{REPORTABLE}

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5163/2012

N K RAJENDRA MOHAN .....APPELLANT

Vs.

THIRVAMADI RUBBER CO. LTD & ORS .....RESPONDENTS

J U D G M E N T

Amitava Roy,J.

The appellant, one of the plaintiffs in the suit instituted before Munsif Court (II), Kozhikode along with others against the respondent No. 1 herein, seeking eviction of the latter from the land involved and damages for the use and occupation thereof, in his relentless pursuit for redress is before this penultimate institutional forum, having successively failed at all the intermediate tiers. The procrastinated tussle spanning over three decades eventually seeks a quietus at this end.

2. We have heard Mr. A. S. Nambiar, Senior Advocate for the appellant and Mr. A. M. Singhvi, Senior Advocate for the respondent No.1. Incidentally, the co-plaintiffs have been arrayed as other respondents in the instant appeal.

3. The salient facts, which make up the edifice of the lingering contentious dissent, however lie in a short compass. As adverted to hereinabove, the appellant alongwith others did institute a suit, being OS 569/1982 before Munsif Court (II), Kozhikode against the Respondent No. 1 praying for its eviction from the suit land and realization of arrear rent, damages etc, the pleaded case being that the suit land had belonged to their Tarwad and was a private forest. On 21.6.1918, an area of 963.75 acres was leased out to one Mr. Campbell Hunt for a period of thirty six years vide Exh. A 1 whereunder, the lessee was liable to pay a sum of Rs. 693.75 per annum towards annual rent. Eventually, through intervening transactions, the respondent-company stood inducted to the suit land with the same status. According to the plaintiffs, they were the joint owners of the property and asserted that neither the original lessee Mr. Campbell Hunt nor his successors did derive

fixity of tenure or right of ownership either under the lease deed or the provisions of the Kerala Land Reforms Act 1964 (hereinafter referred to as Act 1963), brought into force on and from 01.04.1964 or any other tenancy laws prior thereto. The plaintiffs averred, that at the time of handing over the property to Mr. Campbell Hunt in the year 1948, the same was a private forest under the ownership and possession of their Tarwad. The lease which was for a period of 36 years with effect from 01.04.1918 lapsed with efflux of time and the respondent-company had no right to retain the possession thereof. The Plaintiffs admitted that it (respondent-company) had raised a rubber estate on the suit land. It was alleged that the respondent-company also did not pay the lease rent as fixed i.e. Rs. 693.75 per annum for the year 1979, 1980 and thereafter. That in inspite of several requests, it did not vacate the land by removing its buildings etc. therefrom for which a notice was addressed on 10.11.1980 to the respondent-company to vacate and deliver possession of the suit land was stated. According to the plaintiffs, in terms of the notice, the tenancy stood extinguished from 21.6.1981. However in response to the notice, the respondent-company claimed in its reply, that it had acquired the

right of fixity of tenure on the suit land. In this factual premise, the plaintiffs instituted the suit, for the above reliefs claiming inter alia arrear lease rent at the rate of Rs. 693.75 per annum from 01.04.1979 to 20.06.1981 and damages at the same rate for the period subsequent thereto for use and occupation thereof.

4. The respondent-company in its written statement, resisted the suit. While admitting, the lease deed Exh. A 1, in favour of Mr. Campbell Hunt in the year 1918, it elaborated that out of total land leased, the cultivable area was 925 acres and that the lease was granted with the right to cultivate coffee, tea, pepper, cinchona, rubber etc. and any other produce as the lessee would consider proper, by cleaning the area. The respondent-company claimed fixity of tenure under the Malabar Tenancy Act 1929 (for short hereinafter referred to as Act 1929) as well as the Act 1963, and pleaded for the dismissal of the suit.

5. The learned Trial Court in the face of the respondent-company's claim of fixity of tenure, referred the issue to the Land Tribunal, Kasargod which sustained this plea and consequently the suit was dismissed. The appeal preferred by the

plaintiffs met the same fate. Being still aggrieved, they (appellants) did take the challenge before the High Court of Kerala. By the judgment impugned, the High Court has sustained the adjudication of the Courts below.

6. As the decisions impugned would reveal, the High Court negated the plaintiffs' assertion that the suit land at the time of the initiation of the lease in the year 1918 was a private forest and thus stood excluded from the applicability of Act 1963 in terms of Section 3 (1) (vii) thereof, as it was granted to Mr. Campbell Hunt as per Exh. A 1 to cultivate rubber, cinchona, coffee and any such crop as the lessee construed it to be proper. It was inter alia observed that the lease deed clearly disclosed that the land was Puramboke and not assessed to any revenue and that the lessee was permitted to cut and remove trees, shrubs etc. to prepare the same for the purpose of cultivating rubber, tea, coffee etc. The High Court was also of the view that if the conveyed land was a forest, there would have been some stipulation in the lease deed to the effect. That the lease rent was fixed at the rate of the cultivable area was also noted. The High Court did record as well, that the land

was assessed to Government revenue on the basis of cultivations done which too belied the appellants' claim of the same being a private forest. Reference was also made to the relevant survey plan (Exh. A 2), appended to the lease deed, to endorse the conclusion against the existence of private forest on the land at the time of its demise on lease. It ruled further, that even if the land was a private forest at the time of the initial lease, cultivation of various other crops thereon, after the execution of the lease deed took it out of the ambit of Section 3 (1) (vii) of Act 1963.

7. Vis-a-vis the next contention, namely, that the suit land contained a plantation on the date of enforcement of Act 1963 and thus stood exempted from the ambit thereof, the High Court entered a finding, that the statutory provision i.e. Section 3 (1) (viii), applied to cases where a plantation did exist at the time of the grant of lease and not on the date of commencement of the statute. Relying on the decision of a Full Bench of the Kerala High Court in Rt., Rev. Dr. Jerome Fernandes Vs B. B. Rubber Estate Ltd, 1972 KLT 613 dilating on the same issue, the High Court thus concluded that the respondent-company was entitled to fixity of tenure. In

these premise, the aspect of its entitlement to the value of improvements made by it on the land was left undecided. As a corollary, the appeal was dismissed.

8. Mr. Nambiar, the learned Senior Counsel for the appellant has assiduously argued, that having regard to the covenants of the lease deed and the attendant facts and circumstances, the transaction was well within the purview of Section 3 (1) (vii) and/or 3 (1) (viii) of the Act 1963 and was thus exempted from the applicability thereof and consequently the respondent-company was not entitled to any fixity of tenure as per the statute. Referring to the objects and reasons of the enactment, the learned senior counsel insisted that the applicability of Section 3 (1) (vii) and 3 (1) (viii) thereof has to be essentially tested on the touchstone of the date of the enforcement of the legislation. As admittedly, there was a standing rubber plantation on the suit land on that date i.e. 01.04.1964, the respondent-company unmistakably had no sustainable right of fixity of tenure and thus the deductions to the contrary as recorded in the impugned decisions are patently non est in law. Mr. Nambiar urged that this issue having been authoritatively settled by a

Constitution Bench of this Court in Karimbil Kunhikoman vs State of Kerala (1962) Suppl. 1 SCR 829, the decision to the contrary as recorded by the Full Bench of the Kerala High Court in Rt., Rev. Jerome Fernandes (supra) is on the face of it *per incuriam* and consequently the impugned verdict founded thereon is unsustainable in law and on facts. The learned senior counsel pleaded, that as the Act 1963, enacted after the Kerala Agrarian Relations Act 1961, is one for implementing land reforms in the State, no interpretation with regard to the applicability thereof ought to be assigned that would ensue in fragmentation of plantations existing on the date of the enforceability thereof and thus, the plantations standing on the suit land, did come within the exemption contemplated under Section 3 (1) (viii). No exposition of Section 3 of Act 1963, incompatible with the objects and reasons thereof being permissible in law, the finding of the non-applicability thereof to the suit land is patently erroneous, he urged. The learned senior counsel, to endorse this contention, amongst others, placed reliance also on a subsequent decision of the Full Bench of the Kerala High Court in Jacob Philip vs State Bank of Travancore, 1972 KLT 914. Contending that the Act 1963 is prospective in

nature, Mr. Nambiar emphasised that the text of Section 3 (1) (viii) thereof, clearly expressed the legislative intent of including tenancies in respect of plantation exceeding 30 acres existing on the date of enforcement thereof. In addition, the learned senior counsel asserted, that with the expiry of the initial period of lease in the year 1954, there was no formal renewal thereof and in terms of Section 116 of the Transfer of Property Act 1882, the respondent continued in possession of the land by holding over, signifying at the best a lease, on year to year basis and in that view of the matter, in the face of admitted plantation on the suit land, the respondent-company was drawn within the coils of Section 3 (1) (viii) of the Act 1963 and thus was disentitled to claim fixity of tenure. In the alternative, Mr. Nambiar insisted that the respondent-company is not a tenant in respect of the land after 1954 and thus in any case, is not entitled to the protection of fixity of tenure under Section 13 (1) of the Act 1963. The learned senior counsel placed on reliance as well on the decision of this Court in Malankara Rubber and Produce Co. & Ors vs The State of Kerala & Ors. (1972) 2 SCC 492.

9. A contrario sensu, Mr. Singhvi, the learned senior counsel for the respondent-company, maintained that as neither Section 3 (1) (vii) nor the Section 3 (1) (viii) is attracted in the present factual setting, the concurrent findings to this effect are assuredly unassailable and thus the instant challenge deserves to be dismissed in limine. The learned senior counsel insistently urged that as the pleaded case of the appellant in the plaint was limited to the existence of private forest at the time of lease and that there was no whisper whatsoever of any plantation thereon, the plea based on Section 3 (1) (viii) of Act 1963 ought not have been entertained by High Court and by no means should be taken cognizance of by this Court. Mr. Singhvi contended that in the face of the concession on behalf of the appellant that neither at the initiation of the lease nor at the enforcement of Act 1963 there did exist a reserve forest or the land, Section 3 (1) (vii) was decisively inapplicable. The plea founded of Section 3 (1) (viii) relatable to plantation, in absence of any pleading to the effect ought to have been summarily rejected, he asserted. This is more so as this plea was not raised either before the Trial Court or the Land Tribunal, or the First Appellate Court. The decision of the Kerala High Court in

Jerome Fernandes (supra) being a determination clearly answering the issue vis-a-vis Section 3 (1) (viii) of the Act 1963 and as the ruling of this Court in Karimbil Kunhikoman (supra) pertains to a distinctively different sphere of scrutiny, the contention that the former is *per incuriam* the latter is wholly misplaced, he maintained. According to Mr. Singhvi, the decision in Karimbil Kunhikoman (supra) dwelt upon the aspect of discrimination stemming from classification of plantations under the Kerala Agrarian Relations Act 1961 and is wholly unrelated to the challenge in Jerome Fernandes (supra). The learned senior counsel urged as well, that the decision of this court in Malankara Rubber and Produce Co. and Ors supra being on a different issue does not render the adjudication in Jerome Fernandes (supra) *per incuriam*. Mr. Singhvi pleaded that having regard to the doctrine of stare decisis, the verdict in Jerome Fernandes (supra) having held the field, over the years, the same was rightly applied by the courts below. He urged that not only the materials on record, do unequivocally demonstrate that neither the land was a private forest nor did contain any plantation on the date of the lease and thus the same is beyond the scope of Section 3 (vii) and 3 (viii) of Act 1963 as has been consistently held by the Trial

Court and the higher forums, and thus this Court in the exercise of its jurisdiction under Article 136 of Constitution of India would not, even otherwise, lightly dislodge the same. Mr. Singhvi maintained, that the factum of existence of private forest and of plantation for the applicability of Section 3 (1) (vii) and 3 (1) (viii) of the Act 1963 would be assuredly relevant as on the date of the lease and not on one of the enforcement of the enactment and judged by that benchmark, the suit land is beyond the said exemption clauses, entitling the respondent-company to the right of fixity of tenure under the legislation.

10. In responding to the plea raised on behalf of the appellant in reply that in any view of the matter, the provisions of the Act 1963 pertaining to ceiling on the area of land that can be held by the respondent-company would apply, Mr. Singhvi maintained that the same at the first place having been raised for the first time in this Court, it ought to be readily dismissed. Further, as there is a plantation on the suit land on the date of enforcement of the Act, it is exempted from ceiling as per the Section 81 (1) (e) thereof. In any case, it being an issue between State Government and the

respondent-company, the appellant has no *locus standi* to even refer thereto, the learned senior counsel urged. Mr. Singhvi did argue as well, that in the face of Section 72 of the enactment, there was no equity in favour of the appellant, he having been reduced to a non-entity by the statutory investiture of the landlord's right in the Government. The following decisions amongst others too were referred to.

N. V. Srinivasa Murthy (2005) 10 SCC 566, K. V. Pathumma vs Taluk Land Board and Ors (1997) 4 SCC 114, State of Kerala vs K Sarojini Amma and Ors (2003) 8 SCC 526.

11. We have extended our thoughtful consideration to the recorded materials and the competing arguments. Whereas the appellant seeks the ouster of the respondent-company from the land involved contending that it is not entitled to the protection of fixity of tenure under the Act 1963, the latter pleads to the contrary by taking refuge of the enactment, asserting that the exemption clauses contained in Section 3 (1) (viii) and 3 (1) (viii) are inapplicable to it. A correct exposition of Section 3 (1) (vii) and 3 (1) (viii) of Act 1963 would, as a corollary, be of definitive significance.

Necessarily thus, the instant adjudicative exercise, ought to be preceded by an adequate reference to the relevant legal provisions.

12. As the flow of events attest, the enactment earliest in point of time qua the present lis, is the Malabar Tenancy Act 1929. As the preamble of this statute would reveal, it was one to define, declare, alter and amend, the law relating to landlord and tenant in the Gudalur Taluk of the Nilgiris District. Section 2 thereof, which exempted lands from its application being of relevance is quoted hereunder.

" 2. Exception:

Nothing in this Act shall apply to-

(1) Lands transferred by a landlord for filling timber or for planting tea, coffee, rubber, cinchona or <u>any other special crop prescribed by a rule made by the State Government</u> or the erection of any building for the purpose of or, ancillary to the cultivation of such crop, or the preparation of the same for the market or land let only for fugitive cultivation:

Provided that no rule under this clause shall affect any land in respect of which any tenant has a right of fixity of tenure under this Act, so long as such right subsists.

(2) any transaction relating only to the usufruct of trees.
(3) any building owned by a landlord including a house, shop or warehouse, and the site thereof, together with the garden or

land appurtenant thereto but not including a hut belonging to a landlord, in any ulkudi.

Apart from defining inter alia the expressions "landlord" and "tenant", the legislation did confer right of fixity of tenure on certain classes of tenants as set out under Section 21.

13. A plain reading of Section 2 would authenticate exclusion of the applicability of the Act 1929 to lands transferred by the landlord for felling timber or for planting tea, coffee, rubber, cinchona or any other special crop prescribed by a rule made by the State Government or the erection of a building for the purpose of or ancillary to the cultivation of such crop, or the preparation of the same for the market or land let only for fugitive cultivation. The proviso of Section 2 (1) clarifies that no rule thereunder would affect any land, in respect of which any tenant did have right of fixity of tenure so long as such right did subsist. Sub-Sections (2) and (3) being not of relevance are not being adverted to.

14. The legislative backdrop of the Act 1963 portrays, that it was amongst others preceded by the Kerala Agrarian Relations Act 1960 (hereinafter referred to as Act 1960) which sought to

introduce comprehensive land reforms in the State of Kerala and did receive the assent of the President on 21.1.1961. The statement of objects and reasons of the enactment i.e. Act 1963 disclose that this Court had declared unconstitutional the Act 1960 in its application to ryotwari lands of Hosdurg and Kasargod Taluks, whereafter eventually the Act 1963 was enacted to provide an uniform legislation in the State, by keeping in view the broad objectives of land reforms as laid down by the Planning Commission and the basic objectives of the Act 1960. As the scheme of Act 1963 would dominantly demonstrate, the statutory endeavour has been to strike a fair and equitable balance of various interests to be impacted thereby so as to facilitate smooth implementation thereof, without casting undue financial burden on the State. Conferment of fixity of tenure on the tenants as well as the limited right of resumption to the landlords are also the noticeable features of the enactment with the emphasis that the right of resumption would not be available against tenants, who were entitled to fixity of tenure immediately prior to 21.1.1961 under the law then in force, unless such tenants had in their possession land in excess of the ceiling area.

The statement of objects and reasons do refer to as well, the provisions pertaining to determination of fair rent at uniform rates and purchase of the rights of the landowners and intermediaries of a holding by the cultivating tenant. The Act 1963 as contemplated, did provide for imposition of a ceiling on holdings and constitution of Land Tribunal and Land Board for the administration of the provisions, with the remedy of appeal/revision from the decisions of this fora. The legislation received the assent of the President on 31.12.1963 and some of the provisions thereof which concern the present pursuit were enforced with effect from 1.4.1964.

Sections 2 (44) and 2(47) which define "plantation" and "private forest" are extracted hereunder:

" *"**Plantation**" means <u>any land used by a person principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon</u> (hereinafter in this clause referred to as 'plantation crops') and includes –*

(a) land used by the said person 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 area cultivated with plantation crops, not exceeding twenty per cent of the area so 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 [or the Taluk Land Board, as the case may be] as necessary for the protection and efficient management of such cultivation.*

Explanation- Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and play grounds shall be deemed to be lands used for the purposes of sub-clauses (a);

*"**private forest**" means a forest which is not owned by the Government, but does not include-*

(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
(iv) other areas which are cultivated with pepper, arecanut, coconut, cashew or other fruit-bearing trees or are cultivated with any other agricultural crop;"

15. Chapter II of the enactment deals with provisions regarding tenancies. Section 3 exempts the transactions, as referred to therein subject to the stipulations enjoined, from the application thereof. Section 3 (1) (vii) and 3 (1) (viii) being the focal point of scrutiny demand extraction as well;

3 (vii) leases of private forests:

[Provided that nothing in clauses (i) to (vii) shall apply in the cases of persons who were entitled to fixity of tenure immediately before the 21st January, 1961,

under any law then in force or persons claiming under such persons; or]

3(viii) tenancies in respect of plantations exceeding thirty acres in extent;

Provided that the provisions of this Chapter, other than Sections 53 to shall apply to tenancies in respect of agricultural lands which are treated as plantations under sub-clause © of clause (44) of Section 2;

15.1 Section 13 of the enactment mandates that notwithstanding anything contrary to the law, custom, usage or contract or any decree or order of Court, every tenant shall have fixity of tenure in respect of his holding and no land from the holding shall be resumed except as provided in Sections 14 to 22. Section 72 proclaims that on a date to be notified by the Government in the official gazette, all right, title and interest of the landowners and intermediaries in respect of holdings held by cultivating tenants (including holders of Kudiyiruppus and holders of Karaimas) entitled to fixity of tenure under Section 13 and in respect of which certificates of purchase under sub-Section (2) Section 59 have not been issued, shall, subject to the provisions of that Section, be vested in the Government free from all encumbrances created by the landowners and intermediaries and subsisting thereon on the

said date. Whereas Section 72 B confers cultivating tenants' right to assignments, Section 81 as well do cull out exemptions from the applicability of Chapter III captioned "Restriction on ownership and possession of land in excess of ceiling area and disposal of excess lands."

16. Bar of jurisdiction of Civil Courts to settle, decide or deal with any question or to determine any matter which is required by or under the enactment to be decided, dealt with or determined by the Land Tribunal or Board Authority or the Land Board or Taluk Land Board or the Government or an Officer of the Government as contained under Section 125 and the repeal amongst others of the Malabar Tenancy Act 1929 and Kerala Agrarian Relations Act 1960 vide Section 132 deserve a passing reference to complete the fringe survey of the legislative scheme of Act 1963.

17. The lease deed Exh. A 1, the fundamental instrument having a decisive bearing on the course of the present determination next commands attention. It was executed on 21.6.1918 between the Tarwad of the plaintiffs and Mr. Campbell Hunt, featuring an area of land measuring 963-$^{1/2}$ acres of which 925 acres was fit for

cultivation and not subject to any Government revenue. Thereby, the lessor accorded a lease of the said 963-1/2 acres of land to the lessee i.e. Mr. Campbell Hunt for a period of 36 years on and from 01.4.1918 on payment of premium of Rs. 693.12 anna calculated at the rate of 12 annas per acre of the cultivable portion, that is 925 acres. The lease deed evidenced, that pursuant to the payment of premium of Rs. 693.12 annas, the lessor, his heirs, successors, legal representatives and assigns did lease unto the lessee, his heirs, successors, legal representatives and assigns, the property for a period of 36 years. The land involved was delineated in the appended plan along with 25 hills, water channels, poyils lands etc. totaling 963– ½ acres of which 925 acres were alone fit for cultivation for the purpose of plantation and cultivation with a right to cultivate coffee, tea, pepper, cinchona, rubber and any other produce which the lessee would think fit and proper to cultivate, with full right of access to the premises, with all ways, watercourse, privileges, easements, advantages and other appurtenances therewith and to cut, till and remove all forests, jungles and trees for the purpose of planting and cultivating without any let or interruption from the lessor.

18. The lease deed, reading between the lines, would demonstrate irrefutably, that at the time of execution thereof, neither a private forest nor a plantation as defined in Section 2 (44)/2 (47) of the Act 1963 did exist on the demised land. The lease which was for a period of 36 years w.e.f. 01.4.1918, encompassed land admeasuring $963^{-1/2}$ acres which included hills, water channels, poyils lands etc so much so that only 925 acres were comprehended to be fit for cultivation and the lessee was left at liberty to raise coffee, tea, pepper, cinchona, rubber or any other produce at the latter's discretion. It is apparent as well on the face of the lease deed, that there were forests, jungles and trees on the land which the lessee was authorized to clear for the purpose of plantation and cultivation, to be decided by him. There was thus no restriction or regulation on the nature of cultivation/plantation to be resorted to by the lessee on the cultivable portion of the land leased out. To reiterate, on the date of creation of the lease there was neither any plantation nor a private forest on the leasehold land within the meaning of Section 2 (44) and 2 (47) of Act 1963 respectively.

19. Significantly, the above notwithstanding, in the plaint, the plaintiffs while acknowledging the rubber plantation on the suit land raised by the respondent-company, the assignee/transferee, in possession in place of the original lessee, did assert that from prior to the initiation of the lease in the year 1918, there was a private forest on the suit land. They contended, to reiterate, that as the lease period had expired after 36 years, the company had no right to retain the possession of the suit land and claim fixity of tenure. Noticeably however, the plaintiffs complained of non-payment of lease rent at the rate of 693.75 paisa per annum by the respondent-company from the year 1979 for which a decree for arrear rent was also prayed for. Axiomatically thus, the plaintiffs acknowledged and approved the possession of the leasehold land by the respondent-company even after the expiry of the period of lease in 1954 and did receive the annual rent at the same rate, even on their admission up to the year 1978. In course of the arguments before this Court, however, the learned senior counsel for the appellant has not pursued the plea based on private forest and has confined the assailment qua "plantation" as per clause 3 (1) (viii) of Act 1963. The parties are also not at issue that on the date of the

lease, no plantation as defined in Section 2 (44) did exist on the demised land. The plaint, to reiterate does not refer to such plantation on the date of the lease, as well. In that view of the matter, the appellant's plea based on Section 3 (1) (viii) lacks foundation in the plaint and in the strict sense of the term as the debate has its genesis in a suit, ought not to have been entertained by the High Court. This is more so, as the records substantiate that the contention based on "plantation" was raised for the first time before that forum.

20. The remonstrance based on cessation of the lease on the expiry of 36 years also does not commend for acceptance in the face of unreserved acceptance of lease rent at the earlier rate of Rs. 693.75 paisa admittedly till the year 1978. The assertion that in any view of the matter, as the respondent-company in terms of Section 116 of the Transfer of Property Act 1882, ought to be construed to be the lessee, holding over the demised land on payment of rent and that the lease stood renewed from year to year and that accordingly on the date of the institution of the suit there was a subsisting tenancy in respect of plantation exceeding 30

acres cannot be sustained as well. Though admittedly, at the institution of the suit, the rubber plantation of the respondent-company did exist on the land, in the teeth of Section 116 of the Transfer of Property Act 1882, which comprehends renewal of the expired lease, year after year or month after month it is essentially qua the purpose for which the property had been originally leased which in the instant case is traceable to the year 1918. As the lease deed dated 21.6.1918 proclaims in no uncertain terms that the transaction evidenced thereby was by no means a tenancy in respect of plantation, the same with efflux of time, in our estimate cannot transfigure into the same merely because a plantation has been raised on the leasehold land in between by the lessee who had been left at its discretion to grow the same. In absence of a conscious intervention of the parties to the lease, either to convert it into one for tenancy in respect of such plantation ad idem or to extend it thereto, an automatic transformation of the lease not for plantation cannot stand converted into one for plantation. As a transaction of this kind involving immovable property is essentially governed by the terms and conditions concurred upon by the parties thereto, no unilateral

alteration or modification thereof, unless agreed to by both, in categorical terms, ought to be permitted to be pleaded or enforced by anyone of them to the disadvantage of the other. Neither the lease deed contains any stipulation sanctioning such unilateral alteration of the stipulations contained therein nor do the materials on record testify such consensus based modification of the lease covenants. A plain perusal of the Section 116 of the Transfer of Property Act 1882 also does endorse this deduction.

21. This conclusion of ours is founded amongst others on the enunciations of the Federal Court in Kai Khushroo Bezonjee Capadia Vs Bai Jerbai Hirjibhoy Warden & Anr 1949-50 FCR 262 and referred to and relied upon by this Court in Bhawanji Lakhamshi & Ors Vs Himatlal Jamnadas Dani and Ors (1972) 1 SCC 388 and State of UP Vs Jahoor Ahmad and Anr AIR 1973 SC 2520, dwelling on the question of the nature of the tenancy created under Section 116 of the Transfer of Property Act 1882.

21.1 Further, this cavil having been expressed before this Court for the first time, we are not inclined to sustain the same, on that count as well.

22. In the factual conspectus unfolded hereinabove, the issue of the applicability of Act 1963 to the lease of private forests and tenancies in respect of plantations exceeding 30 acres not in existence as on 21.6.1918, but standing/present on the date of its enforcement deserves to be addressed. This indeed is of decisive bearing and would assuredly involve a dialectical interpretation of Section 3 (1) (vii) and 3 (1) (viii) of Act 1963 to discern the true purport thereof as legislatively intended. In view of the abandonment of the plea based on private forests, in course of the arguments, as noted hereinabove, it is inessential thus too dilate on the scope of Section 3 (vii).

22.1 As alluded hereinbefore, tenancies in respect of plantations exceeding 30 acres in extent have been exempted from the purview of the Act vide Section 3 (1) (viii). That on the date of the execution of the lease deed i.e. 21.6.1918 there was no plantation on the leasehold land, is an admitted fact. Such plantation as defined in Section 2 (44) of the Act 1963 however did exist on the date on which the enactment was brought into force i.e. 1.4.1964. To clinch the issue in favour of the appellant, reliance has been placed on the

ruling of the Constitution Bench of this Court, in Karimbil Kunhikoman (supra) purportedly buttressed by the Malankara Rubber and Produce Company and Ors etc. supra, Per contra, the verdict of a Full Bench of the Kerala High Court in Jerome Fernandes supra has been pressed into service on behalf of the respondent-company.

23. In Karimbil Kunhikoman (supra), a Constitution Bench of this Court was seized with the impugnment of the vires of the Kerala Agrarian Relations Act 1960 (for short Act 1960) on the following counts to be violative of Articles 14, 19 and 31 of the Constitution of India.

1. *The Bill which became the Act had lapsed before it was assented to by the President and therefore the assent of the President to a lapsed bill was of no avail to turn it into law.*
2. *The Act is a piece of colourable legislation as it has made certain deductions from the compensation payable to landholders under Chap. II and to others who held excess land under Chap. III and this amounts to acquisition of money by the State which it is not competent to do under the power conferred on it in Lists II and III of the Seventh Schedule to the Constitution.*
3. *The properties of the petitioners who are ryotwari pattadars are not estates within the meaning of Art. 31 A of the Constitution and therefore the Act is not protected under that Article so far as it applies to lands of ryotwari pattadars like the petitioners.*

4. *The Act exempts plantation of tea, coffee, rubber and cardamom from certain provisions thereof, but no such exemption has been granted to plantations of areca and pepper, and this is clearly discriminatory and is violative of Art. 14.*
5. *The manner in which ceiling is fixed under the Act results in discrimination and is therefore violative of Art 14.*
6. *The compensation which is payable under Chapters II and III of the Act has been reduced by progressive cuts as the amount of compensation increases and this amounts to discrimination between persons similarly situate and is therefore violative of Art. 14.*

24. While repelling the impeachment of the statute qua the grounds enumerated in serial No. 1 and 2 as above, it was ruled that the lands held by the ryotwari pattadars as referred to therein and which had come to the State of Kerala by virtue of the States Re-organisation Act 1956 from the State of Madras were not estates within the meaning of Article 31 A (2) (a) of the Constitution and therefore the legislation under attack was not protected from the assailment under Articles 14, 19 and 31. Vis-a-vis the discord that the Act 1960 did effect a discrimination between areca and pepper plantations on one hand and certain other plantations on the other by not including these (areca and pepper plantations) in the definition of "plantation" provided by Section 2 (39) thereof, by

totally disregarding the existing large number of areca and pepper plantations as comparable to tea and coffee and rubber plantations, this court sustained the same and being of the view that as the provisions relating to plantation contained in the assailed legislation were inseverable, adjudged the legislation as a whole to be unconstitutional. In concluding thus, this Court did explore the reasons impelling the legislature to treat these two categories of plantations as class different and observed that the objective of land reforms, including imposition of ceiling on land holdings as manifested by the statute under scrutiny, was to remove impediments arising from the agrarian structure inherited from the past, in order to increase agricultural production and create conditions, for evolving as speedily as possible an agrarian economy with a high level of efficiency and productivity as was underlined in the Second Five Year Plan. That thereunder, it was recognized that some exemptions would have to be granted from the ceiling, to ensure that the productions may not suffer, was taken note of as well. While referring to the Third Five Year Plan, dealing with land reforms and ceiling on agricultural holdings, this Court on an audit of the materials available, concluded that there was no appreciable

difference between the economics of tea, coffee and rubber plantations and areca and pepper plantations so as to justify the differential treatment. The report of the concerned committee, that if areca gardens were brought under the ceiling, it would hamper production and would be against national economy and that it had recommended to the Planning Commission, the Central Government and the State Government that at par with tea, coffee and rubber plantations, orchards, areca nut gardens should also be similarly exempted from ceiling and that the result of the application of the ceiling and other provisions of Act 1960 would occasion breakup of the plantations with a likely result in fall in production, was also noted. While concluding that the same considerations as extended to tea, coffee and rubber plantations, were available as well to areca and pepper plantations, the omission of the respondent State, to set out adequate justification for exclusion of pepper and areca nut from the benefit of exemption granted to tea, coffee and rubber plantation was recorded. Adverting to the object and purpose of the Act 1960, and the basis on which exemption was granted thereunder to the plantations as defined thereby, it was held that there was no reason for making any

distinction between tea, coffee and rubber plantations on one hand and areca and pepper plantations on the other, in the facts of the case. The contentions listed in serial No. 5 and 6 though, beyond the framework of the instant inquisition, suffice it to state, were answered in the affirmative in favour of the appellant.

25. This pronouncement, though had taken note of the recommendations of the Planning Commission against disintegration of plantations as a measure of land reforms in the State and to promote national economy, it was in the context of evaluation of the plea of discrimination between the existing plantations vying for equal treatment for exemption. The issue which seeks adjudication in the present appeal did not fall for scrutiny in this decision and therefore, we are of the comprehension that it does not advance the case of the appellant.

26. The assertion on behalf of the appellant that the decision in Karimbil Kunhikoman (supra) does essentially enjoin, that under all circumstances, tenancies in respect of plantation as contemplated in Section 3 (1) (viii), as existing on the date of the commencement of the Act, would stand exempted from the purview thereof,

irrespective of whether or not such the plantation did exist on the date of the lease, cannot be countenanced. Not only this pronouncement is not an authority on this proposition, having regard to the scope of the analysis undertaken therein as well as issues addressed, it would be wholly inferential to draw this conclusion only on the basis of the recommendations of the Planning Commission against disintegration of plantations as a measure of economic policy. Such a presumptive approach according to us would not a safe and expedient guide for the interpretation required.

27. The constitutionality of the Kerala Land Reforms Act 1963 (also referred to as Act 1963) as amended (inter alia by Act 1964) was questioned in Malankara Rubber and Produce Co. & Ors (supra) on the grounds that (i) Chapter III thereof was not aimed exclusively at agrarian reform and was thus not saved by Article 31 A. (ii), it was violative of Article 14 due to deletion of clause (a) and (g) of Section 81 (1) caused by the amendment of Act 1969 thereby withdrawing the exemption extended to cashew estates, pepper gardens and areca gardens of the areas as mentioned therein.(iii)

lands which were not then under rubber plantation but had been set apart for expansion of existing plantations or were likely to be taken up therefor in future could not be acquired and diverted to other purposes as the rubber industry had been declared to be one of national importance vide Rubber Act of 1947.

28. Following an exhaustive reference to the decision in Karimbil Kunhikoman (supra), it was held that the petitioners had failed to demonstrate that their lands were not estates and thus were beyond the purview of the Kerala Land Reforms Act 1964 as amended in 1969. It was declared as well, that the provisions of the 1964 Act were immune from challenge under Article 31 A by reason of its inclusion in the Ninth Schedule of the Constitution. It was held that the reduction of ceiling limit by the amending Act 1969 did not attract the operation of the second proviso to Article 31 A(1). It was propounded that the provisions of the Act 1963 withdrawing protection to pepper and areca plantations could not be challenged under Article 14, if the lands were estates within the meaning of Article 31 A (2) (a). That forest and jungles would be exempted from the operation of the Act was underlined as well. It would be patent

from the contextual text of this decision that the questions posed and the contours of the judicial survey were distinctively different from those in hand and thus is of no avail to the appellant.

29. A Full Bench of the Kerala High Court in Jerome Fernandes (supra) however encountered the same issue qua Section 3 (1) (viii) of Act 1963 in an identical fact situation. The appellant therein, had filed a suit for recovery of possession of the scheduled property with arrears of rent and mesne profits. The suit land had been leased out to the predecessor in interest of the respondent-company therein, which eventually under an assignment stepped into the position of the original lessee. As on the expiry of the lease, the respondent-company did not surrender possession of the land, the suit was instituted. The respondent-company pleaded fixity of tenure in respect of the holding under the Act 1963. The lower forums concurrently held that the respondent-company was entitled to the benefit of fixity of tenure under Section 13 of Act 1963 as the transaction of lease did not attract the exemptions under Chapter II of the statute. The query that fell for scrutiny, was whether the transaction of lease did entitle the

respondent-company to the fixity of tenure. That it was a tenant in terms of Section 2 (57) of the Act 1963 was admittedly beyond doubt. Referring to Section 3 (1) of the statute, which listed the categories of transactions exempted from the purview thereof, the High Court while noticing that the leasehold property had been described in the lease deed as consisting of garden land, and wet lands, negated the appellant's contention based on clause (iii). Qua clause (viii), the High Court examined the definition of the word "plantation" provided in Section 2 (44) and entered a finding, that undoubtedly on the date of the execution of the lease deed, the land covered thereby had not been put to any use as expressly mentioned in the definition. Responding to the plea of the appellant, that the determinative factor for the applicability of clause (viii) was the character of the land or the use thereof at the commencement of the Act, the High Court on a comparison of the text amongst others of clause (v) and (ix) of Section 3 (1) and Section 2 of the Malabar Tenancy Act 1929 dealing with exemption and Section 3 (1) (viii), of the Kerala Agrarian Relations Act 1960 enunciated that the legislature did consciously, as a matter of policy, in relation to the grant of exemption for plantations, restrict

the scope thereof. The High Court in categorical terms referred to the language used in Section 3 (1) (viii) and the definition of the expression "plantation" in both the statutes, and was of the view that the object behind the constricted sweep of "plantation", was to confine the scope of exemption from the applicability of the Act. The High Court entertained the notion, that the legislature had construed it to be unfair and improper to deny the benefit of the fixity of tenure to a lessee who might have taken the lease of extensive parambos or waste lands and in course of time by hard toil had developed those into plantations. That under the provisions of the Malabar Tenancy Act 1929, such a tenant was entitled to fixity of tenure, unless the lease had been one granted specifically for the purpose of raising plantation as mentioned therein was also emphasised. The High Court thus rejected the appellant's plea based on Section 3 (1) (viii) and held that in view of the clues furnished by the statutory history preceding the legislation involved, and also the express language used in Section 3 (1), the lease transaction was beyond the ambit thereof. It held as well that if the interpretation of Section 3 (1) (viii) as sought to be projected by the appellant was accepted, it would divest the tenants of their

pre-existing right of fixity under the Malabar Tenancy Act 1929 was underlined as well.

30. Another Full Bench of the Kerala High Court, comprising amongst others of Hon'ble Mr. Justice T. C. Raghavan C.J., as the common member, in Jacob Philip (supra) also had the occasion to examine the aspect of the fixity of tenure under Section 13 of the Act 1963. A lease of land, covered by Section 3 (1) (i) was involved in a suit instituted against the appellant therein. It was contended on behalf of the appellant, that this exemption provision ought to be applied qua the point of time, when the lease was granted and not at the commencement of the Act or of any subsequent date, as on the date of the execution of the lease neither the Government nor any corporation owned or controlled by the Government was in the picture. The attention of the High Court was drawn amongst others to the decision in Jerome Fernandes (supra). On an analysis of the contents of the Section 3 (1) (i), the High Court negatived this plea. Drawing sustenance from the text of the Explanations appended to the clause, it returned a finding that the requirements under Section 3 (1) (i) would be satisfied, even if the leased land happened

to belong to or become vested in the Government or a corporation under or controlled by the Government etc, subsequent to the grant of the lease.

31. The rendering in Jacob Philip (supra) turns on its own facts and by no means, in our opinion neuters the determination made in Jerome Fernandes (supra). Jacob Philip (supra) proceeded on an interpretation of Section 3 (1) (i) of Act 1963 which is distinctively different in language and content from Section 3 (1) (viii) and no analogy, therefore, can be drawn to make it applicable to the case in hand. In our considered opinion, the decision of the Full Bench, in Jerome Fernandes (supra), having regard to the scheme of Act 1963 with particular reference to Chapter II and Section 3 (1) (viii) thereof, correctly states the law on the issue. We endorse the view taken in Jerome Fernandes (supra) on the applicability or otherwise of Section 3 (1) (viii) to the leasehold land of the present appeal.

32. Noticeably, the respondent-company in its written statement had pleaded that the lease created by the deed dated 26.6.1918 was an agricultural tenancy entitling the lessee to fixity of tenure under the Malabar Tenancy Act 1929 and that the same benefit stood

extended under the Act 1963. The learned Trial Court while dismissing the suit, recorded as well the finding of the Land Tribunal, following an inquiry, that the respondent-company was entitled to fixity of tenure in respect of the leasehold land both under the Malabar Tenancy Act 1929 (as amended) and the Act 1963. This finding was upheld upon by the First Appellate Court and not dislodged by the High Court. We notice as well that Section 2 of the Malabar Tenancy Act 1929 has no application to the facts and circumstances of the case, so as to warrant exemption from the applicability thereof.

33. As determined hereinbefore, the respondent-company, continued as a lessee by holding over after 1954 and the lease rent at the agreed rate fixed at the first instance was paid till 1978 as admitted by the appellant. The Act 1963 had come into force prior thereto. As neither Section 3 (1) (vii) nor 3 (1) (viii) is applicable to the plantation involved, the respondent-company is entitled to fixity of tenure under Section 13 thereof. To reiterate, Section 116 of the Transfer of Property Act ,1882 even if applicable, the lease originally entered into would not get transformed with time into one of

tenancy in respect of plantation as defined in Section 2 (44) of Act 1963, in absence of any overt act of the parties, intending the same on agreed upon terms.

34. The consequences of the applicability of the Act, vis-a-vis the plantation need not detain us, as the same would be regulated by the provisions of the statute and as rightly asserted on behalf of the respondent-company, the course to follow would witness the State and the tenant as the parties thereto. With the enforcement of the Act 1963, the appellant would be left with no role in that regard.

35. On a totality of the consideration of all aspects, factual and legal as detailed hereinabove, we are of the unhesitant opinion that no interference with the findings recorded by the forums below is called for. The appeal lacks in merit and is thus dismissed.

36. No Costs.

.....J.
(M.Y. EQBAL)

.....J.
(AMITAVA ROY)

New Delhi
Dated: 02 July, 2015

ITEM NO.1 COURT NO.1 SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 5163/2012

NK RAJENDRA MOHAN **Appellant(s)**

VERSUS

THIRVAMADI RUBBER CO. LTD AND ORS **Respondent(s)**

Date : 02/07/2015 This matter was called on for pronouncement of Judgment today.

For Appellant(s) **Mr.A.S.Nambiar, Sr.Adv.**
Mr. P. K. Manohar,Adv.
Ms.Shanta Vasudevan, Adv.

For Respondent(s) **Dr.A.M.Singhvi, Sr.Adv.**
Mr.Amrendra Sharan, Sr.Adv.
Mr.Padam Khaitan,Adv.
Mr.Gopal Sankaranarayanan, Adv.
Mr.Nitish Massey, Adv.
Mr.Shikhar Srivastava, Adv.
for M/s. Khaitan & Co.,Advs.

Hon'ble Mr.Justice Amitava Roy pronounced the Judgment of the Bench comprising Hon'ble Mr.Justice M.Y.Eqbal and His Lordship.

The appeal is dismissed, with no costs, in terms of the reportable Judgment.

(G.V.Ramana) **(Vinod Kulvi)**
AR-cum-PS **Asstt.Registrar**
(Signed reportable judgment is placed on the file