A **MALANKARA RUBBER AND PRODUCE CO., & ORS. ETC. ETC.**

v.

STATE OF KERALA & ORS. ETC. ETC.

April 28, 1972

B [S. M. SIKRI, C.J., J. M. SHELAT, I. D. DUA, H. R. KHANNA AND G. K. MITTER, JJ.]

Kerala Land Reforms Act 1964 *as amended in* 1969 *and* 1971—*Validity of sub-section* (1*A*) *of s.* 96—*Public purpose in sub-section* (1*A*) *whether can be read down as public purpose connected with agrarian reform—Provisions relating to kudikidippukars whether covered by expres-*
C *sion 'agrarian reform'—Reduction of ceiling by amending Act without payment of compensation at market value—Validity—Act whether discriminatory is not granting exemption to pepper and areca plantations and cashewnut and cocoanut gardens—Whether offends Art.* 14 *of Constitution of India—Validity of provisions relating to Rubber plantations—Forests, dairy farms, lands under teak and eucalyptus trees whether exempted under Act.*

The Kerala Land Reforms Act 1 of 1964 was included in the Ninth Schedule and was protected by Art. 31-B of the Constitution. The Act
D was amended by the Kerala Land Reforms (Amendment) Act, 1969. The amending Act was not included in the Ninth Schedule and therefore it could claim protection only under Art. 31A. The validity of the amended Act was considered by the Kerala High Court in *Narayan Nair* v. *State*, (A.I.R. 1971 Kerala 98). The High Court, *inter alia*, held that the lands in question were 'estates' within the meaning of Art. 31A, and that the reference in s. 96 to reservation of acquired land for 'public purpose' must be read down to mean public purpose connected with agrarian
E reform, and so read the Act as a whole was protected by Art. 31A though portions failed for want of that protection. After this judgment the Kerala legislature by a further amendment added sub-s. (1A) to s. 96 and provided therein that "Notwithstanding anything contained in sub-s. (1) the Land Board may, if it considered that any land vested in the Government under section 86 and section 87 is required for any public purpose, reserve such land for such purpose". The present petitions
F challenging various provisions of the Act as amended were filed under Art. 32 of the Constitution.

HELD : (i) It was for the petitioners to establish that the lands held by them and mentioned in the petitions were not 'estates' so that they could be out of the purview of the Act. It was all the more necessary for them to do so in view of the categorical findings of the Full Bench of the Kerala High Court in paragraph 5 and 99 of the judgment in *Narayan Nair's* case. In the absence of material in the petitions to show
G *prima facie* that the lands of the petitioners were not estates it could not be held that the petitioners were not affected by the Kerala Land Reforms Act of 1964 as amended in 1969. In any event, so far as the provisions of the 1964 Act are concerned the same could not be challenged under Art. 31 by reason of its inclusion in the Ninth Schedule to the Constitution. [426E-F]

(ii) The reduction of the ceiling limit by the Amending Act of 1969
H does not attract the operation of the second proviso to Art. 31 A(1) [426-G]

The contention that reduction in the ceiling area fixed by the 1964 Act had to be compensated for by payment of market value of the difference between the ceiling areas fixed by the two Acts could not be

accepted inasmuch as the "ceiling limit applicable to him under any law for the time being in force in Art. 31 A" can refer only to the limit imposed by the law which fixes it and not any earlier law which is amended and repealed. [413G] A

It was open to the legislature to prescribe a ceiling for all landholders whether they are incorporated or not, and merely because the 1964 Act did not touch these incorporated bodies, no objection can be taken to their being brought within the fold by the Amending Act. [413H-414B]

(iii) Section 96(1A) is no doubt couched is too general and wide a language of including public purpose which would not be those falling within the expression 'agrarian reform'. The fact however that the legislature has once again used the same general language in spite of the interpretation given by the High Court in *Narayan Nair's* case need not lead us to strike down wholly the sub-section. In accordance with the well recognised canon of construction adopted in a number of cases decided by this Court the sub-section must be read down to mean only reservation of the land for such public purposes as would bring about agrarian reform inasmuch as any acquisition under Art. 31-A for any public purpose other than that falling under the expression "agrarian reform" cannot be considered as having the protection of that Article. [415-H-416D] C

Ranjit Singh v. *State of Punjab*, [1965] 1 S.C.R. 82, referred to. D

The provision for settlement of tenants of kudikidippukars in small holdings would be covered by agrarian reform or purposes ancillary thereto. The problem of the kudikidippukars has always been intimately connected with agricultural land and can legitimately come within "agrarian reform". Historically they were allowed to come on to the land because of the needs of an agricultural population and any scheme which envisages the improvement of their lot and grant of permanent rights to them would not transgress the limits of agrarian reform. This principle however only relates to lands in panchayat areas and kudikidappukars etc. on them. The provisions for purchase contained in s. 80A of the Act by kudikidappukaran of their kudikidappus for consideration less than the market value of the land when the same was below the ceiling area fixed under the Act and within the area of the personal cultivation of the landlord would be hit by the second proviso to Art. 31-A of the Constitution. [421H-422C] E F

Armuoha Konar v. *Sanku Muthammal*, A.I.R. 1950 Madras 487, *Saimva Umma* v. *Kunhammad*, I.L.R. [1957] Kerala 815 and *Mariam & Ors.* v. *Ouseph Xavier*, 1971 K.L.T. 707, referred to.

(iv) Lands which are interspersed between sites of commercial undertakings and house-sites in municipalities with lands surrounding them are not agricultural lands fit for acquisition under the Act. [427D] G

(v) The provisions of the Act withdrawing protection to pepper and area plantation could not be challenged under Art. 14 if the lands were estates within the meaning of Art. 31A(2)(a). [426H]

(vi) The Act was not discriminatory with regard to cashew and cocoanut gardens. [426H]

(vii) The withdrawal of exemption from lands contiguous to rubber plantations by the Amending Act of 1964 could not be challenged. [427A] H

However important it may be for the owner of the rubber plantation to have or hold lands in the immediate vicinity of the plantation for its

A expansion it cannot be said that the Rubber Act gave the Union Legislature any power to direct a rubber manufacturer to increase his production by bringing any additional land under rubber plants. All that s. 17 of the Act aims at is to make it obligatory on the owner of an estate to secure a licence if he wants to plant rubber on land which does not bear it or replant rubber in the portions of the land which are under it. Further although it was the function of the Rubber Board under s. 8 to take measures for the development of the rubber industry, it did not appear B that the expansion of a rubber plantation or guidance in that direction by the Board was contemplated under the section. [424 G—425 A]

Tika Ramji & Ors. etc. v. *The State of Uttar Pradesh and Ors.*, [1956] S.C.R. 393 and *State of Maharashtra* v. *Patilchand*, [1968] 3 S.C.R. 712, referred to.

(vii) Forest lands and jungles would be exempt from the operation of the Act. A jungle unless it is included within an estate consisting C *inter alia* of lands held for agricultural purposes cannot be acquired so as to have the protection of Art. 31A : if the holding or tenure in which the jungle lies consists only of jungle it cannot be so acquired. The same private forests are specially exempted from acquisition under the Act.] [426B-C]

(ix) Lands under eucalyptus or teak which are the result of agricultural operations normally would be agricultural lands and therefore would D be exempt under the provisions of the Act. However lands which are covered by eucalyptus or teak growing spontaneously as in a jungle or a forest would be outside the purview of acquisition [426 D]

ORIGINAL JURISDICTION : Writ Petitions Nos. 117, 132 to 134, 149, 167, 168, 209 and 516 of 1970.

E Under article 32 of the Constitution of India for enforcement of the Fundamental Rights.

M. C. Chagla, Joy Joseph B. Datta, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the petitioner (in W.P. No. 117 of 1970).

F *K. T. Harindranath, B. Datta, J. B. Dadachanji, O. C. Mathur* and *Ravinder Narain*, for the petitioner (in W.Ps. Nos. 132 and 133 of 1970).

M. C. Setalvad K. T. Harindranath, K. R. Nambiar, B. Datta, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the petitioner (in W.P. No. 134 of 1970).

G *M. Natesan, Fazee Mahmood, P. C. Chandi, A. T. M. Sampath* and *E. C. Agrawala*, for the petitioner (in W.P. No. 149 of 1970).

M. C. Chagla, B. Datta, J. B. Dadachanji, O. C Mathur and *Ravinder Narain*, for the petitioners (in W.P. No. 167 of 1970).

J. B. Dadachanji, O. C. Mathur and *Ravinder Narain* and *S. Swarup*, for the petitioner (in W.P. No. 168 of 1970).

H *A. V. V. Nair*, for the petitioner (in W.P. No. 516 of 1970).

K. T. Harindranath and *A. Sreedharan Nambiar*, for the petitioner (in W.P. No. 516 of 1970).

M. M. Abdul Khader, Advocate-General for the State of Kerala, *M. M. K. Nair* and *Varghese Kaliath*, for the respondent (State of Kerala) (in all the petitions). A

B. Sen and *R. N. Sachthey*, for respondent No. 2 (in W.P. No. 117 of 1970).

R. N. Sachthey, for respondent No. 2 (in W.Ps. Nos. 132 to 134 and 149 of 1970). B

K. N. Bhat and *K. L. Hathi*, for respondents Nos. 3 to 6 (in W.P. No. 133 of 1970).

The Judgment of the Court was delivered by

Mitter, J.—This is a group of nine writ petitions challenging the vires of the Kerala Land Refroms Act, 1963 (Act I of 1964) as amended by the Kerala Land Reforms (Amendment) Act, 1969 (Act 35 of 1969) with the object of preventing the State from acquiring lands in the possession of the petitioners in excess of the ceilings imposed thereunder. C

The details of the holdings of the petitioners are briefly as follows :— D

Writ Petition No. 117/1970

Petitioner company owns a block of land Ac. 2313-00 in extent out of which Ac. 1818-00 were planted with rubber trees, Ac. 30-00 with pepper, Ac. 5—50 with arecanut, Ac. 260—00 under cocoanut, Ac. 12—50 under paddy, Ac. 25—00 under nutmeg and fruit trees, the rest being jungle and waste. E

Writ Petition No. 132/70

Petitioner, a citizen, owns land in Kesargod taluk consisting of Ac. 21—00 under cocoanut, Ac. 6—00 paddy land and Ac. 34—00 dry land. He also leased out Ac. 91—00 of land to tenants. He owns jointly with his brother an arecanut garden of Ac. 5—50, cocoanut plantation of Ac. 49—00 and cashew plantation of Ac. 25—00. F

Writ Petition No. 133/1970

Petitioner owned lands in Kasargod taluk Ac. 9—94 in extent which has been usufructuarily mortgaged for a long time. G

Writ Petition No. 134/1970

Petitioner is a ryotwari pattadar holding pepper garden Ac. 30—00, arecanut Ac. 45—00, rubber estate Ac. 445—00 cashew plantation Ac. 25—00, cocoanut garden Ac. 44—00 and paddy lands of Ac. 2—00, all under personal cultivation. He has also leased out Ac. 673—00 of dry land to tenants. Besides the above he cultivates as lessee Ac. 56—00 of pepper garden and owns H

A with his brother Ac. 22—00 of pepper garden and arecanut garden etc. He also owns with other members of his family Ac. 19—00 of land set apart and used as dairy farm.

Writ Petition No. 137/1970

B Petitioner is a matadhipati in Kasargod taluk : extent of lands : Ac. 348—00 of paddy, Ac. 114—00 of garden land under cocoanut and arecanut, Ac. 69—00 leased out to tenants and Ac. 219—00 of dry land bearing cashew etc. are also leased out.

Writ Petition No. 149/1970

C The two petitioners owned Ac. 95—00 of land in District of Trichur. They also owned Ac. 58—00 in village Azhikode and Ac. 154—00 in village Kadappuram and all the lands are used for cocoanut plantation. It is stated in paragraph 2 of the petition that the petitioners have employed a large number of kudikiddappukarans either as watchmen or workers to look after the lands.

D Writ Petition No. 167/1970

Petitioner is a Private Limited Company and petitioner No. 2 is a director and shareholder. Petitioner owns rubber plantations of Ac. 22—00, cashew Ac. 65—00, pepper Ac. 16—00, arecanut Ac. 58—00, cocoanut Ac. 13—00, paddy land Ac. 5—50, cardamom Ac. 305—00, cocoanut Ac. 5—50, teak Ac. 36—00, eucaE lyptus Ac. 530—00.

Writ Petition No. 168/1970

Petitioner owns Ac. 3888—00 of which Ac. 3000—00 are private forest and Ac. 400—00 under rubber. There are also cocoanut gardens, arecanut gardens, teak and eucalyptus plantaF tions.

Writ Petition No. 207/1970

Petitioner owns lands in Kasargod taluk in excess of the ceiling area.

G Writ Petition No. 516/1970

The petitioner owns Ac. 2—69 of land out of which Ac. 1—21 is his residential compound containing several buildings He also owns Ac. 1—84 of paddy land in his direct possession besides a few tenants holding property under him. In the said land of Ac. 2—69 there are nine kudikidippukars (respondents 3 to 11) H to each of whom he will have to transfer 10 cents of land if s. 80-A of the Act is enforced. The buildings occupied by these respondents do not lie close to one another but are spread all over the property and parcelling out 10 cents of land to each of them

in terms of the provisions of the Act with valuable cocoanut trees will destroy the utility of the petitioner's property permanently. According to the petition the Act in so far as it makes provision for the compulsory transfer of lands under the petitioner's personal cultivation to kudikidippukar is not a law of acquisition within the meaning of Art. 31-A and as such is not entitled to pro ection under that Article. The petition however shows that the lands are situate in a panchayat area.

Most of the petitioners do not give any indication of their title to the lands which are the subject matter of the petitions. They all apprehend that the Act as it stands will affect their holdings. In the counter affidavit of the State there is a bald statement that the lands owned or held by the petitioners come within the meaning of the expression 'estate' as defined in Art. 31-A(2).

In Writ Petition 167 of 1970 there is an admission that the properties stand in the names of the petitioners as ryotwari pattadars.

In substance the complaint of the petitioners is that the ceilings fixed are arbitrary, that plantations of cashew, areca and pepper and even gardens of cocoanut cannot be acquired. The further complaint is that the Act is a composite Act intended to affect all the lands whether agricultural or not and to be used for purooses, some of which would not come under agrarian reform.

As regards the nature of the title to the lands i.e. whether they constitute estates or not within the meaning of Art. 31-A(2), it would be difficult to come to any conclusion with regard to lands of some of the petitioners. In the normal course of things we would expect petitioners who were faced with acquisition of their lands under statutes seemingly under the protection of Art. 31-A to state clearly why their holdings were not estates so as to be without the State's power of acquisition for the purpose of agrarian reform. This series of petitions was heard after the disposal of various applications under Art. 226 of the Constitution disposed of by a Full Bench of the Kerala High Court. It is worthy of note that in paragraph 5 of that judgment of the Chief Justice concurred in by another learned Judge, the opening sentence runs :

> "The lands held by the several petitioners are undisputably estates within the meaning of Art. 31-A of the Constitution."

The third learned Judge who delivered a separate judgment stated in paragraph 99 that

> "the lands involved in these petitions are estates within the meaning of Art. 31-A has been practically admitted by counsel appearing in these cases."

A We may also note that in *Purushothaman Nambudri* v. *The State of Kerala*(1) this Court came to the conclusion that Pandaravaka Verumpattomdars and Puravaka tenures which were originally situate within the erstwhile State of Cochin but came to form part of the Kerala State were estates within the meaning of the expression used in Art. 31-A(2)(a).

B Lands which are held or let for the purpose of agriculture—as undoubtedly most of these lands are, being covered with rubber, coffee etc., if held under a single tenure which could be said to be equivalent to an estate—would come under Art. 31-A(2)(iii), but waste lands, forest lands, land for pastures or sites of buildings and other structures occupied by cultivators of land etc. would only C be out of the purview of Art. 31-A(2) if they are held on independent tenures and are not parts of land held or let for purposes of agriculture or for purposes ancillary thereto. This is the result of the decision of this Court in *U.P. State* v. *Raja Anand*(2). In that case it was held that in the case of a gran of the nature of a jagir or inam its acquisition for the purpose of agrarian reform would be protected under Art. 31-A in spite of the fact that hund- D reds of square miles of forest land were comprised therein. The Court also held that forest lands, or waste lands etc. would not be deemed to be estates within cl. (iii)(2) of Art. 31-A unless the same were held or let for purposes anciliary to agriculture.

The impugned Acts are not the first enactments of the State to divert lands from the hands of large owners for distribution among E less favoured people. The density of population a substantial portion whereof is landless, coupled with the high rate of unemployment, have always been a headache to the State of Kerala. To relieve the latter evil at least partially, the State embarked upon legislation very soon after the Reorganisation of States in 1956. The Kerala Agrarian Relations Bill was introduced in the Kerala F Legislative Assembly in December 1957 and was passed by it in June 1969. Ultimately, after some modification, it received the assent of the President in January 1961 and was intituled the Kerala Agrarian Relations Act, 1960. Its object was to provide for acquisition of certain types of agricultural lands in the State beyond the specific maximum extents laid down in the statute. It was attacked on various grounds in this Court by two groups G of writ petitions filed in 1961. The Act was struck down by this Court in the second group of petitions reported in *Karimbil Kunhikoman* v. *State of Kerala*(3). The ground urged relevant for our present purpose was that the Act exempted plantations of tea, coffee, rubber and cardamom from certain ceiling provisions but no such exemption was provided for in the case of plantations of H areca and pepper and as such was violative of Art. 14. The basis of this decision was that the lands held by ryotwari pattadars

(1) [1962]—Supp. (1) S.C.R. 753 at 817. (2) [1967]—1 S.C.R. 362.
(3) [1962]—Supp. (1) S.C.R. 829.

which came to the State of Kerala by virtue of the States Reorganisation Act from the State of Madras were not estates within the meaning of Art. 31-A(2(a) of the Constitution and therefore the Act was not protected by Art. 31A in respect thereof. It may however be noted that on the same date on which the above judgment was rendered the same Bench held in *Purushottam Nambudiri* v. *The State of Kerala* (supra) that the validity of the Act could not be questioned by persons holding land on Puravaka tenure or Pandaravaka Veruvupattam tenure which satisfied the test as to what constituted an estate under Art. 31-A(2)(a) of the Constitution.

Chapter II of the 1960 Act provided for the carrying out of the purposes of the Act in two stages : in the first stage, the property of the land-owner was vested in the State and thereafter the tenant was given the right to acquire the property from the State. The scheme of Chapter III was to provide for a ceiling and any land in excess of the ceiling was to vest in the Government. The land so vested could be assigned to persons who did not possess any land or possessed land less than Ac. 5—00 of certain type.

It was held by this Court in *Karimbil Kunhikoman's* case that the main purpose of the Act was to do away with the intermediaries and to fix a ceiling and give the excess lands, if any, to the landless or those who had land much below the ceiling. The Court held that the lands held by a ryotwari pattadar who had come to the State of Kerala by virtue of the States Reorganisation Act from the State of Madras were not estates within the meaning of Art. 31-A(2)(a) of the Constitution and the Act was not protected under Art. 31-A(1) from attack under Arts. 14, 19 and 31 of the Constitution. With regard to the contention on behalf of the petitioners that there was no reason to exclude plantations of areca and pepper from exemption granted to other plantations like those of tea, coffee, rubber etc. the Court noted that :

> "The objective of land reform including the imposition of ceilings on land holdings is to remove all impediments which arise from the agrarian structure inherited from the past in order to increase agricultural production, and to create conditions for evolving as speedily as possible in agrarian economy with a high level of efficiency and productivity (see p. 178 of the Second Five Year Plan) . . Even So, it is recognised that some exemptions will have to be granted from the ceiling in order that production may not suffer."

The main factors to be taken into account to decide exemptions from the ceiling in the Second Five Year Plan at p. 196 as noted by this Court were:

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(1) integrated nature of operations especially where industrial and agricultural work are undertaken as a composite enterprise,

(2) specialised character of operations, and

(3) consideration from the aspect of agricultural production the need to ensure that efficiently managed farms which fulfil certain conditions are not broken up.

B

According to the judgment it was in pursuance of this that the Second Five Year Plan recommended exemptions from operation of ceilings of plantations like tea, coffee, and rubber, where they constitute reasonably compact areas; specialised farms engaged in cattle breeding, dairying, wool raising etc; sugarcans farms operated by sugar factories; and efficiently managed farms which consist of compact blocks on which heavy investment or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production. The same view was reiterated in Chapter XIV of the Third Five Year Plan dealing with Land Reform ceiling on agricultural holdings. Referring to Farm Bulletin No. 55 relating to pepper cultivation in India issued by the Farm Information Unit, Directorate of Extension, Ministry of Food and Agriculture, in September 1959 the Court observed that

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D

> "the most important pepper producing State in India was Kerala where the cultivation was on an organised plantation over fairly extensive areas."

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The Court also observed that the initial expenditure on laying out a pepper plantation could be recovered only after several years. A similar reference was made to Farm Bulletin No. 14 with regard to arecanut. On the material before the Court it took the view that fixation of ceiling on arecanut garden would hamper production detrimental to national economy. Although areca and pepper plantations were not as widespread as tea, coffee and rubber plantations, the Court found no reason for treating them differently from tea, coffee etc. Accordingly the Court was of opinion that the provisions relating to plantations were violative of Art. 14 of the Constitution. Addressing itself to the question whether the provisions were severable, it took the view that (see p. 861) :—

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G

> "the legislature did not intend that the provisions relating to acquisition by tenants and ceilings should apply to plantations as defined in the Act, so that they may have to be broken-up with consequent loss of production and detriment to national economy. It seems that the legislature could not have intended in order to

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carry out the purpose of the legislation to do so even after breaking-up all the plantations which existed in the State. It follows therefore that the legislature could not have passed the rest of the Act without the provisions relating to plantations. As these provisions affect the entire working out of Chapters II and III of the Act which are the main provisions thereof, it follows that these provisions relating to plantations cannot be severed from the Act and struck down only by themselves. Therefore, the whole Act must be struck down as violative of Art.14 of the Constitution so far as it applies to ryotwari lands in those areas of the State which were transferred to it from the State of Madras. . . ."

The Act was also held to be violative of Art.14 on account of the manner in which the ceiling had been fixed under s. 58. It was further held to be objectionable on the same ground because of the progressive cuts imposed on the purchase price under s. 52 and the market value under s. 64 in order to determine the compensation payable to land owners or intermediaries in one case and to persons from whom excess land was taken in another. In the result the Act was struck down in relation to its application to ryotwari lands which had come to the State of Kerala from the State of Madras.

However, the Legislature of Kerala passed a new Act known as the Kerala Land Reforms Act, 1963 which became Act 1 of 1964 and amended it further by Act 35 of 1969 which became effective from 1st July, 1970. Act 1 of 1964 was included in the Ninth Schedule of the Constitution receiving the protection of Art. 31-B. Such an immunity however did not attach to the Amending Act of 1969. The Act as amended was challenged by numerous writ petitions filed in the Kerala High Court. These were all decided by a judgment reported in *Narayan Nair* v. *State*(1). The conclusions of the High Court may be summarised as follows :—

1. The Act as a whole was a measure of agrarian reform. It had to be read as applicable to agricultural land alone by the doctrine of severable application. It got protection of Art. 31-A though portions failed for want of that protection and could be challenged under Arts. 14, 19 and 31 of the Constitution.

2. According to the learned Chief Justice of the High Court and one of his colleagues agrarian reform may be wide enough to include ameliorative measures for agriculturists unrelated to rights in the lands but in

(1) A.I.R. 1971 Kerala 98.

A the context of Art. 31-A it could only cover measures affecting rights in estates. According to the third learned Judge the scope of agrarian reform was much wider and the objective of such reform justified the enactment and protected it under Art. 31-A.

B The net result of the provisions relating to compensation payable under s.72-A was that it was not likely to exceed a third of the market value of the property and even this low compensation was not payable within a reasonable time. Even so the provisions under consideration being those for the acquisition by the State of rights in an estate for the purpose of agrarian reform C they were immune from attack under Arts. 14, 19 and 31.

In this judgment we shall only refer to such provisions of the Act as call for special attention for the disposal of the writ petitions while others are the subject matter of the group of appeals filed in this Court D from the said judgment of the High Court. Such of the petitioners as hold private forests and plantations of rubber, coffee, cardamom or cinnamon can have even now no grievance with regard to the tracts of land actually occupied by the said plantations etc. The definition of 'plantation' in the Act of 1964 suffered a change E by the Amendment Act of 1969. Under s.2(44) of the Act of 1964 'plantation' meant any land used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon (known as plantation crops) and included.—

F (a) land used for any purpose ancillary to the cultivation of plantation crops or for the preparation of the same for the market;

(b) land contiguous to, or in the vicinity of, or within the boundaries of, the areas cultivated with plantation crops, not exceeding 20 per cent of the area so G cultivated and reserved by the said person and fit for the expansion of such cultivation;

(c) agricultural lands interspersed within the boundaries of the area cultivated by the said person with plantation crops, not exceeding such extent as may be determined by the Land Board as necessary for the protection and efficient management of such cultiva- H tion. Although not within the definition of 'plantations' cashew estates having a contiguous extent of Ac. 10-00 or more, pure pepper gardens and pure arecanut gardens having a like extent of Ac. 5-00 or more were exempted

from the operation of the 1964 Act under s. 81. By the amendment in 1969 the said exemptions have been deleted from s.81. Cocoanut gardens were never made the subject matter of any exemption.

The main arguments in this series of writ petitions were advanced by Mr. Chagla in Writ Petitions Nos. 117 and 167 of 1970 and Mr. Setalvad in Writ Petition No. 134 of 1970. Counsel appearing for other writ petitioners adopted the arguments advanced by Messrs Chagla and Setalvad with some additions thereto.

Both Mr. Chagla and Mr. Setalvad pursued the same line of attack against the vires of the Act. Their submissions were as follows :—

(a) Chapter II of the Act was not aimed exclusively at agrarian reform and as such was not saved by Art. 31-A. In particular, even if the Act of 1964 got the protection of Art. 31-B by inclusion in the Ninth Schedule, the amendments in the 1969 Act are not similarly protected and can only be upheld if they are covered by Art. 31-A.

(b) By the deletion of cls. (f) and (g) of s. 81(1) by the amendment of 1969 and taking away the exemption given by the 1964 Act to cashew estates of Ac. 10-00 or more and pure pepper gardens and pure areca gardens of Ac. 5-00 or more, the enactment has become violative of Art. 14 as was pointed out in *Karimbil Kunhikoman's* case (supra) as should be struck down. It was further said that these plantations i.e. of cashew, pepper and areca, are of as much importance to the national economy as tea, coffee etc. which have received protection under the Act as plantations and the scheme of the Act whereby most of these plantations will be decimated to support landless or near landless persons cannot be upheld on the ground of agrarian reform. It was argued that the State of Kerala taxes all plantations alike under Act 17 of 1960. Further, Plantations Labour Act 69 of 1951 treats all plantations as industries. Sub-division of plantations into two groups one of which is exempted under the Act and the other is not, savours of discrimination and violates Art. 14.

(c) So far as rubber estates are concerned lands which are not at present under rubber but have been set apart for expansion of plantations or are likely to be taken up for expansion in the future cannot be acquired and diverted to other purposes inasmuch as the Rubber

A Act of 1947 has declared the rubber industry to be an industry of national importance. The Parliamentary legislation under Entry 52 of List I must have supremacy over State Legislation encroaching thereupon.

Mr. Natesan learned counsel appearing for the petitioner in B W.P. No. 149 of 1970 adopted the above arguments, and raised an additional plea for cocoanut gardens being regarded as plantations in the same way as tea, coffee etc. and urged that denial of protection to cocoanut gardens is discriminatory and violative of Art. 14 on the same grounds as impelled this Court to take this view in *Karimbil Kunhikoman's* (1) case.

C Mr. Harindranath who appeared in Writ Petitions 132 and 133 of 1970 adopted the arguments of Messrs Chagla and Setalvad and so far as writ petitions 132 and 133 were concerned, he did not press the point as to the invalidity of s.4-A which had been struck wown by the Kerala High Court in its judgment in *Narayanan Damodaran v. Narayana Pancicker* (2).

D (d) Mr. Chagla appearing in Writ Petition 167/1970 raised additional arguments with regard to the area of Ac. 530-00 planted with eucalyptus and Ac. 5-50 planted with teak. He contended that the timber from eucalyptus plantation was used in rayon pulp manufacture and as such the plants were grown for an industrial purpose.

E Mr. J. B. Dadachanji contended that in considering Central and State Legislation on the same subject the pith and substance of the legislation was to be looked into. He sumbitted that the aim of the Rubber Act was to secure raw material for the industry and the raw material was integrally connected with the end product and that if the latter was the subject matter of legislation F by the Union any legislation by the State which might adversely affect the production of the raw material would encroach upon the field of Union Legislature. He also submitted that plantation was a concept which was well recognised in law and the legal history with regard to plantation had to be taken note of. He drew our attention to a number of measures passed by the Central Legislature to control various industries, namely, the Tea Act of G 1953, the Rubber Act, 1947, The Cardamom Act, 1955, the Coffee Act of 1942 and the coir Act of 1963. The measures in all these Acts, according to counsel, though designed mainly to regulate the industry in the finished products would be adversely affected if the production of the raw material was in any way stalled or affected by the State Legislature.

H We may note the main provisions of Chapter III of the Act as enacted in 1964 and consider the effect of the amendments

[1] [1962] Supp. 1 S.C.R. 829. (2) 1971 Kerala Law Journal 461

introduced by the 1969 Act. The broad scheme of Chapter III of the Act of 1964 is epitomised by its heading "restriction on ownership and possession of land in excess of the ceiling area and disposal of excess lands". By s.81 various exemptions were granted. Those which concern us in this batch of writ petitions are sub-clauses (f), (g) and (n). Sub-cls. (f) and (g) relate to cashew estates, pure pepper gardens and pure arecanut gardens and (n) refers to uncultivable waste lands. This last class of lands is not agricultural land and acquisition thereof can only be justified under Art. 31-A if it is included in a tenure which can be equated with an 'estate'.

So far clauses (f) and (g) are concerned it was argued on behalf of the petitioners that the decision of this Court in *Karimbil Kunhikoman's* case (supra) would still hold and unless provision for exemption of plantations of pepper and arecanut were provided for the Act would suffer from the same defect as was pointed out in the judgment of this Court.

In the counter affidavit of the State it is asserted that pepper, arecanut, cashew and cocoanut are not cultivated in the same manner as tea, coffee, or rubber and these are essentially "homestead garden crops". The State does not admit that in Kerala pepper cultivation has reached the plantation stage or that arecanut is generally grown on a plantation scale and asserts that the cultivation of pepper, areca, cashew and cocoanut is in the main on holdings of less than Ac. 5-00. It appears to us that in giving exemption to pure pepper gardens and pure arecanut gardens—the word "pure" being used to show that the lands were being utilised substantially if not exclusively for training pepper vines and growing arecanut trees—the State recognised that these called for some protection but now the State asserts that pepper and areca are "essentially homestead garden crops" or that "these have not reached the plantation stage." After all the State is best qualified to consider are overall aspect of the matter in relation to its economy and on the materials before us we cannot hold that the State's viewpoint is not corect.

With regard to cocoanut gardens, it was argued by Mr. Natesan that there was no reason to make a discrimination thereof from plantations like tea, coffee etc. He referred us to the definition of 'plantation' in s.2(6) of the Kerala Plantations (Additional Tax) Act of 1960 under which plantation meant land used for growing one or more of the following, namely, cocoanut trees, arecanut trees, rubber plants, coffee plants, tea plants, cardamom plants and pepper vines, and submitted that the State of Kerala having placed cocoanut gardens in the definition of plantations in the above mentioned Act should not have excluded them from

A exemption under the Act of 1964 and 1969 and this dsicrimination shou'd have the same result as the discrimination against pepper and areca had in *Karimbil Kunhikoman's* case. He submitted that cocoanut and its products could be of considerable importance to the national economy if proper attention was directed towards it. He made extensive reference to a monograph B called the Cocoanut Palm by Menon and Pandalai to show that coir mats, rugs, mattings and carpets were being exported from India to various countries and to augment the production of coir it was necessary to stimulate the production of cocoanut not in small gardens but in plantations. He referred to the said monograph to show that mechanisation in cocoanut gardens was only C possible where the area was not small and such mechanisation would greatly increase efficiency and "any attention paid to the cocoanut palm will be adequately rewarded as has been the experience of cocoanut growers in all parts of the cocoanut growing countries". (see the monograph at p.357). He also referred to the fact that realising the importance of the coir industry Parliament passed an Act known as the Coir Industry Act 45 of 1953 and by D s. 2 thereof declared that it was expedient in the public interest that the Union should take under its control the coir indusry. According to Mr. Natesan coir industry could only thrive by encouragement of the growth of cocoanut in plantations.

E "Ceiling area" is covered by s.82. Such area with regard to unmarried persons and families fixed by the 1964 Act was cut down considerably by the Amending Act of 1969. It was argued both by Mr. Chagla and Mr. Setalvad that this was hit by the second proviso to Art. 31-A(1) inasmuch as the ceiling having once been fixed by the 1964 Act any diminution in the extent thereof would only be justified if compensation at a rate not less than the market F value thereof was provided which undoubtedly is not the case here. S.82 of the Act of 1964 was aimed at imposing ceiling area on families and adult unmarried persons and did not touch companies. The amending Act of 1969 makes a complete departure from the above provision and imposes a ceiling limit on all persons inclusive of companies or incorporated bodies. The contention G that reduction in the ceiling area fixed by the 1964 Act had to be compensated for by payment of market value of the difference between the ceiling areas fixed by the two Acts cannot be accepted inasmuch as the "ceiling limit applicable to him under any law for the time being in force in Art. 31-A" can refer only to the limit imposed by the law which fixes it and not any earlier law H which is amended or repealed.

Further there is no substance in the contention put forward on behalf of the companies because it was open to the legislature

to prescribe a ceiling for all landholders whether they were incorporated or not and merely because the 1964 Act did not touch these incorporated bodies, no objection can be taken to their being brought within the fold by the Amending Act. S. 83 as amended in the Act of 1969 imposes a ceiling area on incorporated bodies as well. S. 85 provides for the determination of lands in excess of the ceiling in certain cases and the surrender of all excess lands. S. 86 provides for the vesting of excess lands in Government which are to be surrendered under s. 85. It empowers the Land Board to call upon persons affected by the ceiling provisions to surrender the excess lands and in default of compliance to take possession thereof in manner prescribed. Upon surrender all lands are to vest in the Government free from all encumbrances. Under s. 96 as enacted in 1964 the Land Board was to reserve in each village lands necessary for public purposes and then assign on registry the remaining lands vested in the Government under ss. 86 and 87 as specified therein, namely (i) to assign the holdings in which there were kudikidappukars to these persons, as far as possible and (ii) out of the remaining area available for assignment to assign (a) 50% (later raised to 87½%) to landless agricultural labourers of which again one half was to be given to the landless agricultural labourers belonging to the Scheduled Castes, (b) 25% (later reduced to 12½%) to small holders and other landlords not entitled to resume any land and (c) the remaining 25% to cultivators who did not possess more than Ac. 5-00 of land in extent. Under sub-s. (2) of the section, the Land Board was not to assign more than Ac. 5-00 (later reduced to one acre) in extent of land to any person and where a person possessed any land only so much land as would make the extent thereof in his possession five acres was to be assigned. By the Amending Act of 1969 s. 91(1) was completely recast to provide as follows :—

> "(1) The Land Board shall assign on registry, subject to such conditions and restrictions as may be prescribed, the lands vested in the Government under section 86 or section 87, as specified below :
>
> (i) the lands in which there are kudikidappukars shall be assigned to such kudikidappukars;
>
> (ii) the remaining lands shall be assigned to—
>
> (a) landless agricultural labourers; and
>
> (b) small holders and other landlords who are not entitled to resume any land :
>
> Provided that eighty-seven and half per cent of the area of the lands referred to in clause (ii) available for assignment in a taluk shall be assigned to landless

A agricultural labourers of which one-half shall be assigned to landless agricultural labourers belonging to the Scheduled Caste or the Scheduled Tribes.

Explanation.—For the purposes of this section—

(b) a kudikidappukaran or the tenant of a kudiyi-
B ruppu shall be deemed to be a landless agricultural labourer if he does not possess any other land; and

(c) "Scheduled Castes" and "Scheduled Tribes" shall include converts to Christianity from such Castes and Tribes."

C As a result of the amendment assignment of land is to be made not only to kudikidappukars and landless agricultural labourers but also to tenants of a kudiyiruppu who were to be deemed landless agricultural labourers if they did not possess any other land. A new sub-s. (1A) was added reading :

"Notwithstanding anything contained in sub-s. (1)
D the Land Board may, if it considers that any land vested in the Government under section 86 or section 87 is required for any public purpose reserve such land for such purpose."

Sub-ss. (2) and (3) were modified by limiting the extent of assignment of land from Ac. 5-00 to Ac. 1-00 in all cases. Sub-
E s.(1A), it may be noted, was inserted in the Act of 1971 after the decision of the Full Bench of the Kerala High Court.

It was argued that although the Kerala High Court in *Narayan Nair's* case turned down the contention that under the wide language of s. 96(1) "the reservation for public purpose could be for any purpose whatever including one entirely unconnected
F with agriculture such as for example, an "industrial undertaking" on the ground that "having regard to the context in which it appears the reservation for public purposes under that sub-section can only be for public purposes relating to agriculture, such as the provisions for threshing floors or the construction of irrigation or drainage channels or the construction of houses for agri-
G cultural labourers", the new sub-s. (1A) shows that the State did not intend to be bound by the construction placed upon s. 96 by the High Court and made it clear that the section was not to be so read down thereby keeping in its hand the matter of reservation of land for public purpose of any kind not limited to agrarian reform.

H The agrement though forcefully put cannot be accepted. The object of both the 1964 Act and the present Act was to effect agrarian reform, which only can give to the statute the protection

of Art.31-A. This was made clear by the High Court in its judgment and in our view rightly, by reading down the said provision as to reservation for public purposes to reservation for purposes falling within the expression "agrarian reform". By enacting sub-s.(1A) despite the said construction by the High Court it appears that the intention of the State Legislature was to overrule legislatively the view expressed by the High Court and not to be bound by the interpretation placed by the High Court. By so doing the new sub-section has once again been made prone to the same constitutional challenge. We have no doubt that the sub-section is couched in too general and wide a language capable of including public purposes which would not be those falling within the expression 'agrarian reform'. There was therefore considerable force in the contention of counsel for the petitioners. The fact however that the Legislature has once again used the same general language in spite of the aforesaid interpretation given by the High Court need not lead us to strike down wholly the sub-section. In accordance with the well recognised canon of construction adopted in a number of cases decided by this Court we read the sub-section to mean only reservation of the land for such public purposes as would bring about agrarian reform inasmuch as any acquisition under Art. 31-A for any public purpose other then that falling under the expression "agrarian reform" cannot be considered as having the protection of that Article.

It was argued that the section suffers from other deficiencies. It was said that in order to secure protection of Art. 31-A it must be shown that the surplus lands were meant to be utilised only for agrarian reform which, broadly speaking, would include distribution of land among landless or near landless people to advance the cause of agriculture and other equitable distribution of land to diminish imbalance in society and prevent concentration of land in the hands of a few to raise the economic standards and better rural health and social conditions as was laid down in *Ranjit Singh* v. *State of Punjab*(1). Some examples cited in that case were provision for the assignment of lands to village panchayats for the use of the general community or for hospitals, schools, manure pits, tanning grounds, the settling of a body of agricultural artisans such as village carpenters, village blacksmiths etc.

A fair amount of argument was advanced to challenge the provisions in the Act relating to kudikidappukaran, kudikidippu and kudiyiruppu. It was said that settling landless people on land by itself would not constitute agrarian reform. It was also

(1) [1965] 1 S.C.R. 82.

A said that such landless people unless they are associated with agriculture would not help the cause or advance such reform; further a tenant of a kudikidappukar would not necessarily be an agricultural labourer and a kudiyirippu might be occupied by people unconnected with agricultural pursuits.

B The important statutory provisions may be noted in this connection. Under s.2(25) of the Act "kudikidappukaran" means a person who has neither a homestead nor any land exceeding in extent three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township in possession either as owner or as tenant on which he could erect a homestead and——

C

(a) who has been permitted with or without an obligation to pay rent by a person in lawful possession of any land to have the use and occupation of a portion of such land for the purpose of erecting a homestead; or

(b) who has been permitted by a person in lawful possession D of any land to occupy, with or without an obligation to pay rent, a hut belonging to such person and situate in the said land; and 'kudikidappu' means the land and the homestead or the hut so permitted to be erected or occupied together with the easements attached thereto.

Provided that a person who, on the 16th August, 1968, was E in occupation of any land and the homestead thereon, or in occupation of a hut belonging to any other person, and who continued to be in such occupation at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, shall be deemed to be in occupation of such land and homestead, or hut, as the case may be, with permission as required under this clause.

F Under s.2(26) "kudiyiruppu" means a holding or part of a holding consisting of the site of any residential building, the site or sites or other buildings appurtenant thereto, such other lands as are necessary for the convenient enjoyment of such residential building and easements attached thereto but does not include a kudikidappu. Under s.75(1) no kudikidappukaran was liable G to be evicted from his kudikidappu except on the grounds mentioned. Under s. 80-A kudikidappukaran was to have subject to the provisions of the section the right to purchase the kudikidappu occupied by him and lands adjoining thereto. Under sub-s.(3) the extent of the land which the kudikidappukaran was entitled to purchase under the section was to be three cents in a city H or major municipality or five cents in any other municipality or ten cents in a panchayat or township. Sections 80 B and 80-C laid down the procedure for the purchase of kudikidappukaran and the deposit of purchase price and the issue of a certificate of

purchase. Under s.95 of the Act before its amendment in 1971 the Land Board constituted under the Act had, ofter reserving in each village the lands necessary for public purposes, to assign *inter alia* the holdings in which there were kudikidappukars to such kudikidappukars. There was an Explanation to the section by which a kudikidappukaran or a tenant of a kudiyiruppu was to be deemed to be a landless agricultural labourer if he did not possess any other land. The section has been amended in 1971 but the main provisions thereof including the Explanation are also in the amended Act.

The objections raised by the petitioner in Writ Petition No. 516 of 1970 were sought to be met in the counter affidavit of the State as follows :—

> "(a) Kudikidappukars as a class were permitted by the land owners to reside in their land in return for their services as watchmen of the parambas and cocoanut gardens and as agricultural labourers. Kudikidappukars work for the owner of the property in which the kudikidappu is situated. The wages paid to the kudikidappukars by the owners of the land are generally lower than that paid to the labourers. Kudikidappukars work for the owners of the land at the time of plucking of cocoanuts and at times of conducting agricultural operations in the land. Besides this, the kudikidappukars work in the paddy lands of the oweners of land during the cultivation season. They are therefore agricultural labourers. In rural life many individuals, whether farmers or labourers or artisans, have to eke out their existence by doing work of more than one kind and a person may be both an artisan and a labourer, doing what work comes his way at a given time in the year. Thus they had all connections with the lands as persons living in the huts or homesteads and also labourers employed in the cultivation of lands.
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> (b) The granting of relief to kudikidappukars and conferment of benefits on them have always been treated as part of measures of agrarian legislation in Kerala. By Proclamation XVIII of 1122, the Government of Cochin recognised the need to prevent the eviction of kudikidappukars. In Travancore, permanent right of occupancy in respect of their kudikidappu was conferred on kudikidapukkars by the Travancore Prevention of Eviction Act XXII of 1124. Under this Act, the rights of kudikidappukars were made heritable.

A Further this Act gave every kudikidapukkaran a permanent right to occupy in his kudikidappu, subject to the provisions of the Act. Section 7 of the Act provides specific grounds in which kudikidapukkars might be evicted. The Malabar Tenancy (Amendment) Act, 1951 gave protection to holders 'ulkudies' or 'kudikiB dappus' by granting them right of permanent occupation subject to payment of fair rent.

(c) Protection of kudikidappukars always formed an important part of legislation which has the objective of tenancy reform. The Kerala Agrarian Relations Act (4 of 1961) took within its compass certain provisions C intended for the protection of kudikidappukars as an integral part of a scheme of agrarian reform embodied in the Act. Under the provisions of that Act, as well as under the Principal Act kudikidappukarans were entitled to 90% of the compensation in case of acquisition of land occupied by his homestead or hut.

D (d) The report of the Agrarian Problems Enquiry Committee, 1949 (published by the Government of Cochin) the report of the Land Policy Committee. 1950 (published by the Government of Travancore-Cochin) and the report of the Special Officer for the investigation of Land Tenures on the recommendations E of the Malabar Tenancy Committee, May 1947 (published by the Madras Government) recommended measures for the protection of kudikidappukars as part and parcel of tenancy legislations. The report of the Land Policy Committee considered the question of conferment of purchase rights on kudikidappukars. The F report also went to show that the kudikidappukars were originally inducted as agricultural labourers and watchmen.

(e) The Kerala Land Reforms Act, 1963 (Act 1 of 1964) took within its compass certain provisions intended for the protection of the kudikidappukars as an G integral part of the scheme of agrarian reforms embodied in the Act. The provisions in the Kerala Act 35 of 1969 were in continuation and enlargement of the rights conferred on kudikidappukars from time to time as an integral part of the agrarian reforms and those provisions were intended to make them the owners of H huts and homesteads and the lands adjacent thereto. Kudikidappukars, landless or near landless labourers were at the very base of rural economy. They were connected with land as agricultural labourers. They

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> have interest in the land as persons living and working on them. Statutory provisions dealing with their rights would, therefore, be a part of any comprehensive law of agrarian reforms."

So far as kudikidappukarans or those who are deemed to be such under the Explanation to s. 96 on estates are concerned, the direction for compulsory purchase in their favour cannot be questioned under Art. 31-A. Substantially these provisions were contained in the Act of 1964 which received protection under Art. 31-B by inclusion in the Ninth Schedule. The land reforms legislations in most of the States in India have conferred such rights on tenants and it is too late in the day to challenge such legislation on the ground of hardship or of inconvenience. The affidavit affirmed on behalf of the State goes to show that kudikidappukars have for very many years past been residing in the lands in return for services which may be seasonal and they were by and large agricultural labourers. The rights conferred on them in respect of kudikidappu cannot therefore be said to have transgressed a scheme of agrarian reform. With regard to the Explanation to s. 96 that a kudikidappukaran or a tenant of a kudikidappukaran would be deemed to be a landless agricultural labourer if he did not possess any other land is beyond challenge inasmuch as it was contained in the Act of 1964 which had the protection of Art. 31-B read with the Ninth Schedule to the Constitution.

B C D

The problem posed by the presence of hordes of kudikidapukarans and the tenants of kudiyiruppus and the pressure on the land thus caused have engaged the attention of the legislature for many years past as mentioned in the counter affidavit of the State, and it is also apparent from a number of decisions of the Madras and Kerala High Courts. We may mention the case of *Armugha Konar* v. *Sanku Muthammal*(1) where a tenant claimed to be entitled to purchase the landlord's right in kudiyiruppu under s. 33 of the Malabar Tenancy Act (Act XIV of 1930). A similar question fell for consideration in *Saimva Umma* v. *Kunhammad*(2). In that case it was held that a vacant site not attached to a building will not become kudiyirappu. The construction of any kind of a building on such a site will not also make it a kudiyiruppa. Reference was made to the observations of the Kerala High Court in *Mariam & others* v. *Ouseph Xavier*(3) wherein referring to the provisions for kudikidappukaran etc. it was said :

E F G

> "The legislative perspective of this provision (s 2(25)) will throw light on its scope and sweep. In a community, essentially agrarian, with large chunks of the

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(1) A.I.R. 1960 Madras 487. (2) I.L.R. 1957 Kerala 815.
(3) 1971 Kerala Law Times 707 at 710-11.

A population engaged in agricultural labour and accommodated by, or with the leave and licence of, the owners in tiny tenements dotting the farms and the fields where or near where they work, feudal fashion, a certain special equilibrium is maintained. But the pressure of population and consequent increase in the number of shacks or kudis on the one hand and the tempting rise in the price of produce and of lands appetising the landlords to vacate the occupiers of homesteads who sometimes and on the sly, may help themselves to the income from the land on the other gave rise to a social phenomenon of many evictions of these homeless in the world..... The play of these social forces explains the legislative insulation of kudikidappus, punctuated by further ameliorative changes in the law calculated to plug the loopholes exploited by the land owners and brought to light by judicial decisions....

When the legislature conferred immunity from eviction on occupiers of huts brought in by the permission of the land owner—by and large, they were landless families working on the farms—the tendency to evict them through court became noticeable for reasons I have already stated. Since a permission to occupy was an essential ingredient of a kudikappu, by definition, this Court held that where consent was not extant, in the sense of its having been withdrawn or not renewed, the right of kudikidappu also ceased to exist. Landlords could easily stultify the kudikidappu protection clause by unilaterally withdrawing permission to remain on the homestead and the flood-gates of eviction would be thrown open. The legislature naturally reacted to this situation by providing, in the shape of an explanation, that any person in occupation of a kudikidappu on 11th April 1957 and continued on the hutment would be deemed to be there with permission required as under the clause. The obvious intendment of this Explanation (Explanation to s. 2(25)) was to protect those who had come in by permission of the owner but who were sought to be removed by withdrawal of permission by the land owner. Once a person came to occupy a hut by permission he became a kudikidappukaran and acquired the right to fixity."

The above is sufficient to show that the problem of kudikidappukaran has always been intimately connected with agricultural land and can legitimately come within "agrarian reform". Historically they were allowed to come on to the land because of the

needs of an agricultural population and any scheme which envisages the improvement of their lot and grant of permanent rights to them would not transgress the limits of agrarian reform. A

It may however be noted that our judgment only relates to lands in panchayat areas and kudikidappukars etc. on them. We are not dealing with a similar problem in respect of lands in municipal areas. Although no specific argument was advanced on the point it appears to us that the provisions for purchase contained in s. 80-A of the Act by kudikidappukaran of their kudikidappus for consideration less than the market value of the land when the same was below the ceiling area fixed under the Act and within the area in the personal cultivation of the landlord would be hit by the second proviso to Art. 31-A of the Constitution. B C

Argument was also raised that s. 83 which forbade every person from owning or holding or possessing land under mortgage in the aggregate in excess of the ceiling area was bad inasmuch as the provision made no distinction between agricultural land and other lands. This was sought to be fortified by reference to s. 81 some sub-clause of which, it was argued, could possibly have no bearing on agricultural land. For instance, sub-cl. (k) of s. 81 (1) only exempts "land belonging to or held by an industrial or commercial undertaking and set apart for use for similar purpose." That all lands belonging to or held by such an undertaking did not qualify for exemption is made clear by the proviso to the clause under which any land not actually used for the purpose for which it had been set apart could only be considered for exemption if the setting apart has been made within a time fixed by the District Collector by notice to the undertaking concerned. Similarly cl. (m) it was said, aimed at giving a very restricted exemption even with regard to lands appertenant to dwelling houses, tanks, wells or other structures inasmuch as such lands could only be exempted if found necessary for convenient enjoyment of the house sites, structures etc. The adjudication of the question as to whether any land was to be exempted or not was left to be decided by the Land Board constituted under s. 100 by virtue of the provision in s. 101(4) and the decision of the Land Board was to be final. It was said that even within municipal areas lands appertaining to dwelling houses or belonging to or held by industrial or commercial undertakings which could serve no agricultural purposes were within the fold of the Act. The intention of the legislature, it was urged, was clear in that the legislation was not meant to make any distinction between agricultural and non-agricultural land but was a composite Act which affected every bit and parcel of land in the State of Kerala. Such a comprehensive legislation, it was contended, could not possibly be upheld under Art. 31-A. D E F G H

A No doubt in its counter affidavit the State has made a case that "in Kerala within cities and municipalities there are tracts of cultivated lands" and merely because the Act was applied to the lands situate within cities and municipalities it did not detract from its essential character as a measure of agrarian reform. It was also submitted in the said affidavit :

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> "Lands are agricultural lands unless they are put to non-agricultural uses like the construction of buildings which alters the physical character of the land, rendering it unfit for agricultural purposes. Neither the principal Act nor the Amendment Act concerns themselves with commerce, trade or industries or buildings."

C We find ourselves unable to accept the above submission. Whether lands are agricultural or not may depend also on their physical properties and situation. There may be rocky lands, sandy lands, hillsites, unculturable lands, forests etc. which by their very nature are not agricultural lands. So also lands comprised within a municipality specially in towns and cities cannot be styled agricul-
D tural lands because agricultural operations can be carried on there. Further the statements in the counter affidavit do not follow the provisions of sub-ss. (k) to (m) of s. 81(1). To take an example, if an industrial or commercial undertaking owns several blocks of buildings situate close to each other with some land interspersed between them, it cannot be said that these lands
E are agricultural lands and can only qualify for exemption only if they are notified to the District Collector and set apart for the industrial or commercial purpose of the undertaking. Similarly, a person owning a house with lands surrounding it covered by a garden or an orchard within a municipality should not be left to the mercy of the Land Board to decide the extent of land necessary for the convenient enjoyment of the house and have the rest
F taken away from him. However laudable may be the object of the legislature in attempting to settle landless persons on land obtained by the Land Reforms Act, the taking away of such lands in the circumstances mentioned above either from industrial or commercial undertakings or from the owner of house sites within a municipality for distribution among the landless cannot be said
G to effect agrarian reform. The Act in so far as it purports to acquire these lands cannot be upheld.

Mr. Chagla contended that even if the Court were to hold that the acquisition of lands under the Act as amended in 1969 was for agrarian reform, certain provisions of it ought to be struck down. In particular he contended that so far as rubber
H estates were concerned, lands contiguous thereto or set apart for development of rubber estates could not be acquired. He drew our attention to certain provisions of the Rubber Act of 1947 under s. 2 of which there was a declaration that it was expedient

in the public interest that the Union should take under its control the rubber industry which was said to be in terms of item 52 of List I of the Seventh Schedule to the Constitution. Under s. 17 of this Act no one can plant or replant rubber except under and in accordance with the conditions of a special licence issued by the Rubber Board and a licence issued under this section was to specify the area in which the rubber may be planted or replanted and the period for which the licence was to be valid. He also drew our attention to clauses (c), (e) and (h) of the definitions in s.3 of the Rubber Act. Under cl. (c) 'estate' means any area administered as one unit which contains land planted with rubber plants. Under cl. (e) 'manufacturer' means any person engaged in the manufacture of any article in the making of which rubber is used and under cl. (h) 'rubber' includes not only crude rubber, that is, that prepared from the leaves, bark or latex of any rubber plant but include scrap rubber, sheet rubber etc. leaving out rubber contained in any manufactured article. Under s. 8(1) it was to be the duty of the Rubber Board to permit such measures as was thought fit for the development of rubber industry. All this according to Mr. Chagla went to show that the rubber industry including rubber plantation was put under the special charge of the Union Legislature and it was not competent to any State to enact any provision which would affect the supremacy of the Union legislation or run counter thereto. It was said that it was only the Rubber Board which could sanction the planting of additional areas with rubber but if the State of Kerala was to take away lands which were not actually planted with rubber plants but set apart for development of the plantation in future, there would be usurpation of the powers of the Union Legislature. It was also argued that the activities of a company engaged in the manufacture of rubber would not be purely agricultural but that there was an industrial side to it and any taking away of lands from the rubber manufacturer would affect his industry and so contravened the provisions of the Rubber Act.

We find ourselves unable to accept this broad proposition. However important it may be for the owner of a rubber plantation to have or held lands in the immediate vicinity of the plantation for its expansion it cannot be said that the Rubber Act gave the Union Legislature any power to direct a rubber manufacturer to increase his production by bringing any additional land under rubber plants. All that s. 17 of the Act aims at is to make it obligatory on the owner of an estate to secure a licence if he wants to plant rubber on land which does not bear it or replant rubber plants. All that s. 17 of the Act aims at is to make it though it was the function of the Rubber Board under s. 8 to take measures for the development of the rubber industry, it does not

A appear that the expansion of a rubber plantation or guidance in that direction by the Board was contemplated under the said section.

The learned Advocate-General of Kerala submitted that by the Rubber Act all that the Union Legislature sought to achieve B was to control the industry *i.e.* the manufacture of rubber and did not mean to control the production of raw material *i.e.* the latex etc. from which rubber was produced. In support of his contention he drew our attention to a judgment of this Court in *Ch. Tika Ramji & others etc. The State of Uttar Pradesh and others* (1) where this Court upheld the validity of the legislation of the U.P. C State regulating the supply and purchase of sugarcane. It was there contended *inter alia* that the State of U.P. had no power to enact the impugned Act as it was with respect to the subject of industries the control of which by the Union was declared by law to be expedient in the public interest within the meaning of Entry 52 in List I. Referring to the various legislations in force D the Court observed (see at p. 420):

> "The Provincial Legislatures as well as the Central Legislature would be competent to enact such pieces of legislation and no question of legislative competence would arise. It also follows as a necessary corollary that, even though sugar industry was a controlled in- E dustry, none of these Acts enacted by the Centre was in exercise of its jurisdiction under Entry 52 of List I. Industry in the wide sense of the term would be capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) F the distribution of the products which would be comprised in Entry 27 of List II. The process of manufacture or production would be comprised in Entry 24 of List II except where the industry was a 'controlled industry when it would fall within Entry 52 of List I and the products of the industry would also be com- G prised in Entry 27 of List II except where they were the products of the controlled industries when they would fall within Entry 33 of List III. This being the position, it cannot be said that the legislation which was enacted by the Centre in regard to sugar and sugarcane could fall within Entry 52 of List I."

H Reference was also made to the decision in *State of Maharashtra v. Patilchand*(2) in this connection and it was submitted that

(1) [1956] S.C.R. 393.

(2) [1968] 3 S.C.R. 712.

taking away surplus lands which were not under cultivation of rubber did not entrench upon the field of operation of the Rubber Act of 1947.

Mr. Chagla also contended, apart from his submission on pepper and areca gardens which have already been noted, that a jungle was not held for agricultural purposes and could not be acquired under Art. 31-A(2). A jungle unless it is included within an estate consisting *inter alia* of lands held for agricultural purposes cannot be acquired so as to have the protection of Art. 31-A : if the holding or tenure in which the jungle lies consists only of jungle it cannot be so acquired. The same would hold good of dairy farms, pastures etc.

Lands under eucalyptus or teak which are the result of agricultural operations normally would be agricultural lands. They would certainly not be forests but the statements in the petitions seem to suggest that operaions were carried hereon for the express purpose of growing these plants and trees. However, lands which are covered by eucalyptus or teak growing spontaneously as in a jungle or a forest, would be outside the purview of acquisition.

Our conclusions therefore are as follows :—

1. It was for the petitioners to establish that the lands held by them and mentioned in the petitions were not 'estates' so that they could be out of the purview of the Act. It was all the more necessary for them to do so in view of the categorical findings of the Full Bench of the Kerala High Court in paragraphs 5 and 99 of the judgment in *Narayanan Nair's* case (supra). In the absence of material in the petitions to show *prima facie* that the lands of the petitioners were not estates we cannot hold that the petitioners are not affected by the Kerala Land Reforms Act of 1964 as amended in 1969. In any event, so far as the provisions of the 1964 Act are concerned the same could not be challenged under Art. 31 by reason of its inclusion in the Ninth Schedule to the Constitution.

2. The reduction of the ceiling limit by the Amending Act of 1969 does not attract the operation of the second proviso to Art. 31-A(1).

3. The provisions of the Act withdrawing protection to pepper and areca plantations cannot be challenged under Art. 14 if the lands were estates within the meaning of Art. 31-A(2)(a).

4. The act is not discriminatory with regard to cashew and cocoanut gardens.

A

5. The withdrawal of exemption from lands contiguous to rubber plantations by the Amending Act of 1969 cannot be challenged.

6. Forest lands and jungles would be exempt from the operation of the Act only as already indicated. Private forests are
B however specially exempted from acquisition under the Act.

7. Dairy farms if they are parts of estates are not exempt.

8. Lands planted with eucalyptus or teak are agricultural lands and so are not exempt.

9. The provision for settlement of tenants of kudiyiruppus or
C kidikidippukars in small holdings would be covered by agrarian reform or purposes anciliary thereto.

10. Lands which are interspersed between sites of commercial undertakings and house sites in municipalities with lands surrounding them are not agricultural lands fit for acquisition under the Act.

D

In the result, we hold that save that the provisions of the Act making discrimination against pepper and areca plantations are bad only if the lands are not estates and that the lands interspersed between sites of commercial undertakings and house sites in municipalities with lands surrounding them cannot be acquired
E as the same are not agricultural lands. Except as above the provisions of the Kerala Land Reforms Act are beyond challenge. The parties will pay and bear their own costs.

G.C.