



2024:KER:70761

W.P.(C)NO.18663/2016

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 13TH DAY OF SEPTEMBER 2024 / 22ND BHADRA, 1946

WP(C) NO. 18663 OF 2016

PETITIONER:

S.T.SADIQ
AGED 49 YEARS
S/O. THAHA, AGED ABOUT 49 YEARS, ZEENATH MAHAL,
KADAPPAKADA, KOLLAM, KERALA.

BY ADVS.
SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.S.NITHIN ANCHAL
SRI.SABU GEORGE
SRI.P.B.SUBRAMANYAN

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY TO
GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 THE ADDITIONAL DIRECTOR OF INDUSTRIES COMMERCE AND
SPECIAL OFFICER UNDER KERALA CASHEW FACTORIES
(ACQUISITION) ACT, 1974 VIKAS BHAVAN,
THIRUVANANTHAPURAM-695001.
- 3 THE CASHEW WORKERS INDUSTRIAL CO-OP. APEX SOCIETY
LIMITED
(CAPEX), MUNDAKKA, KOLLAM, REPRESENTED BY ITS MANAGING
DIRECTOR, PIN-691001.
- 4 UNION OF INDIA
THROUGH SECRETARY, MINISTRY OF INDUSTRIES AND COMMERCE,
UDYOG BHAWAN, NEW DELHI-110007.



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BY ADVS.
GOVERNMENT PLEADER
SMT.SINDHUMOL.T.P., CGC
SRI.M.K.CHANDRA MOHANDAS
SRI.JELSON J.EDAMPADAM
SRI.PIRAPPANCODE V.S.SUDHIR
ADVOCATE GENERAL OFFICE KERALA
K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL()
SHRI.T.B.HOOD, SPL.G.P. TO A.G.()

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.05.2016 AND HAVING BEEN FINALLY HEARD ON 29.07.2024, THE COURT
ON 13.9.2024 DELIVERED THE FOLLOWING:

**'C.R.'****JUDGMENT**

This writ petition has been filed challenging Sections 3A, 6A and 9 of the Kerala Cashew Factories (Acquisition) Act, 1974 (hereinafter referred to as the 1974 Act) after its amendment by the Kerala Cashew Factories (Acquisition) Amendment Act, 2015 (hereinafter referred to as the Amending Act, 2015) and the order dated 6.8.2015 issued by the Government of Kerala taking over the Cashew Factory belonging to the petitioner under Section 3A of the 1974 Act. The petitioner also prays for a direction to restore the possession of the Cashew Factory of the petitioner and claims compensation for the illegal acquisition/taking over of the factory.

Facts in brief:-

2. The petitioner was the owner of about 2.77 acres of land where a Cashew Factory known as M/s. Rajmohan Cashews Limited was functioning. According to the petitioner, the land/factory was leased out to the aforesaid M/s. Rajmohan Cashews Limited for a period of five years from 05.05.1981. It is stated that the factory and the associated buildings etc. were confined to about 97 cents out of the total extent of 2.77 acres and the remaining land was being used for agricultural purposes. On 02.05.1985, the petitioner leased out the factory and its premises to M/s. Janso Exports (P)



Ltd., for the period from 02.05.1985 to 02.05.1987. On 19.09.1985 the Government of Kerala issued Ext.P2 notice (under Rule 3 of the Kerala Cashew Factories (Acquisition) Rules,1974) proposing to acquire/take over the Cashew Factory and providing to the petitioner and to the then occupier (M/s. Janso Exports Pvt.Ltd.) the right to make their objections. The grounds taken in Ext.P2 were that the factory was lying closed and there was no possibility of restarting its functioning in the immediate future. It was stated that the Government was, therefore, of the opinion that the situation may lead to large-scale unemployment of workers in the Cashew Factory. The petitioner filed an objection to Ext.P2 notice and also approached this Court by filing O.P.No.9499/1985 challenging the validity of the notice as well as the validity of the provisions contained in the 1974 Act. On 11.06.1986, the Government of Kerala issued an order to take over the Cashew Factory and the entire land appurtenant to the same on the ground that there has been large-scale unemployment. O.P.No.9499/1985 filed by the petitioner challenging the order dated 11.06.1986 was dismissed by this Court on 20.01.1994. The petitioner preferred S.L.P.(C)No.8219/1994 to challenge the judgment of this Court in O.P.No.9499/1985.

3. On 12.5.1994, the Supreme Court through its judgment in ***Indian Nut Products & Others v. Union of India; (1994) 4 SCC 269*** set aside the acquisition of various factories (other than that of the petitioner)



on the ground that the notices issued were not in accordance with the requirement of the provisions of sub-section (1) of Section 3 of the 1974 Act. The State Government was required to return the possession of the factories to the respective owners. Thereafter the case of the petitioner was disposed of (after granting leave) and it was declared that the matter was covered by the judgment in ***Indian Nut Products (supra)***. It was also held that the directions issued in paragraph 13 of the judgment in ***Indian Nut Products (supra)*** will apply to the petitioner as well. The order of the Supreme Court in the case of the petitioner is on record as Ext.P5.

4. Out of the total number of 46 factories that had been taken over under the 1974 Act, 36 had been entrusted to the Cashew Development Corporation and the remaining 10 factories were entrusted to the Kerala State Cashew Workers Apex Industrial Co-operative Society (CAPEX). Following the orders issued by the Supreme Court, out of the total number of 46 factories taken over by the Government in the manner indicated above, all the factories which had been taken over and entrusted to the Cashew Development Corporation (36 in number) were returned to the respective owners. However, the possession of the factory belonging to the petitioner and nine others whose factories had been entrusted with the CAPEX was not so returned.

5. On 16.08.1995, the Kerala Cashew Factories (Acquisition)



Amendment Act, 1995 (hereinafter referred to as the Amendment Act 1995) was notified by the State Government by incorporating Sections 3A and 6 in the 1974 Act (Though Section 6 of the Amendment Act 1995 introduces a completely new provision, the Amendment Act 1995 does not specify the number of the provision after incorporation in the 1974 Act. Therefore any reference to Section 6 in this judgment may be read as a reference to Section 6 of the Amendment Act, 1995). Section 3A essentially provided that the Government may by notification take over any Cashew Factory if those factories were closed for a period of not less than three months and such closure had prejudicially affected the interest of the majority of workers engaged in that factory. Section 6 of the Amendment Act 1995 *inter alia* provided that notwithstanding anything contained in any judgment, agreement, decree or order of any Court, Tribunal or other authority and notwithstanding anything contained in any other law, agreement or other instrument for the time being in force, the Cashew Factories listed in the Schedule to the 1974 Act stand transferred to the Government in public interest with effect from the date noted against each.

6. The petitioner filed a writ petition namely W.P.(C)No.14084/1997 before this Court challenging the vires of Sections 3A and 6 introduced by the 1995 Amendment Act. On 11.08.2005, this Court dismissed the writ petition and also held that the ten factories (including that of the petitioner) which



were entrusted to CAPEX formed a separate class and stood on a different footing from the 36 factories that were restored to the ownership and possession of the erstwhile owners following the directions of the Supreme Court in ***Indian Nut Products (supra)***. On 04.02.2015 the Supreme Court reversed the judgment of this Court in O.P.No.14084/1997 and directed that the factory of the petitioner be restored to him within a period of eight weeks. The decision of the Supreme Court is reported as ***S.T. Sadiq v. State of Kerala and others; (2015) 4 SCC 400***. This direction was also not complied with prompting the petitioner to initiate contempt of court proceedings. The CAPEX filed a review petition seeking the review of the judgment in ***S.T. Sadiq (supra)*** principally on the ground that eight (8) out of ten factories which had been the subject matter of the litigation had accepted the Judgment of the High Court and that the benefit of the judgment may enure only to those who had approached the Supreme Court and not to any other person. This plea was allowed by the Supreme Court and as a consequence, the directions in ***S.T. Sadiq (supra)*** were confined only to two factories including that of the petitioner.

7. The Amending Act, 2015 came into force on 03.08.2015, making further amendments to Section 3A (originally incorporated through the Amendment Act of 1995) and incorporating a new provision namely Section 6A in the 1974 Act. A further provision namely Sub-section (8) was



incorporated into Section 9 providing for a deemed conveyance of a Cashew Factory once the compensation had been accepted by the owner. By an order dated 6.8.2015 issued under Section 3A of the 1974 Act (as amended by the 2015 Amending Act), the factory of the petitioner was again taken over w.e.f the date of the original acquisition. The factory of the petitioner was also included in the Schedule (Schedule-III) under Section 6A (inserted by the Amending Act, 2015). By such incorporation, the factory of the petitioner was deemed to have been transferred to and vested in the Government on the date specified in Schedule-III. Insofar as the petitioner was concerned, this date was 11.06.1984. The Contempt Petition filed by the petitioner alleging violation of the directions issued in **S.T. Sadiq (supra)** was closed by the Supreme Court reserving the liberty of the petitioner to challenge the validity of the provisions incorporated vide the Amending Act, 2015.

8. The petitioner is thus before this Court challenging the validity of the provisions of Sections 3A (as amended by the Amending Act, 2015), 6A (inserted by the Amending Act, 2015) and 9 (as amended by the Amending Act, 2015) of the 1974 Act and the order dated 6.8.2015 issued under Section 3A of the 1974 Act (as amended by the Amending Act, 2015).

The Submissions:-

9. Sri. P.B. Krishnan, the learned Senior Counsel appearing for the petitioner on the instructions of Adv. P.B. Subramanyan would submit



that though the provisions of the 1974 Act as originally enacted were entitled to the protection of Article 31-B of the Constitution of India, the provisions of Section 3A (as incorporated by the Amendment Act, 1995 and thereafter amended by the Amending Act, 2015), Section 6A (inserted by the Amending Act 2015), Section 9 (as amended by the 2015 Amending Act) and the Schedule-III (inserted through the incorporation of Section 6A) to the 1974 Act are not protected under Article 31-B of the Constitution of India as the provisions of the Amending Act, 2015 have not secured presidential assent. It is submitted that the provisions can therefore be challenged on the ground that they violate the rights conferred by Part III of the Constitution. In support of this contention, the learned Senior Counsel placed reliance on paragraph 7 of the judgment in ***Ratna Bai v. State of Kerala; 2004 KHC 316*** as also on paragraph 48 of the judgment of the Supreme Court in ***Pattali Makkal Katchi v. A. Mayilerumperumal and Ors.; (2023) 7 SCC 481***.

10. It is next contended that the ten (10) Cashew Factories which were entrusted with the CAPEX do not stand on a different footing from the factories that were restored to the owners after the first round of litigation. It is submitted that this has been held so in paragraph 23 of ***S.T. Sadiq (supra)***. It is submitted that, following the disposal of the review petition filed by CAPEX against the judgment in ***S.T. Sadiq (supra)***, the provisions



introduced by the Amending Act, 2015 were confined to the factory of the petitioner and to one other factory. It is submitted that, presently, the law is confined to the factory of the petitioner alone as the other factory to which the judgment in ***S.T. Sadiq (supra)*** was to apply had also given up the fight somewhere along the line. He submits that a law which is directed only against one or two individuals without there being any special distinguishing feature would be *ultra vires* the Constitution. The learned Senior Counsel placed reliance on the judgment of the Supreme Court in ***P. Venugopal v. Union of India (2008) 5 SCC 1***, in support of this contention. It was next contended that the Legislature cannot directly annul a judgment of the Court. It is submitted that Section 6A introduced by the the Amending Act, 2015 is practically a verbatim reproduction of Section 6 which was struck down by the Supreme Court in ***S.T. Sadiq (supra)***. It is submitted that, if this course is permitted, it would be a direct affront to the doctrine of separation of powers which is part of the basic structure of the Constitution. It is submitted that after the action of the State Government in acquiring the factory of the petitioner under Section 3 of the 1974 Act was annulled, the State Government could not have taken over the factory by issuing a notification under Section 3A and/or by including it in the Schedule under Section 6A introduced by the Amending Act, 2015. It is pointed out that a reading of Sections 3 and 3A indicate that there are several overlapping



features and that after the action under Section 3 was found to be illegal in the first round of litigation before the Supreme Court (Ext.P.5 Judgment), a notification under Section 3A was not permissible in law. It is submitted that in the first round of litigation, none of the provisions of the 1974 Act were struck down by the Supreme Court and executive action which was found to be bad in the manner of its exercise cannot be reversed through legislation. In other words, it is submitted that a binding *inter partes* judgment between parties cannot be made ineffective with the aid of legislative power. The learned Senior Counsel referred to ***S.T. Sadiq (supra), Medical Council of India v. State of Kerala and others; (2019) 13 SCC 185*** and ***G.C. Kanungo v. State of Orissa (1995) 5 SCC 96*** in support of this contention. It is submitted that, in the facts and circumstances of this case, the impugned provisions are manifestly arbitrary in the sense that the term has been understood in ***Shayara Bano v. Union of India and Ors; (2017) 9 SCC 1***. It is next contended that the impugned provisions are violative of Article 300A as there is practically no compensation provided for acquisition. Reliance in this regard is placed on the judgment of the Supreme Court in ***Kolkata Municipal Corporation & Anr. v. Bimal Kumar Shah & Ors; (2024) SCC OnLine SC 968***, ***Dinesh & Ors v. State of Madhya Pradesh; (2024) SCC OnLine SC 937*** and ***Dharnidhar Mishra v. State of Bihar; (2024) SCC OnLine SC 932***. It is next



contended that by introducing the impugned provisions with retrospective effect, the State has achieved the impermissible by tinkering with rights and the benefits acquired by the petitioner under the then-existing rules and the judgment of the Supreme Court. It is submitted that, in the facts and circumstances of the case, the introduction of the impugned provisions in 2015 with retrospective effect from 1.5.1984 is without any rationale. Reliance is placed upon the decision of the Supreme Court in ***State of Gujarat and another v. Raman Lal Keshav Lal Soni and others; (1983) 2 SCC 33*** in support of this contention.

11. Sri. K. Gopalakrishna Kurup, the learned Advocate General assisted by Sri. T.B. Hood, (Special Government Pleader to the Advocate General) appears for the State. The learned Advocate General submits that this is the third writ petition filed by the petitioner, the earlier ones being O.P.No.9499/1985 and O.P. No.14084/1997. It is submitted that the validity of Section 9 of the 1974 Act was challenged in the earlier two writ petitions and no relief was granted to the petitioner. It is submitted that Section 9 cannot be challenged on any of the grounds raised in the present writ petition as the provisions of the 1974 Act as originally enacted were included in the IXth Schedule to the Constitution of India as Serial No.148 and therefore the provisions of Article 31-B of the Constitution of India would apply. It is



submitted that Sub-section (8) of Section 9 of the 1974 Act was introduced by way of Amending Act, 2015. It is submitted that the said provision provides for deemed conveyance and extinguishment of rights of owners who had accepted the amount determined under the provisions of the Act. It is submitted that since the petitioner had not accepted the amount offered as compensation, the provisions of Section 9(8) would not apply to the petitioner. It is submitted that the challenge to Section 6A of the 1974 Act (incorporated by the Amending Act, 2015) is also misconceived as the factory of the petitioner was taken over by a notification issued under Section 3A of the 1974 Act and not by operation of Section 6A. It is thus submitted that the challenge to provisions contained in Section 6A and Section 9(8) of the 1974 Act as incorporated by the Amending Act, 2015 is misconceived. It is submitted that the challenge to Section 3A also cannot be accepted as the provisions of Section 3A were challenged by the petitioner while filing O.P.No.14084/1997. It is submitted that the Supreme Court in **S.T. Sadiq (supra)** did not find Section 3A of the 1974 Act to be unconstitutional and only declared Section 6 of the 1974 Act inserted by way of amendment in 1995 to be unconstitutional. It is submitted that the petitioner cannot, therefore, challenge Section 3A by filing a fresh writ petition. It is submitted that Section 3A of the 1974 Act was again amended in the year 2015 conferring general power on the Government to acquire factories in public interest, if



those factories were closed for a period of not less than three months and such closure had prejudicially affected the interest of majority of workers engaged in that factory. It is submitted that Section 3A of the 1974 Act as amended in the year 2015 does not discriminate between any Cashew Factory on any ground and therefore, the challenge to Section 3A on the ground of alleged discrimination is devoid of merit. The learned Advocate General placed reliance on paragraphs 11 and 12 of the judgment of the Supreme Court in ***Ram Krishna Dalmia v. S.R. Tendolkar & others; AIR 1958 SC 538*** and also paragraph 205 of the judgment of the Supreme Court in ***K.T. Plantation Pvt. Ltd. & another v. State of Karnataka; (2011) 9 SCC 1*** in support of the contention that Section 3A is not discriminatory and violative of Article 14 of the Constitution of India.

12. The learned Advocate General submits that Section 3A of the 1974 Act as amended in 2015 does not confer any arbitrary power on the Government and the exercise of power under that provision is effectively controlled by legislative scrutiny as contemplated by the proviso to the Section. It is submitted that since the power under Section 3A is controlled by legislative scrutiny, the said provision cannot be challenged on the ground that it confers arbitrary power on the Government. The learned Advocate General placed reliance on paragraphs 90 and 91 of the judgment of the Supreme Court in ***Dr. Jaya Thakur v. Union of India and others;***



(2023) 10 SCC 276 in support of this contention.

13. The learned Advocate General submits that Section 3A of the 1974 Act is not a validating Act and was not intended to remove the basis of the judgment of the Supreme Court in **S.T. Sadiq (supra)**. It is submitted that Section 6 of the 1974 Act as incorporated by the Amendment Act, 1995 was declared unconstitutional by the Supreme Court in **S.T. Sadiq (supra)** on the finding that it directly seeks to upset a final *inter partes* judgment. It is reiterated that the power under Section 3A of the 1974 Act (as amended in 2015) was invoked for the first time only on 6.8.2015 in the case of the petitioner through Ext.R1(a) Government Order. It is submitted that the provisions of Section 3A of the 1974 Act as amended in the year 2015 are similar to Section 15 of the Kerala Education Act, 1958 which was found to be valid by the Supreme Court in **In Re The Kerala Education Bill; AIR 1958 SC 956**. Reference is made in this regard to paragraphs 10, 14, 15, 17 and 19 of the said judgment. It is also pointed out that action taken by the Government under Section 15 of the Kerala Education Act, 1958 was upheld by the Supreme Court in **A.A Padmanbhan v. State of Kerala and others; (2018) 4 SCC 537**.

14. The learned Advocate General further submits that Ext.R1(a) Government Order issued under Section 3A of the 1974 Act as amended in 2015 assumes legislative character since the proviso to that



Section requires a resolution of the Assembly. It is submitted that since the Government Order assumes legislative character, the question of the applicability of principles of natural justice does not arise for consideration. Reference is made in this regard to paragraph 17 of the judgment of the Supreme Court in ***Rameshchandra Kachardas Porwal & Others v. State of Maharashtra & Others; (1981) 2 SCC 722*** and again to the judgment in ***K.T. Plantation Pvt. Ltd.(supra)***.

15. It is next submitted by the learned Advocate General that the observations of the Supreme Court in ***Raman Lal Keshav Lal Soni (supra)*** are not applicable to the facts of the present case. It is submitted that another Constitution Bench in ***State of Tamil Nadu v. Arooran Sugars Ltd; (1997) 1 SCC 326*** had held that the Legislature had the power to amend, delete or obliterate prospectively or retrospectively and in such process the rights of some are bound to be affected one way or the other. It is submitted that the Supreme Court found that the observations in ***Raman Lal Keshav Lal Soni (supra)*** were made in the peculiar facts and circumstances of that case. It is further submitted that in ***Shri Krishna Gyanoday Sugar Ltd. & another v. State of Bihar; (2003) 4 SCC 378*** the Supreme Court had considered the matter of acquisition of sugar undertakings and had also referred to the findings in ***Raman Lal Keshav Lal Soni (supra)*** and had negated the contentions taken in that case



regarding the retrospective operation of the Legislation.

16. The learned Advocate General also submits that a statute cannot be declared unconstitutional lightly and there is always a presumption of constitutionality. It is submitted that, unless there is a flagrant violation of constitutional provisions, the law made by Parliament or a State Legislature cannot be declared unconstitutional and if two views are possible, one making the Statute constitutional must always be preferred. Reference is made in this regard to the judgment of the Supreme Court in ***Dr. Jaya Thakur (supra)***. It is submitted that the Supreme Court in the said judgment had observed that the Court must make every effort to uphold the constitutional validity of a Statute even if it requires giving a strained construction or narrowing down the scope of the provision.

17. The learned Advocate General submits that it is not disputed that the factory of the petitioner had been closed since 1981. It is submitted that the Government/CAPEX had infused substantial amounts for the upkeep and maintenance of the factory and for setting up new facilities and the details of such investments are given in paragraphs 10 and 11 of the counter affidavit dated 6.4.2018 filed by the CAPEX. It is submitted that, in the counter affidavit filed by the CAPEX, it is stated that at the time of taking over of the factory, there were 1345 workers including 1300 women workers and the factory was remaining closed and a large number of workers were



thus rendered unemployed. It is submitted that this caused several issues in the area and had a huge impact on the local economy. It is submitted that the life of Cashew Factory workers therefore outweigh any rights including the property rights of the petitioner. It is submitted that the contention that the factory was situated only in 97 cents of land and the entire 2.77 acres were not required to be taken over is untenable as the entire land was clearly required for the purposes of the factory.

18. Lastly, it is submitted by the learned Advocate General that, if at all this Court were to find in favour of the petitioner and any directions are to be issued to handover possession of the factory to the petitioner, the directions of the Supreme Court as contained in the last paragraph of the judgment in ***India Nut Products (supra)*** must be made applicable to this case also. It is submitted that in the first round of litigation, the Special Leave Petition filed by the petitioner was disposed of on identical terms as contained in the judgment of the Supreme Court in ***India Nut Products (supra)*** and therefore the petitioner is also bound by the directions contained in the last paragraph of the judgment in ***India Nut Products (supra)***.

19. The learned Senior Counsel for the petitioner, would in reply and upon instructions, submit that the petitioner is willing to comply



with all the directions issued by the Supreme Court in ***Indian Nut Products (supra)*** insofar as it relates to employees in the 'workmen' category.

Analysis:-

20. Having considered the submissions made across the bar and having perused the pleadings and the written submissions placed for the consideration of this Court, I am of the view that the petitioner is entitled to succeed.

21. The factory of the petitioner was originally taken over by issuing a notification in terms of the provisions contained in Section 3 of the 1974 Act. This notification was issued on 11.06.1986 on the grounds relatable to Section 3 (1) (c) of the 1974 Act. Though the present writ petition does not seek to challenge any action taken under Section 3 of the 1974 Act, it may be relevant to refer to the provisions of Section 3 of the 1974 Act, which read as follows:-

"3. Order of acquisition .- (1) The Government may, if they are satisfied-

(a) that the occupier of a cashew factory does not conform to the provisions of law relating to safety, conditions of service or fixation and payment of wages to the workers of the factory;
or

(b) that raw cashew nuts allotted to a cashew factory by the Cashew Corporation of India are not being processed in the



factory to which allotment has been made or that such nuts are being transferred to any other cashew factory; or

(c) that there has been large-scale unemployment, other than by way of layoff or retrenchment, of the workers of a cashew factory;

by order published in the Gazette, declare that that cashew factory shall stand transferred to, and vest in, the Government:

Provided that before making a declaration under this sub-section in respect of a cashew factory, the Government shall give the occupier of the factory and the owner of the factory, where he is not the occupier, a notice of their intention to take action under this sub-section and the grounds therefor and consider the objections that may be preferred in pursuance of such notice.

Explanation .-For the purposes of this sub-section, the expressions "lay off" and "retrenchment" shall have the meanings respectively assigned to them in the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

(2) The notice referred to in the proviso to sub-section (1) shall also be published in two newspapers published in the State of Kerala , and such publication shall be deemed to be sufficient notice to the occupier, to the owner where he is not the occupier and to all other persons interested in the cashew factory.

(3) On the making of a declaration under sub-section (1) the cashew factory to which the declaration relates, together with all machinery, other accessories and other movable properties as were immediately before the appointed day in the ownership, possession, power or control of the occupier in relation to the factory and all books of accounts, registers and other documents relating thereto shall stand transferred to, and vest in the Government. ”

The notification dated 11.06.1986 was set aside by the Supreme Court in



Ext.P5 judgment; treating the matter as covered by the judgment in ***Indian Nut Products (supra)***. As already noted, out of the 46 factories which were taken over by issuing identical notifications under Section 3 of the 1974 Act, 36 factories which had been entrusted with the Cashew Development Corporation were returned to the respective owners following the judgment of the Supreme Court in ***Indian Nut Products (supra)*** and connected petitions. The factory of the petitioner along with nine (9) other factories which had been entrusted with the CAPEX were not returned. Section 3A introduced through the Amendment Act, 1995 and Section 6 of the Amendment Act 1995 read thus:-

"3A. Power to acquire any cashew factory in public interest.- (1) *Notwithstanding anything contained in section 3, if the Government are satisfied, in relation to a cashew factory, that it has been closed for a period of not less than three months and such closure has prejudicially affected the interest of the majority of the workers engaged in that factory and that immediate action is necessary to restart the cashew factory and such restarting is necessary in the public interest, they may, by order published in the Gazette, declare, that the cashew factory shall stand transferred to, and vest in, the Government:*

Provided that no order under this sub-section shall be published unless the proposal for such acquisition is supported by a resolution of the Legislative Assembly.

(2) *The provisions of sub-section (3) of section 3 and section 4 shall, as far as may be, apply to a declaration made under sub-section (1), as they apply to a declaration made under sub-section (1) of section 3.*



(3) The provisions of sections 7 to 16 (both inclusive) shall, as far as may be, apply to, or in relation to, the cashew factory, in respect of which a declaration has been made under sub-section (1), its occupier or Government, as the case may be, as they apply to a cashew factory in relation to which a declaration has been made under sub-section (1) of section 3."

“6. Declaration as to acquisition of certain cashew factories.- (1) *It is hereby declared that it is expedient in the public interest that the cashew factories specified in the Schedule to this Act shall, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in any other law, agreement or other instrument for the time being in force, stand transferred to, and vest in, the Government with effect from the date noted against each.*

(2) The provisions of section 4, section 7 to 16 (both inclusive) of the principal Act shall, as far as may be, apply to, or in relation to, the cashew factory in respect of which sub-section (1) apply, as they apply to a cashew factory in relation to which a declaration has been made under sub-section (1) of section 3A.

(3) For removal of doubt it is hereby declared that the dates mentioned in the Schedule against each factory shall be the ‘appointed day’ in respect of that factory for the purposes of the principal Act.

(4) All acts, proceedings or things done or taken by the Government or any officer or authority in respect of cashew factories mentioned in the Schedule including all the orders issued under sub-section (1) of section 8, during the periods commencing on and from the dates noted against each and ending with the date of publication of this Act in the Gazette, shall, for all purposes, be, and shall be deemed always to have been, as valid and effective as if the amendments made to the



principal Act by this Act had been in force at all material times."

The factory of the petitioner was included in the Schedule prepared under Section 6 of the Amendment Act, 1995 at Serial No.10. In **S.T. Sadiq (supra)** it was the specific case of the State Government that the factory of the petitioner was taken over by virtue of the provisions contained in Section 6 of the Amendment Act, 1995 and on account of its inclusion in the Schedule referred to in that provision and not with reference to Section 3 (forming part of the 1974 Act as originally enacted) or Section 3A introduced by the Amendment Act, 1995. The Supreme Court in **S. T. Sadiq (supra)** held that Section 6 of the Amendment Act, 1995 seeks to upset a final and binding *inter partes* judgment of the Supreme Court. It was held that, while the Legislature has the power to alter the basis of a judgment by even amending the law retrospectively, it has no authority to render a binding *inter partes* judgment, a nullity. Thus, it was declared that Section 6 of the Amendment Act, 1995 was unconstitutional. It was held:-

"13. It is settled law by a catena of decisions of this Court that the legislature cannot directly annul a judgment of a court. The legislative function consists in "making" law (see Article 245 of the Constitution) and not in "declaring" what the law shall be (see Article 141 of the Constitution). If the legislature were at liberty to annul judgments of courts, the ghost of bills



of attainder will revisit us to enable legislatures to pass legislative judgments on matters which are inter partes. Interestingly, in England, the last such bill of attainder passing a legislative judgment [R. v. Fenwick, (1696) How 13 St Tr 538] against a man called Fenwick was passed as far back as in 1696. A century later, the US Constitution expressly outlawed bills of attainder (see Article 1 Section 9).

14. It is for this reason that our Constitution permits a legislature to make laws retrospectively which may alter the law as it stood when a decision was arrived at. It is in this limited circumstance that a legislature may alter the very basis of a decision given by a court, and if an appeal or other proceeding be pending, enable the Court to apply the law retrospectively so made which would then change the very basis of the earlier decision so that it would no longer hold good. However, if such is not the case then legislation which trenches upon the judicial power must necessarily be declared to be unconstitutional.”

The court then referred to ***State of T.N. v. M. Rayappa Gounder, (1971) 3 SCC 1, D. Cawasji and Co. v. State of Mysore 1984 Supp SCC 490; State of Haryana v. Karnal Coop. Farmers' Society Ltd., (1993) 2 SCC 363; Cauvery Water Disputes Tribunal, In re, 1993 Supp (1) SCC 96; S.R. Bhagwat v. State of Mysore, (1995) 6 SCC 16 & Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan,***



(1996) 2 SCC 449 and held:-

“21. Mr Giri, learned counsel appearing for the State is correct in saying that no section of the principal Act had been struck down and hence Section 6 of the Amendment Act did not need to remove the basis of any earlier decision striking down an Act. We repeatedly asked him if action had been taken under Section 3(1) or 3-A of the Amendment Act to acquire any of the cashew factories before us. His candid answer was “no”. The argument that Section 6 contains a third source of power to acquire cashew factories merely by putting them in a schedule has to be rejected on two fundamental grounds. First, no notice or hearing is provided as in Section 3 or Section 5-A of the Land Acquisition Act or any other safeguard such as a resolution of the legislative assembly supporting such acquisition as in Section 3-A. If acquisition is to take place in conformity with law rules of natural justice cannot be bypassed. Further, Section 6 is aimed only at directly upsetting a final judgment of a final court, namely, the Supreme Court of India. This is clear from two things—(1) the non obstante clause wiping out “any judgment”, and (2) the reference to the Schedule of the Amendment Act which contains only the 10 cashew factories that were ordered to be handed back by a final judgment of this Court dated 10-3-1995 [S.T. Sadiq v. State of Kerala, SLP (C) No. 8219 of 1994, order dated 10-3-1995 (SC)] . It is clear, therefore, that Section 6 directly seeks to upset a final judgment inter partes and is bad on this count and is thus declared unconstitutional.”



The operative portion of the judgment in ***S.T.Sadiq (supra)*** reads thus:

“24. The appeals are allowed. The judgment [S.T. Sadiq v. State of Kerala, Original Petition No. 14084 of 1997, order dated 11-8-2005 (Ker)] of the High Court is set aside and it is ordered that the cashew factories and the land appurtenant thereto that have been taken over by the State under the amending Act must be handed back within a period of eight weeks from the date on which this judgment is pronounced.”

Even after the aforesaid directions were issued by the Supreme Court in favour of the petitioner, the State refused to hand over the factory of the petitioner back to him leading to initiation of Contempt of Court proceedings before the Supreme Court. A review petition was filed by the CAPEX taking a contention that the direction in ***S.T. Sadiq (supra)*** be confined to the two out of the ten factories which had carried the matter to the Supreme Court. This review petition was allowed by the Supreme Court by ordering that the directions contained in ***S.T. Sadiq (supra)*** shall apply only to the two factories including that of the petitioner that had approached the Supreme Court. At this point, the Amending Act, 2015 was brought into force. The Amending Act, 2015 amended Section 3A (originally introduced by the



Amendment Act, 1995) and also incorporated Section 6A which was for all intents and purposes a provision similar to the provision contained in Section 6 of the Amendment Act, 1995 which had been declared unconstitutional by the Supreme Court in ***S.T. Sadiq (supra)***. The Government also proceeded to exercise its power under Section 3A of the 1974 Act as amended by the Amending Act, 2015 issuing a notification again acquiring the factory of the petitioner with retrospective effect from the date of original acquisition. The Contempt of Court case filed by the petitioner was, therefore, closed, reserving the liberty of the petitioner to challenge the validity of the provisions incorporated by the Amending Act, 2015 if so advised.

22. The contention urged by the learned Advocate General that the present writ petition cannot seek to challenge Section 3A of the 1974 Act, as amended by the Amending Act, 2015 on account of the fact that the said provision had been challenged in the earlier proceedings which culminated in the judgment of the Supreme Court in ***S.T. Sadiq (supra)*** need not detain this Court even for a moment. The provisions of Section 3A have been amended by the Amending Act, 2015 and therefore, any challenge to the provisions as it stood prior to the Amending Act, 2015 will not preclude the petitioner from challenging the amended provisions of Section 3A by filing this Writ Petition. That apart, the Supreme Court specifically reserved the liberty of the petitioner to challenge the provisions of the Amending Act, 2015



if so advised. To be fair to the learned Advocate General he did not even suggest that the protection afforded by Article 31-B of the Constitution of India would be available to the provisions of Section 3A as originally enacted in 1995 or after amendment in 2015 or to the provisions of Section 6A introduced by the Amending Act, 2015. Therefore, I hold that the objection raised to the maintainability of a challenge to Section 3A in the present writ petition is only to be rejected. Resultantly, I hold the challenge to Sections 3A (as amended in 2015) and 6A is maintainable and those provisions are not immune to challenge on account of the provisions of Article 31-B. I hold that the challenge to Section 9 of the 1974 Act as originally enacted is not maintainable on account of the fact that Section 9 of the 1974 Act (as originally enacted) is entitled to the protection of Article 31-B of the Constitution of India. The protection of Article 31-B is, however, not available to Section 9(8) which was incorporated by the Amending Act, 2015 as the said provision has not received the assent of the President. However, I do not intend to consider any challenge to Section 9(8) which was incorporated by the Amending Act, 2015 as it is the specific case of the State Government in this Court that the petitioner did not accept any compensation and that provision does not apply to the case of the petitioner.



Are Sections 3A and Section 6A of the 1974 Act Constitutionally valid?

23. The answer to the aforesaid question must be an emphatic 'NO' for reasons already set out in the judgment of the Supreme Court in **S.T. Sadiq (supra)**. As already noted, in the first round of litigation, the challenge was to the takeover of the factory of the petitioner through a notification and on grounds relatable to Section 3(1)(c) of the 1974 Act. The Supreme Court decided the case of the petitioner on the basis of the findings and directions issued in **Indian Nut Products (supra)**. In the judgment in **Indian Nut Products (supra)** the following liberty was reserved to the Government:-

“12. However, it is made clear that it shall be open to the Government to exercise the power conferred on it by subsection (1) of Section 3, whenever it is satisfied on the basis of the relevant material, that any of the three conditions mentioned therein exists in individual factories, by following the procedure prescribed therein.”

However, the Government did not choose to initiate any fresh proceedings under Section 3 of the 1974 Act and returned 36 out of the 46 factories that had been taken over on identical grounds i.e. grounds relatable to Section 3 (1)(c) of the 1974 Act. The Legislature proceeded to amend the



1974 Act through the Amendment Act, 1995 incorporating Section 3A and Section 6 (of the Amending Act, 2015). This permitted the Government to retain in its possession and ownership of the 10 factories that had been entrusted to the CAPEX for operations. The factory of the petitioner was taken over (as already noted) by including it in the Schedule under Section 6 of the Amendment Act, 1995 and not by exercising the power under Section 3A incorporated vide the same amendment. Section 6 was declared unconstitutional in ***S.T. Sadiq (supra)*** on the following grounds:-

- a) Legislation which trenches upon the judicial power must necessarily be declared to be unconstitutional; Section 6 directly seeks to upset a final judgment *inter partes*; and
- b) There is hostile discrimination as there is no difference between factories which post-acquisition are run by Cashew Development Corporation or CAPEX. The handing back of only 36 factories would be patently discriminatory as all 46 factories are similarly situated and have been treated as such by the State by issuing common notices to all of them under Section 3 of the 1974 Act. There is no *intelligible differentia* between the 36 factories and the 10 factories taken over having any rational relation with the object sought to be achieved.

Section 6 of the Amendment Act, 1995 and Section 6A introduced by the



Amending Act, 2015 are, for all intents and purposes, identical. One fails to understand how a provision like Section 6A could have been enacted after Section 6 of the Amendment Act, 1995 had been struck down as unconstitutional by the Supreme Court. Though the Government has a specific case before this Court that the factory of the petitioner has now been taken over under a notification issued under the provisions of Section 3A as amended by the Amending Act, 2015, it is necessary to consider the challenge to Section 6A introduced by the Amending Act, 2015 also as otherwise even if Section 3A is struck down, the factory of the petitioner will continue to vest in the Government by operation of Section 6A introduced by the Amending Act, 2015. Section 6 of the Amendment Act, 1995 (which was declared unconstitutional by the Supreme Court) and Section 6A introduced by the Amending Act, 2015 are extracted below to demonstrate that, in substance, there is no change to the provision as it originally stood except for the fact that the new provision now contemplated that the transfer (vesting) shall be supported by a resolution of the Legislative Assembly which shall be passed within a period of six months from the date of publication of the Amending Act, 2015 in the Gazette.

Section 6 of the Amendment Act, 1995 (which was declared unconstitutional by the Supreme Court) in <i>S.T. Sadiq (supra)</i>	Section 6A introduced by the Amending Act, 2015
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**“6. Declaration as to acquisition of certain cashew factories:-**

(1) It is hereby declared that it is expedient in the public interest that the cashew factories specified in the Schedule to this Act shall, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in any other law, agreement or other instrument for the time being in force, stand transferred to, and vest in, the Government with effect from the date noted against each.

(2) The provisions of section 4, section 7 to 16 (both inclusive) of the principal Act shall, as far as may be, apply to, or in relation to, the cashew factory in respect of which sub-section (1) apply, as they apply to a cashew factory in relation to which a declaration has been made under sub-section (1) of section 3A.

(3) For removal of doubt it is hereby declared that the dates mentioned in the Schedule against each factory shall be the ‘appointed day’ in respect of that factory for the purposes of the

"6A. Acquisition of factories specified in Schedule III:-

Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in any other law, agreement or other instrument for the time being in force, it is hereby declared that it is expedient in public interest that the cashew factories specified in Schedule III of this Act shall, stand transferred to, and vest in, the Government with effect from the date noted against each:

Provided that such transfer shall be supported by a resolution of the Legislative Assembly which shall be passed within a period of six months from the date of publication of the Kerala Cashew Factories (Acquisition) Amendment Act, 2015 in the Gazette.

(2) The provisions of section 4, sections 7 to 16 (both inclusive) of the Act shall as far as may be, apply to, or in relation to, the cashew factory in relation to which a declaration has been made under sub-section (1) of



<p>principal Act.</p> <p>(4) All acts, proceedings or things done or taken by the Government or any officer or authority in respect of cashew factories mentioned in the Schedule including all the orders issued under sub-section (1) of section 8, during the periods commencing on and from the dates noted against each and ending with the date of publication of this Act in the Gazette, shall, for all purposes, be, and shall be deemed always to have been, as valid and effective as if the amendments made to the principal Act by this Act had been in force at all material times."</p>	<p>section 3A.</p> <p>(3) For the removal of doubt it is hereby declared that the dates mentioned in the Schedule against each factory shall be the appointed day, in respect of that factory for the purposes of the Act.</p> <p>(4) All acts, proceedings or things done or taken by the Government or any officer or authority in respect of cashew factories mentioned in the Schedule III including all the orders issued under sub-section (1) of section g during the periods commencing on and from the dates noted against each and ending with the date of publication of the Kerala cashew Factories (Acquisition) Amendment Act, 2015 in the Gazette, shall, for all purposes be and shall be deemed always to have been as valid and effective as if the amendments made to the Act by the said amendment Act had been in force at all material times"</p>
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Schedule III referred to in Section 6A introduced by the Amending Act, 2015 to the extent it relates to the factory of the petitioner reads thus:-



Name, description and details of factories	Date from which it is vested in Government
Rajmohan Cashew Limited, Eruva, located at Eruva, Kayamkulam in Karthikappally Taluk, Alappuzha District'	11.6.1984

Section 6A is thus nothing but a reincarnation of the earlier Section 6 of the Amendment Act, 1995, which was declared unconstitutional by the Supreme Court. The only difference between Section 6 of the Amendment Act, 1995 [which was declared unconstitutional by the Supreme Court in ***S.T. Sadiq (supra)***] and Section 6A introduced by the Amending Act, 2015 is that Section 6A provided for a resolution by the Legislature. Though the learned Advocate General attempted to establish that the provision requiring resolution by the Legislature (in Sections 3A and 6A) saved those provisions from being challenged on the ground that it conferred arbitrary power on the Government, no authority was cited for this proposition. I find it difficult to accept this contention of the learned Advocate General. The fact that the provisions contemplate the support of a resolution of the Legislative Assembly for action taken in terms of those provisions do not by itself make the provisions immune from challenge on the ground that they are arbitrary and unconstitutional.

24. As in the case of Section 6 of the Amendment Act, 1995 and



Section 6A introduced by the Amending Act, 2015, there is considerable overlap between the provisions contained in Section 3(1)(c) & Section 3A (which was initially introduced by the Amend Act, 1995 and amended further by the Amending Act, 2015) of the 1974 Act. To establish this, it would be beneficial to again refer to both provisions.

Section 3(1)(c) of the 1974 Act	Section 3A of the 1974 Act (incorporated into the act by the Amending Act, 1995 and amended further by the Amending Act, 2015)
<p>“3. Order of acquisition .- (1) <i>The Government may, if they are satisfied-</i> <i>a).....</i> <i>(b).....</i> <i>(c) that there has been large scale unemployment, other than by way of lay off or retrenchment, of the workers of a cashew factory;</i> <i>by order published in the Gazette, declare that that cashew factory shall stand transferred to, and vest in, the Government:</i></p>	<p>"3A. Power to acquire any cashew factory in public interest.- (1) <i>Notwithstanding anything contained in section 3, if the Government are satisfied, in relation to a cashew factory, that it has been closed for a period of not less than three months prior to the date of coming into force of this Act or any day thereafter and such closure has prejudicially affected the interest of the majority of the workers engaged in that factory and that immediate action is necessary to restart the cashew factory and such restarting is necessary in the public interest, they may, by order published in the Gazette, declare, that the cashew factory</i></p>



	<p><i>shall stand transferred to, and vest in, the Government:</i></p> <p><i>Provided that no order under this sub-section shall be published unless the proposal for such acquisition is supported by a resolution of the Legislative Assembly which shall be passed within a period of six months from the date of publication of the order under sub-section (1) of this Section.</i></p>
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As rightly pointed out by the learned Senior Counsel for the petitioner, Section 3(1)(c) seeks to prevent large-scale unemployment, and Section 3A deals with the closure of factories and prejudice to the employees that leads to large-scale unemployment. Thus, it is clear that at the core of both the Sections, though worded differently, is the giving of authority to the Government to take over a Cashew Factory to prevent large-scale unemployment and the notification issued in the case of the factory of the petitioner under Section 3A (Ext. P10) indicates that the grounds were similar or identical to the grounds set out in the notification issued under Section 3(1) (c) of the 1974 Act (See Ext.P3). It is the specific case of the State before this Court that taking over of the factory of the petitioner after the judgment in ***S.T. Sadiq (supra)*** was not by virtue of the provisions contained in Section



6A introduced by the Amending Act, 2015 but by virtue of a notification issued under Section 3A of the 1974 Act. That being the situation, the findings of the Supreme Court in **S.T. Sadiq (supra)** itself lead me to conclude that the present notification and the taking over of the factory of the petitioner in the exercise of the power under Section 3A of the 1974 Act amounts to hostile discrimination and is thus unsustainable. While the learned Advocate General may be right in contending that the provisions of Section 3A by itself cannot be termed arbitrary or discriminatory, it remains a fact that when for all intents and purposes the essence of both the Sections, though different in form, speak in the same terms and provides authority to the Government to takeover a Cashew Factory to prevent large-scale unemployment, there is no reason to differentiate between the 36 factories taken over on grounds relatable to Section 3(1)(c) and the factory of the petitioner which has been taken over by issuing a notification under Section 3A. The following findings of the Supreme Court in **S.T. Sadiq (supra)** are relevant in this regard:-

“23. It is clear that the objects and reasons for the Amendment Act makes no differentiation between the 36 factories handed back and the 10 factories taken over by the Amendment Act. The High Court was in error in saying that there was an intelligible differentia between the two. Further, even otherwise, there is no difference between factories which post



acquisition are run by Cashew Development Corpn. Or Capex regard being had to the object sought to be achieved—namely, to avoid unemployment of cashew workers. Whether 36 factories run by Cashew Development Corpn. are to be acquired or 10 factories run by Capex are to be acquired makes not the least difference to the object sought to be achieved. Large-scale unemployment is there in both cases. And both, Cashew Development Corpn. And Capex, along with the Government, will suffer financially. In fact, the handing back of only 36 factories would be patently discriminatory as all 46 factories are similarly situate and have been treated as such by the State by issuing common notices to all of them under Section 3 of the Act. We have been reliably informed that these 36 factories are functioning under their respective owners for the last twenty years. In the circumstances we hold that there is no intelligible differentia between the 36 factories and the 10 factories taken over having any rational relation with the object sought to be achieved and on this ground also Section 6 of the Amendment Act deserves to be struck down as violating Article 14 of the Constitution.

25. The principles laid down in ***Ram Krishna Dalmia (supra)*** on which considerable reliance was placed by the learned Advocate General do not, in my view, aid the State. That decision holds:-

“11. The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on Article 14 of the Constitution. In Budhan Choudhry v. State of



Bihar [(1955) 1 SCR 1045] a Constitution Bench of seven Judges of this Court at p. 1048-49 explained the true meaning and scope of Article 14 as follows;

“The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, Chiranjit Lal Choudhuri v. Union of India [1950 SCC 833 : (1950) SCR 869] , State of Bombay v. F.N. Balsara [1951 SCC 860 : (1951) SCR 682] , State of West Bengal v. Anwar Ali Sarkar [(1952) 1 SCC 1 : (1952) SCR 284] , Kathi Raning Rawat v. State of Saurashtra [(1952) 1 SCC 215 : (1952) SCR 435] , Lachmandas Kewalram Ahuja v. State of Bombay [(1952) 1 SCC 726 : (1952) SCR 710] , Qasim Razvi v. State of Hyderabad [(1953) 1 SCC 228 : (1953) SCR 581] and Habeeb Mohamad v. State of Hyderabad [(1953) 1 SCC 501 : (1953) SCR 661] . It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely,



geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;



(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.

12. A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Article 14 of the Constitution, may be placed in one or other of the following five classes:



*(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law, as it did in *Chiranjitlal Chowdhri v. Union of India* [1950 SCC 833 : (1950) SCR 869] *State of Bombay v. F.N. Balsara* [1951 SCC 860 : (1951) SCR 682] *Kedar Nath Bajoria v. State of West Bengal* [(1953) 2 SCC 142 : (1954) SCR 30] , *S.M. Syed Mohammad & Company v. State of Andhra* [(1954) SCR 1117] , and *Budhan Choudhry v. State of Bihar* [(1955) 1 SCR 1045] .*

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will



strike down the law as an instance of naked discrimination, as it did in Ameerunnissa Begum v. Mahboob Begum [(1952) 2 SCC 697 : (1953) 1 SCC 274 : (1953) SCR 404] and Ramprasad Narain Sahi v. State of Bihar [(1953) 1 SCC 274 : (1953) SCR 1129].

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law, as it did in State of West Bengal v. Anwar Ali Sarkar [(1952) 1 SCC 1 :



(1952) SCR 284] Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh [(1954) SCR 803] and Dhirendra Krishna Mandal v. Superintendent and Remembrancer of Legal Affairs [(1955) 1 SCR 224].

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification, the court will uphold the law as constitutional, as it did in Kathi Raning Rawat v. State of Saurashtra [(1952) 1 SCC 215 : (1952) SCR 435].

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court e.g. in Kathi Raning Rawat v. State of Saurashtra that in such a case the executive action but not the statute should be condemned as unconstitutional.”



In the facts of this case, it must be held that in the light of the finding of the Supreme Court in the petitioner's own case in ***S.T. Sadiq (supra)*** that there was no *intelligible differentia* between the factories entrusted to the Cashew Development Corporation and the factories entrusted to the CAPEX, the impugned provisions must be struck down as they make 'no reasonable basis of classification', do not 'lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification' and since "the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate". In that view of the matter, the judgments of the Supreme Court in ***K.T. Plantation Pvt. Ltd. & another (supra)***, ***Jaya Thakur (supra)***, ***In Re The Kerala Education Bill (supra)*** and ***A.A Padmanbhan (supra)*** do not support the case of the State. For the same reasons, the provisions of Sections 3A & 6A also appear to be manifestly arbitrary as the term is understood in ***Shayara Bano (supra)***.

26. The contention of the learned Senior Counsel for the petitioner that provisions are also liable to be declared unconstitutional as there is no provision providing for the payment of a compensation that is 'just'; thus making the provisions fall foul of Article 300A is *prima facie* attractive. The decisions in ***Bimal Kumar Shah & Ors (supra)*** and



Dharnidhar Mishra (supra) are recent authorities for the proposition that fair, just and reasonable compensation is the *sine qua non* of any acquisition process. Such right has been held to be part of the right under Article 300A vide ***K.T. Plantation Pvt. Ltd. & another (supra)***. Even if the provisions relating to the grant of compensation under the 1974 Act were incorporated in the original enactment and were thus entitled to the protection of Article 31-B, it could be argued that, since the acquisition which is the subject matter of challenge is on the basis of a newly incorporated provision (Section 3A as amended by the Amending Act, 2015) which admittedly is not entitled to the protection afforded by Article 31-B, a challenge to the provisions relating to payment of compensation can be raised on the ground that it does not provide for a just and fair compensation. A further possibility is that, since Article 31-B only protects against challenge upon grounds relating to provisions contained in Part III of the Constitution, a challenge could be made even to provisions entitled to the protection of Article 31-B on the ground that they violate Article 300-A. However, in the light of the view that I have already taken, it is not necessary to examine these issues in this Writ Petition. Similarly, the question as to whether the provisions of Section 3A as amended by the Amending Act, 2015 are bad for the reason that they do not provide an opportunity for notice and hearing and on the ground that those provisions could not have been incorporated with



retrospective effect are also not required to be considered as I have already found that the provisions of Section 3A are unconstitutional on other grounds. The contention that the provisions of Section 3A qualify as a law made so as to defeat the rights of one single individual (the petitioner herein) in the peculiar facts of this case also need not be considered. These questions are, therefore, left open.

27. In the light of the above discussions and findings, this Writ Petition is allowed. The provisions of Section 3A (as amended by the Amending Act, 2015) and Section 6A (inserted by the Amending Act, 2015) of the Kerala Cashew Factories (Acquisition) Act, 1974 are declared unconstitutional and are struck down. The provisions are arbitrary and discriminatory and violative of Article 14 of the Constitution of India. It is declared that there is no *intelligible differentia* between the 36 factories that were returned to the respective owners following the judgment in ***Indian Nut Products (supra)*** and the factory of the petitioner and that there was hostile discrimination in retaining the ownership and possession of the factory of the petitioner considering the fact that all these factories had been originally taken over upon grounds relatable to Section 3(1)(c) of the 1974 Act. Therefore, the executive order issued under the provisions of Section 3A (as amended by the Amending Act, 2015) of the Kerala Cashew Factories (Acquisition) Act, 1974, with respect to the factory of the petitioner will also



stand quashed. The possession and ownership of the factory of the petitioner together with the land appurtenant thereto shall be restored to him forthwith. In the light of the undertaking given in this Court on behalf of the petitioner as noticed in paragraph 18 of this judgment, it is directed that on such restoration, the petitioner and the respondents shall be bound by and will duly and faithfully abide by the directions issued by the Supreme Court in sub-paragraphs (ii) to (vi) of Paragraph 13 of the judgment (SCC Report) in ***Indian Nut Products (supra)*** subject to necessary modifications in as much as the reference to the Cashew Development Corporation shall be read as a reference to the Kerala State Cashew Workers Apex Industrial Co-operative Society (CAPEX).

Writ petition ordered accordingly.

Sd/-

**GOPINATH.P.
JUDGE**

acd

APPENDIX OF WP(C) 18663/2016

PETITIONER EXHIBITS

- P1 TRUE COPY OF THE LEASE DEED DATED 02-05-1995 BETWEEN THE PETITIONER AND M/S.JANSO EXPORTS PRIVATE LIMITED.
- P2 TRUE COPY OF NOTICE NO. 31033/K3/84/ID DATED 19-09-1985 ISSUED BY THE SECRETARY TO GOVERNOR, GOVERNMENT OF KERALA.
- P3 TRUE COPY OF ORDER NO. G.O.(P)NO. 161/86/ID DATED 11-06-1986 PASSED BY THE GOVERNMENT OF KERALA INDUSTRIES (K) DEPARTMENT.
- P4 TRUE COPY OF THE JUDGMENT DATED 12-05-1994 PASSED BY THE HON'BLE SUPREME COURT IN WPC NO. 415 OF 1998(1994) 4 SCC PAGE NO. 269.
- P5 TRUE COPY OF THE ORDER DATED 10-03-1995 PASSED BY THE HON'BLE SUPREME COURT IN SLP(C)NO. 8219/94.
- P6 TRUE COPY OF LETTER NO. AD6/6/94 DATED 26-03-1996 ISSUED BY THE CASHEW EXPORT PROMOTION COUNCIL OF INDIA.
- P7 TRUE COPY OF LETTER NO. M5.54254/84 DATED 31-03-2002 ISSUED BY THE DISTRICT COLLECTOR, KOLLAM.
- P8 TRUE COPY OF THE JUDGMENT DATED 04-02-2015 IN C.A.NO. 3962 OF 2007 PASSED BY THE HON'BLE SUPREME COURT.
- P9 TRUE COPY OF THE KERALA GAZETTE NOTIFICATION NO. 4712/LEG.C3/2015/LAW DATED 03-08-2015, THIRUVANANTHAPURAM.
- P10 TRUE COPY OF ORDER G.O.(P)NO. 110/2015/ID DATED 06-08-2015, THIRUVANANTHAPURAM PUBLISHED IN KERALA GAZETTE.
- P11 TRUE COPY OF THE ORDER DATED 13-01-2016



PASSED BY THE HON'BLE SUPREME COURT IN
CONTEMPT PETITION (C)NO. 347/2015 IN C.A.NO.
3962/2007.

P12 TRUE COPY OF THE JUDGMENT DATED 1-04-2016
PASSED BY THE HON'BLE SUPREME COURT IN WRIT
PETITION (C)NO. 141 OF 2016.

RESPONDENT EXHIBITS

Exhibit R1(A) TRUE COPY OF G.O. (P) NO.110/2015/IND DATED
06.08.2015 PUBLISHED IN THE EXTRAORDINARY
GAZETTE AS S.R.O.NO.501/2015

Exhibit R1(B) TRUE COPY OF THE RESOLUTION UNANIMOUSLY
PASSED BY THE KERALA LEGISLATIVE ASSEMBLY ON
16.12.2015

Exhibit R3(1) A COPY OF THE TABLE OF THE DETAILS OF
FACTORIES, NUMBER OF WORKING DAYS, NUMBER OF
WORKERS, TURN OVER, LOSS ETC.

Exhibit R3(2) A COPY OF THE DETAILS OF THE ALLOCATION OF
FUNDS FOR LOANS.

Exhibit R3(3) A COPY OF THE DETAILS OF THE ALLOCATION OF
FUNDS FOR GRANTS.

Exhibit R3(4) A COPY OF THE LIST OF EXPENDITURE INCURRED IN
RESPECT OF THE PETITIONER'S FACTORY FROM THE
YEAR 2000-2001 UPTO 2010-2011.