THE PALACE ADMINISTRATION BOARD

v.

RAMA VERMA BHARATHAN THAMPURAN & ORS.

March 27, 1980

[V. R. KRISHNA IYER, D. A. DESAI AND A. D. KOSHAL, JJ.]

Review—when the Court would review its earlier judgment—earlier judgment clarified.

PER KRISHNA IYER AND DESAI JJ.

In a petition for review, once a clear error in the judgment is revealed no sense of shame or infallibility complex absesses or dissuades this Court from the anxiety to be ultimately right, not consistently wrong. [189 H]

Three points were raised for review of the earlier judgment.

1. The Kerala Joint Hindu Family System (Abolition) Act 1975 (Act 30 of 1976) governs the erstwhile ruling family of former Cochin State and observations of this Court giving a contrary impression may be modified.

2. The observations of the Court that the Board is composed of the heads or seniormost members of the four branches of the family is not wholly correct.

3. The order of this Court dated 30th July, 1979 should not have the intent and effect of nullifying the enormous amount of work and considerable steps taken by the Board so far for partitioning the properties of the family. [193 A-C]

1. (a) The second point arising out of three reliefs mentioned above was an inconsequential error which has crept in by oversight. The statement in the judgment that "the Board, being an old institution in plenary management since 1949 and wisely composed of the *seniormost members of the four branches.....*" was not correct because the Board was constituted by the Royal Proclamation of 1124 and continued by later Acts. [193 D]

(b) The Cochin Maharaja had the power to nominate the five trustees of the Board and there was no objection on him to choose the seniormost members of the Thavashies. What he had to comply with was the directive in section 4 to secure representation so far as possible for each of the four main Thavashies. It is sufficient if its composition secures fair representation so far as possible for each of the four Thavashies of the family. The seniormost need not necessarily be chosen. The Board which has been functioning all these decades is beyond legal cavil and has been rightly constituted. [193 G]

2. (a) The first relief telescopes into the third. From the materials on record it is quite clear that the Board had done good and satisfactory work especially because competent engineers and valuers have been pressed into service. A retired judge of the High Court has been playing the role of a mentor and a small committee of members has democratised and legitimated the process of partition by participation. There is no reason to sweep off the work of valuation done all these years. The argument that the Board's labours should be liquidated cannot be acceded to. The valuation the Board has carried out, the alienations it has effected and provisional allotments it

A has made will be allowed to stand only subject to the obligation to hear objections and to take follow-up action. [196 C-D]

(b) It is not necessary to demolish the work done by the Board upto now. The Boards decision cannot be arbitrary. It has to be reasonable and fair and for that purpose must comply with the opportunity for a hearing to every sharer. Group allotment may be permissible provided the B sharers composing the groups consent. Otherwise each member is entitled to a per capita share. If the Board had made group allotments it has to be justified by practical considerations and by acceptance by the members of the group concerned. The valuation made and the sales effected must be subject to the objections of those who have not had a say in the matter. The draft partition deed, with necessary particulars regarding properties and their value shall be made available for the inspection of the various parties C from the office of the Board. The Board will consider the objections and decide them on their merits. Parties affected by such decision will be given a brief hearing by the Board. [196 H; 197 A-C]

3. The 1976 Act leaves in tact, in large part, the proclamation as well as the 1961 Act. Section 7 of the 1976 Act expressly repeals the scheduled Acts. It also renders texts of Hindu law, customs and usages contrary to D the provisions of the 1976 Act ineffective. The consequence of the omission of the Proclamation and the 1961 Act from the schedule is that they survive and co-exist with the 1976 Act. The definition of joint Hindu family is wide enough to include the Cochin royal family and *prima-facie* section 4(2) spells a division in status and substitutes a tenancy-in-common in the place of jointness *vis a vis* the Cochin royal family also. This consequences can be obviated only if there is something in section 7 which compels a E contrary conclusion. The omission in the repealing section of 1961 Act by itself does not render inapplicable section 4(2) which creates the division in status. It admits of no doubt that until Act 30 of 1976 was passed, there was no partition effected by any decision of the Meharaja persuant to the 1961 Act. Thus one of the joint Hindu families which subsisted at the time of the 1976 Act was the Cochin royal family and section 4(2) could and, therefore, did operate on it. Nor is the rule of per capita division F provided for in the 1976 Act contrary to the shares prescribed in the 1961 Act. The survival of the 1961 Act, because of its omission from the Schedule of the Acts repealed has one effect and that is that the Board alone has the power to divide the properties. Section 3 of the 1961 Act provides for it and must prevail despite the 1976 Act in view of section 7 of the later Act read with the Schedule thereto. The non-repeal of the 1961 Act also leads to the conclusion that *child in the womb* is entitled to a share, whatever G the meaning of section 4(2) of the 1976 Act may be. Thus a closeup view of the statutory scene *vis-a-vis* the Cochin royal family, it is clear that in 1976, the family was divided in statuts with shares for every member including the *per capita* share for a child in the womb and such partition is to be worked out by metes and bounds only by the Board and not by the Civil Court. [200 B-G]

H Koshal, J. (concurring in the final result)

The proclamation coupled with the 1961 Act constituted an exception to the provisions of the 1976 Act which otherwise applied to all joint Hindu families.

Under the proclamation 1124, the Cochin royal family was impartible. The concept of partition in relation to it was for the first time introduced by the 1961 Act subject to three conditions mentioned in section 3 of the Act. All the three conditions had to be satisfied before the Estate could be considered partible and till it acquired that character the Proclamation remained in full force. The 1976 Act did not make the slightest difference to the position prevailing till that Act into force. Neither the Proclamation nor the 1961 Act was repealed by the 1976 Act and, therefore, they continued to co-exist with the 1976 Act. In view of the provisions of section 3 of the 1961 Act which were left in tact by the 1976 Act the Estate could become partible only if all the three conditions specified in section 3 of 1961 Act were fulfilled. The result is that when the 1976 Act was enforced in its original form the Estate continued to be impartible and, therefore, there was no question of section 4(2) of that Act being applicable to it. [203 H-204 A-G]

After the promulgation of the 1978 Act the Proclamation has to govern the Cochin royal family subject to section 3 of the 1961 Act as amended by the 1978 Act which would fully apply to that family notwithstanding anything contained in the 1978 Act or any other law for the time being in force. Finality has thus been given to the provisions of that section which states that the partition is to be made "among all the members entitled to a share of the Estate, and the Palace Fund under section 4 of the Kerala Joint Hindu Family System (Abolition) Act 1975 (30 of 1976.)" Section 4 of the 1976 Act is thus made specifically applicable to the Cochin royal family by reason of the amendment of section 3 of the 1961 Act by the 1978 Act. If this be so the crucial date for determining the number and identity of the members of the family entitled to a share of the Estate and the Palace Fund would be 1st of December, 1976, that is, the date on which the 1976 Act came into force. [206 D-E]

CIVIL APPELLATE JURISDICTION : Review Petition No. 150/1979. Review of this Court's Order dated 30-7-1979 in SLP (Civil) No. 5863 of 1979.

T. S. Krishnamoorthy, Vishnu Bahadur Saharya and *Sardar Bahadur Saharya* for the Appellant.

P. Govindan Nair and *N. Sudhakaran* for the Respondents.

The Order of V.R. Krishna Iyer, J. and D.A. Desai, J. was delivered by Krishna Iyer, J. Koshal, J. gave a concurring Opinion.

KRISHNA IYER, J.—Horace wrote : "But if Homer, who is good nods for a moment, I think it a shame". We, in the Supreme Court do 'nod' despite great care to be correct, and once a clear error in our judgment is revealed, no sense of shame or infallibility complex obsesses us or dissuades this Court from the anxiety to be ultimately right, not consistantly wrong. The present petition for review is one such and we have listened, at unusual length, to

A counsel's oral submissions, having felt that an error in the judgment under review, likely to injure and unsettle, needed to be mended.

We may narrate, very briefly, the necessary facts and catena of statutes so that the flaw may be identified and rectified. The subject-matter is the partition of the assets of the erstwhile royal B family of the Maharajah of Cochin, if we may avoid the jaw-breaking description used in one of the relevant legislations viz. *The Valiamma Thampuran Kovilakam Estate and Palace Fund belonging to the family of the Maharajah of Cochin.* A capsulated survey of the landmark legislations will help locate the controversy and liquidate the error, if any. This family, to begin with, was impartible and C its administration was statutorised by a Royal Proclamation of 1124 (hereinafter called the Proclamation) which constituted a Board in this behalf consisting of five trustees to be nominated by the Maharajah with an equitable eye on representation for each branch (tavazhi) of the family. Sec. 2 (a) read with Sec. 4 of the Proclamation defines the Board's composition which shows a D slight oversight on our part in the earlier order. And thereafter, came the Great Divide in the story of the royal family and began its slow integration into the commonalty, retaining in some measure, its peculiar individuality. By Act 16 of 1961 (The Valiamma Thampuran Kovilakam Estate and Palace Fund (Partition) Act, E 1961 (for short the 1961 Act) impartibility was abolished conditionally, as it were. Sec. 3 therein laid down :

3. (1) Notwithstanding anything contained in Section 22 of the Proclamation, if *a request in writing is made by the majority of the major members and the Maharajah of Cochin is satisfied that in the* F *interests of the family it would be desirable to partition the Estate* and the Palace Fund, among all the members he may declare his decision to effect a partition under his supervision and control, *and direct the Board to proceed with the partition.*

(2) The decision of the Maharaja of Cochin under sub-section (1) shall be published by the Board in the Gazette in English and G Malayalam, and a copy of the notification shall be affixed in conspicuous place at the office of the Board.

Of course, partibility reflected the spirit of the times both in Kerala and in the Hindu fold of India and royalty lost its regalia, including the privy purse, with the enactment of the Constitution (26th H Amendment) Act. Even though royalty had become fossilised and Maharaja's family had become partible the latter retained its legislative distinctiveness in important features, because of its uni-

que history, unwieldy membership and statutory singularity since 1949. The legislature took pragmatic note of these legitimate factors while enacting Act 16 of 1961. Thus partibility was not automatic but dependent on the Maharaja's decision. The division was not to be affected by the civil courts as in ordinary cases but by Board only.

The structure and identity of the Board created under the earlier Proclamation was preserved even for the purpose of effecting partition of the family assets. Once the majority's request was made and the Maharaja was satisfied about the desirability of partitioning the Estate and the Palace Fund, the process of partitioning was the responsibility of the Board, although under the supervision and control of the Maharaja himself. A ticklish question, which is one of the aspects involved in the present review petition, turns on the division among the members and, more particularly, the fixation of shares, depending, as it does, on the *number* of members. This number, in turn, is determined by the date of division in status of the family, Section 3 of the 1961 Act makes partition contingent on the Maharaja's declaration of his decision to effect a partition. Once he declares his decision, there is, *eo instanti* a division in status. Thereafter, s. 4 of Act 16 of 1961 operates. That Section states:

4. Share of Members (1) Each member shall be entitled to an equal share of the Estate and the Palace Fund.

(2) The share obtained by a member on partition shall be the separate property of the member.

(3) A child who is in the womb on the date of the publication of the decision under Section 3 and who is subsequently born alive shall have the some right for a share in the Estate and Palace Fund as any other member as if he or she had been born on or before the date of such publication.

We may state even here that the Maharaja never made the statutory declaration under Sec. 3 and so no division in status took place. The next statutory milestone which has relevance to our legal journey is the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976) (for short 1976 Act). By this measure, the joint family system among Hindus in the state of Kerala was extinguished. All Marumakkathayam families were embraced by the Act and the right by birth in ancestral properties was also put an end to. By force of s. 4 of that Act, joint family ownership was converted into tenancy-in-common as if partition had taken place among all the members. We may read s. 4 (2) at this point.

A All members of a joint Hindu family, other than an undivided Hindu family referred to in sub-section (1) holding any joint family property on the day this act comes into force, shall, *with effect from that day be deemed to hold it as tenants in common*, as if a partition of such property per capita had taken place among all the members of the family living on the day aforesaid, whether B such members were entitled to claim such partition or not under the law applicable to them, and as if each one of the members is holding his or her share separately as full owner thereof.

The emphasis, from the point of view of the date of transformation into tenancy-in-common, is on the date of coming into force C of Act 30 of 1976. From that date (1-12-76) onwards a division in status and a quantification of shares *per capita* must be deemed to have occurred.

Section 7 of this Act repeals certain enactments mentioned in the schedule thereto; but what is of significance in that schedule D is that the Proclamation of 1124 and Act 16 of 1961 (which are measures specially devoted to Cochin Royal Family) are not repealed. What the impact of this omission is, is a subject of debate between the parties and we will come presently to it. We then move on to ordinance 1 of 1978 promulgated on 6-1-1978 which was re- E placed duly by Act 15 of 1978, published in the Gazette on 19-3-78. This Act (The Valiamma Thampuran Kovilakam Estate and the Palace Fund (Partition) and the Kerala Joint Family System Abolition) (Amendment Act, 1978), is an amendatory adventure affecting vitally the partitioning of the Cochin Royal Family. The implications of the provisions of this legislation constitute the subject- F matter of the review petition on which the parties bitterly join issue.

It cannot be denied that partition by metes and bounds of the Cochin Royal Family properties is a stupendous effort, a time-consuming task and an operation involving legal know-how, valuers' skills and adjudicatory steps. We must remember that the assets G are immense and varied even as the members are numerous, being well over 700 in strength. Each member being entitled to a share, the partition is sure to be complicated and if in the shortrun of a human life the partition is to be completed and the properties are to be enjoyed by the shares, innovative strategies of speedy justice must be resorted to. On this basis we have to appreciate the grounds H raised for review by the petitioner herein who had substantially succeeded in the first round when we pronounced a lengthy order on the special leave petition.

The review sought revolves round three points: A

(1) The Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976) governs the erstwhile ruling family of former Cochin State and observations of this Court giving a contrary impression may be suitably modified:

(2) The observation of the Court that the Board is composed of the heads or senior most members of the 4 branches of the family is not wholly correct. B

(3) The Order of this Court dated 30-7-1979 should not have the intent and effect of nullifying the enormous amount of work and considerable steps taken by the Board so far for partitioning the properties of the family. C

The 2nd point may readily be conceded as it is an inconsequential error which has crept in by oversight which may be corrected straightway. It is true that in the judgment earlier delivered in this case, it has been stated in passing that "the Board, being an old institution in plenary management since 1949 and wisely composed of the *seniormost members of the* 4 *branches*....."Strictly speaking, this is not correct because the Board was constituted by the Royal Proclamation of 1124 and continued by later Acts. Section 2 (a) of the Proclamation states that the '"Board" means the Board of Trustees appointed under Sec. 3 of this Proclamation. Section 4 defines the composition of the Board and reads thus: D E

> The Board shall consist of five Trustees who shall be nominated by us from among the male members of our family so as to secure representation as far as possible for each of the four main thavashies of our family. One of the Trustees shall be appointed as the President of the Board by us. F

It follows that the Cochin Maharaja had the power to nominate the five trustees of the Board and there was no objection on him to choose the *seniormost* members of the thavashies. What he had to comply with was the directive in sec. 4 to secure representation as far as possible for each of the four main thavashies. We regret the mistake in this detail although so far as the judgment was concerned it made little difference in the reasoning or the result. Even so, when cantankerous persons seek to read this court's judgment with scriptural regard, mischief may follow. The petitioner in his review petition states that some member of the family has gone to court with a suit (O.S. 391 of 1976) and has issued a notice dated September 19, 1979 wherein he has challenged the va lidity G H

A of the Board on the score that it did not consist of the *seniormost* members of the four thavashies as required by the judgment of this court. It is sufficient if its composition secures fair representation as far as possible for each of the four thavashies of the family. The seniormost need not necessarily be chosen. The Board, which has been functioning all these decades, is beyond legal cavil and B has been rightly constituted. We regret the pecadillo and are surprised at the tendency to impugn the Board's doings on the unexpected score of illegal composition.

Even the 3rd relief, although hotly contested by Shri Govindan Nair for the opposite party, cannot be wholly refused. The grievC ance of the Palace Administration Board is that by virtue of the judgment of this Court and some observations contained therein the valuable, enormous and irreplaceable volume of work turned out over the years stands nullified. Were this consequence true, the consternation of Board might well be justified. If the basis for the nullification of the Board's work is the invalidity of the D composition of the Board, there is no need for apprehension because we have already clarified the position. The Board was rightly constituted and validly continues. The grievance of the Board is different and is based upon its plea that, not being a party to the special leave petition, it should not be hit adversely without being heard adequately. Indeed, it is for this reason that we have afforded E a full length hearing. *Actus curiae nomihem gravabit* is a wholesome admonition to the court itself.

There are two substantial controversies implied in the third relief. In essence, the first relief telescopes into the third and may well be considered in a composite manner.

F

A partition by metes and bounds becomes possible only if the number of sharers is clearly settled. The first point over which the parties have fought before us in this review proceeding relates to the number of sharers which, in turn, follows from the *date of division in status*. The Board has proceeded on the basis that Act 30 of G 1976 has brought about a division in status as on 1-12-1976 If that point of time were legally sustainable, there were 719 members in the family, each being entitled to one share. The rival contention put forward by the opposite parties is that the division in status took place much later when Ordinance 1 of 1978 was promulgated i.e. on 6-1-78. If this later date were to be taken as H decisive more members would have been born into the family and their shares would also have to be given by the Board on partition. There would also have been some exits by death whose heirs could

not claim shares on behalf of their proposite. We have, therefore, to see which view-point is correct in the light of the statutory provisions and their rather ambivalent wording. A

The other essential factor in making a satisfactory partition is the valuation of the numerous assets and their allocation to the plurality of sharers. Each one being entitled to his share and group partition not being the rule, the Board's submission is that it has proceeded on the footing of 719 sharers taking the date, 1-12-1976 when Act 30 of 1976 came into force as the crucial dateline. On this basis, the Board claims that it has turned out a tremendous amount of work by way of valuation of properties through highly competent and fairly expensive architects and engineers. It is further stated that the services of a retired judge of the Kerala High Court had been relied on all and along to tender advice as and when required so that legal guidance may be available for the Board. An Advisory Committee of leading members of the family had also been constituted to assist the Board with its suggestions. Valuation sheets had been prepared and handed over to each group and in the light of representations made and duly considered, revaluation had been directed to be done wherever objections had been raised. It is asserted that all these Himalayan labours have materialised in valuations of properties which, if subverted sterilised, or otherwise invalidated, would spell great loss, waste of energy and indefinite postponement of effective partition. The many members who are virtually royal proletarians cannot afford the price of further procrastination, bewails the Board. True, the court, in search of perfection, should not abandon pragmatic justice and play into the hands of those who have a vested interest in keeping the litigative pot boiling and actualisation of the fruits of partition a teasing illusion. Even so, we must not ignore the law and be stampeded into affirming the Board's blunders, if any, in the name of early finality. B C D E F

Counsel for the first respondent has contested the ground urged by the Board and has sought to maintain that there has been no error in the judgment of this court and that the review sought must be repelled. The number of shares into which the properties must be divided depends on the number of members entitled to shares. If the date were to be fixed with reference to Act 30 of 1976 i.e. 1-12-1976, 719 sharers have claims on the family assets. On the other hand, if the later Act 15 of 1978 were to be operative the relevant date will be 6-1-1978. During this period of around 13 months it is conceivable that a few more members might have G H

A been born or dead; but shares have to be precisely accounted and no person can be deprived of his property if the law confers on him a right thereto. Therefore, we will presently proceed to decide this issue, but before that, we wish to make it clear that the substantial amount of work done by the Board should not be allowed to go waste. After all, a creative, rather than a negative, application of B law makes it truly functional. We are satisfied from the materials on record that the Board has done good and satisfactory work especially because competent engineers and valuers have been pressed into service, a retired judge of the High Court of Kerala has been playing the role of a mentor and a small committee of members has, C in a way, democratised and legitimated the process of partition by participation. Without exaggerating the role of the Board or the turn-out of work it has done, we see no reason to sweep off the work of valuation done all these years and decline to accede to the argument that the Board's considerable labours should be liquidated. There is no substantial reason for doing so. Even so, we cannot D exclude the possibility of the Board having made errors, even blunders. After all, there is much force in hearing aggrieved parties before a correct conclusion is reached. That is why, we have in a later paragraph, subjected the acts and doings of the Board to a clear condition which stems from natural justice. The valuation the Board has carried out, the alienations it has effected and pro- E visional allotments it has made will be allowed to stand only subject to the obligation to hear objections and to take follow-up action, as indicated below.

Sri Govindan Nair has two submissions which merit serious notice. Firstly, the number of shares have been fixed with reference F to Ist December, 1976 and group allotments have been made and these are contrary to the 'one man one share' basis and the valid date of disruption in status. Secondly, many members have had no say in the valuation and sales made by the Board and natural justice cannot be sacrificed at the alter of expediency.

G

Taking the second objection first, we feel that there is force in it but do not consider it necessary to demolish the work done by the Board upto now. The situation can be salvaged by a few practical directions which will take care of natural justice and resolve the grievances of affected sharers. It was represented by Shri Krishna- H moorty Iyer, appearing on behalf of the Board, that the work of partition was almost complete and even the draft deed had been drawn up. But we must make it clear that the Board's decision

cannot be arbitrary, as explained in our earlier judgment. It has to be reasonable and fair and for that purpose must comply with the opportunity for a hearing to every sharer. Group allotment may be permissible provided the sharers composing the groups consent. Otherwise, each member is entitled to a *per capita* share. Therefore, if the Board has made group allotments, it has to be justified by practical considerations and by acceptance by the members of the group concerned. Secondly, the valuation made and the sales effected must be subject to the objections of those who have not had a say in the matter. So we direct that the draft partition deed, with necessary particulars regarding properties and their value etc., shall be made available for the inspection of the various parties from the office of the Board. A notice shall be put up *within one month from today* on the office notice board stating that requisite copies of the draft partition deed and the necessary details will be available in the office for the inspection of the members or their representatives. They will also be permitted to take such number of copies as they want. This is necessary for the members who wish to file objections. Within six weeks thereafter, any sharer will be entitled to file his objections, with specificity, to the various valuations and sales and other actions impugned. The Board will consider these objections and decide them on their merits. Parties affected by such decision will naturally be given a brief hearing by the Board. In short, although without the full panoply of natural justice, a fair and impartial consideration of the objections *de novo* will be made by the Board. Its decisions will, as far as possible, be made within three months of the last date for objections and be published on the office notice board. Those who ask for copies of the decision or portion of the decision will be furnished them

In the course of the arguments in Court we felt that the decisions of the Board should be subject to review by a judicial functionary of high stature, if that were practical. Mr. Govind an Nair, appearing for the first respondent, stated that Shri Justice Mathew, a distinguished retired Judge of the Supreme Court, was available in Cochin and his presence could be taken advantage of for this purpose. Speaking for the Board, Mr. Krishna Moorthy also agreed with the choice. We would have been very happy had Shri Justice Mathew been appointed the final Arbitrator to consider the objections by the parties to the Board's decisions in regard to any of the matters covered by the partition. We are unable to make a formal direction to this effect because many of the sharers are not before us. We must however, observe that taking advantage of the fact that the group represented by

A Shri Govindan Nair is willing to abide by Shri Justice Mathew's arbitral decision, the Board may if possible contact other sharers for their consent. If all the sharers agree in writing to abide by the decision of Mr. Justice Mathew in regard to contested points in the Board's partition arrangement we think that Shri Justice Mathew may be B persuaded to agree. Indeed, if it is brought to our notice that all parties are agreeable, the Court itself may make a request and clothe Shri Justice Mathew with necessary decisional powers. We do not say more than make these observations. But even apart from the appointment of Mr. Justice Mathew as sole Arbitrator, it is necessary to insist that the other directions regarding hearing and compliance C with natural justice will bind the Board before its completion of the partition.

This takes us to the most contentious issue viz. the number of shares and the date with reference to which the division in status must be deemed to have taken place. Certain fundamental facts must D be under scored for appreciating the hotly asserted competing contentions. At the outset, we may mention that the drafting of the legislation has been somewhat slippery breeding semantics confusion. This feature has accentuated the plausibility of both points of view. Going to the basics, we must observe that originally the royal family was impertible but the concept of partition in relation to it subject to E certain conditions was introduced by the 1961 Act. However, notwithstanding the 1961 Act, the Cochin Maharaja had not declared his decision that the family properties be partitioned. A few items out of the enormity of the assets were, it is said, divided. But it seems probable and parties, perhaps proceeded on the footing that there was no royal decision to divide the family pursuant to the enabling provision F in the 1961 Act. The family continued joint.

Now we shift the focus to the statutory scene of 1976 and find a comprehensive Kerala legislation abolishing the joint family status of all coparcenaries generally. The Cochin royal family, *prima facie*, was covered by the 1976 Act. In that event, there must normally G have occurred a division in status in the Cochin royal family too and quantification of shares would then have had to be done by the Board with reference to 1-12-1976 when that Act came into force. This is the Board's stand and it has proceeded on this premise. This position would have been unassailable but for the two circumstances which, in a way, we have adverted to earlier. The 1976 Act contains a schedule H repealing certain Acts and as indicated earlier the Proclamation and the 1961 Act do not find a place in the Schedule. We must infer from this circumstance argues Sri Govindan Nair, that the 1961 Act and

even the Proclamation modified by the 1961 Act survived the 1976 Act. Did they, and if they did, to what extent and effect ? A

This complication is accentuated by the later 1978 Act which amends the 1976 Act and the 1961 Act. Section 8 and 9 are the pertinent provisions. Section 8 inserts a new sec. 8 in the 1976 Act with retrospective effect:— B

"8. *Amendment of Act* 30 *of* 1976 : In the Kerala Joint Hindu Family System (Abolition) Act, 1975 (30 of 1976), after Section 7, the following section shall be, and shall be deemed always to have been inserted, namely:— C

8. *Proclamation IX of* 1124 *and Act* 16 *of* 1961 *to continue in force :* Notwithstanding anything contained in this Act or in any other law for the time being in force Proclamation (IX of 1124) dated the 29th June, 1949, promulgated by the Maharaja of Cochin, as amended by the Valiamma Thampuran Kovilakam Estate and the Palace Fund (Partition) and the Kerala Joint Hindu Family System (Abolition) Amendment Act 1978 and the Valiamma Thampuran Kovilakam Estate and the Palace Fund (Partition) Act, 1961 (16 of 1961), as amended by the said Act, shall continue to be in force and shall apply to the Valiamma Thampuran Kovilakam Estate and the Palace Fund administered by the Board of Trustees appointed under sec. 3 of the said Proclamation." D E

Section 9 also is significant and runs thus: F

"9. *Repeal and Saving*:—(1) The Valiamma Thampuran Kovilakam Estate and the Palace Fund (Partition) and the Kerala Joint Hindu Family System (Aboliton) Amendment Ordinance, 1978 (1 of 1978), is hereby repealed.

(2) Not withstanding such repeal, anything done or any action taken under the principal Act or the Proclamation (IX of 1124) dated the 29th June, 1949, promulgated by the Maharaja of Cochin or the Kerala Joint Hindu Family System (Abolition) Act, 1975 (30 of 1976), as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act or the said Proclamation or Act, as the case may be, as amended by this Act as if this Act had come into force on the 6th day of January, 1978." G H

A There is a sharp divergence between counsel on the role of the various provisions we have briefly referred to above in determining the date on which division in status of the Cochin royal family took place. The 1976 Act, as we have indicated earlier, leaves intact, in large part, the Proclamation as well as the 1961 Act. Section 7 of the 1976 Act expressly repeals the scheduled Acts. It also renders texts of Hindu B Law, customs and usages, contrary to the provisions of the 1976 Act, ineffective. The consequence of the omission of the Proclamation and the 1961 Act from the schedule is that they survive and co-exist with the 1976 Act. The crucial point on which much debate took place is as to whether section 4(2) of the 1976 Act which produce a statutory division in status of all Kerala undivided Hindu Families effects such C a division in the Cochin royal family also. The definition of Joint Hindu Family is wide enough to include the Cochin royal family and, *prima facie*, sec. 4(2) spells a division in status and substitutes a tenancy-in-common in the place of jointness *vis-a-vis* the Cochin royal family also. This consequence can be obviated only if there is D something in sec. 7 which compels a contrary conclusion. The omission in the repealing section of the 1961 Act, by itself, does not render inapplicable sec. 4(2) which creates the division in status. It admits of no doubt that, until Act 30 of 1976 was passed, there was no partition effected by any decision of the Maharaja pursuant to the 1961 Act. Thus one of the joint Hindu Families which subsisted at E the time of the 1976 Act was the Cochin royal family and sec. 4(2) could, and, therefore, did operated on it. Nor is the rule of *per capita* division provided for in the 1976 Act contrary to the shares prescribed in the 1961 Act. The survival of the 1961 Act, because of its omission from the Schedule of Acts repealed, has one effect and that is that *the Board alone has the power to divide the properties.* Sec. F 3 of the 1961 Act provides for it and must prevail despite the 1976 Act in view of sec. 7 of the later Act read with the Schedule thereto. The non-repeal of the 1961 Act also leads to the conclusion that *child in the womb* is entitled to a share, (sec. 4 of the 1961 Act), whatever the meaning of sec. 4(2) of the 1976 Act may be. Thus, if we take a close-up of the statutory scene, *vis-a-vis* the Cochin royal G family, in 1976, we get the position that the family is divided in status with shares for every member including a *per capita* share for a child in the womb and such partition is to be worked out by metes and bounds only by the Board and not by the civil court.

Things would have been simple had the situation ended here. H But sections 8 and 9 of the 1978 Act have left a trail of seemingly queer consequences, or, at any rate, scope for plausible, yet contra-

dictory interpretations. We will, therefore, examine these two provisions which will be the final exercise in this review proceeding. A

According to Shri Krishnamurthi Iyer for the Board, the determination of the date of division in status and consequently the number of shares and the persons eligible thereto, are not affected by sections 8 and 9 of the 1978 Act. Shri Govindan Nair, on the contrary, argues that sections 8 and 9 will be rendered otiose and the statute stultified were we to treat the two sections as of functional irrelevance in fixing the shares and the sharers. Sec. 8 contains a *non-obstante* clause and so must prevail over other provisions. The substantive directive in sec. 8 of the 1978. Act is that the proclamation, as amended by the 1961 Act, as further amended by the 1978 Act, shall continue to be in force, and shall apply is the assets of the Cochin royal family. Of course, the Section has been drafted in a jaw-breaking fashion and its combersomeness could have been simplified had a different type of legislative drafting skill been brought to bear upon the subject. Sec. 8 reminds one of the old British Jingle : B C D

> I'm the parliamentary draftsman
> I compose the country's laws
> And of half the litigation
> I'am undoubtedly the cause.

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Why only half the litigation half the frustration too ! Be that as it may, stripped of the complexities, sec. 8 merely means that the Proclamation, as amended by the subsequent legislation, shall continue to apply to the Estate and the Fund of the royal family. Shri Krishnamurthy Iyer construes this provision to mean that the processual part of the Proclamation, as amended by the 1961 Act, which, in turn had been amended by the 1978 Act was preserved by the legislature with a deliberate design, namely, to speed up the partition without getting clogged up in the formal coils of court proceedings with inevitable delays and interminable appeals. The legislature know that handing up the partition litigation to the civil courts would be denying for a life time any share to any member of the royal family in effect and would aslo mean undoing the considerable work which had already been done in the direction of division. Therefore, the anxiety of the legislature to preserve and consolidate what had been done and to accelerate the actual partition persuaded it to enact s. 8. The intent and achievement of s. 8 was to keep out the civil court and to continue the Board's jurisdiction to partition. Nothing more, nothing less. Sec. 9 merely gives retrospectively to the Act and, more importantly, preserves as F G H

valid all acts done under the Proclamation and the 1976 Act as amended by the 1978 Act. This is meaningful because anything done or any section taken under the 1976 Act is also preserved. In our view only purpose of this saving clause is the quantum of shares, the number of shares, the particular shares having been decided by the 1976 Act, the Board's proceedings on that footing are left unaffected.

There is force in Sri Krishnamurthy Iyer's contention that the goal of ss. 8 and 9 of the 1978 Act was to continue the Board intact to keep as valid all that it had done and to preserve the shares as settled by the 1976 Act. There was no intent, nor effect, of upsetting everything that had been done uptil then by a process of statutory reversal. Such an interpretation would be letting a statutory bull in a china shop demolishing the concrete work already done.

Let us, for a moment, examine the rival plea, which is to the effect that the Proclamation and the 1961 Act having been brought back to life the shares had to be determined on that basis updated to 1978, having special regard to s. 3 of the 1978 Act. For convenience, we may re-read that section:

> 3. *Partition of the Estate and the Palace Fund* :(1) The seniormost male member of the family shall, within sixty days from the date of commencement of the Valiamma Thampuran Kovilakam Estate and the Palace Fund (Partition) and the Kerala Joint Hindu Family System (Abolition) Amendment Ordinance, 1978 direct the Board to effect Partition of the Estate and the Palace Fund among all the members *entitled to a Share of the Estate and the Palace Fund under section* 4 *of the Kerala, Joint Hindu Family System (Abolition) Act*, 1975 (30 *of* 1976), and such direction shall be published by the Board in the Gazette.
>
> (2) If the seniormost male member fails to direct the Board as required by sub-section (1), the Board shall on the expiry of the period specified in that sub-section proceed to effect the partition of the Estate and the Palace Fund among the members referred to in sub-section (1) and the Partition so affected shall be valid notwithstanding anything contained in section 17 of the Proclamation.

The plausible inference is that in tune with the Proclamation (which survives) the seniormost male member—the Maharaja system having ended is to give direction to the Board to effect a partition of the Estate and the fund among the members "*entitled to a share of the Estate and the Palace Fund under section* 4 *of the Kerala Joint Hindu*

Family System (*Abolition*) *Act*, 1975 (30 *of* 1976)". Sub-section (2) of section 3 says that if the seniormost male member fails to make such a direction within 60 days, the Board shall proceed to effect the Partition. According to Shri Govindan Nair, the total effect is the resuscitation of the Proclamation and the direction for Partition willy nilly by virtue of s. 3 of the 1978 Act and, therefore, the date of division-in-status has to be reckoned as that date which falls on the expiry of the 60 days of the promulgation of the 1978 Act. There is a meritrious appeal for this interpretation provided we overlook the vital direction in s. 3 (1) that the division is to be among "all the members entitled to a share under s. 4" of the 1976 Act. None born later can claim, none dying later can lose. Thus, in our view, the inevitable consequence of Act 15 of 1978 is not to throw out of gear everything done so far but to clarify possible ambiguities and to stabilise the work of Partition by the Board. We read the meaning of the various provisions of the 1978 Act in this sense only. The net result is that the division among the members is to be effected according to s.4 of 1976 Act. The Partition by metes and bounds is to be effected by the Board. The work done upto now is to retain its force.

While considering the constitutionality of the impugned Act in our earlier judgment we had made it clear that the Board was not entitled to behave arbitrarily or unreasonably and had to conform to the norm of natural justice. We maintain that conclusion and, indeed, counsel for the Board has not challenged it. In fact, we have strengthened that conclusion by providing for objections and even an appeal against the decision by the Board to the limited extent indicated above to an arbitral body so that the hearing component may not be sacrificed for the speedy component of justice.

In the light of the directions we have made and the elaborate explanation we have given, the petition for review, in substantial part, is allowed.

KOSHAL, J. I have had the advantage of going through the judgment prepared by my learned brother Krishna Iyer, J., and find myself in agreement with him in regard to the conclusions arrived at by him on the three points around which the petition for review revolves but I regret that I am unable to subscribe to the reasons listed by him in relation to the effect of the 1976 and 1978 Acts. I am therefore recording this short note which may be read in continuation of that judgment.

2. There is no dispute regarding the proposition that under the Proclamation of 1124 the Cochin royal family was impartible and that

A the concept of partition in relation to it was for the first time introduced by the 1961 Act, subject to certain conditions which are contained in section 3 of that Act and are to the effect that the Estate would become partible only if—

(i) a request in writing is made to the Maharaja of Cochin by by the majority of the major members of the family;

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(ii) the Maharaja is satisfied that in the interests of the family it would be desirable to partition the Estate and the Palace Fund among all the members of the family; and

(iii) the Maharaja declares his intention to effect a partition under his supervision and control and directs the Board to proceed

C with the partition.

All these three conditions had to be satisfied before the Estate could be considered partible and till it acquired that character the Proclamation remained in full force so that the Estate remained impartible and no question could therefore arise as to the persons entitled to a

D share on a partition.

This position prevailed till the 1976 Act was promulgated and, in my opinion, that Act also did not make the slightest difference to it. Section 7 of the 1976 Act effected a repeal of the enactments mentioned in the Schedule to the Act. Those enactments were twelve in number

E and did not include either the Proclamation or the 1961 Act which therefore, as pointed out by Iyer, J., survived and continued to coexist with the 1976 Act. In view of the provisions of section 3 of the 1961 Act which were left intact by the 1976 Act the Estate could become partible only if all the three conditions above specified were fulfilled which has never been the case so far. The result is that when

F the 1976 Act was enforced in its original form the Estate continued to be impartible and therefore there was no question of section 4(2) of that Act being applicable to it, the specification of shares being incompatible with impartibility. In this view of the matter, the Proclamation coupled with the 1961 Act constituted an exception to the provisions of the 1976 Act which otherwise applied to all Joint Hindu

G Families.

3. The 1978 Act however brought about certain basic changes in the 1961 and the 1976 Acts. Section 8 of the 1978 Act added a new section 8 to the 1976 Act with effect from the date on which the 1976 Act had come into force, i.e., the 1st of December, 1976 and that

H new section stated in no uncertain terms that the Cochin royal family would be governed by—

(a) the 1978 Act itself, and,

(b) the Proclamation as amended by the 1961 Act which itself was to be read as obtaining after its amendment by the 1978 Act.

It is therefore necessary to examine the changes effected by the 1978 Act in the 1961 Act. They are detailed in the following table :

1961 Act as prevailing before the 1978 amendment	1961 Act as obtaining after the 1978 amendment
1	2
Section 2 : In this Act.....	*Section* 2 : In this Act.....
(a) 'Board' means the Board of Trustees appointed under s. 3 of the Proclamation.	(a) 'Board' means the Board of Trustees appointed under s. 3 of the Proclamation.
(b) 'Estate' means the Valiamma Thampuram Kovilakam Estate and all properties belonging to the said Estate.	(b) 'Estate' means the Valiamma Thampuram Kovilakam Estate and all properties belonging to the said Estate.
(c) 'Maharaja of Cochin' means Ruler of former State of Cochin within the meaning of Clause (22) of Article 366 of the Constitution.	(c) 'family' means the Marumakkathayam joint family consisting of the four main thavashies of the Ruler of the former State of Cochin within the meaning of Clause (22) of article 366 of the Constitution of India.
(d) "Member" means a member of the family of the Maharaja of Cochin.	(d) 'Member' means a member of the family.
(e) 'Palace Fund' shall have the same meaning as in Clause (c) of s. 2 of the Proclamation.	(e) 'Palace Fund' shall have the same meaning as in Clause (c) of s. 2. of the Proclamation.
(f) 'Proclamation' means Proclamation (IX of 1124) dated 29th June, 1949, promulgated by Maharaja of Cochin.	(f) 'Proclamation' means Proclamation (IX of 1124) dated 29th June, 1949, promulgated by Maharaja of Cochin.
Section 3	*Section* 3
Maharaja of Cochin to order Partition (1) Notwithstanding anything contained in s. 22 of the Proclamation, if request in writing is made by the majority of the major members and the Maharaja of Cochin is satisfied that in the interest of the family it would be desirable to partition the Estate and the Palace Fund, among all members, he may declare his	*Partition of the Estate and the Palace Fund* (1) The seniormost male member of the family shall within sixty days from the date of the commencement of the Valiamma Thampuran Kovilakam Estate and the Palace Fund (Partition) and Kerala Joint Hindu Family System (Abolition) Amendment Ordinance 1978 direct the Board to effect partition of the Estate and the Palace Fund

1	2
decision to effect a partition under his supervision and control, and direct the Board to proceed with the Partition.	among all the members entitled to a share of the Estate and the Palace Fund under Section 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975 (30 of 76) and such direction shall be published by the Board in the Gazette.
(2) The decision of the Maharaja of Cochin under sub-section (1) shall be published by the Board in the Gazette in English and Malayalam and a copy of the notification shall be affixed in a conspicuous place at the office of the Board.	(2) If the seniormost male member failed to direct the Board as required by sub-section (1), the Board shall, on the expiry of the period specified in that sub-section proceed to effect the partition of the Estate and the Palace Fund among the members referred to in sub-section (1) and Partition so effected shall be valid notwithstanding anything contained in section 17 of the Proclamation.

After the promulgation of the 1978 Act therefore the Proclamation has to govern the Cochin royal family subject to section 3 of the 1961 Act as amended by the 1978 Act which would fully apply to that family "notwithstanding anything contained" in the 1978 Act or any other law for the time being in force. Finality has thus been given to the provisions of that section which states that the partition is to be made "among all the members entitled to a share of the Estate and the Palace Fund under section 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975 (30 of 1976)". Section 4 of the 1976 Act is thus made specifically applicable to the Cochin royal family by reason of the amendment of section 3 of the 1961 Act by the 1978 Act; and if this be so, the crucial date for determining the number and identity of the members of the family entitled to a share of the Estate and the Palace Fund would be the 1st of December, 1976, i.e., the date on which the 1976 Act came into force.

P.B.R. *Petition partly allowed.*