PETITIONER:
SUNNY KURIAKORE & ORS

Vs.

RESPONDENT:
THE STATE OF KERALA & ORS

DATE OF JUDGMENT: 16/08/1996

BENCH:
KIRPAL B.N. (J)
BENCH:
KIRPAL B.N. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
JT 1996 (7) 476 1996 SCALE (6)3

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

KIRPAL,J.

The question Which arises in this appeal is whether the provisions of the Plantations Labour Act, 1951 are applicable to the rubber estates owned by the three appellants herein.

Briefly stated the facts are that there was one estate called Nooracre Estate' which was owned and managed by Ponmudi Rubbers Limited, Trivandrum. Out of this estate, 22.10.1960, three parcels of land were sold. The first appellant purchased 10.28 acres, the second appellant purchased 24.49 acres and the third appellant purchased 27.14 acres. It is the case of the appellants that after the said purchases, these estates are being managed separately and have separate Rubber Board Registrations.

The Plantations Rubber Act, 1951 (hereinaftere referred to as 'the Principal Act') was enacted with a view to provide for the welfare of labour and to regulate the conditions of work in the plantations. Section 1(4) of the Principal Act which specifies the plantations to which the Act applies, as originally enacted, reads as under:

> "It applies in the first instance to all tea, coffee rubber and cinchona plantations, but any State Government may, subject to the previous approval of the Central Government, by notification in the Official Gazette, apply it to any other class of plantations within that State."

By the Plantations Labour (Amendment) Act, 1960, certain amendments were made in different provisions of the Principal Act. In the present case, we are only concerned with the amendments made in Section of the Principal Act. The two material amendments which were made were that the existing sub-section (4) of Section 1 was substituted by a

new sub-section (4) and a new sub-section (5) was introduced. Sub-section (4) of Section 1 after the amendment reads as under:

"It applies to the following plantations, that is to say-
(a) to any land used or intended to be used for growing tea. coffee, rubber or cinchona which admeasures 10.117 hectares or more and in which thirty or more persons are employed or were employed on any day of the preceding twelve months;
(b) to any land used or intended to be used for growing any other plant, which admeasures 10.117 hectares or more and in which thirty or more persons 'are employed 'or were employed on any day of the preceding twelve months, if, after obtaining the approval of the Central Government, the State Government, by notification in the Official Gazette, so directs.

Sub-section (5) which was introduced by the Amendment Act, reads as under:

"1 (5) The State Government may, by notification in the Official Gazetted declare that all or any of the provisions of this Act shall apply also to any land used or intended to be used for growing any plant referred to in clause (a) or clause (b) of sub-section (4), notwithstanding that -
(a) it admeasures less than 10.117 hectares,or
(b) the number of persons employed therein is less than thirty .

Provided that no such declaration shall be made in respect of such land which admeasured'; less than 10.117 hectares or in which less than 'thirty persons were employed, immediately before the commencement of this Act."

It appears that the Government of Kerala by Notification dated 19.8.72, in exercise of its power conferred by Section 1(5) of the Principal Act, declared that all the provisions of the Principal Act shall apply to each and every component part of any land to which the provisions of the Act were applicable on the first day of April, 1954, the date on which the said Act came into force notwithstanding that such component parts admeasured less than 10.117 hectares cf land or less than 30 persons were employed in such a component part after such land is later on sub-divided or fragmented by way of partition, sale or otherwise.

After the issuance of the aforesaid Notification and inasmuch as the lands of the appellants came within the purview of the said Act, notices dated 24.9.74 were issued to the appellants requiring them to comply with the provisions of the said Act.

The validity of the amendment incorporating the new

Section. 1(5) of the Act as well as of the Notification dated 19.8.72 and Notices dated 24.9.74 was challenged by the appellants by filing a Writ Petition in the High Court of Kerala. The said Writ Petition was dismissed by the Single Judge and the Division Bench dismissed the appeal in limine. Thereafter, leave to appeal was granted by this Court.

The only contention which has been raised by the learned counsel for the appellants is that the amendment Act came into force from 21.11.1960 and, therefore, the provisions of the said sub-sections would not apply to the appellants' lands. The submission was that the words 'this Act' in sub-section (5) referred to the Amendment Act, 1960 and not to the Principal Act, 1951. We find no force in this submission.

Sub-section (4) of Section 1 of the Principal Act as originally enacted, made the said Act applicable to all tea, offee, rubber or cinchona plantations irrespective of the size of the estate. It was only with the amendment of the Act in 1960 that the Act became applicable to all such plantations if they admeasured 10.117 hectares or more or in which 30 or more persons were employed. The effect of new sub section (4) was that the Act would not automatically apply to those estates which did not fall within the amended provisions of Section 1(4) such as those which admeasured less than 10.117 hectares or employed less than 30 workers were exempted. Power was, however, given to State Governments under the newly enacted sub-section (5) of Section 1 that even those estates admeasuring less than 10.117 hectares and employing less than 30 workers, the provisions of the Act would be made applicable provided the State Government made such a declaration by Notification in the official gazette.

The proviso to sub-section (5) of Section t of the Principal Act, however, restricted the State Government from making any such declaration in respect of estates which admeasured less than 10.117 hectares or employed less than 30 workers immediately before the commencement of this Act".

Whereas prior to 1950 the Act applied to all types of plantations described therein irrespective of its size or number of workmen employed therein, by the Amendment Act, 1960, three classes of estates were created with reference to the applicability of the Principal Act. By virtue of Sub-section (4) of Section 1, the Act became automatically applicable to the estates admeasuring 10.117 hectares or employing 30 or more persons. Secondly, under Section 1(5) it could be made applicable to smaller estates provided notification to this effect was issued by the State Government. The third category of estates to which the Act was made applicable were those referred to in the proviso of new sub-section (5) namely which admeasured less than 10.117 hectares or employed less than 30 persons immediately before the commencement of the Principal Act.

It is quite evident that with the amendment in sub-section (4) of Section 1 the Act became applicable not to all the states irrespective of their size and the number of persons employed but it automatically applied only to those estates which admeasured 10.117 hectares or employed 30 or more persons provision had to be made with a view to prevent fragmentation of the big estates so as to avoid the applicability of the said Act. This was sought to be achieved, by enacting sub-section (5) of Section 1 This is also evident from the statement of Objects & Reasons accompanying the amendment, the relevant part of which is as follows:

OBJECTS AND REASONS

Sub-section (5)- Sub-Section (5) is being, added in Section 1 to empower the State Government to apply all or any of the provisions of the Act to any plantations less than 10.117 hectares in area or employing less than 30 workers, subject to the condition that such of these plantations as were in existence before the commencement of the Act will not be brought within, its scope. This sub-section thus seeks to check the fragmentation of plantations by employers into small units and to prevent the establishment of such small units in future with a view to bye passing the Act."

The proviso to Section 1(5) was clearly meant to save from the operation of the said Act only those estates which were less than 10.117 hectares or in which less than 30 persons were employed.

We see no warrant for interpreting the words "This Act" in the proviso to Section 1(5) as meaning the Amendment Act. Section 2 of the Amendment Act, 1960 brought about the amendments in Section 1 and provided that sub-section (4) and (5) shall be substituted in the Principal Act. The proviso is integral part of sub-section (5). With the insertion of sub-section (5) in the principal Act the whole of the sub-section (5) became a part of the Principal Act and the reference to 'this Act' can only mean the Principal Act of 1951 and cannot, by any stretch of imagination be regarded as meaning the Amendment Act of 1960.

Therefore, the Kerala High Court was right in not granting any relief to the appellants as their estates did not fall within the ambit of proviso to Section 1(5) of the Act. The appeal is accordingly, dismissed with costs.