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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 16TH DAY OF MARCH 2016/26TH PHALGUNA, 1937

WA.NO. 2766 OF 2015 () IN WP(C).29534/2015

AGAINST JUDGMENT DATED W.P(C) NO.29534 OF 2015
OF HIGH COURT OF KERALA

APPELLANT(S)/RESPONDENT:

1. THE RANGE OFFICER/AUTHORISED OFFICER
KERALA FOREST DEPARTMENT, KERALA FOREST OFFICE
RANGE OFFICE, DEVIKULAM P.O., IDUKKI 685613.

2. THE TAHSILDAR
DEVIKULAM, DEVIKULAM P.O., IDUKKI 685613.

BY SPECIAL GOVERNMENT PLEADER SMT.SUSHEELA BHAT

RESPONDENT(S)/PETITIONER:

MUNNAR TEA GARDEN RESIDENCY
PALLIVASAL P.O.
HAVING ITS REGISTERED OFFICE AT: BUILDING NO.VIII/259
KATHANARUTHOTTATHIL, MEKKADAMBU P.O., RACKAD
ERNAKULAM DISTRICT, PIN 682316
REPRESENTED BY ITS MANAGING PARTNER, P.T.ELDHO
S/O.P.U.THOMAS.

R1 BY ADV. SRI.K.JAJU BABU (SR.)
R1 BY ADV. SMT.M.U.VIJAYALAKSHMI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
04.03.2016, THE COURT ON 16-03-2016 DELIVERED THE
FOLLOWING:

"C.R."

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.2766 of 2015

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Dated this the 16th day of March, 2016

J U D G M E N T

Ashok Bhushan, C.J.

The Range Officer/Authorised Officer, Kerala Forest Department and the Tahsildar, Devikulam, who were respondents 1 and 2 in W.P(C) No.29534 of 2015 have come up in appeal against the judgment dated 26.10.2015 in the aforesaid Writ Petition by which judgment, the learned Single Judge has permitted the petitioner to cut and remove 9 planted Eucalyptus trees from 25 cents of land in R.S. No.49/1-1, Block No.14 of Pallivasal Village.

2. Brief facts of the case as emerged from the pleadings on record are: Petitioner is a partnership firm engaged in business of running hotel, hospitality management, etc. For establishing a hotel in Munnar, petitioner purchased 25 cents of land in R.S. No.49/1-1

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by sale deed dated 06.05.2015. The previous owner of the property was given no objection certificate by the Pallivasal Grama Panchayat on 24.01.2007 for construction of a building in the said property. In the property there were 9 Eucalyptus trees planted by the previous owner. For making any construction in the property, trees were required to be cut and removed. The previous owner had applied for permission to cut and remove the trees in the year 2014 before the Tahsildar, Devikulam. The Tahsildar, by order dated 03.09.2015, Ext.P5, granted permission to the petitioner for cutting and removing the 9 Eucalyptus trees from the property. In pursuance of the permission, workers of the petitioner had cut away branches of three Eucalyptus trees on 17.09.2015. At this juncture, the Range Officer/Authorised Officer intervened and registered a case against the petitioner. Petitioner filed the Writ Petition with the following reliefs:

"(i) issue a writ of mandamus or or any other appropriate writ, order or direction directing the

respondents to permit the petitioner to cut and remove 9 Eucalyptus trees standing in the property covered by Ext.P1 based on Ext.P5 permission.

(ii) declare that the action evidence by Exts.P6 and P7 is illegal and unsustainable in the light of Ext.P5.

(iii) issue a writ of certiorari or any other appropriate writ, order or direction calling for Exts.P6 and P7 and quash the same.

(iv) issue such other and further reliefs as this Honourable Court may deem fit and proper in the facts and circumstances of the case."

3. Petitioner's case in the Writ Petition is that under the provisions of the Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005 (for short, "the 2005 Act") permission for cutting Eucalyptus trees is not required. The land being covered by pattayam issued under the Land Assignment Act and Rules, Section 5(2) of the Kerala Preservation of Trees Act, 1986 (hereinafter referred to as "the 1986 Act") is not applicable.

4. A counter affidavit was filed in the Writ Petition by the Range Forest Officer, Devikulam contending that the Village in question has been

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notified under the 1986 Act by SRO No.1241 of 1990. The Tahsildar is not an Authorised Officer to grant any permission for cutting trees in the notified area under Section 5(2). Permission granted by the Tahsildar was without authority. No permission having been obtained from the Authorised Officer for cutting the trees, petitioner's action was wholly illegal against which a case has already been registered. Copy of the Notification has been brought on record by the 1st respondent as Ext.R1(a). Notification issued under the 2005 Act has been brought on record as Ext.R1(b).

5. The learned Single Judge vide judgment dated 26.10.2015 held that branches of 3 Eucalyptus trees were cut and removed by the petitioner based on the permission granted by the Tahsildar which was a bona fide act and hence petitioner is permitted to cut and remove 9 Eucalyptus trees. Learned Single Judge further observed that it is doubtful whether Eucalyptus trees would fall within the trees referred to in the 1986 Act which is an exempted tree under the Kerala Promotion of

Tree Growth in Non-Forest Areas (Amendment) Act, 2007 (for short, "the 2007 Act"). Learned Single Judge having noticed the definition of 'tree' under the 1986 Act as well as the definition of 'tree' under Section 2 (g) of the 2007 Act observed that he is not entering into the question in the light of the proposed direction in the Writ Petition. It is useful to extract paragraph 6 of the judgment which contained the reasons:

"6. It is doubtful whether Eucalyptus would fall within the trees referred in the Kerala Preservation of Trees Act since it is an exempted tree under the Kerala Promotion of Tree Growth in Non-Forest Areas (Amendment) Act, 2007. The Kerala Preservation of Trees Act defines 'trees' which do not include Eucalyptus, see Section 2(e) of the Act. The Kerala Promotion of Tree Growth in Non-Forest Areas (Amendment) Act, 2007 defines trees, under Section 2(g) as "tree" means any woody plant, whether fruit bearing or not, and includes bamboos. Anyway, I am not entering upon this question in the light of the proposed direction in the writ petition. The petitioner is the holder of only 25 cents of land. They proposes to cut and remove the trees from their land for preserving it for the purpose of utilising the same for tourism related activities. The petitioner based on Ext.P5

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order of the Tahsildar, cut and removed branches of the Eucalyptus trees. It appears, it was a *bona fide* act of the petitioner. Therefore, the petitioner may be permitted to cut and remove nine planted Eucalyptus trees without prejudice to recover the value of trees from the petitioner."

6. Smt.Susheela Bhat, learned Special Government Pleader challenging the judgment of the learned Single Judge contended that the learned Single Judge committed error in permitting the petitioner to cut and remove the trees. It is submitted that the Village in question where the property is situated and the trees are standing is a Village notified under Section 5(2) of the 1986 Act. Copy of Notification dated 12.09.1990 has been brought on record as Ext.R1(a). The Notification clearly stated that Village, Pallivasal is in the Devikulam Taluk. It is not disputed before us that the property is covered by Notification, Ext.R1(a).

7. Shri Jajubabu, learned Senior Advocate appearing for the respondent refuting the submissions of the learned Special Government Pleader contends that Eucalyptus tree is not a tree which is covered by the

definition under Section 2(e) of the 1986 Act and it being not covered by Section 2(e) prohibition as contemplated under Section 5 shall not be applicable with regard to Eucalyptus tree. It is stated that Eucalyptus tree not being covered by the provisions under Section 5, by virtue of the 2005 Act, petitioner was fully entitled to cut and remove the trees and by virtue of Section 6(3) of the 2005 Act, small holders are free to cut and remove trees except the specified tree. Reference was made on the 1st proviso to Section 6(3) of the 2006 Act whereas, even permission is not required for the cutting and removal of trees mentioned in the Schedule and Eucalyptus tree being mentioned in Schedule 26 of the 2005 Act.

8. Before we proceed to consider the submissions of the learned counsel for the parties, it is relevant to refer to the provisions of the 1986 Act.

The preamble of the 1986 Act states:

"WHEREAS there has been indiscriminate felling and destruction of trees in the State of Kerala resulting in considerable soil erosion and destruction and loss of the



timber wealth of the State;

AND WHEREAS with a view to prevent soil erosion and destruction and loss of the timber wealth in the State, it is necessary to regulate the felling and destruction of trees in the State;

BE it enacted in the Thirty-seventh Year of the Republic of India as follows:-

Section 2 is the definition clause. Definition of 'Tree' in Section 2(e) is as follows:

(e) "tree" means any of the following species of trees, namely:-

Sandalwood (*Santalum album*), Teak (*Tectona grandis*), Rosewood (*Dalbergia latifolia*), Irul (*Xylia Xylocarpa*), Thempavu (*Terminalia tomentosa*), Kampakam (*Hopea parviflora*), Chempakam (*Michelia chempaca*), Chadachi (*Grewia tiliaefolia*), Chandana vempu (*Cedrela toona*), Cheeni (*Tetrameles nudiflora*)."

Section 3(1) empowers the Government to appoint such Officer not below the rank of a Ranger for the purposes of the Act. Section 4 contains a restriction regarding cutting of trees.

Section 4 is quoted as below:

"4. Restriction regarding cutting, etc., of trees.-

(1) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn, or

cause to be cut, uprooted or burnt, any tree.

(2) The permission under sub-section (1) shall not be refused if -

(a) the tree constitutes a danger to life or property;
or

(b) the tree is dead, diseased or windfallen:

Provided that where permission to cut a tree is granted on the ground specified in clause (b), the authorised officer shall impose as a condition for the grant of such permission the effective regeneration of an equal number of the same or other suitable species of trees; or

(c) Such cutting is to enable the owner of the land in which the tree stands to use the area cleared or the timber cut for the construction of a building for his own use.

(3) No person shall cut or otherwise damage, or cause to be cut or otherwise damaged, the branch of any tree:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(4) No person shall, without the previous permission in writing of the authorised officer, destroy any plant of any tree or do any act which diminishes the value of any such plant.

(5) Nothing contained in sub-section (1) or subsection (2) or sub-section (3) or subsection (4) shall apply in respect of any tree or plant in the compound of

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any residential building.

(6) Notwithstanding anything contained in this section or in any judgement, decree or order of any Court, the owner of any land shall have the right to cut or cause to be cut any tree, other than a tree as defined in clause (e) of Section 2, standing on such land, without obtaining a permission under this section.

Provided that where such compound exceeds one hectare in extent, the provisions of this sub-section shall apply only in respect of an extent of one hectare immediately surrounding the residential building."

Another provision which is significant is Section 5 which contains "prohibition of cutting of tree in notified areas". Section 5 starts with a non-obstante clause and provides as follows:

"5. Prohibition of cutting of tree in notified areas.- (1) Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any Court, tribunal or other authority, or in any agreement or other arrangement, the Government may, with a view to preserving the tree growth in private forests or in the Cardamom Hill Reserve or in any other areas cultivated with cardamom, by notification in the Gazette, direct that no tree standing in any such area specified in the notification shall be cut, uprooted, burnt or otherwise

destroyed except on the ground that -

- (a) the tree constitutes a danger to life or property;
- or
- (b) the tree is dead, diseased or windfallen:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(2) No person shall, without the previous permission in writing of the authorised officer, cut, uproot burn or otherwise destroy or cause to be cut, uprooted, burnt or otherwise destroyed any tree in any area specified in the notification under sub-section (1) on any of the grounds specified therein.

Explanation I.- For the purpose of this section, the term "tree" shall include any species of tree."

A perusal of the above provisions indicate that prohibition contained in Section 5 shall be applicable by Notification in the Gazette the State directs that trees standing in any area specified in the Notification shall not be cut except on the grounds mentioned therein. Explanation I provides:

"For the purpose of this section, the term "tree" shall include any species of tree."

(16)

As per Explanation I, the term 'tree' shall include any species of tree whereas the definition of tree as mentioned in Section 2(e) of the 1986 Act begins with "tree" means any of the following species of trees, namely:- Sandalwood (*Santalum album*), Teak (*Tectona grandis*), Rosewood (*Dalbergia latifolia*), Irul (*Xylia Xylocarpa*), Thempavu (*Terminalia tomentosa*), Kampakam (*Hopea parviflora*), Chempakam (*Michelia chempaca*), Chadachi (*Grewia tiliaefolia*), Chandana vempu (*Cedrela toona*), Cheeni (*Tetrameles nudiflora*). Various species of trees have been mentioned in Section 2(e). The definition clause in Section 2(e) is an exclusive definition whereas Explanation I defines 'tree' by an inclusive definition which provides that "tree shall include any species of tree". Whether for the purpose of restriction under Section 5, definition of tree as given in Section 2(e) is to be adopted or the restriction under Section 5 shall be as per Explanation I, i.e., all species of trees, is one of the issues raised before us. From the plain reading of the definition in Section 2(e) and Explanation I indicate

that whereas the definition in Section 2(e) is an exclusive definition beginning with the words "means", Explanation I contains an inclusive definition.

9. It is well established rule of statutory interpretation that when interpretation clause uses the word "means" it indicate that the definition is hard and fast definition and no other meaning can be assigned to the expression then put down in the definition and when the word include is used the expression counterheads not only things as they signify according to their natural import but also those things which the class declare that they shall include. It is useful to refer to the judgment of the Apex Court in **Delhi Development Authority v. Bholu Natha Sharma (Dead) By Lrs. And Others** ([2011 [2] SCC 54) wherein the following was observed in paragraphs 25 and 26:

"25. The definition of the expressions "local authority" and "person interested" are inclusive and not exhaustive. The difference between exhaustive and inclusive definitions has been explained in **P. Kasilingam v. P.S.G. College of Technology** 1995 Supp (2) SCC 348 in

the following words:

"19.....A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard - and - fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : Gough v. Gough; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court.) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See: Dilworth v. Commissioner of Stamps (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. The use of the words "means and includes" in R.2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the

categories specified in R.2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time."

26. In *Bharat Cooperative Bank (Mumbai) Ltd. v. Employees Union*, 2007 (4) SCC 685, this Court again considered the difference between the inclusive and exhaustive definitions and observed:

"23.....When in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition it is a "hard - and - fast" definition and no meaning other than that which is put in the definition can be assigned to the same. On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it

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matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in the definition of "banking company" in S.2 (bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

Thus the expression 'trees' has been used in different meaning in definition clause 2(e) as well as in Explanation I to Section 5. Both had been used with a different object and purpose. Section 4 also contains a restriction regarding cutting of trees. Section 4 uses the word 'tree' which refers to the tree as defined in Section 2(e). But Section 5 contains strict provision of prohibition of cutting of trees in notified area. Section 5(1) indicate that prohibition is provided for with a view to preserving the tree growth in private forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom, by notification in the Gazette. The area in question having been notified in

the official Gazette under Section 5(1), there is no escape from the conclusion that the area falls within one of the specified three nature of lands, i.e., private forest, cardamom hills reserve or other areas cultivated with cardamom. Learned Special Government Pleader has stated that the entire area where the property situate, were cardamom hills reserve. Section 5 being a stringent provision which has been made applicable only with regard to the notified area, strict provision prohibiting cutting of trees has been deliberately and consciously provided for. Section 2, definition clause itself begins with the words "in this Act, unless otherwise requires". Thus the definition in Section 2(e) is applicable unless the context otherwise required. Explanation I provides a different context which clearly indicate that definition clause 2(e) is not attracted with regard to Section 5. We are fortified in taking the aforesaid view by the decision of this Court in Mathew v. DFO (1997 [1] KLT 61). Learned Single Judge while

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considering the definition in Section 2(e) as well Explanation I in Section 5 held that as far as Section 2 (e) is concerned, the Legislature has used to make the definition restrictive whereas Explanation I to Section 5 explained the term as to include any species of tree for the purposes of that Section. Following was observed in the aforesaid in paragraphs 10, 11, 13 and 15 of the judgment:

"10. Section 5 of 1986 Act begins with non obstante clause so that it will have full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of particular section. Non-obstante clause sometimes is appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the non obstante clause: Union of India v. G.M. Kokil, AIR 1984 SC 1022; Narcotics Control Bureau v. Kishun Lal, AIR 1991 SC 558; and M/s. Orient Paper and Industries Ltd. v. State of Orissa, AIR 1991 SC 672.

11. Explanation.1 to S.5 explains the term 'tree' as to 'include any species of tree' for the purpose of that Section. As held by the Supreme Court in Sonia Bhatia v. State of UP, AIR 1981 SC 1274, Explanation widens the

scope of the main section and is not meant to carve out a particular exception to the contents of the main section. Explanation to a Section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the Section or clarify ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes, it would be added to include something within it or to exclude from the ambit of the main provision or condition or some words occurring in it. Therefore, the explanation normally should be so read as to harmonise with and to clear up any ambiguity in the same Section: *Sulochana Amma v. Narayanan Nair*, AIR 1994 SC 152. Explanation.1 says for the purpose of S.5, the term 'tree' shall include any species of tree, to mean that for the purpose of other Sections the term 'tree' may not include any species of tree. Explanation.1 also used the expression 'shall include'. Word 'shall' ordinarily means mandatory. Word 'shall' has to be construed in the context in which it is used and the purpose it seeks to serve. As held by the Supreme Court in *State of UP v. Manbodhan Lal*, AIR 1957 SC 912, and *State of UP v. Babu Ram*, AIR 1961 SC 751, word 'shall' raises a presumption that the particular provision is imperative. The Legislature has also used the expression 'include' in the Explanation. As held by the Supreme Court in *Central Inland Water Transport Corporation, v. Brojonath Ganguly*, AIR 1986 SC 1571, whenever an interpretation clause defines a term to include something the definition is extensive. Legislature has also used the expression 'any'.

'Any' in this particular context has to be understood as indefinitely to an appreciable extent. Therefore, the words 'shall include any species of tree' have to be understood in the context in which they are used and the purpose sought to be achieved by S.5 read with the object of the Act.

13. A contention was raised by counsel for the petitioners that term 'tree' in Explanation.1 to S.5 should be understood to mean 'tree' as defined in S.2(e) of the Act. S.2(e) of the Act defines 'tree' as follows:

"In this Act, unless the context otherwise requires,-

(e) 'tree' means any of the following species of trees - namely,

Sandal wood (Santalum album), teak (Tectona Grandis), Rose wood (Dalbergia Latifolia), Irul (Xylocarpa), Thempavu (Terminalia Tomantosa), Kampakam (Hopea parviflora), Chempakam (Michelia Chempaca), Chadachi (Grewia Tiliaefolia), Chandana Vempu (Cedrela toona), Cheeni (Tetrameles nudiflora)".

Section 2(e) uses the expression 'tree' to mean species of trees mentioned in that definition. In other words, where an interpretation clause defines a word to mean a particular thing, the definition is explanatory and prima facie restrictive, and whenever an interpretation clause defines a term to include something, the definition is extensive. As far as S.2(e) is concerned, Legislature has used the expression 'mean' to make the definition restrictive to the species mentioned in that Section. However, Explanation.1 to S.5 uses the expression 'tree shall include any species of tree' for the purpose of

Sections. Definition clause has also used the expression 'unless the context otherwise requires'. Therefore, definition of S.2(e) has to be understood in the context in which the term 'tree' has been used. The word 'tree' may mean one thing in one context and another in other context. For the said reason, same word used in different Section and at different places of a Section of a statute may bear different meaning. Prima facie each component part of the statute gives meaning of that part, and it would be different to other parts: D.N. Banerji v. P.R. Mukherjee, AIR 1953 SC 58; N. Subramania Iyer v. Official Receiver, AIR 1958 SC 1; Anand Nivas Ltd. v. Anandji, AIR 1965 SC 414; and Gramophone Co. of India Ltd. v. Biredra Bahadur Pandey, AIR 1984 SC 667. Therefore, in order to understand the meaning of a particular word, it cannot be detached from the context. Words and phrases occurring in a statute are to be taken not in an isolated or detached manner, dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act.

15. S.4 of the Act, 1986 uses the expression 'restriction regarding cutting etc., of trees'. It says that no person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn or cause to be cut, uprooted or burnt any tree. Therefore, under S.4, a person has to get the previous permission for cutting trees enumerated in S.2(e) of the Act. S.4 is of general application. There is no reference to 'private forest' or 'cardamom hills reserve' in S.4 of the Act. However, under

S.5, there is a specific reference to private forests, which means private forests as defined in the Kerala Private Forests (Vesting and Assignment) Act. There is also reference to Cardamom Hills Reserve or any other area cultivated with cardamom. Therefore, operation of S.5 is all together on a different context. Unlike S.4, S.5 is meant to prohibit and not restrict cutting any tree in private forests as well as in Cardamom Hills Reserve or in any other area cultivated with cardamom. It has got a specific object to achieve. Purpose for which the said Section was introduced was that there was indiscriminate felling and destruction of trees in the State of Kerala resulting in considerable soil erosion and destruction and loss of timber wealth in the state. Therefore, if trees are cut indiscriminately, apart from trees mentioned in S.2(e), that will lead to soil erosion and would cause large scale destruction and loss of timber wealth in the private forests as well as in the Cardamom Hills Reserve. Therefore, the definition of 'tree' has to be understood in a different context when we apply S.5. It is also pertinent to note S.5 applies to only those lands covered by the Government notification. However, for other lands whether it be a private forest or cultivated with cardamom not covered by the notification, S.4 of the Act applies.

10. A Division Bench judgment of this Court in **Joseph v. State of Kerala (2005 [4] KLT 504)** has been relied by the learned Special Government Pleader which

fully covers the issue. In the above case, Notification issued under the 1986 Act was challenged. One of the submissions raised before the Division Bench was that even assuming that Ext.P9 Notification is valid, the same can be taken to have prohibited cutting of only those trees as contained in Section 2 (e) of the 1986 Act and all trees standing in the property. Repelling the above, the following was held in Paragraph 8:

"8. We do not think that counsel is well founded in his submission. Ext. P9 notification has been issued under S.5 of the Act. Explanation I to S.5 specifically stipulates that for the purposes of S.5, the term "tree" shall include any species of tree. This would show that in respect of notifications issued under S.5, the prohibition under S.5 need not be limited to the species mentioned in the definition of "tree" as defined under S.2(e). S.5 is intended at prohibition of cutting of tree growth in private forests. Cardamom Hills Reserve and other areas cultivated with cardamom, for the purpose of which section the legislature has chosen to incorporate an inclusive definition as including any species of trees. On the other hand, S.4 prohibits trees in other areas in the State, without written permission of the authorised officer, for which and other purposes elsewhere in the Act excluding S.5, alone the

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definition in S.2(e) would be applicable. The non obstante clause, by which S.5 starts would put this beyond any shadow of doubt. We note that this issue has been specifically and elaborately considered by a learned Single Judge of this Court (K.S. Radhakrishnan, J.) in the decision of Mathew v. D.F.O. reported in 1997 (1) KLT 61. In the said decision, the learned Single Judge, after referring to the various provisions of the Act as also the purposes for which the Act has been enacted and after a very elaborate consideration of the various issues involved, has specifically come to the conclusion that for the purposes of S.5 of the Act trees as explained in Explanation I would apply and not the definition of "tree" under S.2(e), which would apply only for the purposes of S.4. The said decision has dealt with every aspect of the matter and we fully and respectfully approve of the said decision without any reservation whatsoever. Since the said decision which succinctly deals with every aspect of the subject and squarely covers the field, we do not want to elaborate on the same either."

There is one more reason which fortifies our above view. Prior to the enforcement of the 1986 Act, an Ordinance was issued by the Governor of Kerala, viz., The Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 (for short, "Ordinance"). The Governor has promulgated Ordinance No.21 of 1983 and

thereafter No.29 of 1983. However, the Bill to replace the Ordinance could not be introduced in the Legislative Assembly, hence the Ordinance was repromulgated. The Ordinance as the name itself suggest that the Legislation was with regard to preservation of trees and regulation of cultivation in hill area. The Ordinance contained two different provisions, containing preservation of trees and secondly, provisions pertaining to hill area. Definition of tree in Section 2(h) contained two definitions. With regard to hill area the definition mentioned any tree and with regard to any other land, different species of tree as now included in Section 2(e) of the 1986 Act. It is useful to extract Section 2(h):

"2(h). "tree" means,-

- (i) with reference to any land comprising a hill area, any tree; and
- (ii) with reference to any other land, any of the following species of trees, namely:-

Sandal wood (Santalum album), teak (Tectona Grandis), Rose wood (Dalbergia Latifolia), Irul (Xylia Xylocarpa), Venthekku (Lagerstroemia lancelolata),

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Thempavu (Terminalia Tomantosa), Mulluvenga (Bridelia retusa), Kampakam (Hopea parviflora), Venga (Pterocarpus marcupum) Chempakam (Michelia Chempaca), Chadachi (Grewia Tiliaefolia), Chandana Vempu (Cedrela toona), Cheeni (Tetrameles nudiflora), Jathi (Myristica fragrans), Najvel (Eugenia jambolana) and Tahanni (Terminalia bellerica) ".

Section 4 of the Ordinance contains the provisions regarding cutting of trees. Section 5 of the Ordinance was similar as that of Section 5 of the 2005 Act. Sections 4 and 5 are quoted below:

"4. Restriction regarding cutting, etc., of trees.-(1) No person shall without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree.

(2) The permission under sub-section (1) shall not be refused if-

(a) the tree constitutes a danger to life or property, or

(b) the tree is dead, diseased or windfallen:

Provided that where permission to cut a tree is granted on the ground specified in clause (a) or clause (b), the authorised officer shall impose as a condition for the grant of such permission the effective regeneration of an equal number of the same or suitable species of trees; or

(c) such cutting is to enable the owner of the land in which the tree use the area cleared or the timber cut for the construction of a building for his own use.

(3) No person shall cut or otherwise damage, or cause to be cut or otherwise damaged, the branch of any tree.

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(4) No person shall, without the previous permission in writing of the authorised officer, destroy any plant or any tree or do any act which diminishes the value of any such plant.

(5) Nothing contained in sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in any land referred to above in clause (ii) of clause (d) of Section 2,-

(a) which has been or may be planted by the assignee of that land, other than a tree specified in sub-clause (ii) of clause (h) of the said section:

(b) the value of which has been paid by the assignee to the Government other than a tree specified in sub-clause (ii) of the said sub-clause (h).

(6) Nothing contained in sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in the compound of

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any residential building in any area other than a hill area:

Provided that where such compound exceeds 0.8 hectare immediately . The residential building.

5. Prohibition of cutting of trees in notified areas.-

(1) Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or any Court, tribunal or other authority, or in any agreement or other arrangement, the Government may with a view to preserving the tree growth in private forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom, by notification in the Gazette, direct that no tree standing in any such area specified in the notification shall be cut, uprooted or burnt except on the ground that-

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen.

(2) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn or cause to be cut, uprooted or burnt, any tree in any area specified in the notification under sub-section (1) of the grounds specified therein."

Explanation.- For the purposes of this sub-section, the expression "private forest" means any land which immediately before the 10th day of may, 1971 was a private forest as defined in the Kerala Private Forests (Vesting and Assignment) Act, 1971."

However, explanation I in Section 5 of the 1986 Act

was not similar to the Explanation in Section 5 of the Ordinance.

11. Legislative Scheme as disclosed by the Ordinance clearly indicate that the two concept of trees were used even in the Ordinance; (i) specified species of trees were included with reference to any other land and another concept was with regard to trees situated in hill area. The 1986 Act has maintained two concept of trees. However, the 1986 Act does not separately deal any hill area rather confines the said definition of tree which was used for hill area in the Ordinance in the context of private forest or cardamom hills reserve or any other land cultivated with cardamom which is mentioned in Section 5. It is well established statutory rule of interpretation that use of same words in similar circumstance in later statute they are intended to convey the same meaning as in the earlier Statute. The dichotomy between the trees situated in normal land and those situated in the

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notified area has been maintained in the 1986 Act. We are fully satisfied that the word 'tree' as explained in Explanation I to Section 5 includes any tree and is not confined to few species of tree as defined in Section 2 (e) of the 1986 Act. Thus there is restriction of cutting away of any tree which is notified under Section 5(1) and permission granted by the Tahsildar by Ext.P5 was wholly without jurisdiction. Learned Government Pleader submitted that it is the Range Officer who is authorised under the 1986 Act to grant permission. Thus the permission granted by the Tahsildar could not have come to the rescue of the petitioner in cutting the 9 Eucalyptus trees. Learned Single Judge permitted the petitioner to cut away the trees only on the ground that the petitioner has removed the branches of three trees acting bona fide on the permission granted by the Tahsildar. We are of the view that the action of the petitioner in cutting and removing branches of three Eucalyptus trees could not lead to any valid permission for petitioner to cut away 9 Eucalyptus

trees standing in the property.

12. We however, are of the view that if any occasion arises on any valid ground seeking permission for cutting away the Eucalyptus trees standing in the property of the petitioner, it is always open for the petitioner to make appropriate application before the Officer under the 1986 Act.

In the result, subject to the observation made above, this Writ Appeal is allowed. Judgment dated 26.10.2015 in W.P(C) No.29534 of 2015 is set aside and the Writ Petition is dismissed.

Parties shall bear their own costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**