IN THE HIGH COURT OF JUDICATURE AT MADRAS

Kanyakumari District Planters Association

Vs.

The State of Tamil Nadu

Writ Petition No. 7275 to 7276 of 1985

05-4-2002 dd.

P. SATHASIVAM J

ORDER:

1. Since the issue in all these writ petitions is one and the same, they are being disposed of by the following common order. In W.P.No. 7275/85, Kanyakumari District Planters Association and six others challenge the Notification of the Collector of Kanyakumari District-2nd respondent dated 31-7-80 and 31-12-82, published in the District Gazette of Kanyakumari dated 16-9-80 and 16-2-83 in so far as the members of the petitioners Association and petitioners are concerned. In W.P.No. 14322/88, S. Krishna Pillai and two others challenge the Notification of the second respondent dated 4-10-79 published in the Kanyakumari District Gazette dated 16-11-79 with respect to the area of 38.35 hectares in R.S.No. 583/1 of Churulacode village, Kalkulam Taluk, Kanyakumari District. In W.P.No.3594/89 Antony Puthoor challenges the same notification of the second respondent dated 4-10-79 published in Kanyakumari District Gazette dated 16-11-79 with respect to the area of 8.70 Hectares in R.S.No. 583/1 of Churalacode village, Kalkulam Taluk, Kanyakumari District. In W.P.Nos. 7276/85, 14323/88 and 3593/89, the same petitioners prayed for issuance of a writ of declaration declaring Section 1 (2) (iii) and section 2 (aa), Sections 3 and 6 of the Tamil Nadu Preservation of Private Forest Act, 1949 (Tamil Nadu Act XXVII of 1949) as amended by the Tamil Nadu Preservation of Private Forests (Extension of Kanyakumari District) Act, 1979 as unconstitutional respecting petitioners property.

2. Since identical averments have been made in all these writ petitions, for convenience I shall refer the case of the petitioners in W.P.No. 7275/85. The petitioner principal contention inter alia is that the Tamil Nadu Preservation of Private Forests Act, 1949

(hereinafter referred to as the Act) is ultra vires and unconstitutional, if it is held to be applicable to plantations and cultivated lands. The reading of the preamble makes it evident that in the nature of things, the Act would not apply to plantations, because a plantation by its very nature is developed by contribution of human efforts, skill and money adopting agricultural and cultivation practices whereas the preamble to the Act states that the Act is intended to prevent indiscriminate destruction of private forests and interference with customary and prescriptive rights therein and for certain other purposes. This clearly establishes that the Act is applicable only to a private forest, and interference with certain rights contemplated by the Act in regard to private forests. The sine qua non for application of the provisions of the Act is, therefore, the existence of a forest. The petitioners and members of the Association are cultivating rubber trees as the major holding. The definition of forest under Section 2 (aa) of the Act is an inclusive definition, and forest as such has not been defined. Accordingly, the term forest has to be given the commonly understood meaning, namely, a large uncultivated tract of land covered with trees, bushes, etc. The Act by no stretch of imagination can apply to a land which is cultivated with rubber and other agricultural crops. The rubber extracted by tapping of the rubber trees is an agricultural product and is not a forest produce. There is a regular and systematic cultivation and cultural operations carried on on rubber plantations.

3. Before a Notification under section 1 (2) (iii) is issued by the District Collector, it is a pre-condition for the Government to issue a notification under Section 2 (aa) in the Tamil Nadu Government Gazette if it intends to declare as forest any land other than a forest as understood in common parlance for the purposes of the Act. For the purposes of such notification under Section 2 (aa), the Government can declare only waste land or communal land and any other class of land analogous to the categories of land preceding, namely, waste or communal land, by applying the rule of ejusdem generis. A rubber plantation cannot be regarded as waste or communal land or land analogous to a waste or communal land. In the absence of a notification under Section 2 (aa), the District Collector cannot declare any land as a private forest. Even assuming that he has such a power, such a notification can be validly issued only if the land satisfies the test mentioned in Section 2 (aa), namely, that such land should be a waste land or a communal land or any other class of land analogous to waste or communal land. Hence, the impugned notification dated 3 1-7-1980 is ultra vires the provisions of the Act and is abinitio null and void.

4. A rubber plantation is a creation of human ingenuity and physical labour by applying agricultural practices. Rubber is not a spontaneously grown tree. It is an introduced tree for the purpose of growing the tree and extracting Rubber. Rubber is an industry controlled by the Union Government under an Act of Parliament, namely, the Rubber Act, 1947. The said Act is comprehended by Entry 52 of List I of Schedule VII of the Constitution. Hence, the state Legislature is not competent to pass a law with regard to the field occupied by the Central Act.

5. Section 1 (2) (iii) of the Act is unconstitutional and suffers from the vice of excessive delegation in that the provisions do not provide any legislative guidelines to enable the

Executive to declare any land as a forest. The applicability of the Act to certain private forest depends upon the arbitrary power of the District Collector. No enquiry is contemplated before such a notification is issued, and no hearing is given to persons whose rights are adversely affected by such a notification and the civil consequences arising the refrom. Such uncanalised and unguided power contained in Section 1 (2) (iii) and Section 2 (aa) of the Act are arbitrary, illegal and violative of equality before law guaranteed under Article 14 of the Constitution of India.

6. Section 3 of the Act is also ultra vires and unconstitutional as it seeks to vest uncontrolled and arbitrary power on the authorities who are not even required to follow this rudimentary norms of natural justice before granting or rejecting permission required under these provisions. The section is therefore violative of Article 14 of the Constitution of India.

7. There is no difference in character between a rubber plantation and other types of plantations such as tea, coffee and cardamom which are grown throughout the State, but no notification has been issued declaring all such plantations in the State as forest. Even with regard to rubber, there are a few rubber plantations situated in districts other than Kanyakumari which are not notified as forest under Section 1 (2) (iii). Therefore, there is a clear discrimination against the rubber plantations covered by the impugned notification.

8. No opportunity whatsoever was given to them to plead and prove their case in respect of the proposal to treat their plantations as forests, for the purposes of the Act. The impugned notification being in violation of the principles of natural justice is null and void.

9. The first respondent has filed a common counter affidavit disputing various averments made by the petitioners. The case of the respondents as mentioned in the common counter affidavit is briefly stated hereunder The Forest Department has raised rubber plantations in the reserved forests in Kanyakumari district over more than 5000 hectares right from the year 1960. A number of private rubber estates are situated in the midst of the reserved forest since patta has been granted to private individuals inside the forest by the erstwhile Travancore-Cochin State. There are lot of cases in Kanyakumari district where private estate owners have encroached upon forest land in vast areas and planted rubber trees, prior to verification of reserved forest, boundaries at the time of merger of erstwhile Travancore-Cochin area during November 1956. In view of the suitable climatic condition in Kanyakumari district rubber is planted in private holdings as well as in reserved forests. The rubber plantations contain not only rubber trees, but also other miscellaneous trees, like rosewood, teak, aini, marudam and thomba and wildlife of different species being the very basis of ecology for the purpose of survival of mankind has been recognised as the foremost function of the State. To preserve the trees from indiscriminate cutting by private individuals, the preservation of private forest has to be undertaken by the State and therefore, it was necessary to enact the separate Act called the Tamil Nadu Preservation of Private Forest Act, 1949. As per the provision of the Act, the land owners cannot cut and remove timber without the previous permission of

the concerned authority. The authorities concerned are granting permission if the application to cut the trees is in order. Therefore, the Act is neither unconstitutional nor hit by Article 19 (1) (g) or Article 300 (A) as averred by the petitioners. As per this Act, the private owners having been deprived of their rights in which certain regulations have been imposed which are very reasonable and necessary in the larger interest of the public and to uphold the objective of the national forest policy. If no regulation is imposed, it will not only result indiscriminate cutting of trees from private forest, but also, it will facilitate illicit cutting and smuggling of trees from the reserved forests. So, to preserve entire forest eco-system, rubber plantations raised in patta holdings has to be managed and controlled through Tamil Nadu Preservaiton of Private Forest Act, and Timber Transit Rules, 1968 to prevent indiscriminate destruction of forests for commercial purpose, otherwise it will adversely affect entire eco-system of the Western Ghat forests. If private rubber plantations estates and private forest areas inclusive of estates listed in the annexure excluded from the purview of Tamil Nadu Preservation of Private Forest Act, it may lead to uncontrolled commercial exploitation with large scale biotic interference with which will lead to destruction of the entire bio-diversity and eco-system of the forest and ultimately the objective of the national forest policy gets deported. Explanation to Section 1 (2) (iii) states that a private forest exceeding 2 hectares in extent shall not cease to be such by reason only of the fact that in a portion thereof trees, shrubs, or reeds are felled or cut with or without the permission of the committee or lands are cultivated. There are vast areas of rubber plantations in Kanyakumari district and in those areas there are other miscellaneous trees like Aini, Thimbar, Teak and Rosewood and wildlife. Therefore, it is clear from the explanation that even the lands are cultivated, it will not cease to be forests. Therefore, the rubber plantations even if they are cultivated partly or wholly is to be considered as forest for the purpose of declaration by the District Collector as forest by notification in the District Gazette.

10. The land declared by the State Government to be a forest by notification in Tamil Nadu Government Gazette comes under reserved forest whereas the Collector is the competent authority under section 1 (2) (iii) of the said Act to declare an area exceeding 2 hectares to be forest for the purpose of the said Act by notification in the District Gazette, but does not apply to reserved forest constituted under Tamil Nadu Forest Act, 1882 (Tamil Nadu Act V of 1882) and lands at the disposal of the Government as defined in that Act. Only for the purpose of declaring lands as forests to bring them under reserved forest, notification by the Government is necessary, but in the instant case the lands declared as forest by the Collector is a private forest and for such declaration, Collector is the competent authority under the said Act and the Government notification is not at all necessary.

11. Though the word forests as generally understood means a large uncultivated tract of land covered by trees and underwood, the plantation areas referred to in the writ petitions not only contain rubber trees, but also contain other miscellaneous trees like rosewood, teak, aini, maruthu and themba trees and shrubs of undergrowth also hence, it cannot be said as merely plantations.

12. The Rubber Board will give advise in technical matter like selection of high yielding variety of nursery stock plants, fertiliser application and pesticide application and collection of latex etc., and not about felling trees or clearing the area and it is not mandatory to obtain clearance of the Rubber Board for cutting down the rubber trees and this Act is intended to prevent indiscriminate destruction of forest. The plantations such as tea, coffee and cardamom are mostly grown in hill areas and they are governed by Tamil Nadu Hill Areas Preservation of Trees Act, 1955 (Tamil Nadu Act XVII of 195 5) and prior permission is also required for felling under section 3 (1) of the said Act by the District Committee similar to that of the impugned Act. As far as Kanyakumari district is concerned, there are numerous pockets of private forests in the mids t of the reserved forest. Since the Arasu Rubber Corporation is situated within the reserved forest and all the lands applicable in the reserved forest are applicable to them. Since the petitioners have private holdings within the same reserved forest area, they will have to be brought under laws applicable to private forest. Therefore, the contention of the petitioners that the rubber plantations cannot be considered to be a forest is wrong. The present Act has been enacted only in the interest of the nation keeping in view of the importance and necessity to preserve the existing forest from destruction. Sufficient safeguards have been provided and there is no basis for the apprehension raised by the petitioners.

13. In the light of the above pleadings, I have heard the arguments of Mr. T.R. Rajagopalan, learned senior counsel for the petitioners and the learned Advocate General for respondents.

14. Mr. T.R. Rajagopalan, learned senior counsel, after taking me through the impugned provisions of the Tamil Nadu Preservation of Private Forests Act, 1949 as amended by the Tamil Nadu Preservation of Private Forests (Extension to Kanyakumari district) Act, 1979 and the notification issued by the District Collector, has raised the following contentions i) Rubber plantation is not a forest within the meaning of Tamil Nadu Private Forests Act, 1949 and the same cannot be brought under the provisions of the Act; ii) Rubber plantations cannot be brought under the provisions of the Act having regard to the object of the Act. Notification of the Collector is without jurisdiction; iii) The impugned notifications are violative of Articles 14 and 19 (1) (g) of the Constitution of India; iv) The impugned notifications are in violation of principles of natural justice.

15. Learned Advocate General, after taking me through the object and relevant provisions of the enactment, contended that in Kanyakumai District rubber plantation contained not only rubber trees, but also other miscellaneous trees and to preserve the trees from indiscriminate cutting by private individuals, the Tamil Nadu Preservation of Private Forests Act has to be undertaken by the State. He also contended that in the light of the provisions of the Act, rubber is a forest produce and rubber plantation is a forest plantation; accordingly the impugned enactment is valid. He further contended that in the light of the various safeguards, namely, that only an area of land exceeding 2 hectares alone has been declared to be private forests by the Collector, according to norms prescribed in sub-section 1 (2) (iii), that a right of appeal to the State Government is provided under section 4 of the Act, all the contentions raised by the petitioners are liable

to be rejected. Further, as per the amended notification, the impugned notifications are valid.

16. I have carefully considered the rival submissions.

17. Before considering the rival contentions, it is useful to refer the relevant provisions from the Tamil Nadu Preservation of Private Forests Act, 1949 (Tamil Nadu Act XXVII of 1949) (hereinafter referred to as the Act)

1. Short title, application, commencement:- (2) It applies- (i) (xxx xxx) (ii) to forests situated in estates as defined in the Tamil Nadu Estate Land Act, 1938, in the State of Tamil Nadu. (iii) to private forests situated in other areas in the State of Tamil Nadu and having a contiguous area exceeding 2 hectares which may be declared by the committee to be forests for the purposes of this Act, by notification, in the District Gazette but does not apply to reserved forests constituted under the Tamil Nadu Forest Act, 1882 , and lands at the disposal of the Government as defined in that Act.

Explanation- A private forest exceeding 2 hectares in extent shall not cease to be such by reason only on the fact that, in a portion thereof, trees, shrubs or reeds are felled or cut with or without the permission of the Committee or lands are cultivated, or rocks, roads, tanks, rivers or the like exist; not shall the area of such forest cease to be contiguous by reason only of the existence of all or any of the aforesaid circumstances.

(3) It shall come into force at once.

2. Definition:- In this Act unless there is anything repugnant in the subject or context- (a) Committee means any Committee constituted under section 2-A, and having jurisdiction. (aa) forest includes waste or communal land containing trees shrubs and reeds pasture land and any other class of land declared by the State Government to be a forest by notification in the Fort St. George Gazette.

Explanation: For the purpose of this clause, communal land means (i) beds and bunds of tanks and of supply, drainage surplus or irrigation channels; (ii) threshing-floor, cattle-stands, village-sites and other lands which are set apart for the common use of the villager. (b) owner in relation to a forest includes a mortgagee, lessee or other person having right to possession and enjoyment of the forest; (c) person includes a Hindu undivided family a Marumakkattayam tarwad or tavazhi and an Aliyasantana family or branch; (d) forest offence means as offence punishable under this Act; and (e) in expression Forest Officer, Trees, timber, forest produce cattle, Magistrate, and imprisonment shall have the meaning respectively assigned to them in section 2 of the Tamil Nadu Forest Act, 1882.

3. Preservation of Private Forests:- (1)(a) No owner of any forest shall, without the previous sanction of the Committee sell, mortgage, lease or otherwise alienate the whole or any portion of the forest.

Explanation:- Nothing in the sub-section shall be construed as preventing the owner from selling or otherwise dealing with the right together and remove forest produce other than (trees, timber and reeds) in the usual or customary manner for a period not exceeding two years.

Section 6 (since omitted).

18. According to Mr. T.R. Rajagopalan, learned senior counsel for the petitioners, the sine qua non for application of the provisions of the Act is the existence of a forest. It is his case that plantation by its very nature is developed by contribution of human efforts, skill and money adopting agricultural and cultivation practices and hence rubber plantation cannot be termed as a forest. He narrated the history of early commercial plantations of Rubber in India and Rubber statistics regarding total area, production and average yield per hectare of Rubber in India. He also highlighted that the replanting operation, involving cutting and removing of old and uneconomical rubber trees is an essential and integral part of rubber plantation. It is the case of the petitioners that the restriction imposed by the Act cannot be applied to a rubber plantation as it would prevent regular agricultural operations like removal of deceased trees, wind fallen trees and thinning of trees and even extracting the rubber from latex from the tree etc. Observing the formalities as contemplated under the Act and the rules will hinder/affect the normal seasonal and agricultural activities of planters whose aim is to develop plantation, exploit the same to the fullest and to carry on the business in the best possible manner. The expression forest has not been defined in the Act. Section 2 (aa) is an inclusive definition. In order to understand the meaning of the word forest, learned senior counsel for the petitioners relied on the meaning assigned to forest from various Dictionaries. In the Chambers Dictionary, the meaning of the word forest is given as follows:-

Large uncultivated track of land covered with trees and under growth, woody ground and rude pasture; A preserve for big game: a royal preserve for hunting governed by a special code called the Forest Law.

In the Law Lexicon, it is stated A forest is a large track covered with trees and undergrowth. A great or vast wood; Manwood, in his forest laws, gives this particular definition of it A Forest is a certain territory or circuit of woody grounds and pastures known in its bounds and privilege for the peaceable abiding of wild beasts, and fouls of Forest chase and warren, to be under the kings protection for his princely delight, replenished with beasts of venary or chose, and great coverts of vert for succour of the said beasts; for preservation whereby there are particular laws, privileges and officers belonging thereunto.

In the Book Words and Phrases by John B. Saunders (2nd Edn.) the term Forest is described as follows:-

A certaine territorie of woody grounds and fruitful pastures, privileged for wilde beasts and foules of forest, chase and warren, to rest and abide in, in the safe protection of the

King, for his princely delight and pleasure, which territories of ground, so privileged, is meered and bounded with unremovable markes, meeres, and boundaries, either known by matter of record, or else by prescription, and also replenished with wilde beasts of venerie or chase, and with great coverts of vert (i.e. green-leaved trees, bushes, etc) for the succour of the said wilde beasts, to have their abode in: for the preservation and continuance of which said place, together with the vert and venison, there are certaine particular lawes, priviledges, and officers belonging to the same, meete for that purpose, that are only proper unto a forest, and not to any other place (Manwoods Forest Laws (1 598 Edn.) I; 7 Halsburys Laws (3rd Edn.) 512).

Again in Strouds Judicial Dictionary of words and phrases the word Forest has been described as follows:-

Forest: (1) Forest is a place privileged by royal authority or by prescription, for the peaceable abiding and nourishment of the Beasts or Birds of the forest, for disport of the King.

19. By pointing out the meaning given in the Dictionaries, it is contended that forest as commonly understood means a large track of uncultivated land covered by trees, shrubs, etc. and denotes natural and spontaneous growth without any aid. It is further contended that the plants or trees raised by regular and systematic cultivation and agricultural operations cannot be called as forest. It is further argued that having regard to the object of the Act, no cultivated land can fit the description of forest to be governed by the provisions of Act. It is also the case of the petitioners that since rubber plantation is a creation of human ingenuity and physical labour by applying agricultural practice, they are not covered by the definition of forest as provided under the Act. Mr. T.R. Rajagopalan, learned senior counsel, referred to certain decisions which throw some light on this aspect.

20. In State of Kerala v. Nilgiri Tea Estates Ltd., (AIR 1 988 Supreme Court page 59), the question involved is whether where eucalyptus is planted in the Travancore area of Kerala is a private forest or not for the purpose of Kerala Private Forest (Vesting and Assignment) Act 26/1971? In para 4 the Honourable Supreme Court has held that the forest lands will include only lands other than those on which human skill, labour and resources have been spent for agricultural operations.

21. In State v. K.C. Moosa Haji (AIR 1984 Kerala 149), the object of the Act has been considered. In the said decision, the Full Bench of the Kerala High Court has held that the context and the policy of the statute (Kerala Private Forest (Vesting and Assignment) Act (Act 26/1971), taken along with its history and its object lead to the conclusion that lands principally cultivated with teak trees cannot be considered as land cultivated with fruit-bearing trees or any other agricultural crop, within the meaning of section 2 (f), (1) (i), (c) of the Kerala Private Forest (Vesting and Assignment) Act.

22. The other decision pressed into service is M.R. and Produce Co. v. State of Kerala (AIR 1972 Supreme court 2027). This judgment deals with constitutional validity of

Kerala Land Reforms Act (I of 1964) (as amended by Act 35 of 1969). In para 53 of the judgment it has been observed that lands under eucalyptus or teak plantation which are the result of agricultural operations normally would be agricultural lands and that they would certainly not be forests. The other decision referred to is in the case of L.T. Commissioner v. Benoy Kumar (AIR 1957 S.C. 768). In this decision, the question that arose for consideration was whether income derived from the sale of Sal and Piyasal trees in the forest owned by the assessee which was originally a forest of spontaneous growth not grown by the aid of human skill and labour but on which forestry operations described in the statement of case had been carried on by the assessee involving considerable amount of expenditure of human skill and labour is agricultural income within the meaning of Section 2 (i) of the Income Tax Act. The scope of the term forest and agriculture have been extensively considered in this judgment.

23. In Kanakasabapathy Poonjolai Company Limited v. State of Tamil Nadu (1980 (II) M.L.J. 202), a learned Single Judge of this Court has held that the lands which have been held as a rytwari lands and not forest lands cannot be brought under the provisions of the Act. In para 3, the learned Judge has observed that the word forest as defined under the TNPPF Act will not include lands wherein agriculture operation is being carried on.

24. In Bhavani Tea and Produce Co. v. State of Kerala ((19 91) 2 Supreme Court Cases 463), it has been observed that a land cannot be termed as a forest unless there is evidence to show that the land has been treated as forest. In this case, the Supreme Court has stated that the term forest to include only the lands or area set aside for the production of timber and other forest produce or maintained under woody vegetation for certain indirect benefits. The Supreme Court has expressed that the term Forest can include only lands other than those on which human skill, labour and resources had been spent for agricultural operation. In Gwalior Rayons Silk Manufacturing (Weaving) Co., Ltd v. Custodian of Vested Forests, Palghat (AIR 199 0 SC 1747), the interpretation of the word forest as found under the Kerala Private Forest (Vesting and Assignment) Act, 1971 was considered.

25.By pointing out the above referred decisions, it is contended that the lands of the petitioners are all private patta lands and that these lands were neither forest land nor waste or pasture or communal lands at the time of extension of the Act to Kanyakumari District. Hence it is stated that Rubber plantation is not a forest and the same cannot be brought under the purview of the Act. It is also stated that rubber tree is not a native species, that exotic species were introduced from Brazil for production of commercial nature rubber and that there is no spontaneous or wild growth in rubber plantation so as to treat this as forest. In this regard, it is worthwhile to refer the factual details and assertion made by the Deputy Secretary to Government, Environment and Forests Department, Madras-first respondent herein in the common counter affidavit filed before this Court. It is asserted therein that the Forest Department has raised rubber plantation in the reserve forest in Kanyakumari District over more than 5000 hectares right from the year 1960. Number of private rubber estates are situated in the midst of the reserved forest since patta has been granted to private individuals inside the forest by the erstwhile Travancore-Cochin State. There are lot of cases in Kanyakumari district where private

estate owners have encroached upon forest land in vast areas and planted rubber trees, prior to verification of reserved forest, and boundaries at the time of merger of erstwhile Travancore-Cochin area during November, 1956. In view of the suitable climatic condition in Kanyakumari district, rubber is planted in private holdings as well as in reserved forests. Though rubber trees are raised for the purpose of collection of latex to produce natural rubber, the rubber trees are considered as very valuable source of softwood and as timber by chemical processing and are useful for the purpose of matchwood industry and also for the purpose of firewood. The rubber plantations contain not only rubber trees, but also other miscellaneous trees, like rosewood, teak, aini, marudam and thumba. Rubber trees planted in the Government owned Arasu Rubber Corporation and in many private forests and in patta holdings serve the purpose of forests like any other forest species by stabilising soil, controlling water velocity, preserving forest eco-system. To preserve the trees from indiscriminate cutting by private individuals, the preservation of private forest has to be undertaken by the State and therefore, it was necessary to enact the separate Act called the Tamil Nadu Preservation of Private Forest Act, 1949. As stated earlier, it is clear from Explanation to Section 1 (2) (iii) of the Act that the lands which are cultivable will not cease to be forests. Therefore, the rubber plantations even if they are cultivated partly or wholly is to be considered as forest for the purpose of declaration by the District Collector as forest by notification in the District Gazette. Though the word forest as generally understood means a large uncultivated tract of land covered by trees and underwood, it is clear from the information furnished by the first respondent that the plantation area referred to in the writ petitions not only contain rubber trees, but also contain other miscellaneous trees like rosewood, teak, aini, maruthu and themba trees and shrubs of undergrowth; hence it cannot be said as merely plantations. In the light of the information furnished and in view of the Explanation referred to above, it is clear that a private forest which is a forest shall not cease to be such by reason of the fact that a portion thereof lands are cultivated. In the light of the factual position though there is no quarrel with regard to the law laid down in those decisions, I am of the view that they are not helpful to the petitioners claim.

26. The other contention is that rubber plantations cannot be brought under the provisions of the Act having regard to the object of the Act. The object of the Act is to prevent indiscriminate destruction of private forests and interference with customary and prescriptive rights therein and for certain other purposes. Learned senior counsel for the petitioners highlighted the following events to show that rubber plantations cannot be brought under the provisions of the Act. It is stated that as far as rubber plantations are concerned, periodical re-planting is an integral and essential operation since rubber tree is the yielding capital asset of the rubber plantation industry. Rubber tree after its economic life of about 25 years is over has to be felled and removed and replaced by young plants for the very continued existence of the industry. The total value of the yield of latex from rubber tree over a period of 25 years will run into several thousands as against a paltry sum by sale of young tree. The very development of rubber plantation is secured by regulating systematic planting and replanting. It is not the intention of the legislation to cover this kind of plantation operation. Rubber tree is not a tree mentioned in the Schedule to the Act. After the filing of the writ petitions, there was a representation from

the Chairman of the Rubber Board to the Secretary to the Government of Tamil Nadu, Environment and Forest Department requesting for exemption of rubber plantations from the purview of sub-section (2) of Section 3 of the Act. In response to the said letter, by communication dated 25-7-91, the Secretary to Government, Environment Forest Department stated that no exemption to Section 3 (2) of the Act is necessary with regard to re-plantation of old and uneconomic rubber plantations in Kanyakumari District, admitting that the central Act viz., Rubber Act being in force the provisions of the Act XXVII of 1949 will not be made applicable to the rubber plantation in Kanyakumari District. The clarification made by the Supreme Court in T.N. Godavarman Thirumulkpad v. Union of India (1997 (2) S.C.C. 267) is pressed into service. According to the learned senior counsel, as clarified in this decision, the trees which have been planted and grown and not of spontaneous growth will not be affected by the earlier direction imposing ban on felling of trees in all forest areas. By pointing out it is stated that the trees which have been planted and grown by human ingenuity or planned agricultural operation cannot be brought under the category of forest. It is also stated that pursuant to the directions of the Supreme Court, an expert committee for other State of Tamil Nadu was constituted for the identification of forest etc. In the report submitted by the expert committee it is stated that the rubber plantations were not brought under the category of forest under private ownership. By pointing out the said report, it is argued that it would confirm the position that the rubber plantation can never be treated as forest, especially for the purpose of the Act.

27. Learned Advocate General relied on a decision of the Apex Court in Bhavani Tea and Produce Co. v. State of Kerala, reported in (1991) 2 Supreme Court Cases 463. In para 18, the Supreme Court examined the very same enactment, namely, The Madras Preservation of Private Forests Act, 1949 (Madras Act 27 of 1949) and considered the word forest as defined in Section 2 (a) of the Act. In para 23, they referred to the definition of the words private forest, vesting etc. In para 33, Their Lordships have held 33. The definition of private forest given in Section 2 (f) of the Vesting Act and in Section 2 (47) of the Kerala Land Reforms Act were considered by K. Jagannatha Sheetty, J. in Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Palghat (19 90 Supp. SCC 785: AIR 1990 SC 1747: JT (1990) 2 SC 130). The lands involved in that case were all forests as defined in the MPPF Act, 1949 and continued to be so when the Vesting Act came into force in 1971. It was observed that the definition of private forests as was applicable to the Malabar district was not general in terms but limited to the areas and lands to which the MPPF Act applied and exempted therefrom lands described under sub-clauses (A) to (D). This significant reference to MPPF Act in the definition of private forests in the Vesting Act made all the difference in the case. The MPPF Act was a special enactment by the erstwhile Madras State to preserve the private forests in the district of Malabar and erstwhile South Kanara District. The scheme appeared to be that if the land was shown to be private forest on the date on which the MPPF Act came into force, it would continue to be a forest even if there was subsequent replantation. Accordingly it was held that the lands which were forests as defined in MPPF Act and continued to be so when the Vesting Act came into force would continue as forests as under that Act.

In para 34, the Supreme Court has held that whether the plantation yielded any crop or not was for the owners to decide and not by the authorities under the Vesting Act, unless it did make specific provisions to cover such a situation.

28. Learned Advocate General very much relied on the directions issued by the Supreme Court in T.N. Godavarman Thirumulkpad v. Union of India, reported in (1997) 2 Supreme Court Cases 267. The following statement of law by the Supreme Court is pressed into service: (para 4)

4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word forest must be understood according to its dictionary meaning.

This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2 (i) of the Forest Conservation Act. The term forest land, occurring in Section 2, will not only include forest as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1 980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat, (1987) 1 SCC 213; Rural Litigation and Entitlement Kendra v. State of U.P., 1989 Supp (1) SCC 504 and recently in the order dated 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority-W.P (C) No. 749 of 1995 decided on 29-11-1996).

This judgment makes it clear that the term forest land will not only include forest as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. I have already referred to the details furnished in the counter affidavit of the first respondent, namely, that existence of rubber plantations within the reserve forest in Kanyakumari District.

29. The other decision referred to by the learned Advocate General is in the case of State of Kerala v. Pullangode Rubber and Produce Company Ltd. ((1999) 6 Supreme court Cases 99). The question involved in this case is whether some areas which are within the rubber plantation of the respondent companies fall within the provisions of the Kerala Private Forest (Vesting and Assignment) Act, 1971. The contention of the appellant therein is that by virtue of the said explanation added to Section 1 of MPPF Act, 1949 the rubber plantation is excluded from the operation of the 1949 Act and, therefore, it automatically gets excluded from the provisions of the Kerala Private Forest (Vesting and Assignment) Act, 1971. In support of his contention that a cultivated plantation is excluded from the operation of the 19 49 Act, the learned counsel drew the attention of

Their Lordships to the case of Bhavani Tea and Produce Co. Ltd., v. State of Kerala, (19 91) 2 SCC 463, wherein dealing with a case relating to the vesting of private forest under the 1971 Vesting Act the Court also referred to the MPPF Act, 1949. The observations in the said case seem to indicate that plantations of trees which are cultivated would not be covered by the 1949 Act and, therefore, the Vesting Act would also not apply. After referring to the object of enacting the MPPF Act, 1949 and the definition of forest in section 2 (a), Their Lordships have held: (para 6)

6. To our mind forest means a parcel of land on which trees have been grown. This Court in T.N. Godavarman Thirumulkpad v. Union of India ((1997) 2 SCC 267)at page 269 observed that the word forest must be understood according to its dictionary meaning. It would, thus, appear that the rubber plantation containing rubber trees, would be regarded as a private forest the destruction of which was sought to be prohibited by the 1949 Act. The explanation to Section 1 (2) (i) which provides that the clause will not apply to fugitive or other cultivation would not take withi n its ambit the growing of rubber or other trees.

7. The Court in Bhavani Tea Co. case ((1991) 2 SCC 463) did not consider the object for which the 1949 Act was enacted, namely, with a view to prevent the destruction of private forest. If cultivated forest were excluded from the operation of the 1949 Act the whole object of enacting of the said Act would be defeated.

After saying so, Their Lordships expressed that the decision in Bhavani Tea Co. case (cited supra) with regard to this aspect requires reconsideration by a larger Bench; accordingly directed for placing the papers of the cases before Honble the Chief Justice of India for constituting a larger Bench to hear these matters. It is stated that the matters are still pending before the larger Bench.

30. The learned Advocate General has also referred to a Division Bench decision of this Court in Golden Granites, etc. v. K.V. Shanmugam and others (1998 Writ L.R. 47), wherein the Division Bench considered the meaning of the word forest as discussed and observed by the Supreme Court in T.N. Godavarman Thirumulkpads case ((1997) 2 SCC 267.

31. In Karnataka Forest Development Corporation Ltd., v. Cantreads Private Ltd. ((1994) 4 Supreme Court Cases 455), the question considered was whether rubber sheets of various grades supplied by the State of Karnataka or the Karnataka Forest Plantation Corporation to the private limited companies, were Forest Produce within the meaning of the Karnataka Forest Act, 1963. In that case, the High Court found that since what was sold by the appellant was not rubber obtained from the trees but sheets or blocks of rubber which were chemically and mechanically processed it could not be held to be forest produce. The High Court applied the test of commercial parlance and held that where latex produced from the tree underwent processing howsoever meagre it was the resultant produce obtained by addition of sulphuric acid could not be treated to be forest produce. It was further found that since Government rubber plantations itself treated grade rubber sheets as different from wet latex while selling the same in auction it could

not claim that the latex after processing remained the same. The Supreme Court while considering the said conclusion has held thus: (para 7)

7.Neither reasoning appeas to be well founded. The meaning of the word caoutchouc has been discussed. Latex is the modern name for caoutchouc. It is nothing but natural rubber. Caoutchouc or latex means not only milky substance obtained from the trees but it included all milky substance processed, till it is made marketable. Since the processing does not result in bringing out a new commodity but it preserves the same and renders it fit for being marketed, it does not change its character. It was caoutchouc or latex when it was obtained from the trees, it continued to be caoutchouc or latex when it was treated by surphuric acid and continued to be so even after it is dried with smoke to obtain the shape of sheets.

8. The test of commercial parlance while considering entries in Sales Tax Act was evolved as the tax under the Sales Tax enactments is normally either on sale or purchase or on manufacture or import etc.
Therefore, it is the understanding or the knowledge of the item by the common man or persons dealing in it in the market and not in the technical or botanical sense which was accepted by this Court as the deciding factor. But that test cannot be applied while considering the definition of forest produce.

In the light of the observation of the Supreme Court in the decision in State of Kerala v. Pullangode Rubber and Produce Co., Ltd.,(cited supra) and of the fact that the question forest as defined in Section 2(a) of the Act and forest produce was referred to a larger Bench, I am of the view that the learned Advocate General is right in pointing out that the term forest land occurring in Section 2, will not only include forest as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. Accordingly, the contention raised by the learned senior counsel for the petitioners cannot be accepted.

32. As regards the other contention that the Notification of the Collector are without jurisdiction, it is argued that the declaration has to be made by the Committee and not by the District Collector, since the impugned notifications were issued after the Act is amended by substituting the word Committee in the place of District Collector.
It is pointed out that the amendment is in 1979, whereas the notifications were issued only in 1980 and 1982. It is true that the impugned notifications were issued in 1980-82 by the District Collector. By an amendment Act 68/79, the word District Collector in clause (iii) of sub-Section 2 of Section 1 was substituted for the word committee. However, as per Section 2-A, District Collector is the Chairman of the committee. The other members are the District Forest Officer having jurisdiction over the district, the Tahsildar having jurisdiction over the area, the Executive Engineer of the Agriculture Department in charge of soil conservation, and the Personal Assistant (General) to the Collector of the district, who is the Secretary of the Committee. Inasmuch as the impugned notifications were issued by the District Collector in the capacity of the Chairman of the Committee, the same cannot be faulted with. It is also contended that neither the Collector nor the committee has jurisdiction to declare the land as forest under

Section 1 (2) (iii) without there being a notification by the State Government declaring such classes of lands as Forest under Section 2 (aa) of the Act. As rightly stated in the counter affidavit of the first respondent, the land declared by the State Government to be a forest by notification in Tamil Nadu Government Gazette comes under reserved forest, whereas the Collector/ Committee is the competent authority under section 1 (2) (iii) of the said Act to declare an area exceeding 2 hectares to be forest for the purpose of the said Act by notification in the District Gazette. To put it clear, only for the purpose of declaring lands as forests to bring them under reserved forest, notification by the Government is necessary, but in the instant case, the lands declared as forest by the Collector is a private forest and for such declaration, Collector/ Committee is the competent authority and the Government notification is not required as claimed.

33. Regarding the other contention that the impugned notifications are violative of Articles 14 and 19 (1) (g) of the Constitution of India, the contention of the learned senior counsel for the petitioners is that the said Act is not made applicable to other plantations like tea, coffee and cardamom and even in Kanyakumari District many other plantation crops other than rubber have not been declared as forests. According to him, rubber plantations owned by the Government Corporations are not notified as private forest; hence the impugned notifications are discriminatory and hit by Article 14 of the Constitution of India. I have already referred to the categorical assertion made by the first respondent in their counter affidavit that plantation area referred to in these writ petitions not only contained rubber trees, but also other miscellaneous trees like rosewood, teak, aini, marudam, thomba etc. It is further explained that to keep the ecological balance the tree cover should be 33 per cent of the total extent of the land in a country or State. Tamil Nadu has an area of forests equivalent to 26 per cent. Before enactment of the Act, there were indiscriminate destruction of private forest in this State. In order to protect such private forest from destruction, this Act was found necessary. The first respondent has also explained that whenever there are number of private forests available in the State, notification has been issued by the respective District Collector/ Committee. It is also stated that the plantation such as tea, coffee and cardamom are mostly grown in hill areas and they are governed by Tamil Nadu Hill Areas Preservation of Trees Act, 1955 (Tamil Nadu Act XVIII of 1955) and prior permission is also required for felling under section 3(1) of the said Act by the District Committee which is similar to that of the impugned order. It is further stated that in Kanyakumari District, the reserved forest as well as private forests are in high percentage when compared with other districts. I have already referred to the fact that as far as Kanyakumari District is concerned, there are numerous pockets of private forests in the midst of the reserved forest. In such circumstances, the contention with reference to article 14 and 19 (1) (g) of the Constitution of India is liable to be rejected.

34. The other contention relates to principles of natural justice. It is the case of the petitioners that the impugned notifications were issued without issuing a show cause notice or giving an opportunity to them. It is the further case of the petitioners that the consequences of such notifications are serious once the lands are brought under the provisions of the Act. The entire plantation operation thereafter depends upon the will and pleasure of the executive authorities and other constraints as provided under the Act.

By pointing out the civil consequences and the serious prejudice that may be caused to the petitioners by virtue of such notifications, it is argued that it is incumbent on the part of the authorities to issue show cause notice and hold enquiry before issuing such notifications. Admittedly the Act does not provide for giving an opportunity or issuing show cause notice. I have already referred to that Section 2-A which mandates constitution of committees for the purpose of this Act. I have also referred to the members of the committee. The committee will decide which land is to be declared as forest for the purpose of this Act. If any tree is to be cut or removed, necessary application has to be made before the authority and permission would be granted if the application is in order. Further, Section 4 of the Act enables any person aggrieved by an order under clause (a) of sub-Section (1) of Section 8 or under sub-section (2) of that Section in regard to sanction or permission referred to in that clause or sub section may, within two months of the receipt of such order prefer an appeal in writing to the State Government. It is also explained in the counter affidavit that in order to avoid difficulties Government have issued orders in G.O.Ms.No. 512, Forest and Fisheries dated 21-4-84, relaxing certain provisions of the Act and Rules in favour of rubber plantation owners. As per the said G.O., permission is given by the District Forest Officer himself straight away for the felling of matured rubber trees without referring to the District Committee and felling orders are issued within three or four weeks on receipt of application in full shape. It is also stated that no difficulty is experienced by the planters on the application received during February, March, 1985 were disposed of quickly and the planters have planted rubber during 1985 in the area when felling orders were issued. It is also clarified that only for felling the rubber trees, permission of Committee is necessary and for other operations like planting, maintenance, collection of latex, permission of committee is not necessary. In the light of these materials, I am of the view that the petitioners claim that the impugned notifications are in violative of principles of natural justice cannot be accepted. For the same reasons, the exercise of the power by the District Collector/Committee and other officers cannot be construed as unreasonable or discriminatory in nature. As rightly contended by the respondents, the Rubber Board will give advice in technical matters like selection of high-yielding variety of nursery stock plants, fertiliser application and pesticide application and collection of latex etc., and not about felling trees or clearing the area. It is not mandatory to obtain clearance of the Rubber Board for cutting down the rubber trees and the present Act is intended to prevent indiscriminate destruction of forest.

35. Regarding the contention that having regard to the object, scope and effect of the provisions of the Act, the State Government is not competent to encroach upon the field occupied by the Central Government. It is stated by the petitioners that rubber is an industry controlled by the Union Government under an Act of Parliament, namely the Rubber Act, 1947. The said Act is comprehended by Entry 5 2 of List I of Schedule VII of the Constitution. Rubber Act is a Central legislation intended to provide for the development. In this regard, the first respondent in para 11 of his counter affidavit has specifically stated that this Act received the assent of Government of India. This Act received the assent of the Governor General on the 10 th December, 1949 (Part IV A Page 445). Hence, it cannot be said that State Legislature is not competent to pass the impugned enactment.

36. Though it is stated that Section 1 (2) (iii) and Section 2 (aa) of the Act are unconstitutional and that the District Collector or Committee are given arbitrary and un-guided powers, in the light of the fact that there is a provision in the Act for constitution of committee, which consists of the District Collector as its Chairman and other Officers as members and considering its nature of duties, as seen from the Government Orders referred to in the counter affidavit, I am of the view that the said contention is liable to be rejected. Likewise, the contention that sections 3 and 6 infringes the fundamental rights guaranteed under Articles 19 (1) (g) and 300-A of the Constitution of India is also liable to be rejected. First of all, Section 6 is not in the statute book and Section 3 imposes only certain restrictions. As stated earlier, these provisions will apply only to an area of land exceeding 2 hectares after declaration by the committee consisting of Chairman and members on different fields. The Government have also clarified that only for felling of rubber trees, necessary applications have to be made before the Committee and in respect of other purposes, the District Forest Officer is authorised to consider and dispose of the applications then and there. I have already referred to the existence of similar provisions in Tamil Nadu Hill Areas Preservation of Trees Act, 1955 which enactment is applicable to the plantations such as tea, coffee, cardamom and prior permission is also required for felling of trees under Section 3 (1) of the Act No. XVIII of 1955 by the District Committee which is similar to that of the provision in the impugned Act.

37. In the light of what is stated above, I do not find any merit in the contentions raised in all these writ petitions; consequently they are dismissed. No costs.