the lands interspersed within the boundaries of the area of plantation with plantation crops and directed the Taluk Land Board to re-determine the question afresh if it fulfilled the requirement of Section 2(44) of the Act and also keeping in view the observations made in the judgment. High Court, however, did not interfere with the decision of the Taluk Land Board as regards "Land necessary for road, building, factory store, etc." Now the break-up would be as under:- The appeal filed by the State against earlier order dated March 15, 1977 of the High Court came to be decided on May 2, 1979 along with many other appeals from he various judgments of the Kerala High Court and is reported as Chettian Veetil Ammad & Anr. Vs.

Taluk Land Board and ors. (1980 (1) SCC 499). This court was considering a group of appeals arising from various judgments of the Kerala High Court relating to the implementation of provisions for the restriction of ownership and possession of land in excess of ceiling area and the disposal of excess land under the provisions of the Act. This Court noted that there were three points of controversy and gave its decision. However, none of those points were concerned in the appeal filed by the Taluk Land Board (CA 227/78). After giving answer to the questions this COurt examined individual appeals and dealing with the appeal in the case of the appellant, it held as under:

"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 exorbitant 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 qum 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 ben 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." Under Section 2 (44) of the Act when land is principally used for cultivation of tea, coffee, cocoa, rubber, cardamom or canniamon, it would be plantation and the term 'plantation' also includes agricultural lands interspersed within the boundaries of the area cultivated with plantation crops, namely, tea, coffee, cardamom etc. and the extent of this area is to be determined by the Land Board or Taluk Land Board as necessary for the protection and efficient management of the cultivation of plantation crops. The term 'plantation' also includes land used for the purpose ancillary to the cultivation of plantation crops or even for the preparation of the same for the market which also means lands used for the construction of office buildings, godowns, factories, quarters for workmen hospitals schools and play grounds. Under Section 2(3) 'ceiling area' means the extent of land specified under Section 82 as the ceiling area. Section 82 prescribes the 'ceiling area' up to which a person can hold the land. Section 81 exempts certain lands which may not fall within the limits of the ceiling area. Plantation, as defined in Section 2(44), is exempt from the rigour of the ceiling area. Sub-section (3) of Section 81 empowers the Government, in public interest, to exempt any other land over and above the ceiling area and subject to such restrictions and conditions as it may deem fit to impose. Section 83 prohibits any person from owning or holding or possessing land in excess of the ceiling area. Under Section 85 where a person owns or holds land in excess of the ceiling area, he is required to file a statement before the Land Board in the Form prescribed wherein he is to indicate the lands prroposed to be surrendered. Under sub-section (5), the statement so filed is to be transferred by the Land Board to the Taluk Land Board to verify the particulars and then by order to determine the extent of identity of the land which is surrendered. Under sub-section (9), Taluk Land Board on certain conditions existing and at any time has powerr to set aside its order made under sub-section. Sub-section (9A) which was inserted by the Amending Act w.e.f. May 30, 1989. Taluk Land Board has been given powers to

review its decisions.

Statement/Return under sub-section (2) of Section 85 is required to be filed in Form 1 under rule 4. Pules further prescribe as to how the statement will be filed before the Land Board and then transferred to the Taluk Land Board, its verification as to ascertainment and determination of the extent and identity of the and to be surrendered publication of draft statement and service of draft statement on persons interested; enquiry to determine extent and identity of the land surrendered; and such other matters. Statement under Section 85(2) in form No.1 requires various particulars. requirements under Clauses (10) and (11) of statement are:

"(10) (a) Is any land included in annexure A in the possession of other persons by way of mortgage or otherwise and if so,

(b) have particulars of such land been furnished in Annexure E?

(11) (a) Is exemption claimed under Section 81 of the Act in respect of any land included in Annexure A, and if so,

(b) have particulars of such land been furnished in Annexure F and statement under rule 6 in respect of plantation, if any, been attached?" Under Annexure A particulars of all lands owned or held or possessed under mortgage on 1.1.1970 are to be furnished. This annexure is divided into various sections. Under section 1, particulars of land held as owner are required to be given. Under Sections 2 and 3 respectively, particulars of land held as mortgagee and as tenant are to be given.

Under Rule 6 any person claiming exemption under the provisions of Chapter III of the Act on the ground that any land owned or held by him or possessed by him under a mortgage is a plantation, shall furnish to the Land Board statement showing the following particulars namely:- "(a) description of land (with details of survey number, if surveyed, taluk and village), used by the person principally of the cultivation of the crops referred to in section 2 (44);

(b) boundaries of the land;

(c) extent of the land:

(d) description of the crop or crops raised and extent of land on which such crops are raised;

(e) description and extent of the land (with details of survey number, if surveyed, taluk and village) used by the person for any purpose anciliary to the cultivatin of the crops referred to in section 2 (44) or for the preparation of the same for the market;

(f) purpose for which the land referred tto in item (e) is used; and

(g) description and extent of agricultural lands (with details of survey numbers, if surveyed taluk and village) interspersed within the boundaries of the area cultivated by the person with the crops

referred to in section 2(44) and the extent of such lands which the person considers necessary for the protection and efficient management of such cultivation.

Taluk Land Board in its order dated July 26, 1980, made after the remand, found that out of 924.01 acres claimed by the appellant as fuel clearing area for firewood for tea manufacture, an area of 421.88 acres contained Cardamom plantation which had been planted prior to 1964. Taluk Land Board was of the view that the remaining 302.21 acres out of 924.01 acres should also be exempted as it was satisfied that the area earlier claimed was interspersed with cardamom plantation. But because it was first claimed as fuel clearing area, the interspersed area could not be taken over. It, thus, exempted whole of 924.01 acres holding that it could not be treated as surplus land. There have been Eucalyptus trees growing in whole of this area. On the question of claim of the appellant regarding 136.17 acres as 'rested tea area', reference was made to the observation of the Supreme Court where this Court said that if plucking was carried on in the said land, it would be included within the plantation. Taluk Land Board held that in view of the affidavit dated February 5, 1980 filed by the appellant before it and on its local inspection there were tree plants more than 60 years old in the area of 136.17 acres and to that effect there was also a certificate of United Planters' Association of southern India (UPASI). Taluk Land Board, therefore, exempted this area of 136.17 acres under 'rested tea' as part of the plantation. Of these two points, i.e., fuel clearing area of 924.01 acres and rested tea area of 136.17 acres, decision of the Taluk Land Board was by majority with the Chairman wwho is the official member of the Board dissenting on the ground that these questions could not be re-opened by the Taluk Land Board after the decision of the Supreme Court dated May 2, 1979. On the other two heads, namely, the area of 202.55 acres under roads and buildings and other area of 263.63 acres as agricultural lands interspersed with other plantation crops as claimed by the appellant, the decision of the Taluk Land Board was unanimous. High Court, in the revision filed by the State of Kerala, agreed with the Taluk Land Board that it could not go into the question of 'fuel area' and 'rested tea area' after the decision of the Supreme Court. Appellant was held entitled to 200 acres of land only as fuel area. High Court upheld the decision of the Taluk Land Board on the claim of the appellant for 202.55 acres of land under Building sites and roads. As regards 263.80 acres of land (claimed by the appellant as interspersed with cardamom) High Court, however, remanded the matter to the Tribunal to decide the question afresh. High Court upheld the contention of the State Government that in the return earlier filed by the appellant it had not claimed any land under Cardamom plantation and as such exempt from vesting and that appellant was not entitled to get exemption on any ground other than that shown in the statement. This Order of the High Court dated November 6, 1984 has now been challenged before us by the appellant. The questions which arise for consideration are with respect to the claims of the appellant for exemption under the following heads :

1. 136.17 acres as rested tea area (disallowed by the High Court);

2. out of 924.01 acres (earlier claimed as fuel area) 421.88 acres as Cardamom plantation and 302.13 acres as other agricultural land interspersed with other plantation crops (disallowed by the High Court); and

3. 263.63 acres as other agricultural lands interspersed with cardamom crops (remanded by the High Court).

During the course of hearing, this Court on July 15, 1985 passed the following order:

"Without prejudice to the rights and contentions of the parties, we direct that the Cardamom Board established under Section 4 of the Cardamom Act, 1965, will appoint one of its Senior Expert officers to inspect the area of 924 acres said to be cardamom plantation who, after inspection, will submit plantation who, after inspection, will submit a report to this Court on the question of existence extent of area and age of the cardamom plants in that area (since it is stated before us by the counsel for the petitioners that cardamom plants could be of the age varying between 20 to 40 years). We also direct that the said officer will take the assistance and help of an appropriate revenue officer to be appointed by the Collector of Iddikki in the matter of inspection and submission of report. The inspection is to be undertaken after notice to both sides, whose representatives will be at liberty to remain present at the inspection. The report should be submitted to this Court within four months from today. Such inspection and report will initially be at the cost and expenses of the Petitioners.

Matter to be placed on Board after the receipt of the Report."

Cardamom Board submitted its report accepting the claim of the appellant as to the existence of the Cardamom plantation prior to 1964 in the area of 421.88 acres. State Government, however, filed objections to the report stating that it could not be valid under the circumstances. Mr. Salve, learned counsel for tthe appellant, made following submissions :-

1. Statement/return, which was filed in Form-1. was without prejudice and this fact find mention in the statement though it was also mentioned that the appellant was engaged exclusively in producing, manufacturing and marketing tea and all the lands held by the appellant was for that purpose. The statement showed as to how exemption was being claimed for the lands under Section 81 of the Act.

2. At the time when statement was filed, position of law in relation to interpretation of material provisions in the Act was not very clear. there was an order of the State Land Board (with supervisory powers over Taluk Land Boards) dated 29.3.1974 granting exemption to fuel areas as lands used for ancillary purposes to the extent of 16,899 acres for a tea area of 23,239 acres under the Kanan Devan hills (Resumption of Lands) Act. The ratio of fuel area worked out to 2:3. On that basis the chunk of land was claimeed by appellant aas fuel area, when a a matter of fact, appellant wrote a letter dated 18.10.1974 to Special Tehsildar, (Taluq Officer) Peermade, pointing out that the fuel areas of the appellant was used for the purpse ancillary to cultivation and sought to justify the entir extent of 924 acres claimed to be bona fide use as fuel areas.

3.In that very letter which the appellant wrote on 18.10.1974 it was stated that "the lands interapersed within the tea efficient management of the plantation and for the preservation of the same. Regarding the last para of your letter, there has been no conversion of any land into plantation since 1.4.1964. However, we have planted up cardamom in some of our fuel lands. The

lands so planted with cardamom are now exempt as cardamom plantation and also as land ancillary to plantation coming within the definition of plantations." In the affidavit dated May 31, 1976 filed by the appellant before the Taluk Land Board, it was mentioned that there were agricultural lands within the boundaries of the tea plantations which were required for the protection and efficient management of plantation. In that, there were also fuel plantations interspersed within the tea plantations.

4. Under Section 2(44) of the Act, agricultural lands interspersed within the boundaries of the area cultivated with plantation crops, not exceeding such extent as may be determined by the Land Board as necessary for the protection and efficient management of such cultivation was treated as plantation for exemption from the ceiling area. At the material time when the Taluk Land Board made order dated June 6, 1976, it was not competent to examine the claim regarding land interspersed with plantation crops. It was on that account the question had been remanded to State Land Board for determination. But after the Act was amended by Amending Act 27 of 1979 w.e.f. 7.7.1979 Taluk Land Board was also empowerred to examine the claim in question. Taluk Land Board, therefore, could rightly go into this question all over again irrespective of the earlier proceedings which culminated up to Supreme Court (CA No. 227/78).

5. The proposition of law laid down that fuel wood supply to the employees cannot be said to be for ancillary purpose, is no longer good law in the light of the decision of the three learned Judges of this Court in Pioneer Rubber Plantation vs. State of Kerala & Anr. [(1992) 4 SCC 175]. Although that decision is under Kerala Private Forest (Vesting & Assignment) Act, construing a similar provision, this Court has taken the view that land used for fuel area is used for ancillary purpose. This Court has observed thus: "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 the preeparation 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."

6. As to what is rested area' reference may be made to (1) Tea Encyclopedia of the Indian Tea Association, Scientific Department, (2) Tea Planting in Ceylon by E.C. Elliot and F.J. Whitehead and (3) Indian Tea by Claud Bald. Resting of tea is part of tea plantation. Certain area in tea plantation are rested temporarily with the ultimate object of increasing the vigour and productive capacity of the tea bush. As to what is resting tea area was not properly projected before this Court in the earlier appeal (CA 227/78).

7. Taluk Land Board, while it was seized of the matterr on remand could reopen the whole case, when it was pleaded before it in the affidavit dated 18.2.1980 that 421.88 acres of land contained Cardamom plantation coming within the definition of 'plantation' by virtue of Section 81(1)(e) of thee Act etc. Principle of resjudicata cannot be made applicable in these proceedings as it is a case of expropriatory law. Civil law principles of res judicata cannot be invoked unless Taluk Land Board passess a final order and if in the course of proceedings whether during remand or otherwise, it is

found that the area is exempt under any provision of law, any acquisition of that area would be illegal and viod. Proceeding terminate only when there is order under Section 85 of the Act which order had yet not been passed. There can also be no plea of issue estoppel raised by the respondents in the circumstances of the case. Reference in this connection was made to a decision of English House of Lords in Arnold and others vs. National Westminster Bank Plc. (1991 (2) AC 93).

8. Report has since been filed by the Cardamom Board. A persual of the report shows that the Cardamom Board has accepted the majority view of the Taluk Land Board as well as the stand of the appellant that Cardamom plantation existed prior to 1964 and, therefore, the Cardamom area was exempted from the provision of the Act.

9. Taluk Land Board has power under sub-section (9A0 of Section 85 to review its own decision. This could be done on the ground that earlier decision had been made "due to the failure to purduce relevant data or other particular relating to ownership or possession before it or by collision or fraud or any suppression of material fact". In the present case, there was failure on the part of the appellant to produce relevant data regarding fuel area, rested tea and Cardamom plantation.

Mr. P Krishnamurthy, learned senior counsel for the respondent, in reply, made the following submissions: (1) After the decision of the Supreme Court in appeal by the Taluk Land Board (CA 227/78), its jurisdiction was barred on two items, namely fuel area and rested tea area. Reference was made to three decisions of the Supreme Court on application of the principles of res judicata, namely, Devilal Modi, Priprietor, M/s. Daluram Pannalal Modi vs. Sales Tax Officers, Ratlam & Ors. (1965) 1 SCR 686]; Forward construction company & Ors. Vs. Prabhat Mandal (Regd.) Andheri & Ors. (1986 (1) SCC 100] and Y.B. Patil & Ors. vs. Y.L. Patil [AIR 1977 SC 392].

2. In the statement filed in Form 1, it was nowhere mentioned that there was any Cardamom plantation. If there is Cardamom cultivation, it has to come within the meaning of the word 'plantation' and it is not required to refer to the inclusive definition in clause (c) to apply. When the matter was taken up second time by the Tluk Land Board, no correction in the original return was sought but only an affidavit was filed. There was then local inspection and second order of Taluk Land Board, was by majority with the Chairman dissenting. Lot could be said on the conduct of the Taluk Land Board making local inspection without there being any written application and then surveying the whole of the area within a couple of hours on the same day. Reference was made to the evidence and the nature of proceedings earlier held by the Taluk Land Board, Case of the appellant that Cardamom plantation was before 1.4.1964 was incorrect. Letter of the appellant dated 18.10.1974 rather shows that cultivation of Cardamom was after 1.4.1964. In the affidavit dated 31.5.1976 of the appellant, it was stated that main plantation was tea. Statement of the General Manager of the appellant recorded by Taluk Land Board did not mention any Cardamom plantation. Then again in the additional affidavit dated 22.6.1976 of the appellant, there is no mention of any Cardamom cultivation. When revision was filed before the High Court against the order of the Taluk Land Board, again there was no mention of any cultivation of Cardamom. It was not technically possible for the Cardamom Board to conclude that Cardamom plantation existed prior to 1964 and the report was based on local inspection and queries and without any scientific basis.

3. Taluk Land Board on remand could not examine the claim of the appellant over and above 263.83 acres as exempt on account of other agricultural lands interspersed. In Devilal Modi, Properietor, M/s. Daluram Pannalal Modi vs. Sales Tax Officer Ratlam & Ors. [(1965) 1 SCR 686], the lquestion before this Court was whether the principle of constructive res judicata could be invoked against writ petition filed by the appellant under Article 226 of the Constitution. The appellant had been assessed to sales-tax for the year 1957-58 under Madhya Bharat Sales Tax Act, 1950. He challenged the validity of the order of assessment by a writ petition which was dismissed by the High Court of Madhya Pradesh. Appellant appeal by special leave to this Court was also dismissed. At the hearing of the appeal before this Court, appellant sought to raise two additional points, but he was not been specified in the writ petition filed before the High Court and had not been raised at an early stage. On those points which were not allowed to be raised, the appellant filed another writ petition in the High Court challenging the validity of the same very assessment for the year 1957-58. High Court considered the merits of the additional grounds urged by the appellant but rejected them. Appellant again came to this Court. This Court dismissed the appeal on the ground that principle of constructive res judicata was applicable in the circumstances and referred to its earlier decision in Daryo & Ors. vs. The State of U.P. Ors. [(1962) 1 SCR 574] holding that the general principle underlying the doctrine of res judicata i.e. ultimately based on considerations of public policy. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice. In Forward Construction Co. & Ors. vs. Prabhat Mandal (Regd.) Andheri & Ors. [1986 (3) SCC 100] one of the questions raised was whether the writ petition out of which appeal had arisen in the Supreme Court was barred by res judicata. High Court had negatived this plea for two reasons : (1) that in the earlier writ petition the vaildity of the permission granted under Rule 4(a)(i) of the Development Control rules was not in issue, and (2) that the earlier writ petition filed by Shri Thakkar was not a bona fide on inasmuch as he was put up by some disgruntled builder, namely, M/s. Western Builders. This Court said on the first reason; (which is relevant for our purpose): "So far as the first reason is concerrned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matter of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as in the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and described. The first reason, therefore, has absolutely no force".

In Y.B. Patil & Ors. vs. Y.L. Patil [AIR 1977 SC 392], this Court said that "it is well settled that principles of res judicata cn be invoked not only in separate subsequent proceedings, they also get

attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding." We may refer to two more decisions of the Supreme Court on the question of res judicata and estoppel. In Sunderabai w/o Devrao Deshpande and another vs. Devaji Shankar Deshpande (AIR 1954 SC 82) under terms of an Award by the Arbitrator which was made rule of the Court decree provided that rights of adoption was lost to Gangabai from the very beginning and the adoption of Devaji was held to be invalid and it was declared that the adopted son Devaji was not and could never become entitled to the property belonging to the family of his grand father Devrao. With the object of maintaining peace and goodwill in the family decree provided that Sunderabai widow of Devrao shall pay to Devaji Rs. 8000/- in lump sum and that decree for maintenance obtained by Gangabi against Sunderabai in another suit shall continue permanently. It may be noticed that Gangabai was the widow of pre-deceased son of Devrao. The Award which took the shape of decree, it would appear, was accepted by the parties and acted upon. Later on relying on the decision of the Privy Council in Anant vs. Shankar (AIR 1943 PC 196) Gangabai again adopted Devaji. Sunderabai also adopted her daughter's son Jivaji. All this led to Devaji filing another suit now claiming his right as the validly adopted son of Gangabai. This Court dismissed the suit filed by Devaji in view of principle of estoppel. The Court said that bar of res judicata, howeever, may not in terms be applicable as the decree passed on the basis of the Award was in terms of the compromise and that the terms of Section 11 of the Code could not be strictly applicable to the same but the underlying principles of estoppel would still apply.

During the course of arguments, reference was made to a decision of this Court in Malankara Rubber and Produce Co. & Ors. etc. etc. Vs. State of Kerala & Ors. etc. etc. [(1973) 1 SCR 399], a case under the Kerala Land Reforma Act, 1964 as amended in 1969 and 1971, where this Court held that lands planted with eucalyptus or teak are agricultural lands. On the interpretation of sub-section (9) and (9A) of Section 85 of the Act, we were referred to two decisions of the Kerala High Court. In Chathunny vs. Taluk Land Board [1981 KLT 74] a Division Bench of the Kerala High Court held that Section 85(9) of the Act enables the Taluk Land Board to set aside its order under sub-section (5) or sub-section (7) of Section 85 and proceed afresh under that sub-section on satisfaction of any one of the matters enumerated in clauses (a) to (c) of sub-section (9). In this case, order of the Taluk Land Board under Section 85(5) or Section 85(7) had been subject matter of relvision to the High Court under Section 103 of the Act. These revisions had been heard and disposed of by the High Court. The question was whether Taluk Land Board could exercise power under Section 85(9) in such cases. High Court said that sub-section (9) of Section 85 contemplated that exercise of powers by the Taluk Land Board could be exercised to set aside its "order" and once the order of the Taluk Land Board had merged with the order of the High Court passed in revision, Taluk Land Board could not exercise its powers under sub-section (9) of Section 85. It appeared that because of this statement of law by the High COurt, Act was amended by Act 16 of 1989 and sub-section (9A) of Section 85 was incorporated. Thereafter, a single Judge of the High COurt in Thampi Gounder vs. State of Kerala (1994 (1) KLT 89) held that powers under sub-section (9A) of Section 85 could be exercised notwithstanding any revision of the High COurt under Section 103 arising out of the final orders passed by the Taluk Land Board under sub-sections (5), (7) and (9) of Section 85 and that this would be so even where the order of the Taluk Land Board merged with the order of the High Court.

Form 1 under which statements/return is to be filed requires complete details of the plantation as meant in Section 2(44) of the Act. It is to be accompanied with various annexures. The appellant never claimed exemption on the ground of Cardamom plantation existing prior to 1964. It never asked for amendment of the return/statement at any stage of the proceedings. It sought exemption on the ground of the land under the heading 'fuel area'. Once the matter had been determined by the Supreme Court in appeaal, there was no scope for any review by Taluk Land Board to hold that there was Cardamom Plantation existing prior to 1964 in that very area. Mr. P Krishnamurthy is right in his submissions that there was no foundation ever made for review of that part of the land falling under the 'fuel area' was, in fact, cardamom plantation. There was no scope for invoking the provisions of sub-section (9) and/or (9-A) of Section 85 of the Act. The two decisions of the Kerala High Court are, therefore, not quit relevant for our purposes. High Court by its judgment dated March 15, 1977 had set aside the order of Taluk Land Board allowing exemption of 100 acres when appellant had claimed 263.83 acres as agricultural land interspersed within the boundaries of the area cultivated by the appellant. The extent of this area was to be determined by the Land Board as Taluk Land Board at the relevant time had no jurisdiction to so determine. the appellant had specifically claimed 263.83 acres of such land under the head "other agricultural land interspersed". After the remand Taluk Land Board was also vested with power w.e.f. 7.7.1979 to determine the extent of land under clause (c) of Section 2(44) of the Act. That would not, however, mean that Taluk Land Board could now determine that area under this head exceeded 263.83 acres. To the extent that Tulak Land Board by its order dated July 26, 1980 upheld the claim of the appellant to 263.83 acres as "agricultural land interspersed within the boundaries of the area cultivated with plantation crops" cannot be failed. though under the heads 'fuel area' and 'rested tea area' there was difference of opinion among the Chairman and other members of the Tulak Land Board there was unamimity between them on the question of area of 263.83 acres falling under the head 'other agricultural land interspersed'. It cannot be said that Taluk Land Board, while determining this area, did not take into consideration relevant factors as mentioned in clause (c) of Section 2(44) of the Act. We do not think it was necessary for the High Court to lay down any further guidelines than what are given in the provision and for that purpose to remand the matter again to the Taluk Land Board. We would, therefore, set aside the order of the High Court to that extent.

It is settled law that principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even he demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'. These two terms are of common law origin. Again once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. their only remedy is to approach the higher forum if available. the determination of the issue between the parties gives rise to as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operated in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of

Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice. As to what is issue estoppel was considerred by this Court in Gopal Prasad Sinha vs. State of Bihar [(1970) 2 SCC 905]. This case arose out of criminal prosecution, the accused was tried on a charge under Section 409 IPC for having committing criminal breach of trust for Rs. 27,800/during the period between January 31, 1960 to November 30, 1960, when he was acting as Cashier in the Public Works Department of the State. The accused contended that he had been put up on a trial in a previous case under Section 409, IPC for having committed criminal breach of trust with respect to certain amounts during the period December 8, 1960 to August 17, 1961 and in that case the High Court had acquitted him holding that he was not in charge of the case. The point of issue-estoppel was, thus, raised by the accused. The trial Court held that the aforesaid finding of the High Court could not operate as a res judicata. High Court affirmed the decision of the trial Court. In this Court, it was contended that substantially it was the same issue that was tried during the earlier trial and if the accused was not the Cashier from December 8, 1960 to August 11, 1961, he could not be held to be Cashier from January 31, 1960 to November 11, 1960. The accused contended that the defence in both the cases was identical and the evidence also almost the same. This Court observed as under:

"In our opinion, the High Court came to the correct conclusion. The basic principle underlying the rule of issueestoppel is that the same issue of fact and law must have been determined in the privious litigation. The question then arises : Was it the same issue of fact which was determined in the earlier case? A person may be acting as a cashier at one period and may not be acting as a cashier at another period, especially as in this case it was found that the appellant had never been appointed as a cashier. He was a temporary senior accounts clerk who was alleged to be doing the work of a cashier. If there is any likelihood of facts o conditions changing during the two periods which are under consideration then it is difficult to say that the prosecution would be bound by the finding in a previous trial on a similar issue of fact. It seems to us that the later finding must necessarily be in contradiction of the previous determination. There can be no such contradiction if the periods are different and the facts relating to the carrying on of the duties of a cashier are different".

Mr. salve strongly relied on the decision of the House of Lords in Aronold & Ors. vs. National Westminster Bank Plc. [(1991) 2 AC 93] to submit that the appellant could again raise the plea of 'rested tea area', 'Cardamom plantation' and 'agricultural land interspersed' for adjudication before the Taluk Land Board when it was seized of the matter on remand. He said though issue estoppel constituted a bar to relitigation between the same parties of a decided point, appellants were not estopped to seek redetermination of the issue in the facts and circumstances of the case. He said the first return/statement was filed without prejudice and though exemption was not claimed specifically as Cardamom plantation, the fact that Cardamom was growing was within the knowledge of the authorities. It was, in fact, brought on record in an earlier letter of 1974 by the appellant. Then, there was subsequent change of law. Now, this Court by judgment in Pioneer Rubber plantation vs. State of Kerala & Anr. [(1992) 4 SCC 175] delivered by three Hon'ble Judges held that supply of fuel wood to the employees cannot be said to be purpopse unconnected to the cultivation of the plantation. Further as to what is rested tea area was not correctly brought out and

there is voluninous authorities to show that keeping certain area of the plantation as rested tea area is in the larger interest of the plantation itself and a part of the plantation activities. Then, there was a judgment of this Court in Malankara Rubber & Produce Co. & Ors. etc, ettc. vs. State of kerala & Ors, etc. etc. [(1973) 1 SCR 399] holding that lands planted with Eucalyptus or teak trees are agricultural lands. Mr. Salve said all these factors will take the case out of the bar of issue estoppel. He again pointed that when the return/statement was filed, position of law was not clear as the Act had then recently come into force.

In Arnalds & Ors. vs. National Westminster Bank Plc. [(1991) 2 AC 93] House of Lords noticed the distinction between cause of action estoppel and issue estoppel. Cause of action estoppel arises where the cause of action in the later proceedings, the latter havig been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not according to tthe law of England, prevent the latter to be re-opened. Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of actin to which the same issue is relevant one of the parties seeks to re-open that issue. Here also bar is complete to re-litigation but its operation can be thwarted under certain circumstances. The House then finally observed.

"Butg there is room for the view that the underlying principles upon which estoppel is based, public policy and justice, have greater force in cause of action estoppel, the subject matter of the two proceedings being identical, than they do in issue estoppel, where the subject matter is different. Once it is accepted that different considerations apply to issue estoppel, it is hard to perceive any logical distinction bettween a point which was previously raised and decided and one which might have been but was not. Given that the further material which would have put an entirely different complexion on the point was at the earlier stage unknown to the party and could not by reasonable diligence have been discovered by him, it is hard to see why there should be a different result according to whethr he decided not to take the point, thinking it hopeless, or argue it faintly without any real hope of success. In my opinion your Lordship should affirm it to be the law that there may be an exception to issue estoppel in the special circumsttances that there has vecome available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material which could not by reasonable iligence have been adduced in those proceedings. One of the purposes of estoppel being to work justice between the parties, itt is open to courts to recognise that in special circumstances inflexible application of it may have the opposite result....."

Next question for consideration is whether the further relevant material which a party may be permitted to bring forward in the later proceedings is confined to matters of fact, or whether what may not entirely inappositely be described as a change in the law may result in, or be an element in special circumstances enabling an issue to be re-opened.

Your Lordships should appropriately, in my opinion, regard the matter as entire and approach it from the point of view of principle. If a Judge has made a mistake, perhaps a very egregious mistake, as is said of Walton J.'s judgment here, and a later judgment of a higher court overrules his decision in another case, do considerations of justice require that the party who suffered from the misttake should be shut out, when the same issue arises in later proceedings with a different subject matter, from reopening that issue?

I am satisfied, in agreement with both courts below, that the instant case presents special circumstances such as to require the plaintiffs to be permitted to reopen the question of construction decided against them by Walton J., that being a decision which I regard as plainly wrong." Mr. Salve's asserrtions based on the aforesaid decision of the House of Lords may be valid to an extent but then in view of the principles of law laid by this Court on the application of res judicata and estoppel and considering the provisions of Section 11 of the Code we do not think there is any scope to incorporate the exception to the rule of issue estoppel as given in Arnold and others vs. national Westminster Bank Plc. (1991 (2) AC 93).

Law on res judicata and estoppel is well understood in India and there are sample authoritative pronouncements by various courts on these subjects. As noted above the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, a different if an issue which had been decided in earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile law has changed or has been interpreted differently by higher forum. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (explanation to Rule 1) review is not permissible on the ground "that the decision on a question of law on which the judgment of tthe Court is based has been reversed or modified by the subsequent decision of a superor COurt in any other case, shall not be a ground for the review of such judgment".

Since the appellant never claimed exemption outside the ceiling area on the ground of cardamam plantation the question was never gone into in the earlier proceedings of this Court. This point, therefore, could not be agitated before the Taluk Land Board dealing with the matter on remand as finality attached to the areas under the fuel area and rested tea area for which exemption was not or fully granted. It is, therefore, unnecessary for us to go into the question if cardamom plantation existed at the relevant time. We, therefore, uphold tthe judgment of the High Court on the extent of 'fuel area' and 'rested tea area' as determined finally by this Court in CA No. 227/78 and would dismiss the appeal limited to this extent. Though we have upheld the order of the High Court mainly on the grounds of res judicata and estoppel, submission of the appellant commands to us that they bve given opportunity to approach the State Government to seek exemption under provisions of Sub-section 3 of Section 81 of the Act. This is particularly so as a three Judge Bench of this Court has held that supply of fuel wood to employees is for the purpose connected with the plantation, which is a later decision of the two Judge Bench decision of this Court. Further that rested tea area is a part of tea plantation was not properly projected before this Court as has been rightly contended by Mr. Salve. It is a matter of experience and on reference to authoritative text books if rested tea areas are

part of the plantation. We allow the appellant to approach the State government to seek exemption under Sub-section 3 of Section 81 of the Act. For this purpose we grant six weeks time to the appellant to apply to the State Government. the State Government shall take decision on such application in accordance with law explained above. till then the stay granted by this Court by order dated December 6, 1984 shall continue tto operate.

With these observation the appeal stands partly allowed. There shall be no order as to costs.