GWALIOR RAYON SILK MFG. (WVG.) CO. LTD. A

v.

CUSTODIAN OF VESTED FORESTS PALGHAT AND ANR.

APRIL 6, 1990

[K. JAGANNATHA SHETTY AND R.M. SAHAI, JJ.] B

Kerala Private Forests (Vesting and Assignment) Act, 1971: Sections 2(f)(1)(i)(C), 3(1) and (2): 'Private Forest'—Vesting in Government—'Any other agricultural crop'—Does not include all species of trees including eucalyptus plantations—Only fruit bearing trees are excluded—Land planted with eucalyptus—Held vested in Government C *—Object of the Act explained.*

Kerala Land Reforms Act, 1963 (As amended by Amendment Act 35 of 1969): Section 2(47)(iv): Scope and meaning accorded to 'Private Forest'—Held inapplicable to Kerala Private Forests (Vesting and Assignment) Act, 1971: D

The Madras Preservation of Private Forests Act, 1949—Object of.

Statutory interpretation: Words defined in a statute—Judicial interpretation of—Does not afford a guide to construction of the same words in another statute unless the statutes are pari materia legislations. E

Legislative intention—Ascertainment of—Judges should not only listen to the voice of the legislature but also listen attentively to what the legislature does not say.

F

Words and Phrases: 'Agriculture', 'Agricultural Crop', 'Garden' and 'Nilam'—meaning of.

The appellant company was maintaining a large eucalyptus plantation for captive consumption in its production of Rayon Grade Pulp. The State of Kerala claimed that as a consequence of the Kerala Private Forests (Vesting and Assignment) Act, 1971, the eucalyptus plantation being a 'private forest' stood transferred to and vested in it. The company resisted the State's claim on the ground that the term 'private forest' excludes the eucalyptus plantation. The High Court decided the question in favour of the State and against the appellant. G H

A In the appeal to this Court, it was contended on behalf of the appellant that since the eucalyptus plantation was covered by the expression 'any other agricultural crop' in section 2(47)(iv) of the Kerala Land Reforms Act, 1963 the similar expression used in section 2(f)(1)(i)(C) of the Vesting Act, 1971 must also carry the same meaning.

B Dismissing the appeal, this Court.

HELD: 1. Judicial interpretation given to the words defined in one statute does not afford a guide to construction of the same words in another statute unless the statutes are *pari materia* legislations. [408G]

C 1.1 The definition of 'private forest' in the Kerala Land Reforms Act is not just the same as the definition of 'private forest' in the Vesting Act. Indeed, there is a vast difference between the two. Two separate definitions have been provided in the Vesting Act; the first is applicable to the Malabar district where the Madras Preservation of Private D Forests Act, 1949 applied immediately before the appointed day; the second concerned is in relation to the remaining areas in the State of Kerala. The definition of 'private forest' as is applicable to the Malabar district is not general in terms but limited to the areas and lands to which the Madras Preservation of Private Forests Act applied, and exempts therefrom lands described under sub-clauses (A) to (D). E This significant reference to this Act in the definition of 'private forest' in the Vesting Act makes all the difference in the case. The scheme of this Act appears to be that if the land is shown to be private forest on the date on which the Act came into force, it would continue to be a forest, even if there was subsequent replantation. [408H; 409A-D]

F 1.2 The lands involved in this appeal were all forests as defined in the Madras Preservation of Private Forests Act and continued to be so when the Vesting Act came into force. Therefore, it seems inappropriate to transplant the meaning accorded to 'private forest' from the Kerala Land Reforms Act to the Vesting Act. [409E-F]

G *State of Kerala* v. *Anglo American D.T.T. Co.*, [1980] Ker. L.T. 215 and *State of Kerala* v. *K.C. Moosa Haji*, A.I.R. 1984 Ker. 149 referred to.

Malankara Rubber and Produce Co. v. *State of Kerala & Ors.*, H [1973] 1 SCR 399, Held inapplicable.

State of Kerala v. *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.*, [1974] 1 SCR 671, referred to. A

2. The term 'agriculture' and 'agricultural crop' have wider as well as narrower connotation. The wider concept covers both the primary or basic as well as the subsequent operations. It takes within its fold among other things, the products of the land which have some B utility either for consumption or for trade and commerce including forest products such as timber, sal and piyasal, trees, casuarina plantations, tendu leaves, horranuts etc. Of course there must be present all throughout the basic idea that there must be cultivation of the land in the sense of tilling of the lands, sowing of the seeds, planting and similar work done in the land. The forest growth or spontaneous growth of any product, plants or trees, however, would be outside the chracteristic of C agricultural products or operations. [407D-F]

Commissioner of I.T. West Bengal v. *Raja Benoy Kumar Sahas Roy*, [1958] SCR 101, referred to.

D

2.1 Under Section 3(1), private forests vest in Government. Subsection (2) however, excludes from such vesting lands within the ceiling limits applicable to an owner if they are under his personal cultivation. Cultivation for this purpose 'includes cultivation of trees or plants of any species'. The explanation to sub-section (2) makes this aspect beyond doubt. The lands used for the cultivation of any kind of tree, E fruit-bearing or yielding only timber or pulp are not vested under section 3 sub-section (2). The legislature has thus excluded from vesting under section 3 sub-section (2) the trees of every variety. But while providing for exclusion under sub-clause (C) of section 2(f)(1)(i), the legislature could not have again thought of trees or plants of all kinds. It seems to have considered only fruit-bearing trees and not of other F species. Sub-clause (C) refers to lands which are principally cultivated with cashew or other fruit-bearing trees. It next refers to lands which are principally cultivated with any other agricultural crop. If the legislature had intended to use the term 'agricultural crop' in a wide sense so as to take within its fold all species of trees fruit-bearing or otherwise, it would be unnecessary to have the first limb denoting only the G cashew or other fruit-bearing trees. Therefore, there is no indication that the words 'any other agricultural crop' in sub-clause (C) are quite wide enought to comprehend all species of trees including eucalyptus plantations. These words exclude only fruit-bearing trees. [410H; 411A-D]

State of Kerala v. *Amalgamated Malabar Estates*, A.I.R. 1980 H

A **Ker. 137; *State of Kerala* v. *Malayalam Plantation Ltd.*, A.I.R. 1981 Ker. 1 and *State of Kerala* v. *K.C. Moosa Haji & Ors.*, A.I.R. 1984 Ker. 149, approved.**

3. In seeking legislative intention, judges not only listen to the voice of the legislature but also listen attentively to what the legislature B **does not say. [410G-H]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 698 of 1980.

From the Judgment dated the 2.5.1979 of the Kerala High Court in M.F.A. 346 of 1978.

C

M.M. Abdul Khader, Darshan Singh and Praveen Kumar for the Appellant.

P.S. Poti, P.K. Pillai (N.P.), T.T. Kunnhikannan and Ms. Malini D Poduval for the Respondents.

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. This appeal by leave from a Full Bench judgment of the Kerala High Court raises a short question E of construction of the plain words of a term 'private forest' as defined in a statutory enactment called "The Kerala Private Forest (Vesting and Assignment) Act, 1971 (called shortly "The Vesting Act"). The High Court has decided the question in favour of the State and against the appellant. The judgment of the High Court has since been reported in AIR 1980 Kerala 137. The view expressed by the High F Court has been subsequently affirmed by another Full Bench in *State of Kerala* v. *Malayalam Plantation Ltd.*, AIR 1981 Kerala 1 and reiterated by a larger Bench of five Judges in *State of Kerala* v. *K.C. Moosa Haji & Ors.*, AIR 1984 Kerala 149.

Losing the construction argument, the appellant has appealed to G this Court.

The facts of the case are immaterial for the purpose of this judgment, save to state in the barest outline that the appellant is the Rayon Silk Manufacturing Company registered in the State of Madhya Pradesh. One of its industrial undertakings is located in Bilakootam, H Mavoor in Kozhikode District, Kerala State. This establishment pro-

duces Rayon Grade Pulp, using Bamboo Eucalyptus and other species of wood as basic raw material. It has a large eucalyptus plantation covering thousands of acres, maintained as captive raw material for use in the factory. The State says that as a consequence of the Vesting Act, the eucalyptus plantation being a private forest and not excluded therefrom is vested in the State with no right, title and interest subsisting with the company. The claim of the company, however, is that the term 'private forest' as defined under the Vesting Act, excludes the eucalyptus plantation.

'Private forest' has been defined in the Vesting Act as well as under the Kerala Land Reforms Act (Act 1 of 1964) as amended by Amendment Act 35 of 1969 ("The KLR Act"). Since counsel for the appellant largely depends upon the judicial construction of the definition of 'private forest' in the KLR Act, it is necessary that we should set out hereunder both the definitions placed alongside with each other:

THE KERALA PRIVATE FORESTS (VESTING AND ASSIGNMENT) ACT, 1971	THE KERALA LAND REFORMS ACT (ACT 1 OF 1964) AS AMENDED BY THE KERALA LAND REFORMS (AMENDMENT ACT 35/1969)
(Act 26 of 1971)	
(AS AMENDED BY ACT 5 of 1978)	2. Definitions. In this Act unless the context otherwise requires—
2. Definitions: In this Act unless the context otherwise requires—	(47) 'private forest' means a forest which is not owned by the Government but does not include—
(f) 'private forest' means	
(1) in relation to the Malabar district referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956)	(i) areas which are waste and are not enclaves within wooded areas;
	(ii) areas which are gardens or nilams;
	(iii) areas which are planted with tea, coffee, cocoa, rubber, cardamom or cinnamon; and
(i) any land to which the Madras Preservation of Private Forests Act, 1949 (Madras Act XXVIII of 1949) applied immediately	(iv) other areas which are culti-

A before the appointed day excluding—

(A) Lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964)

B

(B) Lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom, or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.

C

Explanation—Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops;

D

E

(C) lands which are principally cultivated with cashew or other fruit-bearing trees or are principally cultivated with any other agricultural crop;

F

(D) sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of, such buildings;

G

(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forests Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.

H

vated with pepper, arecanut coconut, cashew or other fruit-bearing trees or are cultivated with any other agricultural crop; . . . ."

(2) in relation to the remaining areas in the State of Kerala, any forest not owned by the Government, including waste lands which are enclaves within wooded areas.

Explanation: For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs;"

We may first examine the scope of the definition of 'private forest' under Section 2(47) of the KLR Act. It means a forest which is not owned by the Government, excluding thereby four kinds of areas specified under sub-clauses (i) to (iv). The latter part of sub-clause (iv) contains the words "..... Other areas cultivated with any other agricultural crop". The terms 'agriculture' and 'agricultural crop' have wider as well as narrower connotation. The wider concept covers both the primary or basic as well as the subsequent operations. It takes within its fold among other things, the products of the land which have some utility either for consumption or for trade and commerce including forest products such as timber, sal and piyasal trees, casuarina plantations, tendu leaves, horranuts etc. (See: *Commissioner of Income Tax, West Bengal, Calcutta* v. *Raja Benoy Kumar Sahas Roy,* [1958] SCR 101 at 156. Of course there must be present all throughout the basic idea that there must be cultivation of land in the sense of tilling of the lands, sowing of the seeds, planting and similar work done in the land. The forest growth or spontaneous growth of any product, plants or trees, however, would be outside the characteristic of agricultural products or operations.

In *Malankara Rubber and Produce Co.* v. *State of Kerala & Ors.*, [1973] 1 SCR 399, this Court while examining the scheme of KLR Act with particular reference to Chapter III therein observed that 'lands under eucalyptus or teak which are the result of agricultural operations normally would be agricultural lands, but not lands which are covered by eucalyptus or teak growing spontaneously as in a jungle or a forest.' This is the wider concept of agricultural crop, perhaps attributed to the latter part of sub-clause (iv) of the definition under Section 2(47) of the KLR Act.

The latter part of sub-clause (iv) of Section 2(47) of the KLR

A Act, counsel for the appellant contended, is practically the same as the second limb of sub-clause (C) of Section 2(f)(1)(i) of the Vesting Act. It was claimed that since eucalyptus plantation is covered by the expression 'any other agricultural crop' in Section 2(47) sub-clause (iv) of the KLR Act, Section 2(f)(1)(i) sub-clause (C) of the Vesting Act with similar words must also carry the same meaning. It was emphasised B that the KLR Act and the Vesting Act constitute a Code of agrarian reform and they are cognate legislations with the Vesting Act as supplementary to the KLR Act. The expression 'any other agricultural crop' used in both the enactments while defining 'private forest' must therefore, receive the same meaning as otherwise, it would lead to anomalies. This is the line of argument for the appellant.

C This whole line of arguments with respect, is hard to accept. As Felix Frankfurter, J. said: "Legislation is a form of literary composition. But construction is not an abstract process equally valid for every composition, not even for every composition whose meaning must be judicially ascertained. The nature of the composition demands awareD ness of certain presuppositions ..... And so, the significance of an enactment, its antecedents as well as its later history, its relation to other enactments, all may be relevant to the construction of words for one purpose and in one setting but not for another. Some words are confined to their history; some are starting points for history. Words are intellectual and moral currency. They come from the legislative E mint with some intrinsic meaning. Sometimes it remains unchanged. Like currency, words sometimes appreciate or depreciate in value". The learned Judge further stated: "Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evinced in the language of the F statute, as read in the light of other external manifestations of purpose. That is what the Judge must seek and effectuate." (See: Courts, Judges and Politics by Walter F. Murphy: 'Some Reflections of the Reading of Statutes' by Felix Frankfurter).

Judicial interpretation given to the words defined in one statute G does not afford a guide to construction of the same words in another statute unless the Statutes are *pari materia* legislations. In the present case, the aim and object of the two legislations are not similar in the first place. Secondly, the definition of 'private forest' in the KLR Act is not just the same as the definition of 'private forest' in the Vesting Act. Indeed, there is a vast difference in between the two. The object H of the Vesting Act was to provide for the Vesting in the Government

of private forest in the State of Kerala for the assignment thereof to the agriculturists and agricultural labourers for cultivation. The preamble of the Act provides that such agricultural lands should be so utilised as to increase the agricultural production in the State and to promote the welfare of the agricultural population in the State. Two separate definitions have been provided in the Vesting Act; the first is applicable to the Malabar district where the Madras Preservation of Private Forests Act, 1949 ('The MPPF Act') applied immediately before the appointed day; the second concerned is in relation to the remaining areas in the State of Kerala. The definition of 'private forest' as is applicable to the Malabar district is not general in terms but limited to the areas and lands to which the MPPF Act applied and exempts therefrom lands described under sub-clauses (A) to (D). This significant reference to MPPF Act in the definition of 'private forest' in the Vesting Act makes all the difference in the case. The MPPF Act was a special enactment. It was enacted by the erstwhile Madras State to preserve the private forests in the district of Malabar and erstwhile South Kannara District. The Scheme of that Act has been explained by several decisions of the Kerala High Court and that scheme appears to be that if the land is shown to be private forest on the date on which the MPPF Act came into force, it would continue to be a forest, even if there was subsequent replantation. (See: *State of Kerala* v. *Anglo American D.T.T. Co.*, [1980] Ker. L.T. 215 and *State of Kerala* v. *K.C. Moosa Haji,* (supra) (FB) AIR 1984 Ker. 149 at 154-155.)

It is not in dispute that the lands involved in this appeal were all forests as defined in the MPPF Act, 1949 and continued to be so when the Vesting Act came into force in 1971. In *Malankara* case (supra), this Court was not concerned with the lands covered by the MPPF Act, and denuded thereafter of forest growth and cultivated with fresh replantation. Therefore, it seems inappropriate to transplant the meaning accorded to 'private forest' from the KLR Act to the Vesting Act. That wide concept cannot fit into the new legal source.

In *State of Kerala* v. *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.*, [1974] 1 SCR 671, this Court while upholding the constitutional validity of the Vesting Act has observed that the Forest Lands in the State of Kerala has attained a peculiar character owing to the geography and climate and the evidence available showed that the vast areas of these forests are still capable of supporting a large agricultural plantations. That much is clear from the following observations (at 683):

"It is therefcre, *manifest* that when the legislature stated in

A the preamble that the private forests are agricultural lands, they merely wanted to convey that they are lands which by and large could be prudently and profitably exploited for agricultural purposes."

There is thus a judicial recognition of the distinction between B private forest in Travancore-Cochin area in Kerala State and the private forest in Malabar district. This distinction by itself is sufficient to dispel the anomalies suggested by counsel for the appellant.

Look at the definition. Sub-clause (A) refers to gardens or nilams as defined in the KLR Act. 'Garden' means lands used principally for growing coconut trees, arecanut trees or pepper vines or any C two or more of the same. 'Nilam' means lands adapted for the cultivation of paddy. Sub-clause (B) deals with what may be called plantation crops, cultivation of which in the general sense would be cultivation of agricultural crops. Such agricultural crops are by name specified. Lands used for any purpose ancillary to such cultivation or for pre- D paration of the same for the market are also included thereunder. Next follows sub-clause (C). It first refers to lands which are principally cultivated with cashew or other fruit-bearing trees. It thus refers to only the fruit bearing trees. It next refers to 'lands which are principally cultivated with any other agricultural crop. If the legislature had intended to use the term 'agricultural crop' in a wide sense so as to E take within its fold all species of trees fruit-bearing or otherwise, it would be unnecessary to have the first limb denoting only the cashew or other fruit-bearing trees. It may be significant to note that the Legislature in each sub-clause (A) to (C) has used the words to identify the different categories of crops or trees. The words used in every sub-clause too have "associations, echoes and overtones". F While construing such words, judges must, as Felix Frankfurter, J., said "retain the associations, hear the echoes and capture the overtones" (supra p. 414). When so examined and construed, we do not discover any indication that the words in sub-clause (C) "any other agricultural crop" are quite wide enough to comprehend all species of trees including eucalyptus plantations.

G

It is said, indeed rightly, that in seeking legislative intention, judges not only listen to the voice of the legislature but also listen attentatively to what the legislature does not say. Let us compare the wordings in Section 3 with those of sub-clause (C). Under Section 3 sub-section (1), private forests vest in Government. Sub-clause (2) H however, excludes from such vesting lands within the ceiling limits

applicable to an owner if they are under his personal cultivation. Cultivation for this purpose "includes cultivation of trees or plants of any species". The explanation to sub-section (2) makes this aspect beyond doubt. The lands used for the cultivation of any kind of tree, fruit-bearing or yielding only timber or pulp are not vested under Section 3 sub-section (2). The legislature has thus excluded from vesting under Section 3 sub-section (2) the trees of every variety. But while providing for exclusion under sub-clause (C), the legislature could not have again thought of trees or plants of all kinds. It seems to have considered only fruit-bearing trees and not of other species. If the intention was otherwise, the sub-clause (C) would have been in a different language.

In our view as a matter of pure construction untrammelled by authority, the words used in the latter part of sub-clause (C) could not take within its fold all varieties of trees and it could exclude only fruit-bearing trees.

This is also the conclusion of the High Court not only in the impugned judgment under appeal but also in the subsequent two decisions; *Malayalam Plantation Limited and K.C. Moosa Haji* cases (supra).

In the result the appeal fails and is dismissed. In the circumstances of the case, however, we make no order as to costs.

T.N.A. Appeal dismissed.