Supreme Court of India
K. Eapen Chacko vs The Provident Investment Company ... on 1 November, 1976
Equivalent citations: 1976 AIR 2610, 1977 SCR (1)1026
Author: A Ray
Bench: Ray, A.N. (Cj)

PETITIONER:
K. EAPEN CHACKO

Vs.

RESPONDENT:
THE PROVIDENT INVESTMENT COMPANY (P) LTD.

DATE OF JUDGMENT01/11/1976

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SHINGAL, P.N.

CITATION:
1976 AIR 2610 1977 SCR (1)1026
1977 SCC (1) 583

ACT:
Kerala Land Reforms Act (Kerala 1 of 1964) as amended in 1969 and 1971, Ss. 3(1), 50A, 52, 73, 108, 125 and 132(3)--Scope of.
Interpretation of statute--Statute when retrospective.

HEADNOTE:
The proviso to s. 3(1)(vii) of the Kerala Land Reforms Act, 1964. provided that nothing in clauses (i) to (vii) of s. 3(1) shall affect the rights of persons who are entitled to the fixity of tenure immediately before 21 January 1961 under any law then in force. The law prevailing immediately before 21 January 1961, was the Malabar Tenancy Act, 1929. Under s. 23 of that Act a tenant would be liable to be evicted from his holding at the instance of h/s landlord if he intentionally committed acts of waste or defaulted in the payment of rent for more than 3 months. The proviso was amended by Amendment Act 1969 which came into force on January 1; 1970. The amending Act also. inserted in the-Act new Ss. 50A. 52 and 73. Section 50A provided that a tenant entitled to fixity of tenure shall have the right to use his holding in any manner he thinks fit. Section 52 provided that a cultivating tenant shall have a right to

cut trees and is to the effect that the maximum amount that could be claimed by way of arrears of rent is only for 3 years. Section 108(2) was also amended and it provided that any decree passed before the commencement of the section for the dispossession of a person from the land in his possession may on the application. of such person be reopened and disposed of in accordance with the provisions of the 1964 Act as amended by the 1969-Act provided dispossession has not been affected. Section 125(3) provided that if in any suit or proceeding questions regarding the rights of a tenant arose, the civil court shall stay such proceedings and refer the question to the Land Tribunal having jurisdiction over the area. Section 132(3) provided that any decree pursuant to which eviction has not been effected may, on the application of the tenant or the landlord be reopened and the matter disposed of in accordance with the provisions of the Act.

The respondent owned about 550 acres out of which more than half was Coffee planted area. He leased the plantation and the remaining unplanted area to the appellant in 1950 for 12 years. Clause (4) of the lease provided that if the rent was in arrears for 30 days after it became due it was lawful for the lessor to forfeit the lease and re-enter on the land. Alleging_ that since 1953 the 'appellant had neglected to pay the rent, the respondent filed the suit claiming possession of the land, arrears of rent, and damages for waste. The trial court decreed the suit in. 1966 and the decree was confirmed by the 'High Court with the enhanced damages in February 1969. In appeal to this Court the appellant contended that he was entitled to fixity of tenure; that the unplanted area was not a plantation and 'so he was entitled to fixity of tenure therein; ,hat the proceedings were to be disposed of in accordance with the provisions of the 1964 Act as amended by 1969 Amendment Act. that is. that all questions regarding rights of tenants and landlords could be decided only by the Land Tribunal; and that the damages were awarded contrary to the 'provisions of the Act as amended. He, therefore. filed an application praying for reopening of the decree passed by the High Court and also contended that in view of the amendments in 1971 the appeal is to be disposed of in accordance with the provisions of the Act, as amended in 1969 and 1971.

Dismissing the appeal to this COurt,.

HELD: In the present case, the decree was passed by the trial court as' well as by the High Court after the 1964 Act came into force but before the,

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1969 amendment. The decree was correctly passed in accordance with the provisions of the 1964 Act, since the amendments were prospective and not retrospective. [1036 E-F]

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(1) A statute has to be looked into for the general

scope and purview of the statute and at the remedy sought to be applied. In that connection the former state of law is to be considered and also the legislative changes contemplated by the statute. Words not requiring retrospective operation so as to affect an existing statutory provision prejudicially ought not to be so construed. It is a general rule that when the legislature alters the rights of the parties by taking away or conferring any right of action, its enactments.unless in express terms they apply to pending actions, do not affect them. If however, a statute deals merely with procedure in an action and does not affect the rights of the parties, it will be held to apply prima facie to all actions pending as well as future. [1033 E-G]

Gardner v. Lucas (1878) 3 Appeals Cases 582; Moon v.Durden (1948) 2 Exch.22 and Smithies v. National Union of Operative Plasterers (1909) 1 K.B. 310, referred to.

(2) The entire land leased out does not come within the definition of plantation, because. the extent of coffee cultivated area has been found to have dwindled to about 100 acres out of the total extent of about 550 acres by reason of the acts of waste committed by the appellant and ceased to be a plantation even before 1 January 1970. The appellant, however, is disentitled to take advantage of his own wrongs so as to claim statutory benefits which were also not available to him. [1033 A-B, E-G]

(3) The appellant had been found to be habitual defaulter since 1952 in the payment of rent and to be guilty of wilful acts of waste before and after the institution of the suit. He had denuded the entire tree growth in morethan one half of the area and destroyed more than one half of the coffee planted area, and the remaining part was in an utterly neglected condition. Therefore, s. 23 of the Malabar Tenancy Act, the appellant had no fixity of tenure on 21 January 1961, and hence was not entitled to the benefit of proviso (1) to s. 3(1) either under the 1964 Act or the 1969-Act. [1032 G-H, 1034.B-D)]

(4) The respondent was a Government company. Under s. 3(1)(e) of the 1964 Act, leases of lands owned by Government companies are exempted from the provisions of Chap. II. Section 13, which is in Chap. II and which provides for fixity of tenure cannot therefore be invoiced. by the appellant for claiming 'fixity, of tenure under the 1964 Act. [1033 C-D]

(5) The appellant is disentitled from invoking ss. 50A, 52 and 73 of the 1964 Act as amended in 1969 because, Chapter 1I of the 1964 Act is not applicable to the lease since the respondent lessor iS a Government Company. Moreover, these sections came into effect on 1st January 1970 and were not retrospective, but were. prospective in. operation. [1032 A-D, 1033 H, 1036 A-B]

(6) Sect.ion 108(3) of the Act as amended in 1971 will permit the opening of the decree only if a person has claims

to a right benefit or remedy which has been conferred on him under the Act. In the present case neither under the 1964 Act nor under the 1969 Amendment the. appellant can claim the benefit of s. 50A because he wilfully misused the holding and caused acts of waste causing loss to the lessor and damage and destruction to the holding.

[1033 H, 1034 A-B]

Section 125(1) of the Act which came into force on 1 January 1970, creates bar against the civil court deciding questions required to be settled by the Land Board. This provision is prospective. and the proviso expressly states that the section shall not apply to proceedings pending in any court at the commencement of the 1969 amending Act. It, therefore, follows that the proceedings in the present case which were pending at the commencement of the 1969 Amendment Act are saved from the operation of s. 125(1). Section 125(3) is equally prospective. It will be applied with regard to the provisions contained in s. 125(1) of the Act. Matters which will be within the mischief of s. 125(1) are matters which will arise in suits or proceedings initiated or originated after the commencement of the Act. It is unsound to

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suggest that pending proceedings which are exempt from the application of s. 125(1) will yet fall within that sub-section by reference to s. 125(3).

Therefore, the provisions contained in s. 125 are not applicable in the present case. [1034 G-H, 1035 A-E]

Anantha Narayana Iyer v. Pran 1976 K.L.T. 403, over-ruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1343 of 1969.

From the Judgment and Decree dated 17-2-1969 of the Kerala High Court in Appeal Suit No. 493 of 1966. S.T. Desai, S. Krishan Iyer and A.G. Puddisery, for the Appellant.

T.S. Krishnamoorthy Iyer, K.P.K. Menon, I. N. Shroff and R.P. Kapoor, for the Respondent.

The Judgment of the Court was delivered by RAY, C.J. This appeal is by certificate from the judgment dated 17 February, 1969 of the High Court of Kerala. The respondent filed this suit against the appellant for recovery of property with arrears of rent and mesne profits and damages for waste.

The property measuring 550.37 acres consisted of 279.86 acres of planted area and the rest was unplanted area. By a lease dated 7 October, 1950, the. respondent leased out to the appellant the plantations together with Bungalow, quarters of what is described as "Beenachi Estate". The lease was for a period of 12 years with effect from 1 Janu- ary, 1950. The rent for the first six years was

fixed at Rs. 3600/- per annum. The rent for the second period of six years was fixed at Rs. 4500/- per annum. The rent was payable in advance on 1 January of each calendar year. The respondent's case is that since 1953 the appellant failed and neglected to pay rent fixed under the lease. Clause 4 of the lease provided that if the rent would be in arrears and unpaid for 30 days after the same would become due it would be lawful for the lessor respondent to forfeit the lease notwithstanding the fact that the term had not expired. The lease provided that the respondent lessor would re-enter the premises in that event and the lease would cease and determine. The respondant by notice dated 5 March, 1959 called upon the appellant to quit, vacate and deliver to the respondent vacant possession of the property. The notice was consequent upon the wilful default of the appellant to pay rent and consequent on the several breaches of covenants as alleged in the notice.

The respondent filed the suit on 5 February, 1960. The defendant claimed possession of the property known as the Beenachi Estate together with movable, a declaration that the lease had determined and -claimed arrears of rent, mesne profits a sum of Rs. 2,20,394/- as 'damages for waste. At the trial the appellant raised the plea that the tenancy is governed by the Malabar Tenancy Act, and, there- fore, the suit is barred by Act 1 of 1957. The respondent pleaded that the tenancy is covered by exception in section 2(1 ) of the Malabar Tenancy Act VII of 1954. The trial Court accepted the preliminary objection of the appellant and dismissed the suit.

The High Court on appeal remanded the case tO the Subor- dinate Judge for fresh trial. The trial Court on remand decreed the suit on 25 October, 1966. The respondent ob- tained a decree for eviction with arrears of rent and dam- ages amounting to Rs. 1,00,000/- for certain items and a further sum of Rs. 51,030/- for other items of damages. The trial COurt held that in view of the proviso to section 3(1)

(vii) of the Kerala Land Reforms Act I of 1964 hereinaf- ter referred to as the 1964 Act a tenant having fixity of tenure under the Act as it stood on 21 January 1961 would continue to enjoy it under the 1964 Act notwithstanding the fact that the landlord might be a corporation owned or controlled by the Government of India or by any State Gov- ernment in India .as provided in section 3(1) (c) of the 1964 Act. The appellant was held by the trial Court to be disentitled to resist the prayer for eviction in 'the suit because his holding was a plantation exceeding 30 acres in extent as provided in section 3(1) (vii) of the 1964 Act. The appellant filed an appeal. The respondent filed cross objections. The High Court dismissed the appellant's appeal and allowed the cross objections of the respondent. The High Court enhanced the damages from Rs. 1,00,000/- to Rs. 2,20,394/- and confirmed the award of Rs. 51,030/- as damages under other heads.

Counsel for the appellant contended that the High Court was in error in taking the view that the appellant was not entitled to claim fixity of tenure. Counsel for the appellant relied on section 3(1) (vii)of the 1964 Act as amended by Act 35 of 1969. Before the 1969 Amendment the 1964 Act provided in clause (vii) to section 3(1) that nothing in this Chapter shall apply to clauses (i) to (vii) of section 3 to the rights of persons who were entitled to fixity of tenure immediately before 21 January 1961 under any law then in force. The aforesaid proviso was substitut- ed by the Amendment Act 35 of 1969 as follows :--

> "Provided that nothing in clauses (i)to
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> (vii) shall apply in the cases of persons who were entitled to fixity of tenure immediately before 21 January 1961 under any law then in force or persons claiming under .such persons".

The High Court held that only rights of persons but not fixity of tenure were saved.

Counsel for the appellant contended that the effect of proviso to section 3(1) (vii) of the 1964 Act as amended in 1969 is that fixity of tenure and rights with regard to the same are both saved, and, therefore, the High Court should have held that the appellant was entitled to fixity of tenure.

The second contention of counsel for the appellant is that the High Court was in error in holding. that under section 23 of the Malabar Tenancy Act 1929 the appellant was liable to be evicted by the landlord and that the appellant had no right to resist eviction.

The contention of the appellant was that assuming the High Court was right on the above conclusion, the provisions contained in section 108 sub-sections (2) and (3) of the 1964 Act as amended in. 1969 require the Court. to apply the law retrospectively in respect of pending suits, appeals, applications, decree where dispossession had not been ef- fected. It is said by the appellant that the relevant date .for the application of these sub-sections was 1 Janu- ary 1970 on which, date the 1969 Amendment Act came into force. It is contended on. behalf of the appellant that the appellant had not been dispossessed from the property on or before 1 January, 1970, but only an order appointing Receiv- er was made by the. High Court on 17 February, 1969. The property, therefore, according to the appellant, continued to be on lease and the order appointing Receiver could not have the affect of dispossession. The appellant, therefore, under section 108(2) of the 1964 Act claimed to have the decree reopened for disposal in accordance with section 125(3) of the 1964 Act as amended in 1969 Section 108(2) of the 1964 Act as amended is as follows :--

> "Any decree passed before the commencement of this section for the dispossession of a person from the land in his possession, pursu- ant to which dispossession has not been af- fected, may, on the application of such per- son, be reopened and the matter may be dis- posed of in accordance with the provisions of the principal Act as amended by this Act.

By the principal Act is .meant the 1964 Act. Section 125(3) of the 1964 Act as amended in 1969 is as follows :--

> "If any suit or other proceeding in ques- tion regarding rights of a tenant or of a kudikidappukaran (including a question as to whether a person is a tenant or a kudikidappu- karan) arises, the civil court shall stay the suit or other proceeding and refer such ques- tion to the Land Tribunal having jurisdiction over the area in which the land or part there- of is situate together with the relevant records for the decision of that question only".

Extracting these provisions counsel for the appellant contended that section 125(3) of the 1964 ACt as amended in 1969 indicated that all questions regarding rights of ten- ants could be decided only by the Land Tribunal to which a reference has to be made.

The third contention on behalf of. the appellant is that the 1964 Act as amended in 1969 inserted section 50A to the 1964 Act the effect of which is that notwithstanding any- thing contained in any law or contract, or in any judgment, decree or order of court, a tenant. entitled to fixity of tenure shall have the right to use his holding in any manner he thinks fit. The 1964 Act as amended in 1969 introduced section 52 which was. also relied on by the appellant, to show that the cultivating tenant shall have a right to cut such trees and the landlord or the intermediary shall not have the right to cut any such trees. Section 73 of the 1964 Act which was introduced in 1969 is to the effect that the maximum amount that could be claimed by way of arrears of rent for the period ending May 1968 notwithstanding any contract, judgment or order of court is only 3 years and nothing more.

These provisions, viz., Sections 50-A, 52 and 73 which were introduced by the 1969 Amendment Act were relied on by the appellant for the purpose of showing that the appellant would be entitled to use the holding and to cut trees and the maximum arrears of rent could be claimed for a period of three years and not more.

Counsel for the appellant next contended that the trial Court was in error in finding that the holding of the appel- lant is a plantation in the context of section 3(1) (viii) of the 1964 Act. The contention on behalf of the appellant was that assuming that the trial Court was right in its conclusion as regards the area of 279.86 acres which accord- ing to the respondent was the extent of coffee plantation .on the date of the lease, in respect of the remaining extent of land the appellant was entitled to fixity of tenure in view of the proviso to clause 3(1)(viii) of the 1964 Act.

The crucial date according to the appellant is 1 January 1970 when the 1969 Amendment Act came into force. The effect of section 108(2) and (3) of the 1964 Act read with section 125(3) of the Act is according to the appellant, that the questions as to whether 'the whole or portion of the land is a plantation, whether there is fixity of tenure and whether the respondent can claim damages could all be disposed of only by the Land Tribunal. The appellant con- tended that the judgment of the High Court has, therefore, to be set aside and this Court should direct that the mat- ters may be disposed' of by the Land Tribunal.

As a corollary counsel for the appellant contended that the trial Court was wrong in holding that the appellant was liable to pay damages and in view of the provisions con- tained in sections 50-A and 52 of the 1964 Act as amended in 1969 read which section 125(3) of the Act as amended all matters would be decided by the Land Tribunal. Counsel for the appellant relied on section 108(3) of the Act which as changed by amendment in 1971 is as follows :--

> "If in any suit, application, appeal, revision, review, proceedings in execution of a decree or other proceedings pending at the commencement of this section before any court, tribunal, officer or other authority, any person claims any benefit, right or remedy conferred by any of the provisions of the principal Act, or the principal ,Act as

> amend- ed by this Act, such suit, application, ap- peal, revision, review, proceedings in execu- tion or other proceedings shall be disposed of in accordance with the provisions of the principal Act as amended by the 1971 Act."

In short the contention of the appellant is that' the whole proceedings in the suit and the pleas therein are to be disposed of in accordance with the provisions' of the Act. According to the appellant the provisions of the Act indicate that there should not be any decree for eviction and .further that the damages award- ed against the appellant cannot be sustained by the provi- sions of the 1964 Act as amended by Act 35 of 1969, Act 25 of 1971 and Act 17 of 1972.

The appellant filed an application praying for reopen- ing the decree passed by the High Court and in that behalf has invoked section 132(3) of the 1964 Act and section 108(2) of the Act as amended in 1969. The appellant also prayed that section 108(3) as introduced in 1969 and as amended in 1971 indicates that the appeal is to be disposed of in accordance with the provisions of the appeal is as amended in 1971.

Section 132(3) of the 1964 Act is as follows :-

> "Notwithstanding the repeal of the enactments mentioned in sub-section (2) any decree passed before. the commencement of this Act for the eviction of a tenant from his holding, pursuant to which eviction has not been effected, may, on the application of the tenant or the landlord, be reopened and the matter may be disposed of in accordance with the provisions of this Act."

This provision according to the appellant establishes that it applies to decree passed before the commencement of Act 1 of 1964 and also pursuant to which eviction has not been effected.

In the present case, the decree was passed by the trial Court as well as by the High Court after the 1964 Act came into existence. The decree was passed in accordance with the provisions of the 1964 Act but before the amendment in 1969. The appellant claimed benefit of the proviso to section 3 (1) (vii)of the Act. The benefit claimed is fixity of ten- ure. The proviso as it stood when the 1964 Act came into operation was that nothing in clauses (i) to (vii) of sec- tion 3 (1) of the Act "shall affect the rights of persons who are entitled to the fixity of tenure immediately before 21 January 1961 under any law then in force". The change Substituted by the 1969 Amendment Act is that nothing in clauses (i) to (vii) of section 3(1) of the Act "shall apply in the case of persons who were entitled to fixity of tenure immediately before 21 January 1961 under any law then in force or persons claiming under such persons". The prevail- ing law on 21 January 1961 was the Malabar Tenancy Act. If, therefore, the appellant did not or could not have fixity of tenure on 21 January 1961 under the Malabar Tenancy Act he would not have any claim to the benefit of fixity of tenure under the 1964 Act or even under the 1964 Act as amended in 1969. Under section 23 of the Malabar Tenancy Act a Verum- pattom tenant would be liable to be evicted from his holding at the instance of his landlord if 'he intentionally commit- ted acts of waste sufficient to impair materially the value or utility of the holding for the, purpose for which it was let to him or that he committed default in the pay- ment of stipulated rent for more than 3 months after its due date, or allowed strangers to trespass upon the

holding. In the present case,. the appellant has been found to be a habitual defaulter since 1952 in the payment of rent fixed under the lease of 1950 under which the appellant was let into possession of the estate. Further the appellant has been found to be guilty of willful acts of waste before and after the institution of the suit. The appellant has also been found to have denuded the entire tree growth in more than one half of the area of the estate. The appellant has been found to have destroyed more than one half of the coffee planted area that had been leased to him.It was found that the remaining part of the coffee plantation as a result of the acts of the appellant is in utterly neglected condition.

The facts circumstances of the present case as found by the courts establish that the appellant had no fixity of tenure on 21 January 1961 warranting grant of any benefit, remedy or right against eviction. In fact, this claim was also canvassed by the appellant and found against him by the court.

The respondent in the present case is a Corporation owned or controlled by the Government of Madhya Pradesh and, is, therefore, a Government company under the Indian Companies Act. The appellant is disentitled to claim fixity of tenure under section 13 of the Act inasmuch as under the 1964 Act and under amendment in 1969 leases of lands owned by the Government owned Companies are by section 3(1) (i) of the 1,964 Act specifically exempted from the provisions of Chapter II of the Act. Section 13 which is in Chapter 1I cannot therefore, be invoked by the appellant. The right to fixity of tenure is denied to a tenant in respect of a holding owned by or belonging to a Government controlled CompanY. The appellant is, therefore, not entitled to claim fixity of tenure under the 1964 Act as amended. The Beenachi Estate in the present case does not come within the definition of "plantation" in section 2(44) of the 1964 Act as amended in 1969 because the extent of coffee cultivated area has been found by the court to have dwindled to a little over 110 acres in extent out of the total extent of a little over 550 acres. Further, tapioca has been grown by the Receiver in the areas other than the coffee planted area. Therefore, the Estate ceased to be a property princi- pally planted with coffee even before 1 January 1970 when the 1969 Amendment Act came into force. Under the lease the coffee planted area was 279.86 acres and the remaining extent of 271 acres was also intended to be extended area to be planted with coffee. The courts have found that instead of coffee plantation the appellant deliberately committed waste during the progress of litigation in the courts by reducing the extent of coffee plantation to just 168.58 acres. This area dwindled to little over 110 acres before 2 March 1969 when the Receiver was appointed by the High Court. The .large extent of vacant areas within the estate was on account of deliberate devastation of the said area by denudation of tree growth during the pendency of the litiga- tion in the courts.Therefore, it"is obvious that the appellant is dis-entitled to take advantage of his own wrongs so as to claim statutory benefits which are also not available to the appellant. The property by reason of acts of waste, damage, devastation, denudation Ceased to be coffee plantation on 1 January 1970 when the 1969 Amendment came into effect.

Section 108(3) of the Act as amended in 1971' will permit the reopening of the decree only if a person has claims to right, benefit or remedy which has been conferred on him under the Act. In the present case neither under the Act of 1964 nor under the 1969 Amendment Act the appellant can claim the benefit of section 50-A of the 1964 Act as amended in 1969 because the appellant willully misused the holding and caused acts of waste causing loss 'to the lessor and damage and destruction

to the holding.

The High Court rightly held that under the proviso to clauses (i) to (vii) of section 3(1) of the 1964 Act the appellant had no right to fixity of tenure under the Malabar Tenancy Act. Section 23 of the Malabar Tenancy Act con- ferred a right on the landlord to evict the tenant who intentionally and wilfully committed such acts of waste as are calculated to impair materially and permanently the value or utility of the holding for agricultural purposes and who has not paid within three months after the due date, the whole or any portion of the rent due in respect of the holding. The courts found the defendant to be guilty of wilful waste prior to the institution of the suit and during the pendency of the suit and further that the appellant committed default in payment of rent for seven years. Therefore, the appellant was not entitled to any rights .of fixity of tenure under the proviso to clauses (i) to (vii) of section 3(1) of the 1964 Act is to be interpreted in the light of the provisions of-the Malabar Tenancy Act in the present case.

The appellant invokes the provisions contained in sec- tion 125(3) of the Act for the purpose of determination in accordance with the provisions of the Act benefits, rights or remedies conferred by the Act and claimed by him are fixity of tenure, remedy against eviction and remedy against payment of damages and arrears of rent. The appellant also invokes the provisions contained in section 108(2) and (3) of the Act for the purpose of reopening of the decree and disposal of the same in accordance with the provisions of the Act on the same ground that the appellant claims bene- fits, rights and remedies conferred on him by the provisions of the Act.

Counsel for the appellant relied on the Full Bench decision of the Kerala High Court in Anantha Narayana Iyer v. Pran(1) in support of the contention that by reason of the provisions contained in section 125(3) of the Act the appeals_should be disposed of in accordance with the provi- sions of the Act.

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Section 125 (1 ) of the Act created a bar against civil court to settle, decide or deal with the questions required to be settled by the Land Board in accordance with the provisions of the Act. The provisions contained in section 125(1) of the Act are prospective. Section 125 came into effect on 1 January, 1970 when the other amendments intro- duced by the 1969 Amendment Act came into force. The provi- so to section 125(1) of the Act expressly states that Sec- tion 125(1) of the Act shall not apply to proceedings pend- ing in any court at the commencement of the Amendment Act of 1969 on 1 January, 1970. The effect of the proviso is to carve out by way of exception what would otherwise have fallen within the provision to which it is a proviso. It, therefore, follows that the proceedings in the present case which were pending at the commencement of the Amendment Act on 1 January, (1) (1976) K.L.T. 403.

1970 are saved from the operation of section 125(1) of the Act. In short, the proceedings are to be determined by the civil court.

Section 125(3) of the Act which provides that if in any suit or other proceeding any question regarding the rights of a tenant arises the civil court shall stay the suit and refer such question to the Land Tribunal having jurisdiction over the area in which the land or the part thereof is situate for the decision of that question only. The appel- lant relied on the Kerala Full Bench decision which held that section 125(3) of the Act as amended in 1969 is retro- spective, and, therefore,. proceedings should be determined by the Land Tribunal. The reason given by the Kerala High Court is that the suit or proceeding must be pending at the commencement of the Amendment Act 1969 before the provisions contained in section 125(3) of the Act can be applied. The Kerala High Court has, therefore, concluded that suit or other proceeding which is pending at the commencement of the Act will be governed by section 125(3) of the Act. This reasoning is not correct.

Section 125(3) of the Act is equally prospective. Section 125(3) of the Act will be applied with regard to the provisions contained in section 125(1) of the Act. Matters which will be within the mischief of section 125(1) of the Act are matters which will arise in suits or proceedings initiated and originated after the commencement of the Act. It is unsound to suggest that pending proceedings which are excepted from the application of section 125 (1) of the Act will yet fall within section 125(1) of the Act by reference to section 125(3) of the Act. The Kerala High Court fell into the error of overlooking the purpose of section 125(3) of the Act. The purpose is that suit or other proceeding shall be stayed. In the present case the appeal in this Court which was pending on 1 January 1970 is a proceeding which was pending at the commencement of the Act and was not initiated or originated at the commencement of the Act. Therefore, the provisions contained in section 125 are not applicable in the present case.

A statute has to be looked into for the general scope and purview of the statute and at the remedy sought to be applied. In that connection the former state of the law is to be considered and also the legislative changes contem- plated by the statute. Words not requiring retrospective operation so as to effect an existing statutory provision prejudicially ought not be so construed. It is a well recognised rule that statute should be interpreted if possible so as to respect vested rights. Where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding, the prima facie construction of the Act is that it is not to be retrospective. See Gardner v. Lucas.(1) In Moon v. Durden(2) a question arose as to whether section 18 of the Gaming Act 1845 which came into effect in August 1845 was retrospective so as to defeat an action which had been commenced in (1) (1878) 3 A.C. 582. (2) (1848) 2 Exch. 22. 16--1338SCI/76 June, 1845. The relevant section provided that no suit shall be brought or maintained for recovering any such sum of money alleged to have been won upon a wager. It was held that it was not retrospective. Parke B said "It seems a strong thing to hold that the legislature could have meant that a party who under a contract made prior to the Act had as perfect a title to recover a sum of money as he had to any of his personal property, should be totally deprived of it without compensation".

Again in Smithies v. National Union of Operative Plas- terers(2) section 4 of the Trade Disputes Act, 1906 which enacted that an action for tort against a trade union shall not be entertained by any court was held not to prevent the court's from hearing and giving judgment in. actions of that kind

begun before the passing of the Act. It is a gener- al rule that the legislature alters the rights of parties by taking away or conferring any right of action, its enact- ments, unless in express terms they apply to pending ac- tions, do not affect them. But there is an exception to this rule, namely, where enactments merely affect procedure and do not extend to rights of section. See Re Joseph Sucha & Co. Ltd.(2). If the legislature forms a new procedure alteration in the form of procedure are retrospective unless there is some good reason or other why they should not be. In other words, if a statute deals merely with the procedure in an action, and does not affect the rights or the parties it will be held to apply prima facie to all actions, pending as well as future.

In the present case the provisions in section 50-A, 52 and 73 of the 1964 Act as amended in 1969 were invoked by the appellant. The appellant is disentitled from doing so by reason of Chapter II of the 1964 Act not being applicable to the lease where the lessor is a Government Company. Further these sections came toto effect on 1 January 1970. The sections are not retrospective but prospective in opera- tion. The appellant is not entitled to attract these sec- tions.

For the foregoing reasons the appeal is dismissed with costs.

V.P.S. Appeal dismissed.

(1) [1909] 1 K.B. 310. (2) (1875) 1 Ch. 48.