S. APPUKUTTAN

v.

THUNDIYIL JANAKI AMMA & ANR.

JANUARY 13, 1988

[SABYASACHI MUKHARJI AND S. NATARAJAN, JJ.]

Kerala Land Reforms Act, 1964 as amended by Act 17 of 1972— Explanation II-A to clause (25) of Section 2 of—Scope and effect of.

These appeals and Petitions for Special Leave raised a common question of law regarding the scope and effect of Explanation II-A to clause (25) of section 2 of the Kerala Land Reforms Act, 1964, as amended by Act 17 of 1972. What fell for consideration was whether by reason of Explanation II-A to section 2(25) of the Act, a person in occupation of a homestead or a hut belonging to another during the period stipulated in the Explanation would become a Kudikidappukaran and be entitled to Kudikidappu rights under the Act.

Allowing Civil Appeal No. 3045 of 1980, allowing C.A. No. 2505 of 1977 partly and dismissing the Petitions for Special Leave, the Court,

HELD: The contentions of the parties in these cases had to be examined in the conspectus of the several amendments made by the Legislature to section 2(25) of the Act and the decisions rendered by the Kerala High Court. [669C]

Explanation II-A has been made a *non-obstante* provision in order to give over-riding effect to the Explanation over any judgment, decree or order of any court, passed against a person who was on 16.8.68 in occupation of a homestead or hut thereon and who continued to be in such occupation till the 1st day of January, 1970. The Legislature has by introducing Explanation II-A done away with any reference to occupation being referable to any permission granted by the owner of the land or the hut as the case may be. Not only had the Legislature eschewed any reference to permissive occupation but had also given a mandate that every one in actual occupation of any land and the dwelling house thereon between 16.8.68 and 1.1.70, irrespective of who built the dwelling place, should be granted recognition as a Kudikidappukaran. By reason of this explicit provision, there was no scope whatever restricting the class of person entitled to the benefit of Explanation II-A to only those who were able to prove obtainment of initial permission to

A occupy a homestead or a hut thereon. Explanation II-A equates an occupant of a homestead or a hut thereon during the relevant period with a Kudikidappukaran as defined under the main clause. Such being the case, anyone satisfying the requirements of Explanation II-A would automatically be entitled to have the status of a Kudikidappukaran and to all the benefits flowing therefrom. In other words, a person falling B under Explanation II-A has to be statutorily deemed as one permitted to occupy a homestead or the hut thereon as envisaged in sub-clauses (a) and (b) of clause (25) of section 2. The only limitation placed by explanation II-A is that a person falling within the terms of the definition should satisfy the conditions laid down by the *proviso* to the Explanation, *viz.* that if he or his predecessor had not constructed the dwelling house, the house should not costwise exceed Rs.750 or rentwise exceed a C monthly rent of Rs.5 and the occupant should not be in possession of land exceeding three cents in extent in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township either as owner or as a tenant on which he could erect a building. Viewed in the proper perspective, Explanation II-A consti- D tutes a second limb of clause (25) of section 2 to give full effect to its intendment, viz., entitling a person to Kudikidappu rights under section 2(25) if he proves initial permission to occupy the land and the dwelling house without the need of proving continuous possession during a prescribed period of time or in the alternative to claim Kudikidappu rights under Explanation II-A by proving continuous occupation during the E period of time prescribed by the Explanation without the necessity of proving obtainment of initial permission to occupy the land and the dwelling house thereon. Explanation II-A has got operative force of its own, which may be seen from the fact that clause (25) of section 2 as well as sub-clause (b) of the *proviso* to Explanation II-A lay down identical conditions which are to be satisfied by an applicant under F the main clause or the Explanation for claiming rights as a Kudikidappukaran. If the Explanation was sub-servient to section 2(25), there was no need for the Legislature to have provided sub-clause (b) of the *proviso* to Explanation II-A. There was no repugnancy between the two provisions because section 2(25) pertains to occupants of homesteads of one category while Explanation II-A pertains to homestead occupants of G a different category. [670A-H; 671A-G]

The Kerala Land Reforms Act was a beneficial enactment intended to secure occupancy rights to farmers and agricultural labourers who did not have homestead lands and dwelling places of their own for their occupation. In the case of beneficial enactments, the courts H should follow a policy of benevolent and liberal construction. Even if

there was any little room for doubt whether Explanation II-A could go to the extent of conferring Kudikidappu rights on persons who were not able to prove their lawful entry upon the land and the occupation of the dwelling house, it had to be held that the Explanation had been specifically provided for giving greater thrust to the intendment of the legislature, and, therefore, the Explanation warranted a liberal and purposive interpretation so as to fulfil the object of the legislation and comply with the legislative intent. [672G-H; 673G-H; 674A]

The attention of the Court was drawn to a judgment of this Court in *Palayi Kizhakkekara Methai's son K.M. Mathew and anr.* v. *Pothiyill Mommutty's son Hamsa Haji & Ors.*, C.A. No. 165 of 1974, etc.—J.T. 1987 (2) S.C. 520, but the Court found no conflict between the view taken by the Court in these appeals and the view taken by this court in C.A. No. 165 of 1974, etc. [675C; 676E]

In C.A. No. 3045 of 1980, the appellant was in possession of a hut from 1982 onwards; nevertheless his claim for Kudikidappu rights under Explanation II-A was rejected as he was not able to prove grant of permission to him by the respondent for occupying the hut. Since it has been held by the Court that a claimant for Kudikidappu rights under Explanation II-A, who did not suffer any disqualification under the *proviso*, needed only to prove the factum of possession between the prescribed dates for being placed on par with a Kudikidappukaran as defined in section 2(25) of the Act, the appeal had to succeed, with order of the Land Tribunal, restored. [676F-H]

In the C.A. No. 2505 of 1977, the appellant claimed Kudikidappu rights in respect of two sheds set out in A & B Schedules: The appellant was not entitled to any relief in respect of the A schedule property because it had been concurrently found by all the courts that he had taken the shed on lease in the year 1954 under rent chit and that the shed continued to be in existence and it had not been rebuilt by the appellant. In respect of the B schedule shed, the appellant had been denied relief solely on the ground that he had failed to prove grant of permission by the respondent and his predecessor-in-title to occupy the homestead and put up the shed. In view of the *factum* of occupation of the B schedule property during the period envisaged by Explanation II-A, the appellant was entitled to a decree in respect of the B schedule property. Appeal was partly allowed—in respect of the B schedule property—and the case, remitted to the Land Tribunal for determining the price of the B schedule property and for directions, etc. [677A-D]

A **The Petitions for Special Leave failed, because it had been concurrently found that the sheds occupied by the respondent in each case were included in the property leased to the petitioner though possession was allowed to be retained by the respondents and as such, the respondents were entitled to claim Kudikidappu rights under Explanation II-**
B **A. As the respondents had been inducted into possession of the huts by the owner of the land and as the lease granted to the petitioner comprised the sheds occupied by the respondents also, the petitioner could not contend that the respondents were not entitled to seek the sale of ten cents of land adjoining each hut under section 80 B of the Act. [677E-F]**

C *Velayudhan* **v.** *Aishabi,* **A.I.R. 1981 Kerala 185;** *Gopalan* **v.** *Chellamma,* **[1966] K.L.T. 673;** *Mariam and others* **v.** *Ouseph Xavier,* **[1971] K.L.T. 709;** *Achutan* **v.** *Narayani Amma,* **[1980] K.L.T. 160, A.I.R. 1980 NOC 90;** *Moideen Kuktty* **v.** *Gopalan,* **[1980] K.L.T. 468;** *East End Dwelling Co. Ltd.* **v.** *Finsbary Borough Council,* **[1952] AC 109;** *M.K. Venkatachalam* **v.** *Bombay Dyeing and Manufacturing Co.*
D *Ltd.,* **[1959] S.C.R. 703;** *Commissioner of Income Tax, Delhi* **v.** *Teja Singh,* **A.I.R. 1959 S.C. 355;** *Industrial Supplies Pvt. Ltd.* **v.** *Union of India,* **[1980] IV S.C.C. 341;** *Jeewanlal & Ors.* **v.** *Appellate Authority,* **[1984] 4 S.C.C. 356;** *Bharat Singh* **v.** *Management of New Delhi Tuberculosis Centre, New Delhi, & Ors.,* **[1986] 2 SCC 614;** *Sonawati & Ors.* **v.** *Shri Ram & Anr.,* **[1968] 1 SCR 617;** *Azad Singh & Ors.* **v.**
E *Barkat Ullah Khan & Ors.,* **[1983] 2 SCR 927;** *Shri Prithvi Cotton Mills Ltd. & Anr.* **v.** *Broach Borough Municipality & Ors.,* **[1970] 1 SCR 388;** *Hari Singh & Ors.* **v.** *The Military Estate Officer & Anr.,* **[1973] 1 SCR 515;** *D. Cawassi & Co. Mysore* **v.** *State of Mysore & Anr.,* **[1985] 1 SCR 825 and** *Palavi Kizhakkekara Mathaiy's son K.M. Mathew & Anr.* **v.** *Pothiyill Mommitty's son Hamsa Haji & Ors.,* **J.T. 1987 2 S.C. 520,**
F **referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3045 of 1980 etc.

From the Judgment and Order dated 3.6.1980 of the Kerala High
G Court in C.R.P. No. 2711 of 1978

S. Padmanabhan and N. Sudhakaran for the Appellant.

Abdul Khader and K.M.K. Nair for the Respondents.

H The Judgment of the Court was delivered by

NATARAJAN, J. The appeals by special leave and the special leave petitions raise a common question of law regarding the scope and effect of Explanation II-A to Clause (25) of Section 2 of the Kerala Land Reforms Act, 1964, (for short the Act hereafter) as amended by Act, 17 of 1972. It is, however, necessary to mention two matters even at the outset of the judgment. Had the judgments in the two appeals been pronounced after the decision in *Velayudhan* v. *Aishabi,* AIR 1981 Kerala 185 by a Full Bench of the Kerala High Court, the results would have been different and there would have been no necessity for these appeals being filed. Secondly, the decision in *Velayudhan* v. *Aishabi,* has become final since no appeal has been preferred to this Court against the judgment therein.

What falls for consideration in all these cases is whether by reason of Explanation IIA to Section 2(25) of the Act, a person in occupation of a homestead or a hut belonging to another during the period stipulated in the Explanation would become a Kudikidappukaran and be entitled to Kudikidappu rights under the Act.

For a proper understanding of the issue, we may make a brief reference to the history of the Legislation and to some of the earlier decision of the High Court. Originally, the occupants of dwelling houses or huts on homestead land belonging to others were only given a right to remove the materials of the super-structure put up by them or alternately to seek monetary compensation thereof. The restricted conferment of rights exposed the occupants of huts belonging to others to indiscriminate eviction. To afford protection to them, the erstwhile Cochin State and the Travancore State passed suitable enactments to safeguard their possession. Eventually, when the Travancore-Cochin State came to be formed, an Act known as the travancore-Cochin Prevention of Eviction of Kudikidappukars Act, 1950 was passed. Even under that Act, protection was given only to those persons who had put up the super-structures themselves and not to persons who were occupying huts put up by the land owners. Protection was extended to that class of persons also under the Kerala Stay of Eviction Proceedings Act, 1957. The said Act was amended by the Kerala Stay of Eviction Proceedings Act, 1958. This was followed by the Kerala Land Reforms Act, 1964 (the Act). Clause (25) of Section 2 of the Act defined a Kudikidappukaran and Kudikidappu as under:

> "25. 'Kudikidappukaran' means a person who has neither a homestead nor any land exceeding in extent three cents in any city or major municipality or five cents in any other

A municipality or ten cents in any panchayat area or township, in possession either as owner or as tenant, on which he could erect a homestead and:

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

(b) who has been permitted by a person in lawful possession of any land to occupy, with or without an obligation to pay rent, a hut belonging to such person and situate in the said land; C

and 'Kudikidappu' means the land and the homestead or the hut so permitted to be erected or occupied together with the easement attached thereto."

D There were two Explanation to Section 2(25). For our purpose, it is enough if we set out Explanation II alone. It read as under:

"Explanation II". "Any person who was in occupation of a Kudikidappu on the 11th day of April, 1957, and who continued to be in such occupation at the commencement of E this Act, shall be deemed to be in occupation of such Kudikidappu with permission as required under the clause. (Emphasis supplied).

In *Gopalan* v. *Chellamma,* [1966] K.L.T. 673 Madhavan Nair, J. of the Kerala High Court held, without noticing a contrary view taken F in an earlier case in Second Appeal No. 558 of 1961, that to be a Kudikidappukaran, the occupancy must have commenced with the permission of the owner of the land, that the permission given should not have been withdrawn or terminated subsequently but must have continued to be effective till the relevant time, that Explanation II would only have the effect of extending the permission initially G granted to the date of the commencement of the Act and that a trespasser forcibly entering upon the land will not be entitled to claim rights as a Kudikidappukaran.

Subsequent to this decision, the Act underwent several amendments under the Kerala Land Reforms (Amendment) Act, 1969. One H of the changes effected was the substitution of Explanation II

(extracted above) by a proviso which read as under: A

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

The proviso came to be construed by Krishna Iyer, J. (as he then was) in *Mariam and Others* v. *Ouseph Xavier,* [1971] K.L.T. 709 and C the learned Judge differed only partly from the view taken in *Gopalan* v. *Chellamma* (supra) and held that "the initial leave to occupy is obligatory to make the dweller a Kudikidappukaran" and that the proviso operates only at the next stage and hence such protection was afforded only to persons who had initially obtained permission to occupy the homestead or hut and continued to be in occupation till the D commencement of the Act but without reference to any further question as to whether the permission initially granted continued to subsist or had been subsequently revoked.

After this decision was rendered, the Legislature once again brought about certain amendments to the Act by means of the Kerala E Land Reforms (Amendment) Act, 1972. The Legislature omitted the proviso to Section 2(25) (extracted above) and introduced Explanation II-A with retrospective effect. Explanation II-A is to the following effect:

> *Explanation II-A* "Notwithstanding any judgment, decree F or order of any court, a person, who on the 16th day of August, 1968, was in occupation of any land and the dwelling house thereon (whether constructed by him or by any of his predecessors-in-interest or belonging to any other person) and continued to be in such occupation till the 1st day of January, 1970, *shall be deemed to be a Kudikidapp-* G *ukaran*: (emphasis supplied).
>
> Provided that no such person shall be deemed to be a Kudikidappukaran—
>
> (a) in cases where the dwelling house had not been H

A constructed by such person or by any or his predecessors-in-interest, if—

(i) such dwelling house was constructed at a cost, at the time of construction, exceeding seven hundred and fifty rupees; or

B

(ii) such dwelling house could have, at the time of construction, yielded a monthly rent exceeding five rupees; or

(b) if he has a builidng or is in possession of any land exceeding in extent three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township, either as owner or as tenant, on which he could erect a building.

C

The scope and effect of Explanation II-A introduced by the D Amending Act of 1972 came to be construed by a Division Bench of the Kerala High Court in *Achuthan* v. *Narayani Amma,* [1980] K.L.T. 160: AIR 1980 NOC 90. The Bench held that the effect of Explanation II-A is to dispense with proof of permissive occupation, either in support or rebuttal thereof, and that even in the absence of such proof and without any enquiry as regards the original occupation, a person who E satisfies the conditions mentioned therein and does not fall within the ambit of the proviso thereto has to be deemed a Kudikidappukaran. However, in *Moideenkuktty* v. *Gopalan,* [1980] K.L.T. 468 another Division Bench took a contrary view and held that the legal fiction which had all along existed right from 1955 under Section 4(2) of the Travancore-Cochin Act, 1955, Explanation II to Section 2(20) of the F Agrarian Relations Act, 1961, Explanation II To Section 2(25) of the Kerala Land Reforms Act, 1964 and the proviso thereto as inserted by the Amending Act, 1969 was only intended to protect a Kudikidappukaran who began his occupation of a Kudikidappu with permission by providing for the statutory continuance of the permission initially given till the commencement of each of the above mentioned Statutes G and the Explanation II-A introduced by Act 17 of 1972 had not altered or widened the legal fiction so as to cover a case of initial permission also. The Bench, therefore, held that unless initial permission for occupation of a homestead or hut is established, Explanation II-A will not be attracted. It was on account of the conflicting views taken by the two Division Benches in *Achuthan's* case (supra) and *Moideenkukutty's* case (supra), a reference was made to a Full Bench for decision H

of the case in Velayudhan & Ors. v. *Aishabi & Ors.* (supra) The Full Bench, after elaborately tracing the history of the Legislation and considering the changes brought about periodically by the Legislature to confer Kudikidappu rights on occupants of homesteads and huts and reviewing the earlier decisions, came to the conclusion that Explanation II-A could be treated as an addendum to Section 2(25) in order to widen the definition or alternately Section 2(25) can be treated as the main provision and Explanation II-A as an exception thereto. In that view of the matter, the Full Bench held that the decision in *Achuthan's* case (supra) laid down the correct law and the view taken in *Moideenkukutty's* case was not sustainable.

It is in the conspectus of the several amendments made by the Legislature to Section 2(25) of the Act and the decisions rendered by the Kerala High Court, we have to examine the contentions of the counsel for the appellants and the respondents in the respective appeals. The Full Bench of the Kerala High Court has analysed the position and summed up its view in the following manner regarding the purpose underlying the changes brought about in the Act and the new dimension that has now been given by Explanation II-A to Section 2(25). The relevant passage in *Velayudhan's* case (supra) occurs in para 24 at page 192 of the report (AIR 1981 Kerala 192) and is as follows:

> "When the words 'in occupation of a Kudikidappu' in Explanation II to Sec. 2(25) in the K.L.R. Act as originally enacted was held by this Court to be suggestive of the need for the person claiming Kudikidappu right thereunder to prove permissive occupation as on the relevant date (11.4.1957) thereunder, the legislature omitted the word "Kudikidappu", and resorted to the terminology of 'in occupation of any land and the homestead thereon, or in occupation of a hut .....' in the proviso to Section 2(25) as amended by the Amending Act, 1969. When this Court pointed out that still the emphasis of the fiction is on the permissive aspect of occupation and not on the status of the person as Kudikidappukaran, and that the words 'homestead' and 'hut' are indicative of the requirement that permissive occupation as on the relevant date (16.8.1968) has to be established, the legislature reacted by omitting the words 'homestead' and 'hut' from the fiction and laying stress on the status as Kudikidappukaran by enacting Explanation II-A to Section 2(25) of the K.L.R. Act as per the K.L.R. (Amending) Act, 1972."

A At the outset it has to be pointed out that Explanation II-A has been made a non-obstante provision in order to give over-riding effect to the Explanation over any judgment, decree or order of any Court passed against a person who was, on 16.8.1968 in occupation of a homestead or hut thereon and who continued to be in such occupation till the 1st day of January 1970. Now, if we look at Explanation II to B Section 2(25) as it originally stood and the proviso which replaced it under the 1969 (Amendment) Act and Explanation II-A which was introduced by the amending Act 1972, we may notice the significant changes made by the Legislature and the underlying reasons therefor. In Explanation II, it was laid down that any person in occupation of a Kudikidappu during the prescribed period viz. 11.4.1957 to the date of commencement of the Act "shall be deemed to be in occupation of C such Kudikidappu with permission as required under this clause". Since it was held in *Gopalan's* case (supra) that the use of the words "in occupation of a Kudikidappu with permission", obligated an occupant of a Kudikidappu to prove initial permission to enter a homestead or occupy a hut on the land of another and further prove con- D tinuance of such permission till the relevant date, the Legislature omitted the word "kudikidappu" in the proviso that was substituted for Explanation II under the 1969 Amendment Act. Even then, it was held in *Mariam's* case (supra) that initial leave to occupy was obligatory to make an occupant a Kudikidappukaran because of the use of the words "with permission as required under the clause" in the proviso. There- E fore, what the Legislature has done while introducing Explanation II-A by the 1972 Amendment Act is to do away with any reference to occupation being referable to any permission granted by the owner of the land or the hut as the case may be. Not only has the Legislature eschewed any reference to permissive occupation but has also given a mandate that everyone in actual occupation of any land and the dwel- F ling house thereon, between the dates 16.8.1968 to 1.1.1970, irrespective of who built the dwelling place, shall be granted recognition as a Kudikidappukaran. The words used are "the person ..... in occupation ..... shall be deemed to be a Kudikidappukaran." By reason of this explicit provision, there is no scope whatever for restricting the class of persons entitled to the benefit of Explanation G II-A to only those who are able to prove obtainment of initial permission to occupy a homestead or a hut thereon. Explanation II-A equates an occupant of a homestead or a hut thereon during the relevant period with a Kudikidappukaran as defined under the main clause. Such being the case, anyone satisfying the requirements of Explanation II-A would automatically be entitled to have the status of a H Kudikidappukaran and to all the benefits flowing therefrom. In other

words, a person falling under Explanation II-A has to be statutorily deemed as one permitted to occupy a homestead or the hut thereon as envisaged in Sub-Clauses (a) and (b) of Clause(25) to Section 2. The only limitation placed by Explanation II-A is that a person falling within the terms of the definition should satisfy the conditions laid down by the proviso to the Explanation viz. that if he or his predecessor had not constructed the dwelling house, the house should not costwise exceed Rs.750 or rentwise exceed a monthly rent of Rs.5 and the occupant should not be in possession of land exceeding three cents in extent in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township either as owner or as a tenant on which he could erect a building. viewed in the proper perspective, Explanation II-A constitutes a second limb of Clause (25) of Section 2 devised by the Legislature to give full effect to its intendment viz. entitling a person to claim Kudikidappu rights under Section 2(25) if he proves initial permission to occupy the land and the dwelling house without the need of proving continuous possession during a prescribed period of time or in the alternative to claim Kudikidappu rights under Explanation II-A by proving continuous occupation during the period of time prescribed by the Explanation without the necessity of proving obtainment of initial permission to occupy the land and the dwelling house thereon. Explanation II-A has got operative force of its own and this may be seen from the fact that Clause (25) of Section 2 as well as Sub-Clause (b) of the proviso to Explanation II-A lay down identical conditions which are to be satisfied by an applicant under the main clause or the Explanation for claiming rights as a Kudikidappukaran. Both the provisions lay down that any claimant for Kudikidappu rights should not have a homestead or any land exceeding in extent three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township in his possession either as owner or tenant on which he could erect a homestead. If the Explanation is subservient to Section 2(25), there was no need for the Legislature to have provided Sub Clause (b) to the proviso to Explanation II-A. There is no repugnancy between the two provisions because Section 2(25) pertains to occupants of homestead of one category while Explanation II-A pertains to homestead occupants of a different category.

By introducing Explanation II-A, the Legislature has created a statutory fiction. As to how statutory fictions are to be interpreted is by now well-settled. The approach formulated by Lord Asquith in *East End Dwelling Co. Ltd.* v. *Finsbary Borough Council,* [1952] AC 109 has been approved by this Court in a number of cases. The line of

A approach set out by Lord Asquith is as under:

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which if the putative state of affairs had in fact existed, must inevitably
B have flowed from or accompanies it.....The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

C This line of approach has been adopted by this Court in a number of cases and we may refer only to some of them. See *M.K. Venkatachalam* v. *Bombay Dyeing and manufacturing Co. Ltd.*, [1959] SCR 703: AIR 1958 SC 875; *Commissioner of Income Tax, Delhi* v. *Teja Singh,* AIR 1959 SC 355. In *Commissioner of Income Tax, Delhi* v. *Teja Singh* (supra), this Court pointed out that "it is a rule of interpre-
D tation well-settled that in construying the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate." In *Industrial supplies Pvt. Ltd.* v. *Union of India,* [1980] IV SCC 341, this Court observed as follows:

> "It is now axiomatic that when a legal fiction is incorpora-
E ted in a statute, the court has to ascertain for what purpose the fiction is created. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The court has to assume all the facts and consequences which are incidental or inevit-
F able corollaries to giving effect to the fiction. The legal effect of the words 'as if he were' in the definition of owner in Section 3(n) of the Nationalisation Act read with Section 2(1) of the Mines Act is that although the petitioners were not the owners, they being the contractors for the working of the mine in question, were to be treated as such though, in fact, they were not so."

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It has also to be borne in mind that the Kerala Land Reforms Act is a beneficial enactment intended to secure occupancy rights to farmers and agricultural labourers who do not have homestead lands and dwelling places of their own for their occupation. Incidentally, we may mention that Act 17 of 72 has been subsequently included in the
H 9th Schedule to the Constitution and this would reflect in fuller mea-

sure the anxiety of the Legislature to protect the rights of occupants of homestead and huts thereon. In the case of beneficial enactments the courts should follow a policy of benevolent and liberal construction. In *Jeewanlal & Ors.* v. *Appellate Authority,* [1984] 4 SCC 356 it was observed as follows:

> "In construing a social welfare legislation, the court should adopt a beneficent rule of construction; and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequence, for, in that case, the words of the statute speak the intention of the Legislature. When the language is explicit, its consequences are for the Legislature and not for the courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the status is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none."

In *Bharat Singh* v. *Management of New Delhi Tuberculosis Centre, New Delhi & Ors.,* [1986] 2 SCC 614, the abovesaid policy was reiterated in the following words:

> "Now it is trite to say that acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have-not and the underdog and which would lead to injustice should always be avoided."

Therefore, even if there is any little room for doubt whether Explanation II-A can go to the extent of conferring Kudikidappu rights on persons who are not able to prove their lawful entry upon the land on the occupation of the dwelling house, it has to be held that the Explanation has been specifically provided for giving greater thrust to

the intendment of the legislature and, therefore, the Explanation warrants a liberal and purposive interpretation so as to fulfil the object of the legislation and comply with the legislative intent.

Mr. Abdul Khader, learned counsel for the respondent however sought to contend, that whichever way Explanation II-A is construed i.e. whether as a legal fiction or as a re-enacted provision of substantive law the Explanation would still be trammelled by the basic prescription contained in the main clause regarding permissive occupation. The counsel argued that so long as clause (25) of Section 2 continued to define a Kudikidappukaran as a person "who has been permitted ..... by a person in lawful possession ..... to have the use and occupation of a portion of the land for the purposes of erecting a homestead/hut belonging to him in the said land", the Explanation would necessarily be governed and controlled by the words in Clause (25) of Section 2 and as such even if a person was in occupation of a homestead or hut between the period 16.8.1968 to 1.1.1970 he will not be entitled to claim rights as a Kudikidappukaran unless he is able to prove grant of initial permission by the owner of the land or the hut, as the case may be. It was argued that it was not the intention of the legislature to confer Kudikidappukaran rights on trespassers and unauthorised occupants. Our attention was drawn to the decisions in *Sonawati & Ors.* v. *Shri Ram & Anr.*, [1968] 1 SCR 617, and *Azad Singh & Others* v. *Barkat Ullah Khan & Others,* [1983] 2 SCR 927. In these decisions the words "Cultivatory possession" occurring in the U.P. Zamindari abolition & Land Reforms Act and the U.P. Land Reforms (Supplementary) Act have been held to refer to lawful possession and as such they would not, cover the case of a trespasser upon the land. These decisions can be of no avail in this case because Explanation II-A has avoided any reference to permissive occupation and has straight away equated an occupant of a homestead during the prescribed period with a Kudikidappukaran as defined in the main clause. The Explanation has to be interpreted in the light of the words used by the legislature and having in mind the object sought to be achieved and the evil sought to be remedied by the Act.

Mr. Abdul Khader alternatively contended that Explanation II-A should be construed as a validating provision introduced by the legislature to overcome the limitations noticed by the Courts in the corresponding provisions in the previous enactments and as such the validation exercise cannot be given acceptance unless the validating law satisfied the tests prescribed therefor. The learned counsel referred to certain decisions in this behalf, viz. *Shri Prithvi Cotton Mills*

Ltd. & Anr. v. *Broach Borough Municipality & Ors.*, [1970] 1 SCR 388; *Hari Singh & Ors.* v. *The Military Estate Officer and Anr.*, [1973] 1 SCR 515 and *D. Cawassi & Co. Mysore* v. *The State of Mysore & Anr.*, [1985] 1 SCR 825: AIR 1984 SC 1980 and argued that a validating law can be upheld only if the legislature has competence to legislate over the subject matter and secondly, only if the legislature has removed the defects noticed by the Courts in the previous law. This argument fails to take note of the significant change the legislature has made in the wording of Explanation II-A. It is therefore futile to contend that Explanation II-A suffers from the same limitations the earlier provisions were thought to suffer from.

After the arguments were concluded, learned counsel for the respondents have circulated a copy of the judgment of this Court in C.A. No. 165 of 1974 etc. *Palayi Kizhakkekara Mathaiy's son K.M. Mathew & Anr.* v. *Pothiyill Mommutty's son Hamsa Haji & Ors.*, JT 1987 2 SC 520 delivered on 29.4.1987 wherein Section 7D of the Kerala Land Reforms Act, 1963 as amended by the Kerala Land Reforms (Amendment) Act, 1969 has been interpreted as conferring benefit thereunder only on persons whose occupation of the private forests or unsurveyed lands had a lawful origin and not on persons in unlawful occupation based on trespass or forcible and unlawful entry. We have carefully considered the judgment and find that the pronouncement therein does not in any way lend support to the contentions of the respondents herein. The scheme of Sections 7A, 7B, 7C, 7D, 8 & 9 of the Kerala Land Reforms Act, 1963 is entirely different and this position is succinctly brought out by the following passage in the decision referred to above. The Court had summed up the scheme of the Act in the following words:

> "On a careful scrutiny of the aforesaid provisions, it becomes abundantly clear that the intention of the legislature was to grant protection only to persons whose possession had a lawful origin in the sense that they had either *bona fide* believed the lands to be Government's land of which they could later seek assignment or had taken the lands on lease from person whom they *bona fide* believed to be competent to grant such leases or had come into possession with the intention of attorning to the lawful owners or on the basis of arrangements like varam etc. which were only in the nature of licences and fell short of a leasehold right. It was not within the contemplation of the legislature to confer the benefit of protection on persons

A who had wilfully trespassed upon lands belonging to others and whose occupation was unlawful in its origin. The expression "in occupation" occurring in Section 7D must be construed as meaning "in lawful occupation."

B The clear finding in that case was that the appellant had claimed title on the basis of adverse possession and his own plea was that he had come into possession of the lands by trespass. He was therefore, far removed from the class of persons whom the Legislature wanted to provide for viz. persons who had entered upon land under a *bona fide* mistaken belief that the land belongs to Government and is capable of assignment or that the land belongs to the person who had granted C them lease etc. The entry was, therefore, linked with a *bona fide* belief though mistaken, about the character of the land and hence a trespasser is not entitled to claim any benefit. But in so far as Section 2(25) and Explanation II-A of the Act are concerned the occupant of the homestead or hut is not enjoined to prove that he occupied the homestead or hut under a *bona fide* mistaken belief and that he was D not a trespasser. He need only prove under the main clause that he had been permitted to occupy the homestead or hut and under Explanation II-A that he had been in continuous occupation from 16.8.1968 to 1.1.1970. Presumably the Legislature has thought that an occupant of a homestead or a hut would not have been allowed to remain in occupation for so long if he was a trespasser. There is therefore, no conflict E between the view taken by us in these appeals and the view taken by this Court in CA No. 165/74 etc. (supra)

Having settled the question of law we will now deal with the appeals and the Special Leave Petitions on their merits. In C.A. No. 3045 of 1980 it was found that the appellant was in possession of a hut F from 1962 onwards. Nevertheless his claim for Kudikidappu rights under Explanation II-A was rejected as he was not able to prove grant of permission to him by the respondent for occupying the hut. Since we have held that a claimant for Kudikidappu rights under Explanation II-A, who does not suffer any disqualification under the proviso, need only prove the factum of possession between the prescribed dates for G being placed on par with a Kudikidappukaran as defined in Section 2(25) of the Act, the appeal has to succeed and will accordingly stand allowed. Consequently, the order of the Land Tribunal Telicherry in O.A. No. 22 of 1973 will stand restored but having regard to the lapse of time, the appellant is directed to pay the entire amount towards the value of the hut and the land, as fixed by the Land Tribunal, within H three months from today.

As regards C.A. No. 2505 of 1977, the appellant claimed Kudikidappu rights in respect of two sheds set out in plaint A & B schedules. In so far as A schedule property is concerned, the appellant is not entitled to any relief because it has been concurrently found by all the Courts that he had taken the shed on lease in the year 1954 under a rent chit for running a tea shop and that the shed continued to be in existence and it had not been rebuilt by the appellant. However, in so far as the shed comprised in B schedule is concerned, the appellant has been denied relief solely on the ground that he had failed to prove grant of permission by the respondent and his predecessors-in-title to occupy the homestead and put up the shed. Having regard to the factum of occupation of the B schedule property during the period envisaged by Explanation II-A, it follows that the appellant is entitled to a decree in respect of the B schedule property. The appeal is, therefore, partly allowed in so far as the B schedule property is concerned. The matter will stand remitted to the Land Tribunal Telicherry for determining the price of the B schedule property for the directions regarding the manner in which the purchase price should be paid by the appellant.

Special Leave Petitions 204 & 205 have to fail because it has been concurrently found that the sheds occupied by the respondent in each case were included in the property leased to the petitioner though possession was allowed to be retained by the respondents, and as such the respondents are entitled to claim Kudikidappu rights under Explanation II-A of Section 2(25) of the Act. As the respondents had been inducted into possession of the huts by the owner of the land and as the lease granted to the petitioner comprised the sheds occupied by the respondents also, the petitioner cannot contend that the respondents are not entitled to seek the sale of ten cents of land adjoining each hut under Section 80B of the Act. Hence the Special Leave Petitions are dismissed.

There will be no order as to costs in the appeals as well as the special leave petitions.

S.L. Appeals and Petitions dismissed.