

K H Nazar vs Mathew K Jacob on 30 September, 2019

Equivalent citations: AIR 2019 SUPREME COURT 4681, AIRONLINE 2019 SC 1137, (2019) 13 SCALE 179, (2019) 4 ICC 824, (2019) 4 KER LJ 472, (2019) 4 KER LJ 652, AIR 2020 SC (CIV) 363

Author: L. Nageswara Rao

Bench: Hemant Gupta, L. Nageswara Rao

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 7699-7700 of 2019
(Arising out of SLP (C) Nos.7792-7793 of 2019)

K. H. NAZAR

.... Appellant(s)

Versus

MATHEW K. JACOB & ORS.

.... Respondent (s)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

1. The width and amplitude of the expression ‘commercial site’ in Section 2 (5) and Section 81 (1) (q) of the Kerala Land Reforms Act, 1963 (for short, “ the Act”), falls for our consideration in these Appeals. Commercial sites are exempted from the purview of the Act. The question whether a rocky land which is used for quarrying purposes can be treated as a ‘commercial site’ and thereby excluded from the applicability of the Act was answered by a learned Single Judge of the Kerala High Court by holding that mere blasting of rocks and conversion into metals does not render the area a ‘commercial site’.¹ Twenty years after the said judgment, a Division Bench of the Kerala High Court took a different view. Quarrying was held to be a commercial operation involving the process of manufacture. Hence, it was held that a quarry falls within the ambit of ‘commercial site’ and is exempted from the applicability of the Act.²

2. The Appellant requested environmental clearance for his quarry which was recommended in his favour by the District Expert Appraisal Committee (DEAC) on 25.04.2017. Respondents No.1 and 2 filed a Writ Petition aggrieved by the said recommendation to permit quarry on land which was a

plantation site. It is relevant to note that the Appellant's land was exempted from the realm of the Act as it was a plantation. The objection of Respondent No.1 and 2 was that the Appellant cannot be permitted to use the land for a purpose other than plantation, especially for quarrying operations. After examining the judgments of the High Court in K. Krishnankutty v. State of Kerala and Others (supra) and State of Kerala v. Mohammedali Haji (supra), a learned Single Judge of the High Court of Kerala doubted the correctness of the latter K. Krishnankutty v. State of Kerala and Others. CRP No.1245/1975 State of Kerala v. Mohammedali Haji. (1996) 1 KLT 584 (DB) judgment in State of Kerala v. Mohammedali Haji (supra) and referred the matter to a larger Bench.

3. The Writ Petition filed by Respondent No.1 and 2 was heard by a Full Bench of the Kerala High Court comprising three Judges. The majority opinion was in favour of Respondent No.1 and 2. It was held by the majority that the land which is used for quarrying is not covered by the expression 'commercial site'. Therefore, there can be no exemption of such land from the applicability of the Act. The Appellant is aggrieved by the said judgment of the Full Bench of the High Court.

4. Mr. K. V. Vishwanathan, learned Senior Counsel for the Appellant took us through the provisions of the Act including Sections 2(5), 81 and 83 to argue that a quarry is a commercial site, which is exempted under Section 81 (1)

(q) of the Act. He alluded to the statement of objects and reasons to submit that the legislation was made to protect the interests of all stake-holders. He referred to the meaning of the words 'commercial activities' and 'business' to submit that the activity of quarrying is done for profit. Hence, quarrying is a commercial activity. According to him, there can be no distinction between activities done above and below the surface of land for the purpose of deciding whether land is a commercial site or not. He criticized the plurality opinion for erroneously invoking the mischief rule. He commended the judgment of the dissenting Judge for our acceptance. He emphasized that environmental issues are not germane for interpretation of Sections 2 (5) and 81 (1) (q) of the Act.

5. Mr. Pallav Shishodia, learned Senior Counsel appearing for the State of Kerala resisted the submissions made on behalf of the Appellant by submitting that the expression 'commercial site' is a term of art and has to be interpreted on the basis of the context in which it is used.

6. Mr. Romy Chacko, learned counsel for the Respondent No.1 and 2 asserted that the Act is a beneficial legislation. When there is a doubt about the meaning of expressions used in such a statute, literal interpretation should be avoided and Courts should adopt the principles of purposive construction. He submitted that the exemption provision should be narrowly construed.

7. Before we consider the submissions made by the learned counsel, it is necessary to examine the provisions of the Act. Section 83 of the Act provides that no person shall be entitled to own or hold or possess under a mortgage, lands in the aggregate in excess of the ceiling area with effect from the date notified by the Government of Kerala in the Gazette. The ceiling area of land is specified in Section 82 of the Act. Lands exempted under Section 81 shall be excluded from computation of the ceiling area as per Section 82 (6) of the Act. Section 81 of the Act is as follows:

81. Exemptions: - (1) the provisions of this Chapter shall not apply to-

- a) Lands owned or held by the Government of Kerala or the Government of any other State in India or the Government of India or a local authority [or the Cochin Port Trust] or any other authority which the Government may, in public interest, exempt, by notification in the Gazette, from the provisions of this Chapter.

[Provided that the exemption under this clause shall not apply to lands owned by the Government of Kerala and held by any person under lease whether current or time expired or otherwise.] Explanation I. – “Lands owned by the Government of Kerala” shall, for the purposes of this clause, have the same meaning as “Government lands” under sub- section (1) of Section 2 of the Kerala Government land Assignment Act, 1960 [but lands escheated to the Government and held by tenants entitled to fixity of tenure under Section 13 shall not be deemed to be lands owned by the Government of Kerala;] Explanation II – Lands, the right, title and interest in respect of which have vested in the Government under sub-section (9) of Section 66 or Section 72, shall not be deemed to be “lands owned by the Government of Kerala” for the purposes of this clause;] Explanation III - For the purposes of this clause, “other authority” shall include a corporation owned or controlled by the Government of Kerala or the Government of any other State in India or the Government of India;]

b) Lands taken under the management of the Court of Wards;

Provided that the exemption under this clause shall cease to apply at the end of three years from the commencement of this Act;

c) Lands comprised of mills, factories or workshops and which are necessary for the use of such mills, factories or workshops;

d) Private forests;

e) Plantations;

f) x x x x

g) x x x x

h) lands mortgaged to the Government, or to a co- operative society (including a co-operative land mortgage bank) registered or deemed to be registered under the Co-operative Societies Act for the time being in force, or to the Kerala Financial Corporation, or to the Kerala Industrial Development Corporation, or to the State Small Industries Corporation, as security for any loan advanced by the Government or by such society or Corporation, so long as the mortgage subsists:

provided that the exemption under this clause shall cease to apply at the end of three years from the commencement of this Act;

i) lands purchased by the Kerala Co-operative Central Land Mortgage Bank or a Primary Mortgage Bank under Section 18 of the Kerala Co-operative Land Mortgage Banks Act, 1960 [or by the Kerala State Co-

operative Bank Ltd., or by a primary agricultural credit co-operative society or by a scheduled bank as defined in the Reserve Bank of India Act, 1934] so long as such lands continue in the possession of the bank;

j) Lands purchased by the Kerala Financial Corporation or lands the management of which has been taken over by that Corporation, under Section 32 of the State Financial Corporations Act, 1951, so long as such lands remain in the ownership, or continue under the management, as the case may be, of the said Corporation:

[provided that the exemption under this clause shall not apply in the case of lands the management of which has been taken over by the Corporation on or after the 1st day of April, 1964;]

k) lands belonging to or held by an industrial or commercial undertaking at the commencement of this Act, and set apart for use for the industrial or commercial purpose of the undertaking:

Provided that the exemption under this clause shall cease to apply if such land is not actually used for the purpose for which it has been set apart, within such time as the District Collector may, by notice to the undertaking, specify, in that behalf;

l) x x x x

m) house sites, that is to say, sites occupied by dwelling houses and lands, wells, tanks and other structures necessary for the convenient employment of the dwelling houses.

Explanation.- For the avoidance of doubt, it is hereby declared that a compound wall shall not be deemed to be a structure necessary for the convenient enjoyment of a dwelling house, if the land on which the dwelling house is situated and enclosed by the compound wall is more than the land necessary for the convenient enjoyment of the dwelling house.

n) x x x x

o) sites of temples, churches, mosques and cemeteries and burial and burning grounds:

p) sites of buildings and including warehouses;

q) commercial sites;

- r) land occupied by educational institutions including land necessary for the convenient use of the institutions and playgrounds attached to such institutions;
 - s) lands vested in the Bhoojan Yagna Committee;
 - t) lands owned or held by-
 - i. a University establishment by law; or ii. a religious, charitable or educational institutions of a public nature; or iii. a public trust which expression shall include a wakf; Provided that-
 - (i) the entire income of such lands is appropriated for the University, institution or trust concerned, and
 - (ii) where the University, institution or trust come to hold the said lands after the commencement of this Act, the Government have certified previously that such lands are bona fide required for the purposes of the University, institution or trust, as the case may be; and u) lands granted to defence personnel for gallantry. (2) [xxx] (3) The Government may if they are satisfied that it is necessary to do so in the public interest-
 - (a) on account of any special use to which any land is put; or
 - (b) on account of any land being bona fide required for the purpose of conversion into plantation or for the extension or preservation of an existing plantation or for any commercial, industrial, educational or charitable purpose, by notification in the Gazette, exempt such land from the provisions of this Chapter, subject to such restrictions and conditions as they may deem fit to impose:

Provided that the land referred to in clause (b) shall be used for the purpose for which it is intended within such time as the Government may specify in that behalf; and, where the land is not so used within the time specified, the exemption shall cease to be in force.]
8. In the present case, the Appellant is claiming exemption on the ground that a quarry would fall within the sweep of ‘commercial site’ as stated in Section 81 (1)
- (q). Commercial site is defined in Section 2 (5) as follows:
- “2(5) “commercial site” means any land (not being a kudiyiruppu or a kudikidappu or karaima) which is used principally for the purposes of any trade, commerce, industry, manufacture or business;”
9. The Appellant contended that the definition of ‘commercial site’ is very wide and any land which is principally used for the purpose of trade, commerce, industry, manufacture or business is a commercial site. According to the Appellant, breaking of rock is a manufacturing activity. Quarrying

operations involve digging land and breaking of rocks into metal pieces. It was submitted that digging of land and breaking of rock is for a commercial activity and the sale of stones is for the purpose of trade and business. We are afraid that we cannot agree.

10. The dominant legislative intent of the Act is the imposition of ceiling on land holdings and distribution of excess land among landless people.³ Large number of State of Kerala v. K. A. Gangadharan (1977) 1 SCC 208 people have no place of abode in the State of Kerala, which is known as God's own country. To provide land to such landless people by taking it from those who possess in excess is the major objective of the Act.⁴

11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach.⁵ The Act should receive a liberal construction to promote its objects.⁶ Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the Court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation⁷.

12. In the words of O. Chinnappa Reddy, J. 8, the principles of statutory construction of beneficial legislation are as follows:

4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these One Earth One Life & Ors. v. State of Kerala, WP (C) No.28496 of 2016 Regional Executive, Kerala Fishermen' Welfare Fund Board v. Fancy Food, (1995) 4 SCC 34 Bombay Anand Bhavan Restaurant v. ESI Corporation, (2009) 9 SCC 61 and Union of India v. Prabhakaran Vijay Kumar, (2008) 9 SCC 527 Bharat Singh v. Management of New Delhi Tuberculosis Centre, (1986) 2 SCC 614.

Workmen v. American Express International Banking Corp. (1985) 4 SCC 71 legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds [(1971) 3 All ER 237]). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court [(1980) 4 SCC 443], we had occasion to say, "Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the

remedy should be adopted. 9 It is settled law that exemption clauses in beneficial or social Indian Performing Rights Society v. Sanjay Dalia, (2015) 10 SCC 161 welfare legislations should be given strict construction 10. It was observed in Shivram A. Shiroor v. Radhabai Shantram Kowshik (*supra*) that the exclusionary provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council¹¹, Kirby, J. held that the principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly.

14. There is no dispute that the Act is a beneficial legislation. The extent of land that can be held is fixed and any land in excess has to be surrendered to the Government, which is distributed in favour of the landless people in the State. The interpretation of the provisions of the Act should be in a manner which promote the said object.

15. Section 81 exempts among others, lands comprised of mills, factories or workshops, lands occupied by Shivram A. Shiroor v. Radhabai Shantram Kowshik, (1984) 1 SCC 588 [2008] HCA 48 educational institutions, and lands owned by Universities, religious and charitable institutions. House sites, sites of temples, churches and mosques, sites of buildings including warehouses and commercial sites are also exempted. There is a definite distinction between the expressions 'lands' and 'sites' in the context in which they have been used. Commercial sites read along with the other clauses dealing with sites clearly indicate that land occupied by structures is described as 'site'. As stated above, the other clauses in Section 81 dealing with sites are house sites, temples, churches and mosques and buildings. As such, the expression 'commercial site' cannot take into its fold vacant lands, including lands used for the purpose of quarrying. It has a restrictive meaning in comparison to the other categories of 'land' in Section 81. Therefore, quarry cannot fit into the terms 'commercial site'. Mr. Bechu Kurian, leaned Senior Counsel argued on behalf of the Appellant that digging the land for extracting stones is for a commercial purpose of making profit and hence quarry is a commercial site. We do not agree. A commercial site is a land on which there is a structure being utilized for an industrial or commercial purpose. Extension of the words 'commercial site' to quarries would result in defeating the purpose of the Act.

16. We disagree with the opinion of the dissenting Judge that the expression 'commercial site' should be attributed its natural and original meaning. On the basis of the statement made by the learned Additional Advocate General, the dissenting Judge held that if lands used for quarrying operations prior to the Act coming into force stood exempted under Section 81 (1) (k), a quarry should be considered as commercial site. Further, it was observed that if a quarry can be exempted under Section 81 (3) by the Government in public interest, then quarrying is a commercial activity falling within the sweep of Section 81 (1) (q) of the Act.

17. We uphold the view of the majority that exemption of quarries by the Government under Section 81 (3) would not arise if quarries are covered by Section 81 (1)

(q) of the Act. In other words, if quarries are commercial sites, the need for their exemption in public interest does not arise. Section 81(3) of the Act empowers the Government to exempt lands

for commercial purposes in public interest. The overriding power conferred on the Government to exempt lands from the applicability of the Act cannot be utilized for the purpose of interpretation of Section 81 (1) (q) which exempts commercial sites from the purview of the Act. Section 81 (1) (k) exempts unused lands of industrial or commercial undertakings at the time of commencement of the Act. The provision presupposes that an industrial or commercial undertaking was existing on the date of the commencement of the Act and there was some land set apart for the use of the undertaking in future. The said land is exempted only if the land is used for the industrial or commercial purposes of the undertaking within the time to be fixed by the authority. If the land is not used for the purpose for which it was set apart, the exemption ceases to operate. It is clear from the above that Section 81(1) (k) deals with a completely different type of land belonging to an industrial or commercial undertaking set apart for use of the said undertaking. Therefore, we are not in agreement with the support sought by the dissenting Judge from Section 81 (1) (k) to interpret the expression ‘commercial site’ in Section 81 (1) (q).

18. Another submission of the Appellant that quarrying includes a manufacturing activity does not appeal to us. Breaking of rock into small pieces of stone, according to us, is not a manufacturing activity. For this view, we seek support from a judgment of this Court in Rajasthan SEB v. Associated Stone Industries 12. It was held in the said judgment that cutting and polishing stones into slabs is not a process of manufacture for the obvious and simple reason that no new and distinct commercial product came into existence as the end product still remained stone and thus its original identity continued.

19. The findings recorded in the majority opinion on the issue pertaining to the environment is not relevant for the decision of the dispute. The concern of the Court should have been restricted to the gamut of the expression ‘commercial site’. The interpretation of Section 81 which exempts certain lands and sites should be interpreted in a manner, which promotes the object of (2006) 6 SCC 141 the Act and restricts concentration of large swathes of land in favour of a few individuals. Wider construction of the words ‘commercial site’ would defeat the laudable object of the Act.

20. The upshot of the above discussion is that there is no error in the majority opinion of the Full Bench in the impugned judgment which requires to be upheld.

21. The Appeals are dismissed, accordingly.

.....J. [L. NAGESWARA RAO]J. [HEMANT GUPTA] New Delhi,
September 30, 2019