

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 4572 of 2011 (S)

PETITIONER/PARTY-IN-PERSON :

**P.C.THOMAS EX.M.P.,
ADVOCATE, 67, KUMARANASAN NAGAR,
KADAVANTHARA, ERNAKULAM.**

BY ADV. SRI.P.C.THOMAS EX.MP (PARTY IN PERSON)

RESPONDENTS :

- 1. THE UNION OF INDIA,
REP. BY ITS SECRETARY, MINISTRY OF HOME AFFAIRS,
NEW DELHI.**
- 2. THE REGISTRAR GENERAL AND CENSUS
COMMISSIONER, MINISTRY OF HOME AFFAIRS, NEW DELHI.**

R1 & R2 BY ADV. SRI.N.NAGARESH,

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-05-2015, ALONG WITH WPC. 4709/2011, THE COURT
ON 25-06-2015 DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE RELEVANT PORTION OF THE GUIDELINE FOR CENSUS OF INDIA 2011, ISSUED BY THE R2 AND IT'S ENGLISH TRANSLATION.

RESPONDENT'S EXHIBITS :

EXT.R2(a): COPY OF THE TABLES SHOWING NATIONAL INDUSTRIAL CLASSIFICATION 1998.

EXT.R2(b): COPY OF THE TABLES SHOWING CLASSIFICATION OF MAIN WORKERS CLASSIFIED BY AGE, INDUSTRIAL CATEGORY AND SEX.

//TRUE COPY//

P.S. TO JUDGE

bp

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.P (C) Nos. 4572 & 4709 of 2011

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Dated this, the 25th day of June, 2015

J U D G M E N T

Shaffique, J

W.P (C) No. 4572/2011 is filed seeking a writ of mandamus to declare that Ext.P1 guidelines to the extent excluding the production of tea, coffee, rubber, coconut and arecanut from the definition of agriculture is arbitrary and illegal and for other consequential directions to correct the same and further to exclude the cultivation of ganja from the purview of agriculture and to reconsider and clarify the reference to 'agriculture' in clause 6.127 of Ext.P1.

2. The petitioner has approached this Court as a party-in-person highlighting certain deficiencies in the guidelines issued for conducting survey for "Bharat Census 2011". Specific reference is made to Clauses 6.126 in Ext.P1 and 6.127 which read as under;

"6.126 - The production of produces from plantations would not be considered as agriculture. If a person is

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engaged in the production of plantation crops, he would not be considered as agriculturist or agricultural labourer, as the case may be. Instead of that he would be classified in 'other categories'. It is very important to notice that if a person states that he is an agriculturist or agricultural labourer it should be made clear as to which type of crop cultivation he is engaged.

6.127 - It is to be specifically noticed that the production of plantation crops viz. tea, coffee, rubber, coconut and arecanut, will not come under the definition of agriculture."

3. His contention is that excluding farmers who cultivate the agricultural crops from the nomenclature of farmer is absolutely arbitrary and the classification will detrimentally affect the entire agriculturists community who are engaged in the said plantation and that the consequences are far reaching. No reason has been stated for excluding persons who cultivates tea, coffee, rubber coconut and arecanut from the definition of agriculture. He also points out that cultivation of 'ganja' is treated as agriculture and those cultivating the same are treated as farmers. Persons who are engaged in 'hunting' and 'trapping' are recognised as 'other workers'. This, according to the petitioner, is clear

discrimination of the category of agriculturists.

4. It is submitted that there is no rational nexus between the purpose and object sought to be achieved. It is submitted that the object of the census is to renew the schedule of house and family of the citizen with reference to their occupation and this sort of classification will deny the benefits which are available to farmers under the head of agriculturists/agricultural labourers. Petitioner also placed reliance on the Division Bench judgment in **Muhammed Basheer v. Kannur District Co-operative Bank Ltd.** (2010 (2) KLT 577) wherein Division Bench considered the question whether a piece of land planted with rubber is to be excluded from the term agricultural land for the purpose of 31(i) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Division Bench held that plantation of rubber is an agriculture activity. Reference is made to paragraphs 16 and 17 which read as under;

16. "Agricultural land" is that species of land which could be said to be either used or ordinarily used for agricultural purposes. "Agricultural land" must have a connection with an agricultural user or purpose. It is on the nature of user

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that the meanings of 'agricultural purpose' and 'agriculture' become relevant. Popular and authoritative Dictionaries say that "agriculture" is the art or science relating to the practices of cultivating the land. Agriculture is the process by which human skill is expended upon land. Human labour, with or without the aid of implements, tools and machines, is employed utilising the art or science of cultivating the ground. In its good sense, it means farming, horticulture, forestry etc., including the allied pursuits, preparation of land or fields in large quantities, preparation of soil, planting of seeds, raising and harvesting of crops etc. In certain shades, agriculture also includes management of livestock etc. But primarily, it is understood as the process of putting land to use in the growing of crops by employing human skill and labour upon land. As noted above from Raja Benoy Kumar Sahas Roy (supra), agriculture includes raising, on the land, of products which have some utility either for consumption or for trade and commerce. The term 'agriculture' cannot be defined or understood by the nature of the products cultivated. No such classification is conceivable unless specifically provided for, having regard to the specific need to make such classification. If such classification is to provide different consequences of a piece of statute law, including its applicability, we definitely think that such classification should be found explicit on the clear expressions in that particular statute.

17. The primary exercises in agriculture cannot be treated as an activity alien to agriculture, even if it relates to

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growing and harvesting of product or crop which goes in for consumption otherwise than as an edible item. Rubber sap is a biological product generated from the rubber trees which are grown as plantations, utilising human skill and labour, by carrying out an agricultural process starting with preparing the lands for the cultivation. Rubber saplings are generated by different modes; by germination of seeds or by botanical manipulations like grafting, budding etc. Those saplings are planted, watered, provided with manure and otherwise cared for, to grow them up. The said process is nothing but 'agriculture'. The mere fact that the product that is ultimately taken from the rubber trees is sap that goes into processing or consumption other than as food is no intelligible criteria to say that rubber sap taken from the rubber trees is not an agricultural produce, in common parlance, or that cultivation of rubber is not agriculture and still further, that lands on which rubber is cultivated is not agricultural land.

5. Another judgment relied upon is a Constitution Bench judgment in ***Commissioner of Wealth Tax, Andhra Pradesh v. Officer-in-Charge (Court of Wards), Paigah*** [1976) 3 SCC 864]. This case has been decided on the basis of certain disputes under the Wealth Tax Act, 1957 as to whether certain lands held by the respondent were agricultural lands and therefore excluded from the definition of assets given in Section 2(e) of the Wealth

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Tax Act, 1957. After considering the term 'agriculture' as understood in the common parlance under the provisions of the Wealth Tax Act, it was held thus at paragraphs 5, 6 and 8 as under;

"5. The term "agriculture" was discussed very thoroughly by this Court in CIT v. Raja Benoy Kumar Sahas Roy. This Court said there (at pp. 472-73):

"The term 'agriculture' and 'agricultural purpose' not having been defined in the Indian Income Tax Act, we must necessarily fall back upon the general sense in which they have been understood in common parlance. 'Agriculture' in its root sense means ager, a field, and culture, cultivation, cultivation of a field which of course implies expenditure of human skill and labour upon land. The term has, however, acquired a wider significance and that is to be found in the various dictionary meanings ascribed to it. It may be permissible to look to the dictionary meaning of the term in the absence of any definition thereof in the relevant statutes."

Therefore, this Court, beginning with the decision of Lord Coleridge in R.v. Peters, scanned and discussed various decisions of English and Indian courts, and the meanings given in various dictionaries of the English language, as well as in the law dictionaries. It then reached the conclusion (at p. 510):

"If the term 'agriculture' is thus understood as

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comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the land of products which have some utility either for consumption or for trade and commerce, it will be seen that the term 'agriculture' receives a wider interpretation both in regard to its operations as well as the results of the same. Nevertheless there is present all throughout the basic idea that there must be at the bottom of it cultivation of land in the sense of tilling of the land, sowing of the seeds, planting, and similar work done on the land itself. This basic conception is the essential sine qua non of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same. But if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations.

6. In Raja Benoy Kumar Sahas Roy case the question before this Court was whether income from forest lands derived from sal and piyasal trees "not grown by human skill and labour" could constitute agricultural income. The test applied there was whether there was some integrated activity which could be described as agricultural operation yielding income. It was pointed out that, although, a mere wild or spontaneous growth of trees, not involving the employment of any human labour or skill for raising them, could not be agricultural income, yet, when there was a forest more than 150

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years old, which had been carefully nursed and attended to by its owners, the income would be agricultural. It is true that this case is not a direct authority upon what is "agricultural land". Nevertheless, it goes a long way in helping us to decide what could be agricultural land. We think that this must be land which could be said to be either actually used or ordinarily used or meant to be used for agricultural purposes. In other words, "agricultural land" must have a connection with an agricultural user or purpose. It is on the nature of the user that the very large number of definitions and authorities discussed by this Court, in Raja Benoy Kumar Roy case have a direct bearing. In that case, this Court held that the wider meaning given to agricultural operations, such as breeding and rearing of livestock, poultry farming, or dairy farming will not be applicable. It held that the correct test to apply would be to find out whether human labour had been applied to the land itself, in order to extract from its natural powers, added to or aided by other natural or artificial sources of strength to the soil, a product which can yield an income.

7. xxxxxx

8. *It is true that in Raja Benoy Kumar Sahas Roy case this Court pointed out that meanings of words used in Acts of Parliament are not necessarily to be gathered from dictionaries which are not authorities on what Parliament must have meant. Nevertheless, it was also indicated there that, where there is nothing better to*

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rely upon, dictionaries may be used as an aid to resolve an ambiguity. The ordinary dictionary meaning cannot be discarded simply because it is given in a dictionary. To do that would be to destroy the literal rule of interpretation. This is a basic rule relying upon the ordinary dictionary meaning which, in the absence of some overriding or special reasons to justify a departure, must prevail. Moreover, it was held there that the dictionary meanings of the word "agricultural" were wider than what was meant by "agricultural income" as that term was used in the Income Tax Act. Even if we could give a wider connotation to the term "agricultural" than the one it carries with it in the Income Tax Act, we cannot dispense with credible evidence of at least appropriation or setting apart of the land for a purpose which could be regarded as agricultural and for which the land under consideration could be reasonably used without an alteration of its character. This, we think, is the minimal test of "agricultural land" which should be applied in such cases.

6. Counter affidavit has been filed on behalf of respondents 1 and 2 *inter alia* stating that in Census 2011, it is proposed that farmers depending on plantation crops such as coconut, rubber, coffee, tea and arecanut will be classified under the Broad Structure of National Industrial Classification, 2008 viz.,

Section A: Agriculture, Forestry and Fishing. It is stated that in the census, the workers are broadly classified into 4 categories viz., cultivator, agricultural labourer, worker in household industry and other worker. Household industry and other workers are further classified based on National Industrial Classification in categories such as agriculture, hunting, forestry, fishing, manufacturing, electricity, gas and water supply, construction, hotels and restaurants and transport, storage and communication etc. It is stated that such a practice is being followed since 1981 and the plantation workers have always been recorded under 'other workers' as they are broadly considered to be in organised sector and are governed by labour laws and as such their data is separately available. It is also stated that in census, the classification of workers is undertaken following the National Industrial Classification (NIC) which also forms the basis for estimation of national accounts. They also produced Ext.R2(a), the table generated electronically based on National Industrial Classification, 1998. It shows each of the plantations separately. Reference is also made to R2(b) table showing classification of

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main workers classified by age, industrial category and sex. It is maintained by the Registrar General, India which generates tables on economic activity and it also shows plantation as part of agriculture. It is therefore contended that there is no illegality in not classifying the plantations in agriculture. The apprehension expressed is not real. Respondent also submits that the present method of classification, operational procedures and final tabulation allows office of the Registrar General, India in providing much more basic details for plantation workers.

7. In W.P (C) No. 4709/2011 also the petitioner had raised challenge to the very same guidelines *inter alia* contending that the non inclusion of tea, coffee, rubber, coconut, pineapple, tapioca and arecanut under the agricultural produces and non inclusion of cultivators of both crops under the head farmer is illogical and irregular. In the counter affidavit filed by the respondents, identical contentions have been urged.

8. Having regard to the fact that both the writ petitions raise common issues; the same are decided together.

9. Heard petitioner Sri.P.C.Thomas, who is party-in-

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person in W.P (C) No. 4572/2011, Adv.Sri.Noble Mathew appearing in W.P (C) No. 4709/2011 and learned Assistant Solicitor General of India appearing on behalf of the respondents.

10. Though the petitioners have raised certain apprehensions for non inclusion of certain category of agriculturists in the guidelines issued for Census 2011, it is relevant to note that though the said census can be larger programme to form a data base for the Government, there is sufficient explanation from the respondents to indicate that agricultural operations in the form of plantations are treated differently as they form an organized class. The classification now made is apparently only for the purpose of census and based on the National Industrial Classification. The census is being prepared on guidelines formulated by the Government of India taking into consideration various policy matters. It has to be given a larger sphere to differentiate between different categories of workers and different categories of occupation, agricultural or otherwise. It might be true that in ordinary parlance, persons involved in agricultural activities have to be treated as

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agriculturalists or farmers and all agricultural operations have to be treated alike. But, when it comes to the question of census and the manner and preparation of the same for logistic purposes, it is always open for the Government to treat various agriculture operations differently. By treating such agricultural operations differently by itself may not affect an agriculturist in any manner. Only when it comes to the question of such agricultural operations being affected on account of other policy decisions taken by the Government, that a question of challenge to the classification arises. As matter stands now, the classification made is only for the purpose of census and apparently the census has already been completed by lapse of time. Further, in the counter affidavit filed by the respondents, it was clearly indicated that the said practice is followed since 1981 and the plantation workers have always been recorded as 'other workers' as they are broadly considered to be in organized sector and are governed by various labour laws. This, according to us, is reasonable explanation for classifying them separately. Therefore, we do not think that taking into consideration the

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limited scope of census being done, the guidelines issued treating certain category of agriculturists differently from that of other agricultural operations in any way amounts to any discrimination. The judgments relied upon by the petitioners are of course based on particular instances where the Court had gone into the question regarding whether a particular activity amounts to agricultural operation or not. The said findings cannot be the basis of departing from the classification made by the Government for the purpose of census.

Under such circumstances, we do not find any merit in these writ petitions. The same are dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

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PS to Judge