



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Monday the 22<sup>nd</sup> day of March, 2021)

**Appeal Nos.100/2018** (A/KL-68/2016) **108/2018** (A/KL-69/2016)  
**109/2018** (A/KL-70/2016) **110/2018** (A/KL-71/2016)

Appellants

1. Mr. Joseph J Vayalat  
Vayalat Veedu  
House No. VI/419 C  
Kundanoor,  
Maradu
2. Mr. Thomas J Vayalat  
Vayalat House  
House No. VI/419 B  
Kundanoor,  
Maradu
3. Roy J Vayalat  
Vayalat Nest  
Door No. 0023/ 406 A  
EdaKochi , Ernakulam
4. Raju J Vayalat  
Vayalat House  
House No. CCI / 262  
Fort Kochi , Ernakulam

By Adv. Paulson C Varghese

Respondents

1. The Regional PF Commissioner  
Sub Regional Office, Kaloor,  
Kochi – 682017

By Adv. Joy Thattil Ittoop

2. M/s. Meenakshi Estate  
Kallar, Vattiyar  
Idukki District.

These appeals came up for hearing on 03/03/2021 and this Industrial Tribunal cum Labour Court issued the following order on 22/03/2021.

**ORDER**

All the above appeals are filed from Order No.KR/KC/1944(KTM)/2016/3061 dt.08/06/2016 deciding the continued applicability of the Act as per the direction of the Hon'ble High Court of Kerala in WPC No 20940 /2005.

2. The appellants purchased land from one Mr. A.R Arunachalam Chettiar and his Sons on 09/08/1989 by virtue of sale deed bearing no. 1493 of Devikulam Sub Registrar's Office. The property tax in respect of the property is being separately paid by the appellants. The appellants are brothers. Prior to the purchase of the property by the appellants, the services of the workmen were terminated and also settled all eligible dues when the estate was owned by the vendor. The provisions of the EPF

and MP Act was not applicable to the estate. After the purchase of the estate by four brothers, the same is managed independently and each appellant is employing only four employees each. After a lapse of 14 years, the appellants were issued an order U/s 7A of the Act. A true copy of the order dt. 22/07/2004 is produced and marked as Annexure A2. Annexure A2 order would show that the first respondent assessed the dues in respect of four partitioned units under the provisions of the Act for the period from 07/2003 to 06/2004. The portions of the estate purchased by 4 brothers are independently managed and there is no functional, administrative or financial integrality between the estates. The employees of one estate cannot be transferred to another estate. Even if the estate owned by the vendor is covered under the provisions of the Act, on account of subsequent division into 4 independent estates, the integrality of the estate is disrupted and the number of employees employed by them individually is less than 20. In view

of the decision of the Full Bench of Hon'ble High Court of Kerala in **TA Zainulabdeen Vs RPFC**, 1974 KHC 159, Section 1(5) of the Act cannot be made applicable to the appellants establishments. The appellants had been maintaining muster rolls and wage registers separately. Aggrieved by the order of the respondent U/s 7A, the appellants approached the Hon'ble High Court of Kerala in Writ Petition Nos. 20940/2005, 20941/2005, 20946/2005, and 20947/2005. The Hon'ble High Court allowed the Writ Petitions, set aside the 7A order and remanded the matter back to the respondent for fresh consideration. A true copy of the judgment of the Hon'ble High Court is produced and marked as Annexure A4. A true copy of the daily wages payable to the workers in the Cardamom Estate for the period 2002 to 2011 is produced and marked as Annexure A5. The appellant also filed a review petition U/s 7B of the Act and the same was dismissed by the respondent vide order dt. 20/05/2005. A true copy

of the order is produced and marked as Annexure A6. The respondent in the impugned order found that there was a bonafide sale of property but the other elements of disintegration such as settlement of terminal benefits to the employees, closure of the establishments etc., are not proved in the enquiry. The question whether the sale deeds executed by Shri. A.R Arunachalam and his sons in favour of the appellants is a bonafide one is positively found by the respondent in Annexure A6 order. The finding of the respondent that provident fund contribution was being deducted from the employees on the basis of the wage register produced in the enquiry is not correct. It is only an entry made with regard to the advances paid to the employees but wrongly reflected in the provident fund deduction column. An employee who was drawing salary of Rs.1538.20 shall be paying a contribution of Rs.184.58 hence it can very well be seen that the deduction of Rs.600 made from salary of the employees cannot be towards provident fund

contribution. The original establishment by name is Meenakshi Cardamom Estate, Pallivasal ceased to exist since the date of the transfer of the property and the M/s Meenakshi Cardamom Estate is disintegrated into four different independent units.

3. The respondent filed counter denying the above allegations. M/s. Meenakshi Cardamom Estate is an establishment covered under the provision of the Act w.e.f 31/05/1964. The estate is purchased by the appellants in 1989 and the establishment was in default from that date. Hence an enquiry U/s 7A of the Act was initiated to assess the dues from December 1982 onwards. The appellant did not attend the enquiry and therefore the enquiry was finalized and order was issued assessing the dues from 07/2003 to 01/2004. The present owners challenged the assessment order before the Hon'ble High Court of Kerala and the Hon'ble High Court directed the petitioners to file a review application U/s 7B of the Act. In the Section 7B review, the appellants took a

view that they purchased a portion each of the Meenakshi Estate in 1989 and none of them are engaging more than 20 employees. The respondent found that all the four brothers who purchased the estate are residing in the same address, doing the same nature of business and employing more than 20 employees. Respondent found that there is unity of management and functional integrality hence the review U/s 7B was rejected. The appellant again challenged the order before the Hon'ble High Court of Kerala. In the Writ Petition the appellants admitted that they purchased the property from the same vendor and the estate was one in the hands of the vendor. The Hon'ble High Court directed the appellants to appear before the respondent authority on 24/02/2015 and produce all the records for deciding the issue afresh. The appellants appeared before the respondent and pleaded that the four units of Meenakshi Estate are independent units managed by four independent individuals. Meenakshi

Cardamom Estate which was in default from 1982 did not close its functioning at the time of purchase by the appellants nor did it settle the provident fund of its employees. Even in the wages register produced by the appellant it can be seen that provident fund contribution is deducted from the salary of the employees and the employees were also in the belief that they continue to be EPF members. In the case of **T.A Zainulabdeen** (supra) the estate was closed down and the benefits were settled to the employees prior to transfer of the property. In this case, M/s. Meenakshi Cardamom Estate was in default from 1982, did not close its functioning nor they settled the provident fund contribution of its employees. The reviewing authority U/s 7A of the Act came to the conclusion that there is unity of management and functional integrality between the partitioned units.

4. The original unit M/s. Meenakshi Cardamom Estate is an establishment covered under



the provision of the Act. The estate is purchased by 4 appellants who are brothers. According to the appellants after they purchased the units, the four separate units are managed independently and there is no functional, financial or administrative integrality and none of the appellants engaged more than 19 employees for statutory coverage under the provision of the Act. According to the respondent even though the property is purchased by 4 appellants they continued to be the same and is managed commonly. The employees of erstwhile Meenakshi Cardamom Estate continued to be working and provident fund contribution was being deducted from the salary of the employees. The employees were under the impression that their provident fund contribution is being paid to the respondent. When they found that the contribution is not being paid to the respondent they filed complaints with regard to non-remittance of contribution, which resulted in initiation of action U/s 7A of the Act.

5. From the facts narrated above, it can be seen that the respondent has taken a view that since M/s. Meenakshi Cardamom Estate was covered under the provision of the Act, the appellants also will have comply under provision of the Act. Sec 1 (5) of the Act stipulates that once an establishment is covered under the provision of the Act, it will continue to be covered, even if the employment strength goes below 20. The learned Counsel for the appellant relied on the decision of the full bench of the Hon'ble High Court of Kerala in **T.A Zainulabdeen Vs RPFC**, to argue that as per the above decision the Hon'ble High Court has created an exemption to Sec 1(5) of the Act. According to him, when there is genuine partition and the integrality of the unit is disrupted and if the employment strength of each individual unit is below 20, then the provision of the Act cannot be extended to the parties. The learned Counsel for the respondent tried to distinguish that decision stating that in the above case the estate was completely

closed, the employees were terminated and their claims were settled before partition. Where as in the present case, the unit continued to be covered under the provisions of the Act and provident fund benefits of the employees were not settled erstwhile management. According to him in such a scenario the Act will continue to apply to the partitioned units. The issue regarding the coverage of partitioned units was considered by the Hon'ble High Court of Kerala in ***Muhammed Kutty Vs RPFC***, 1968 (2) LLJ 466. In this case the Hon'ble High Court of Kerala was considering the applicability of the Act to the 3 partitioned units. The test evolved by the Hon'ble High Court in that case are :

- a) Is the partition real and bonafide ?
- b) Did it disrupt the integrity of the establishment and create three separate establishments ?
- c) And does this separate establishment employed less than 20 persons.

As already discussed, the issue was covered by the full bench decision of Hon'ble High Court of Kerala in **T.A Zainulabdeen Vs RPFC**, (supra). The Division Bench of Hon'ble High Court of Kerala again considered this issue in the case of **APFC, Kottayam Vs K.M Eapen and others**, 2017 (5) KHC 892. In the above case an estate comprising off 190 acres, called M/s. Kanjirapally estate originally found by Shri. Mathew, was covered under the provision of the Act. After his death the said establishment was inherited by 13 of his legal heirs. After considering the facts of the case elaborately, the Hon'ble High Court pointed out that

*“16. The respondent had thus discharged their initial burden of showing that 13 parcels of land had come independent establishment, it was certainly incumbent on the appellant, while making an enquiry, to obtain sufficient materials and evidence on record, so as to establish and*

*hold otherwise which is unfortunately deficient in this case. ....*

(17) The learned Single Judge has rightly held that in the absence of any evidence being gathered by the appellant Commissioner and the fact that he had not even caused any enquiry with the employees of establishments, to ascertain if the 13 parcels of units are still under one management, there is no justification to determine the amounts from the respondent U/s 7A of the Act, to be amounts payable by the erstwhile Kanajirappally Estate as a single unit.

(18) It is also relevant that the records and material available in this case do not even indicate that the appellant Assistant Commissioner had made an attempt to call for the records from the respective establishments or that there was an enquiry as to whether such records are maintained showing the various parcels of land as separate establishments or otherwise. Even without that, the appellant

Assistant Commissioner entered into a conclusion that the separate estates continued to be single unit and that the similarity in their business would lead to an inference of functional integrity within it.”

The Hon’ble High Court, in the above case concluded that, whatever be the nature of dialectical submissions, the order does not do justice to the jurisdiction vested in the Commissioner while acting U/s 7A of the Act and would, therefore, obtain no forensic support or legal sustenance.

6. Coming to the present case, as per Annexure A6 order the respondent concluded that the sale deeds are bonafide and the real one. And further held that the appellants are doing the same nature of business and the integrality of M/s. Meenakshi Cardamom Estate is not disintegrated. Coming to the impugned order, the respondent authority also concluded that there was a bonafide sale of property

to the 4 appellants. But other elements of disintegration such as settlement of terminal benefits to the employees, closure of the establishment etc., are not proved in the enquiry. According to the legal authorities cited above, once it is established that there was a bonafide sale, it is upto the respondent Commissioner to establish that the functional integrity of the appellant establishments are not disintegrated. The only issue relied on by the respondent is that there are entries in the wage register which shows that provident fund deduction is made from the salary of the employees. As pointed out by the learned Counsel for the appellant it is not believable that an employee drawing approximately Rs.1500/- as salary will be paying Rs.600/- as provident fund contribution. The respondent authority could have collected third party information such as the employees' statement to arrive at the conclusion whether the terminal benefits were settled by the earlier management and whether provident fund is

being deducted from the salary of the employees. The evidence available in this appeal do not in any way support the conclusion arrived by the respondent Commissioner.

7. Considering all the facts, circumstances, evidence, and pleadings in this appeal I am not inclined to accept the findings of the respondent in the impugned order.

Hence the appeals are allowed, the impugned orders are set aside and the respondent is direct to decide the issue of coverage on the basis of the law laid down by the Hon'ble High Court of Kerala in above referred cases, within a period of 3 months after issuing notice to the appellants. If the respondent finds that the integrity of the appellant units were maintained even after the purchase of the units by the appellants he may proceed with the assessment of dues.

Sd/-

**(V.Vijaya Kumar)**  
Presiding Officer