
(1975) 09 AP CK 0002
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 343 of 1973

Appalaneni China Veera Raghaviah APPELLANT
Vs
Estates Abolition Tribunal (District Judge) Guntur and Others RESPONDENT

Date of Decision : 25-09-1975

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 15
Andhra Pradesh (Andhra Area) Estates Land Act, 1908 — Section 185, 3(10)
Estates Abolition Act — Section 15

Citation : AIR 1976 AP 51 : (1977) 1 APLJ 193 : (1976) 1 APLJ 1

Hon'ble Judges : Ramachandra Raju, J;Raghuvir, J;Kondaiah, J

Bench : Full Bench

Advocate : P.M. Gopala Rao, for the Appellant; Govt. Pleader for Excise C. Poornaia and K.B.R. Krishnamurthy for N. Rajeswara Rao, for the Respondent

Judgement

Kondaiah, J.—The village Kantetivari Kandrig, Narasaraopet, taluk in the district Guntur was notified and taken over under the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948) on September, 1951. Respondents 4 and 5 and one Chennapati Lakshmaiah applied for the grant of a patta in respect of a piece of land comprised in R.S. No. 14/1 (O.S. 3/9) having an extent of Ac. 3-04 cents u/s 15 of the Estates Abolition Act claiming that it constituted their private land. According to the applicants-inamdars, the land in question was gifted to their predecessors in the year 1911 and it was given on a short term leases evidenced by Exs. P-4 and P-5 in favour of Gorantla Veerayya and Venkataswamy for the periods commencing from 1918 and ending with 1923 and from 1929 to 1934 respectively.

Thereafter, it was cultivated by the inamdars through one Raghavulu from 1944 to 1949 and from 1949 to 1953-54 personally. The claim of the inamdars was opposed to the appellant herein contending inter alia that he and his predecessors in-title were in possession of the land ever since 1925 and he is

entitled to a ryotwari patta. The Settlement Officer, by his order dated July, 8, 1959, rejected the claim of the inamdars holding that the land in question is poramboke land. On appeal by the inamdars, the Estates Abolition Tribunal set aside the findings of the Settlement Officer and remanded the case to his file for determining the question whether it is private land or not.

In the meanwhile on November 24, 1962, the land was sold by the inamdars to one Vidapalapati Venkateswararao, the 3rd respondent herein. However, he was not then added as a party to the proceeding before the Estates Abolition Tribunal or the proceeding before the Settlement Officer after remand. The Settlement Officer, by his order dated November 30, 1964, came to the conclusion that the land was ryoti land and therefore, the inamdars were not entitled to a patta u/s 15 of the Estates Abolition Act on the basis of their claim that it was their private land. Aggrieved by the decision of the Settlement Officer the 3rd respondent transferee and the applicants for the grant of patta preferred an appeal to the Estates Abolition Tribunal.

The learned District Judge, Guntur who constituted the Tribunal, on a careful consideration of the entire evidence--oral and documentary, held that the landholders were letting out the land to tenants on short term leases that there was an intention on their part to retain the land for personal cultivation by the inamdars from 1944 to 1954, that the claim of the appellant that himself and his predecessors-in-title were in continuous possession and enjoyment of the land sine 1925 was not true and he came into possession of the land only in the year 1954 and that, therefore, the landholders are entitled for the grant of a patta on the footing that the land in question was their private land. The appellant questioned the validity of the order of the Estates Abolition Tribunal and dismissed the writ petition.

This appeal preferred against the decision of the learned Judge came up first before a Division Bench consisting of the Honourable the Chief Justice and A.V. Krishna Rao, J., before whom it was contended by the appellant's counsel that the decision of a Full Bench of the Madras High Court in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, is no longer good law in view of the subsequent decision of the Supreme Court in T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, and that in two unreported decisions of this court in Writ petition No. 2748 of 1968 and batch dated 10-8-1972 = Srimanthu Rajah Yarlagaadda Sivarama Prasad Bhadur Zamindar Vs. State of Andhra Pradesh and Others, , a view contrary to the one taken by the Madras High Court in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, was taken. On the basis of that representation, the learned Judges have directed this appeal to be heard by a Bench of three Judges. That is how this appeal has come up before us.

2. Mr. Gopala Rao, the learned counsel appearing for the appellant, strenuously contended that there is inconsistency between the decision of the Madras High

Court in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, and that of the Supreme Court in T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, regarding the concept of domain or home farm land within the meaning of Section 3 (10) (b) (i) of the A.P. (Andhra Area) Estates Land Act (1 of 1908) (hereinafter referred to as the Estates Land Act) and the mode of proof required to establish a particular land to be private land and the tests laid down by the Full Bench of the Madras High Court in Clauses 4 to 6 of the paragraph 49 of its judgment are inconsistent with the test of direct cultivation enunciated by the Supreme Court. It is further urged that the finding of the Estates Abolition Tribunal and the learned single Judge to the effect that the land in question is a private land is based on inferences which are drawn on inadmissible evidence, that the land was ryoti and that the landholders are not entitled to patta u/s 15 of the Estates Abolition Act as they failed to prove cultivation for 12 years prior to 1908 or 1936.

3. This claim of the appellant is resisted by Mr. C. Poornaiah for Sri N. Rajeswara Rao, the learned counsel appearing for the landholders, contending inter alia that there is no conflict between Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, and T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, that the Estates Abolition Tribunal has, on an appraisal of the evidence, rightly held that there was intention on the part of the landholders to retain the land for personal cultivation or use and there is proof of direct cultivation prior to 1906 and 1936 for a period of 12 years and in any event there was personal cultivation for some period and that the plea that the land was ryoti from the beginning was neither specifically raised nor determined and it cannot be permitted to be urged at this stage and there is no merit in this writ appeal.

4. Upon the respective contentions of the parties and the facts, the following points arise for decision : (1) Whether the decision in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, is in conflict with, and overruled impliedly by the decision of the Supreme Court in T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, . (2) Whether, on the facts and in the circumstances, the land in question is a private land, as contended by the respondents, or ryoti land, as pleaded by the appellant?

5. Before advertng to the facts of the case for the determination of the second question, it is not only profitable but convenient to examine the law and the tests that govern the determination of a particular land being private or ryoti in character. Section 3 (10) of the Estates Land Act defines "private land" whereas "ryoti land" is defined u/s 3 (10) of the same Act. We may notice the provisions of section 3 (10) (b) (i) which is relevant for our purpose:--

"3. (10) "Private land"--

(a) xx xx xx

(b) in the case of an estate within the meaning of sub-clause (2) means---

(i) the domain or home-farm land of the landholder by whatever designation such as Rambattam, Khas, sir or pannai land;..... "Ryoti land" is "cultivable land in an estate other than private land". The definition of "ryoti land" does not include beds and bunds of tanks, drainage or irrigation channels, threshing floor, cattle stands, village sites and lands granted on service tenure as indicated in clauses (a) to (c) of Section 3 (16). A presumption that land in inam village is not private land is created u/s 185 which contains guidelines for determination of the question whether a land is a private land. Section 185 to the extent relevant for our purpose, reads thus:---

"Presumption that land in inam villages is not private land---When in any suit or proceeding it becomes necessary to determine whether any land is the landholder's private land, regard shall be had---

(1) to local custom.

(2) in the case of an estate within the meaning of sub-clause (a), (b), (c) or (e) of clause (2) of Section 3, to this question whether the land was before the first day of July, 1898, specifically let as private land; and

(3) to any other evidence that may be produced;

Provided that the land shall be presumed not to be private land until the contrary is proved."

Whether a particular land is a private land or a ryoti land fell for determination in several decided cases as the definition of "private land" merely states that "private land" means the "domain or home farm land of the landholder" but nowhere in the Estates Land Act, the words "domain or home-farm land" have been defined. We shall now refer to a few leading cases which are relevant for the purpose of deciding the controversy with which we are concerned.

6. The earliest important decision on this aspect of the case is that of the Judicial Committee in *Yeriagadda Malikarjuna Prasad Naidu v. Somayya*, ILR (1919) Mad 400 : (AIR 1918 PC 182) affirming the decision of the Madras High Court in *Zamindar of Chellapalli v. Somayya*, ILR (1916) 39 Mad 341 at p. 753). The question that fell for consideration therein was whether the lands in dispute which were admittedly ryoti at an earlier point of time, had been converted into or proved to be, the private lands of the Zamindar. On the evidence on record, it was found by the Madras High Court in *Zamindar of Chellapalli v. Somayya*, ILR (1916) 39 Mad 341 at p. 346 : (AIR 1915 Mad 750 (2) at p. 753) that the Zamindar did never cultivated by tenants. Wallis C.J., observed :

"One it is shown as here that they were a ryoti, down to a certain date the effect of Section 8 is that even if the Zamindar subsequently acquired the kudivaram right that would not of itself convert them into private land and we have to see

whether what has happened subsequently is sufficient to convert the land into private land, that is to say, into domain or home-farm land."

Sheshagiri Ayyar, J., in his concurring judgment, meant the terms "domain" and "home farm" in the same way and the expression "Demesne" land was held to mean "land immediately surrounding the mansion or dwelling house, the park or chase". The expression "domain" in the Madras Estates Land Act was held to have been used in that limited sense. In these circumstances, the test that was applied by the High Court was that private land is "land which a zamindar has cultivated himself and intends to retain as resumable for cultivation by himself even when from time to time he demises it for a season." The Judicial Committee approved the aforesaid test laid down by Wallis, C.J., as "That test is obviously suggested by Section 185 of the Actg." It does not lay down that the test of personal cultivation is applicable even to cases where the question is whether the land which was not once ryoti and whose original was not known, was validly converted into the category of private land.

The next important case is Jagadeesam Pillai Vs. Kuppammal, at p. 221 and 222). Therein it fell for consideration whether the lands in dispute formed part of the Tanjore Palace Estate It was held that those lands were ryoti and they were in the hands of tenants prior to 1862 when fresh title was conferred on the Raja by the Crown Grant as a result of which the landholder got both the mevaram and Kudivaram rights. On a careful review of the entire evidence--oral and documentary it was found that the lands in question remained the holdings of the tenants in which they had occupancy rights. It was further found that there was no material in hold that the lands in question had been cultivated or retained by the land holder. However, certain observations had been made by the learned Judge Wadsworth Officiating C.J., speaking for the court about the meaning of the expression "domain" and "home farm", thus:--

"It seems to us that sub-clause (b) (i) of the definition is intended to cover those lands which come obviously within what would ordinarily be recognised as the domain or home farm, that is to say land appurtenant to the landholder's residence and kept for his enjoyment and use."

The two words "domain" and "home farm" appear to have been fund to be synonymous having identical import. In our view, there is no basis of justification for such an assumption either in precedent or etymology. What had been stated by the Judges therein would be applicable to domain land but not home-farm land. After pointing out the clauses other than sub-clause (b) (i) of the definition which deal with lands which would not necessarily be regarded as home-farm lands in the ordinary usage of the term but cultivated personally by the landholder for the requisite number of years, or lands in which the tenant's right has been purchased by the landholder, the learned Officiating Chief Justice observed (at pages 221, 222) thus:--

"It seems to us that the definition read as a whole indicates clearly that the

ordinary test for "private land is test of retention by the landholder for his personal use and cultivation by him under his personal supervision. No doubt such lands may be let on short leases for the convenience of the landholder without losing their distinctive character; but it does seem to us to be inconsistent with the scheme of the Madras Estates Land Act, as amended, to treat as private those lands with reference to which the only peculiarity is the fact that the landlord owns both the varams in the lands and has been letting them out on short term leases. There must in our opinion, be something in the evidence either by way of proof of direct cultivation or by some clear indication of an intent to regard those lands as retained for the personal use of the landholder and his establishment, in order to place those lands in the special category of private lands in which a tenant under the Madras Estates Land Act cannot acquire occupancy rights."

Anything the aforesaid test applicable to the facts of that case where the lands were found to be ryoti ones, it was found that the lands in question were not proved to have been converted into private lands as there was no personal cultivation or intention to retain the same for personal use by the landholder. This may be noticed from the following passage (at p. 222):--

"It seems to us that there are no materials in the present case to show that these lands have been so cultivated or retained by the landholder. It is said that they are situated within a mile or two of one of the palaces in the estate; but they were not in origin home-farm lands, before the seizure of the estate from the Raja, and seeing that the estate has been under successive Receivers almost continuously since the re-grant, there is no evidence that the grantee treated these lands as lands kept for his personal use and occupation or cultivated them under his personal supervision. Seeing that the lands cannot come under any other clause of the definition than Clause (b) (i) of sub-section (10) of Section 3 and having regard to the fact that the presumption is in favour of the ryoti character of the lands, we must hold that the plaintiff has failed to prove that the lands are private lands."

The aforesaid passage indicates without doubt that the test applied by the court governed the facts of that case. If the court had come to the conclusion that there was personal cultivation or intendment of the landholder to retain the lands though situate one or two miles away from one of the palaces in the estate, the court would not have hesitated to uphold the contention of the landholder that they were private lands. The distance to the land from the palace or the mansion of the landholder is not material and not a guideline on which the character of the land--whether private or ryoti can be determined. That apart in the class of estates falling u/s 3 (2) (d) the landholder who resides in the main village can, under no circumstances, own and possess private lands in such estates if the mansion test alone is to be applied.

In fact, the estates falling u/s 3 (2) (d) were found to comprise private lands of the landholder and hence, the category of home-farm land cannot validly be

confined only to lands surrounding or appurtenant to the palace or mansion of the zamindar or landholder. In other words, lands irrespective of their location within an estate, can be proved to be private lands of the landholder, provided he satisfactorily displaces by positive evidence the presumption u/s 185 that a land is not private.

7. We shall now turn to an unreported decision of learned Judges Subbarao and Chandra Reddi, JJ., (as they then were) in *Parish Priest of Karayar Parish v. Thiagarajaswamy Devasthanam* (Appeal nos. 176 to 178 and 493 of 1946 of the Madras High Court), Broadly accepting the test laid down in *Jagadeesam Pillai Vs. Kuppammal*, the learned Judges summed up the legal position thus:--

"Private land as defined under the Madras Estates Land Act comprise two categories, private lands, technically so-called and lands deemed to be private lands. In regard to private lands strictly so called, it must be a domain or home-farm land as understood in law. The mere fact that particular lands are described in popular province as panni, Kambattam, sir, khas, is not decisive of the question unless the lands so-called partake of the characteristics of domain or home-farm lands.

The test as to ascertain whether a land is domain or home farm is that accepted by the Judicial Committee in *Mallikarjana Prasad v. Somayya*, ILR (1919) 42 Mad 400 :(AIR 1918 PC 182) i.e., land which a zamindar has cultivated himself and intends to retain as resumable for cultivation by himself even if from time to time demises for season. Whenever a question therefore arises whether a land is private land technically so-called as defined in sub-clause (1) of clause (b) of Section 3 (10) the presumption is that it is not a private land. The recitals in the leases, pattas etc., after 1918 must be excluded and the recitals in similar documents prior to 1918 in themselves are not sufficient evidence that these lands were either domain or home farm lands in the sense that they were in their origin lands directly cultivated by the landlord or reserved by him for his direct cultivation." The aforesaid dicta laid down by the learned Judge, Subba Rao, J., (as he then was) would not support the theory that lands which are either cultivated personally or preserved by the land holder for his direct cultivation must invariably be appurtenant to the palace or mansion of the Zamindar in order to come within the category of domain or home farm lands. The broad general test as enunciated by the Judicial Committee in *Mallikarjuna Prasad v. Somayya*, ILR (1919) 42 Mad 400 :(AIR 1918 PC 182) that there must be proof that the lands were in their origin directly cultivated by the landholder or reserved by him for his direct cultivation in order to establish that they are domain or home farm lands, was applied.

8. The next important decision is that of a Full Bench of the Madras High Court in *Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others*, . Therein the Devasthanam represented by its managers claimed to be the owners of malwaram and Kudiwaram interests in the lands which were being enjoyed as pannai lands or private lands. They also claimed

that they were leasing out the lands, from time to time changing tenants and were also collecting "swamibhogam" in recognition of their full proprietary rights. The defendants sought to evict the tenants. The tenants resisted the suit claim contending inter alia that the village in question was in estate u/s 3 (2) (d) of the Estate Land Act and they were cultivating tenants having occupancy rights and the lands in question were not private but ryoti. Both the courts below found the village to be an estate u/s 3 (2) (d). It was further found that the plaintiff-temple sold melwaram and Kudivaram interests that the lands were private lands and that the defendants had not acquired occupancy rights in the lands either under the Act or by prescription. On an elaborate review of the entire case law on the subject and the impact of the provisions of Sections 3 and 185 of the Estates Land Act, the learned Judge Satyanarayana Rao, J., enunciated the following propositions for the determination of the question whether the land in a given case is a private or ryoti land.

- "1. If the land is known to be ryoti at its inception the only mode by which it could be converted into private land is by proof of continuous cultivation for a period of 12 years prior to the commencement of the Act.
2. Even if the nature of the land is not known, continuous cultivation for the required period of 12 years before the commencement of the Act would conclusively establish that the land is private land.
3. If there is no proof of cultivation for a continuous period of 12 years before the commencement of the Act, the land may be proved to be private land by the other methods provided the land was not shown to be once ryoti.
4. Cultivation of the lands or leasing of the lands under short-term leases may be one mode of proof.
5. An intention to cultivate or resume for cultivation is also a test to decide that the land is private land and such intention may be established by any other means, not necessarily by cultivation alone.
6. The essence of private land is continuous course of conduct on the part of the landholder asserting and acting on the footing that he is the absolute owner thereof and recognition and acceptance for the tenants that the landholder has absolute right in the land.
7. Mere proof that the landholder is the owner of both the warams is not sufficient to prove that the land is private land." (Page 346).

The learned Judge disapproved the view taken by Seshagiri Ayyar, J., in the case of *Zamindar of Chelipalli v. Somayya* ILR (1916) 39 Mad 341 : (AIR 1915 Mad 750 (2)) in assessing a restricted meaning to the words "domain" and home farm and the observations of Wadsworth, Officiating Chief Justice, in *Jagadeesam Pillai Vs. Kuppammal*, to the same effect, as the statutory provision of Section 185 of the Estate Land Act does not indicate or support the theory of such restricted meaning to the expression "domain" and "home farm". The learned

Judge, Viswanatha Sastry in a separate judgment concurred with the view expressed by Satyanarayana Rao, J., and the principles enunciated by him. We may notice the following passage at p. 358 where the learned Judge indicates the test for finding out whether the land is private or ryoti where the original character is not known and no evidence of direct cultivation is forthcoming due to lapse of time :--

"If owing to lapse of time or other reasons, evidence of direct cultivation is not forthcoming its absence is not fatal to the claim that the land is private. Section 185 of the Act does not shut out, but on the other hand allows all evidence that would be relevant and admissible under the law of evidence to prove that fact in issue, namely, whether the land is private or ryoti. Local usage or custom and the letting of the land as private land in lease before 1898 are specifically mentioned in Section 185 (1) and (2) as being relevant evidence but other evidence is also expressly made admissible u/s 185 (3)."

The classification of lands as private lands at the time of the permanent settlement or in the early records of zamindaries, the terms of the grant of an under-tenure, the assertion and enjoyment by the landholder of the right to both the warams, the intention to retain with himself the kudiwaram right and the consequent right to resume direct cultivation if he chooses, leases of the lands as private lands or with terms and conditions inconsistent with any right of occupancy in the leases, admissions by tenants that the landholder is the owner of both warams and that they have no occupancy rights changes in the personnel of the tenants, the tenants, these and kindred matters would be relevant and admissible in evidence to prove that the lands are private lands. The probative value of such evidence depends on the facts and circumstances of the each case.

9. We may now notice the view taken by Raghava Rao, J., in interpreting the words "domain" and "home farm". According to the learned Judge, the word "home farm" has not been confused in *Zamindar of Challapalli v. Somayya*, ILR (1916) 39 Mad 341 : (AIR 1915 Mad 750 (2)) with the expression "domain" but "interpreted and given effect to with reference to the land in question in that case." The learned Judge observed (at page 363) thus :--

"The question in that case in fact arose with reference to other than domain land, i.e., land situated far away from the dwelling house of the zamindar and actually in a village of the zamindari known as "iyanki" different to the village Chellapalli in which the dwelling house of the zamindar was situated.

In that case as well as in other cases in which the question of the character of the land as private or ryoti arose with reference to the lands situated far away from the dwelling house or in any other village or villages than the villages in which the dwelling house was situate, the work of the court in the matter of the determination of the character of the land would have stood absolutely simplified, had the mansion house test been applied. In that case it was not the word "homefarm" that fell to be applied to the land in question and the test of

direct cultivation propounded was really because of what was implicit in the word "homefarm."

It is not correct, in my opinion, to say that the Judges who decided that case treated the words "domain" and "homeland" together as importing that the zamindar's private land must be confined to land surrounding his place or residence as in the case of demesneland of an English Lord of the manor. I not only feel highly reluctant, I find it in fact wholly impossible to impute to Judges so distinguished and so experienced as these who decided that case any ignorance of very well known fact that private land in an estate might not only be situate far away from the dwelling house of the zamindari in the same village but might also well lie scattered in different villages throughout the estate, especially when the case before the learned Judges was itself concerned with the latter type of land."

From the aforesaid passage, it is evident that the mansion house test can have reference and application only to domain lands but not homefarm lands.

10. We shall now turn to the decision of the Supreme Court in T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, . The question that fell for decision was whether the disputed lands purchased by the appellant, Chidambaram under a sale deed dated November 11, 1948, situated in Orathur Padugai attached to Pannimangalam, one of the villages comprised in what is known as Tanjore Palace Estate, were private lands as claimed by the appellant, or ryoti lands as urged by the respondents. Incidentally the court had to decide whether Orathur Padugai constituted a whole village and, therefore an estate within the meaning of Section 3 (2) (d) of the Estates Land Act. The Subordinate Judge, Tanjore dismissed the suit is holding that Orathur Padugai was an estate and the lands situated in an estate were ryoti lands in which the defendants had acquired occupancy rights. On appeal, the Madras High Court affirmed the decision of the trial court. See Chidambaram Chettiar v. Ramaswami Odayar, (1957) 1 M L J 72. The learned Judge, Govinda Menon, J., speaking for the court, applied the principles enunciated in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, for determining the nature of the lands, as seen from the following passage (at p.95) :--

"What is private land is explained in the head note of the Full Bench decision in Periannan v. A.S. Amman Kovil, which is to the effect that mere proof that the landholder is the owner of both warams does not necessarily mean that it is private land. Passages at pages 81, 89, 90, 97 and 108 were also relied upon. We are satisfied that on the evidence there is no question of the lands being private." On further appeal, the Supreme Court, on a consideration of the material on record, found that Orathur Padugai is a whole village and therefore constituted an estate within the meaning of Section 3 (2) (d) and proceeded to consider whether the suit lands were private lands within the meaning of Section 3 (10) (b) of the Estates Land Act. The learned Judge, Ramaswami, J., speaking

for the court observed at p. 1011, thus ;

"Under Section 3 (10) of the Act, private land comprises of two categories, private lands technically so-called and lands deemed to be private lands in regard to private lands technically so-called. It must be the domain or homefarm land of the landholder as understood to in law. The mere fact that particular lands are described in popular parlance as pennai, Kambattam, is, khas, is not decisive of the question unless the lands so-called partake of the characteristics of domain or homefarm lands. In our opinion ,the correct test to ascertain whether a land is a domain or homefarm is that accepted by the Judicial Committee in Yerlagadda Mallikarjuna Prasad Naidu v. Somayya, ILR 42 Mad 400 :(AIR 1918 PC 182) that is whether it is land which a zamindar has cultivated himself and intends to retain a resumable for cultivation by himself even if from time to time he demises for a season."

The aforesaid passage is exactly similar to the one in the judgment of Subbarao, J., (as he then was) in the unreported decision of the Madras High Court in Appeals Nos. 176 to 178 and 493 of 1946, which we have extracted earlier. The learned Judge, Ramaswami J., proceeded to observe :

"The Legislature did not use the words "domain" or "homefarm land" without attaching to them a meaning; and it is reasonable to suppose that the Legislature would attach to these words the meaning which would be given to them in ordinary English. It seems to be that the sub-clause (b) (i) of the definition is intended to cover those lands which come obviously within what would ordinarily be regarded as the domain or home-farm, that is to say, lands appurtenant to the landholder's residence and kept for the enjoyment and use. The homefarm is land which the landlord cultivates himself, as distinct from land which he lets out to tenants to be farmed. The first clause is, therefore meant to include and signify those lands which are in the ordinary sense of the word homefarm lands. The other clauses of the definition appear to deal with those lands which would not necessarily be regarded as homefarm lands in the ordinary usage of the term and with reference to those lands there is a proviso that lands purchased at a sale for arrears of revenue shall not be regarded as private lands, unless cultivated directly by the landlord for the required period. It seems to us that the definition read as a whole indicates clearly that the ordinary test for "private land" is the test of retention by the landholder for the personal use and cultivation by him or under his personal supervision. No doubt, such lands may be let o short leases for the convenience of the landholder without losing their distinctive character, but it is not the intention or the scheme of the Act to treat as private those lands with reference to which the only peculiarity is the fact that the landlord owns both the warams in the lands and has been letting them out on short term leases. There must, in our opinion, be something in the evidence either by way of proof of direct cultivation or by some clear indication of an intent to regard these lands as retained for the personal use of the landholder and his establishment in order to place those lands in the special

category of private lands in which a tenant under the Act cannot acquire occupancy rights."

Applying the aforesaid principles, the learned Judge considered the facts of that case for finding out whether the lands are private or ryoti in character and deserved :--

"In the present case there is no proof that the lands were ever directly cultivated by the landholder. Admittedly soon after the grant of 1862 the estate came under the administration of Receivers who always let out the lands to the tenants to be cultivated..... the description of the land as "Padugai" is not of much consequence."

On a consideration of the entire evidence it was found that "the appellant has not adduced sufficient evidence to rebut the presumption u/s 185 of the Act, that the lands in the inam village are not private lands"..... In that case, the lands were admittedly once ryoti in character and they had been cultivated continuously by the ryots and therefore the test of direct cultivation or retention of by the landholder for his personal cultivation has been held that the homefarm land must invariably be appurtenant for or surrounding the mansion or palace of the Zamindar or landholder but on the other hand, the land personally cultivated by the landholder was considered to be homefarm which is distinct from the land let out to tenants to be farmed and the same cannot be equated to domain land which is appurtenant to the landholder's residence.

Hence, any general observations made by the court in that decision must be confined to the facts of that case. We do not find any inconsistency between the decision of the Full Bench of the Madras High Court in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, and that of the Supreme Court in T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, . Nor do we find any justification for holding that Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, has been impliedly overruled by the Supreme Court in T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, and that therefore, Periannan's case is no longer good law. As pointed out earlier the decision of the Division Bench of the Madras High Court in Chidambaram Chettiar's case (1957) 1 M L J 72 has referred to and applied the principles laid down by the Full Bench of the Madras High Court has been affirmed by the Supreme Court on a consideration of the facts and circumstances.

The decision of the Full Bench in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, is more based on the language of the provisions of Section 3 (10) of the Estates Land Act, which defines "private land" and Section 185 which prescribes the tests for the determination of the question whether a particular land is a private land or not. Proof of direct cultivation by the landholder is undoubtedly a valuable and weighty evidence. Direct cultivation can be inferred from the accounts and other

records usually kept by the landholder. However, if, due to lapse of time or other reasons, evidence of direct cultivation is not forthcoming. Section 185 can be applied for the determination of the issue, viz., whether the land is a private or ryoti. Local usage or custom and letting of the land as private land in leases executed before 1898 are specifically indicated in sub-sections (1) and (2) of Section 185 as being relevant and material evidence. Similarly any other evidence that may be adduced is also expressly made admissible u/s 185 (3).

In view of the specific statutory provisions, it cannot be said that any evidence other than evidence to prove direct or personal cultivation by the landholder is either excluded or not permissible to establish that a particular land is a private land. The burden of proof that a particular land in an estate is private land undoubtedly rests on the landholder himself as the statutory presumption is the other way. The statutory presumption however, is not absolute but rebuttable. The onus of proof assumes importance where no positive evidence is available or where the evidence adduced by either party or gathered by the Settlement Officer is not sufficient or adequate to displace this statutory presumption. But on the other hand, in cases where there is sufficient material on record it loses its importance as it would be of little or no consequence and the concerned authority has to apply its mind to the entire material and determine the question whether the land in dispute is private or ryoti.

The onus to establish a particular land being private cannot be discharged merely by establishing that both the warams were granted to, or enjoyed by, the landholder without specific evidence of the treatment of the land as private land by the landholder either by direct cultivation or otherwise in the manner indicated above. The Supreme Court had to consider a case where the appellant had purchased land situate in an estate in the year 1948 under a sale deed. With regard to such lands which shall not ordinarily be regarded as homefarm lands the second proviso in Section 3 (10) (b) (iv) of the Estates Land Act to the effect that lands purchased in a sale for arrears of revenue shall not be deemed to be private lands unless they are proved to have been cultivated directly by the landholder for the required period, would come into play.

The appellant therein, therefore could succeed in his plea that the lands in question were private lands only on proving that they were directly cultivated by the landholder in order to replace the presumption u/s 185 that the lands in an inam village are not private lands. In view of the concurrent finding of fact that the lands were never cultivated by the landholder and they were always let out to tenants by receivers who administered the estate consistently after the grant of the estate in the year 1962, the Supreme Court held that the lands in question were not proved or established to be private lands and they were ryoti in character. The application of the test of direct cultivation to the lands in that case by the Supreme Court must be confined to the facts therein and the test cannot be said to have been declared by the Supreme Court in law so as to apply to cases wherefore the inception the nature of character of lands in an estate is not

known or traceable. It may not be out of place but is apt and necessary to notice in this context the weighty observations of Lord Halsbury in *Quinn v. Leatham*, 1901 AC 495.

"I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expression are to be found. The other is that a case is only an authority for what it actually decides."

See also *R.D. Suryanarayana Rao Vs. The Revenue Divisional Officer, Land Acquisition Officer, Guntur*, which is an authority for the proposition that a precedent is an authority for what has actually been decided but not the observations in that decided case. The observations of a general nature made by a court of law must be confined to the facts of the case before such court but cannot be extended to cases having dissimilar facts and circumstances.

11. We are also unable to agree with the appellant's counsel that the tests laid down by the Full Bench of the Madras High Court in clauses 4 to 6 of paragraph 49 of its judgment in *Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others*, are inconsistent with, or contrary to the test of direct cultivation prescribed by the Supreme Court for the determination of the question whether a particular land is private or ryoti. The sum and substance of the aforesaid three clauses is nothing but the test of direct cultivation by the landholder. As referred to above, the Supreme Court also was conscious of the fact the lands retained by the landholder for his personal use and cultivation by him or under his personal supervision would not lose their character or nature as private lands even if they are let out to tenants on short term leases "for the convenience of the landholder without losing their distinctive character."

The heart of the matter is that there must be something in evidence to prove direct cultivation, or clear or unambiguous indication of an intention on the part of the landholder to regard the lands as retained for his personal use, to successfully claim them as his private lands in which a tenant under the Estates Land Act cannot acquire rights of occupancy. If direct cultivation is proved, no further evidence is needed. Alternatively, the intention of the landholder to resume the land for his personal cultivation can be established. One of the modes of proving such intention is the consistent conduct of the landholder in leasing out the lands to tenants under short term leases, as laid down by the Full Bench. Clause (4) of para 49 of the judgment of the Full Bench indicates nothing but personal cultivation or leasing of lands under short term leases as one of the modes of proof to hold them to be private lands.

Clause (5) as well as clause (6) indicates, in substance, the same view. The proof

of continuous course of conduct of the landholder in asserting and acting on the basis that he is the absolute owner of the lands and recognition and acceptance by tenants of such right in the landholder, is nothing but establishing the fact that the landholder intended to cultivate or resume the lands for his personal use and occupation as and when he so desires and the tenants who were in possession and enjoyment for some time have not acquired the rights of occupancy. For the reasons stated, we have no hesitation to hold that there is absolutely no conflict between the decision of the Supreme Court in T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, and that of the Madras High Court in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others,

12. Admittedly, there is no reference in the Supreme Court's judgment in Chidambaram Chettiar's case, to the case of Periannan and the latter decision is not specifically overruled. We do not however, find any justification or basis for the application of the doctrine of implied overruling in this regard. The Full Bench of the Madras High Court, in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, as referred to earlier, has reviewed the entire case law on the subject and based its decision on the interpretation of the provisions of Section 3 (10) and Section 185 of the Estates Land Act. If the test of direct cultivation that has been applied for by the Supreme Court is alone declared to be the law on the subject, then it would result in doing violence to the very language used by the legislature in Section 185 and Section 3 (10) of the Estates Land Act.

We are not prepared to hold that section 185 (3) is redundant or the same has been enacted superfluously by the legislature. The legislature in its wisdom, had enacted the provisions of Section 185 (2) and (3) with a definite purpose so as to take in cases where there is no evidence of direct cultivation by the landholder due to lapse of time. Hence, the court has to look to and following the specific guidelines indicated in the very statute to determine the nature and character of such lands.

13. We may notice the decided cases subsequent to the decision of the Supreme Court in T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, . The view now sought to be pressed upon us by the appellant's counsel that the decision of the Full Bench of the Madras High Court in Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, must be deemed to have been overruled by the Supreme Court in Chidambaram Chettiar's case and it is no longer good law, has been expressed by our learned brother Chinnappa Reddy, J., in W.P. No. 685 of 1968 (Andh Pra) and batch, quashing the decision of the Estates Abolition Tribunal (District Judge, West Godavari, Eluru) in respect of certain lands in the inam estates of Kukundru and Veerabhadrapuram villages in the district of West Godavari holding that they are ryoti lands but not private lands.

Aggrieved by the decision of the learned single Judge, the landholders preferred

an appeal. In *Nrasimachar v. Assistant Settlement Officer*, (1971) 2 Andh LT 17 a Division Bench consisting of Narasimham, j., (as he then was) and Parthasarathi J., reversed the decision of the single Judge and held that the dual test of direct cultivation or some clear indication of an intention to retain the lands for personal use propounded by the Supreme Court in *T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others*, is not repugnant to the propositions of law laid down in *Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others*, and there is no "incompatibility between the ratio of the decision of the Supreme Court and the propositions formulated by the majority of the Full Bench" and the Full Bench decision has not been overruled either expressly or impliedly and it is still good law.

We approve the view taken by the Division Bench in *Narasimhachar v. Assistant Settlement Officer*, (1971) 2 Andh LT 17 at p. 35. There is no material to support the plea that *Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others*, must be deemed to have been overruled on the application of the doctrine of implied overruling. It is well-settled that a decided case can be deemed to have been impliedly overruled only when the ratio of the subsequent decision of a superior court is inconsistent with, or is contrary to, that of the decision of the inferior court. As observed by Parthasarathi J., speaking for the court in *Narasimhachar v. Assistant Settlement Officer*, (1971) 2 Andh LT 17 at p. 35 :

"The doctrine of implied overruling can be resorted to only when there is no means of reconciling two pronouncements. An overruling is implied when the ratio of the later decision of a superior court is inconsistent with that of the inferior court. The inconsistency becomes material only when it is attributable or is implicit in the ratio of the later decision. The mere existence of dicta suggestive of an inconsistency is insufficient foundation for invoking the rule of implied overruling. The test to be adopted for applying the rule of implied overruling may be gathered from *Morris v. Edmonton Corporation*, (1957) 2 QB 564. At p. 571 Lord Goddard, C.J. observed as follows:

"With regard to *Keats v. London County Council*, (1954) 1 WLR 1357 :(1954) 3 All ER 303) my view is that it is irreconcilable with *East Riding County Council v. Park Estate (Bridlington) Ltd.* (1957 AC 228) and I think in effect although their Lordships did not refer to Keat's case in their speeches, it must be taken to be overruled by it. I cannot reconcile the reasoning of this court in Keat's case with the reasoning of the House of Lords in the East Riding case." We have, therefore, no hesitation to hold that the doctrine of implied overruling cannot be applied to the facts of the present case and there is no merit in this submission of the appellant. We may add that another Division Bench of this Court in *Yeljipurupu Appaldu v. S.Lakshminarayana* (1972) 2 Andh LT 30 at p. 34 opined that the proof of direct cultivation is not the only method by which it can be proved that the lands are private lands" and "proof can let in to show the intention of the

landholder to regard the lands as retained for the personal use of the landholder and his establishment to treat the lands as private lands" but did not determine the question whether Chidambaram Chettiar's case has impliedly overruled Periannan's case, as it was considered to be unnecessary.

14. We may add that the Madras High Court in *Arunachalam and Others Vs. The Estates Abolition Tribunal and Others*, at p. 597 and 598 applied the principles and tests laid down by the Full Bench of that court in *Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others*, on the ground that the Supreme Court, in *T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others*, has reiterated the same propositions and that Periannan's case is still good law. Ramaprasada Rao, j., was of the view that the statement of law laid down by the Supreme Court in *Chidambaram Chettiar's* case is referable only to homefarm lands but not domain lands, and observed thus ;

"The reference to domain lands in the earlier part of the paragraph has one purpose to serve, but the later tests laid down by the Supreme Court in the very same paragraph are of general connotation and apply to the genus, as I referred to, of private lands of which one such species in domain or homefarm land, I understand the *Chidambaram Chettiar's* case as practically repeating and accepting the well known tests laid down in *Periannan's* case, wherein the learned eminent Judges of our court have indicated the formula which has to be applied to ascertain whether lands in Zamindari are private lands of a landholder or otherwise."

After referring to the propositions laid down by the Full Bench of the Madras High Court in *Periannan's* case, the learned Judge proceeded to state as follows :--

"These propositions are practically reiterated in *Chidambaram Chettiar's* case, excepting for the fact that some of the indications contained in the propositions in *Periannan's* case, have not been elaborately repeated in *Chidambaram Chettiar's* case. My understanding of *Chidambaram Chettiar's* case, is that the material propositions required to establish whether a particular land is private or not have been reiterated by the Supreme Court in *Chidambaram Chettiar's* case, and in this sense *Periannan's* case, is still good law."

The Madras High Court, therefore, rightly accepted the view expressed by the Division Bench of this court in *Narsimhachar v. Assistant Settlement Officer* (1971) 2 Andh LT 17 referred to above and that Court is still of the view that the Full Bench decision in *Periannan's* case is still good law and governs the field and the same has not been overruled by the Supreme Court in *Chidambaram Chettiar's* case. In the circumstances, we overrule the contrary view reiterated by Chinnappa Reddy, J., in *W.P. No. 2863 of 1968* dated 17-1-1973 (Andh Pra) to the effect that the general principles laid down by the Supreme Court with regard to private lands cannot be lightly brushed aside.

15. The unreported decisions in *W.A. No. 17 of 1968* dated 27-11-1969 (Andh

Pra) and W.P. Nos. 2748 to 2755 of 1968 dated 10-8-1972 = Srimanthu Rajah Yarlagadda Sivarama Prasad Bhadur Zamindar Vs. State of Andhra Pradesh and Others, referred to in the order of reference in the present case, as taking the contrary view to the one expressed in Periannan's case but the court, on the material on record, upheld the concurrent findings of the Estates Abolition Tribunal and the Assistant Settlement Officer that the lands in question were never personally cultivated by the landholders and it was not their case that they demised them on short term leases with intent to resume cultivation and, therefore, rejected the claim of the landholders for the grant of patta on the ground that they are their private lands.

In writ petitions Nos. 2748 to 2755 of 1968, dated 10-8-1972, a Division Bench consisting of Gopalrao Ekbote C.J. and Madhava Rao J., did not hold that Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, has been overruled or the correctness of the principles enunciated therein for the determination of a particular land being private or ryoti, has been doubted by the Supreme Court in T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, . Therein, the contention of the petitioner that the Estates Abolition Tribunal has misunderstood the position of law for the determination of the question whether the lands were ryoti or private lands, was rejected with an observation that "whatever may be position earlier, the Supreme Court has now clearly established what the test is in regard to private land". After referring to the passage in the Supreme Court's judgment the court proceeded to examine the facts for finding out whether the landholder has proved the lands in question to be his private lands. The learned Judge, Gopalrao Ekbote, C.J., speaking for the court, observed (at p. 341) thus :--

"In no case the petitioner asserts that he had personally cultivated the lands at any time. In no case again it has been successfully made out that the leases were given on short terms to various persons. In no case again any specific facts have been brought out which would indicate the intention of the petitioner to resume the lands for personal cultivation. There are no facts which would give a clear indication of an intent to regard all these lands as having been retained for personal use of the landholder. There is no proof whatsoever, which can be said to be satisfactory, to place all these or some of them in the special category of private lands in which the tenant under the Act cannot acquire occupancy rights. Some acts of cleansing the lands or growing some grass cannot be said to be such acts as would indicate an intention to cultivate personally the lands sometime or the other.

In fact, in regard to certain lands the Tribunal has held that these lands were converted as ryoti lands".

We therefore, hold that these unreported Division Bench decisions are consistent with the view taken by us, as there was a specific mention of the absence of letting the lands on short term lease to different individuals, which was

considered to be one of the tests in Periannan's case, and do not even remotely come to the aid of the plea raised by the appellant herein.

16. To sum u : "Ryoti land" in which cultivating tenants acquire occupancy rights is cultivable land in an estate other than "private land" defined u/s 3 (10) of the Estates Land Act, tank beds and bunds, drainage and irrigation channels, may be of different kinds. "Domain" and "Homefarm" lands, irrespective of their description such as kambattam, khas, sir or pennai, are different and distinct and do not belong to one and the same category of private lands. Land immediately surrounding the mansion, palace or dwelling house, park or chase of the landholder may fall under the category of "domain land". The theory of the land being appurtenant to or surrounding the palace or mansion of the zamindar or landholder, otherwise known as mansion test, cannot be applied to determine a particular land being homefarm or not. The actual distance of the land or its exact location in the main village or in any other village in the estate is not material and relevant. There is no basis or warrant for an assumption that the two words "domain" and "homefarm" are synonymous having identical import either in precedent or etymology.

17. The statutory presumption that the land is in inam villages is not private but ryoti is not absolute but only rebuttable. The presumption can be displaced by positive evidence on record irrespective of the source from which it emanated, as evidenced by Section 185 of the Estates Land Act. Section 185 specifies the guidelines for the determination of the question whether a particular land is private or ryoti. Such question is a question of fact depending upon the facts and circumstances of each case. But however, what tests, guidelines and principles that should be applied for the determination of this moot question fell for consideration in a catena of decided cases of which Mallikarjuna Prasad v. Somayya, ILR (1919) 42 Mad 400 :(AIR 1918 PC 182), Jagadeesam Pillai Vs. Kuppammal, , Parish Priest of Karavar Parish v. Thiagarajsami Devasthanam (Appeals Nos. 176 to 178 and 493 of 1946) (Mad), Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others, and T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others, are the land marks. The nature of character of some land may or may not be known from its inception. It may also be altered or changed. A private land may become ryoti and a ryoti land can similarly be converted into a private land. Where a land is admitted to be ryoti from its inception, the only method by which such land can be proved to have been converted into private land is by establishing continuous cultivation by the landholder for a period of 12 years prior to the commencement of the Estates Land Act, i.e., 1908 or 1936 when the definition of "estate" was amended. If the nature or character of the land is not known from its origin, the guidelines that should be applied for the determination of the land being private or ryoti, would differ and vary. Personal cultivation for a continuous period of 12 years before the commencement of the Estates Land Act would conclusively prove the land to be private land. Where it is not possible to establish personal cultivation for a continuous period of 12 years before the

commencement of the Estates Land Act due to lapse of time or any other permissible ground, it is still open to the landholder, as indicted in S. 185, to establish his claim by proving any of following provided the land was not proved or shown to be one ryoti; (i) personal cultivation or enjoyment of the land by himself or the members of his family or through his agents or farm-servants for some period coupled with his right to possession-be it physical or constructive on the appointed day fixed for the abolition of the estate and taking over of the same by the Government under the Estates Abolition Act. Mere possession of the land on the material dates by a tenant or a trespasser would not deprive the landholder from claiming the land as his homefarm land.

(ii) intention of landholder to cultivate or resume the land for personal cultivation. Such intention of the landholder can be inferred from admitted or proved facts such as (a) continuous course of conduct of the landholder asserting and acting on the basis that he is the absolute owner of the land and (b) recognition and acceptance on the part of the tenants who are inducted into possession of the lands under short term leases that the landholder has absolute right, interest and title in the land. It is the totality or the cumulative effect of the relevant facts and circumstances that would be material to determine the existence or otherwise of the intention of the landholder to cultivate or retain the land for his personal cultivation, but each factor or circumstances by itself would be of little or no consequence or importance. The heart of the matter is that the landholder, in order to establish his claim that the land in dispute is his private land, must prove direct cultivation by himself or the members of his family or through his agents or farm-servants for some period and on the material dates or in the alternative prove his intention to retain the land for his personal cultivation and use as and when he desires. The mere possession of both the warams by the landholder would not displace the statutory presumption unless something in the evidence either by way of proof of direct cultivation or by some clear indication of an intent to regard the land as retained for his personal use is established. The tests laid down by the majority of the Full Bench in clause 4 to 6 of paragraph 49 of its judgment in *Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others*, are in no way in conflict with the test of personal cultivation and the intention to retain for personal cultivation enunciated by the Supreme Court in *T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others*,). The test laid down and applied in *Chidambaram Chettiar's* case as well as in *Jagadeesam Pillai's* case must be confined to the facts of those cases where the lands in dispute are known once to be ryoti. Hence, it cannot be said that the test of personal cultivation alone can be applied to cases where the nature and character of the land from its inception is not known. The tests laid down in paragraph 4 to 6 of paragraph 49 of the judgment in *Periannan's* case have not been overruled either specifically or impliedly in *Chidambaram Chettiar's* case and they are still good law. Some observations of the Supreme Court in *Chidambaram Chettiar's* case, even if construed to suggest contrary principles in detail are in substance in

accord with the dicta and guidelines enunciated in Periannan's case. From such observations or from a reading of the entire judgment, it cannot be inferred that the Supreme Court intended to overrule by implication the decision in Periannan's case, as the doctrine of implied overruling can only be applied or invoked where it is impossible to reconcile the two pronouncements. There is absolutely no basis or foundation either to suggest or point any inconsistency or conflict between the two decisions warranting the application of the rule of implied overruling.

18. For all the reasons stated, our answer to the question No. 1 is in the negative and against the appellant.

19. This brings us to examine the facts found by, or admitted before the Estate Abolition Tribunal the final fact-finding authority, and apply the principles enunciated by us for the purpose of determining the land in dispute to be private or ryoti.

20. The learned District Judge, Sri K. Punnayya (as he then was) constituting the Estate Abolition Tribunal, Guntur, on a careful appraisal of the entire evidence--oral and documentary, found that the landholders were getting the land in question cultivated ever since 1918 till 1943 through short period leases of 2 or 3 years without losing their kudiwaram rights and continuously asserting their ownership and making the tenants conscious of the fact that the landholders are the absolute owners of the land and the landholders personally cultivated the land from 1944 to 1945 through one Raghavulu and thereafter directly cultivated the land themselves from 1949 to 1953-54 and that the present respondent-tenant was inducted into possession only in the year 1954 but not earlier. The aforesaid findings of fact are amply supported by the evidence--oral and documentary--on record and those findings of fact are binding on this writ court.

In this remise, it must be held that on the material date i.e., 7-9-1951 when the village of Kantetivari Kandriga Narasaraopet taluk in the district of Guntur was notified and taken over under the provisions of Estates Abolition Act the land in question was in possession and enjoyment of the landholders and the appellant herein did not have any connection with, or right in, this land, as he was inducted into possession even as tenant only in the year 1954 but not earlier. He has absolutely no claims for the grant of patta on the ground that he was in possession of the land on the material date as a cultivating tenant and the land in question was a ryoti and. This finding itself is sufficient to reject the claim of the appellant. However, the Tribunal in or view, has rightly considered whether the land in question is private land of the landholders or ryoti land. Whether a particular land in a given case is a private land or a ryoti land, is a question of fact depending upon the facts and circumstances of that case.

The Tribunal, on a very careful consideration of the entire facts and circumstances has, in our view, rightly held that the landholders have personally cultivated the land for some time and by virtue of the short term leases and the

other admitted facts, the landlords must be found to have the intention to retain the land for personal use and cultivation and there is no material to hold that the land is ryoti and the tenants have acquired occupancy rights therein. The documents and other evidence pointed out earlier while narrating the facts would clearly establish that the landholders have by adducing positive evidence oral and documentary, established beyond doubt that the land in question was not only personally cultivated by them for some reasonable period but they also intended to retain the same for their personal use and cultivation, and discharged the onus of not ryoti so as to bring the same within the category of private lands.

The finding of fact arrived at by the Tribunal that the land in dispute is the private land of the landholders and they are entitled for the grant of a patta u/s 15 of the Estates Abolition Act, is binding on the Writ Court and the same cannot be interfered with until and unless this court is satisfied that the finding is vitiated by illegal considerations or erroneous or wrong application of the principles of law and the tests laid down by decided cases for determining the question whether the land is a private land as claimed by the landholders or ryoti land as contended by the tenant.

On a careful consideration of the entire judgment of the Tribunal, we are satisfied that the Tribunal has applied the correct principles of law enunciated in *Periannan and Others Vs. Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal and Others*, and reiterated by the Supreme Court in *T.S. Pl. P. Chidambaram Chettiar Vs. T.K.B. Santhanaramaswami Odayar and Others*,) and arrived at a correct conclusion that the land in question is private land of the landholders. We have absolutely no reason to interfere with the findings of the Tribunal which is supported by ample evidence--oral and documentary, in support of its conclusion. We may add that our learned brother, Kuppuswami, J., also has agreed with the finding of fact on a careful appraisal of the entire material on record and we are not persuaded to take a different view.

21. The further submission of Sri Gopal Rao is that the finding of the Tribunal that the land in question is a private land is based on inferences drawn on inadmissible evidence and the evidence on record is not sufficient to replace the presumption u/s 185 of the Estates Land Act, that the land was once ryoti and that the landholders cannot succeed unless they prove personal cultivation for a continuous period of 12 years prior to the said Act. The plea that the land in question was once ryoti was not raised at the inception. The specific case set up by the appellant before the Assistant Settlement Officer as well as the Tribunal was that he was in possession of the land as a cultivating ryot under the landholder since 1925. The appellant failed to substantiate his plea that he was a cultivating tenant since 1925 onwards and the Tribunal has in our view, rightly rejected his claim. That apart, it is found on the material on record that this land was originally a Government poramboke but not a ryoti land. The appellant was inducted into possession as tenant by the landholders only in the year 1954 and

he had nothing to do with the land prior thereof. Hence, the present plea cannot be availed of by the appellant. He cannot be permitted to raise the new plea which is not supported by any evidence.

22. The further submission of the appellant that Exs. P-4 and P-5 are inadmissible in evidence as they have not been registered and they cannot be looked into for any purpose to show that the land in question is a private land, also is devoid of any merit. As pointed out earlier the Tribunal has, in our view, rightly held that the land in question was under the personal cultivation of the landholders from 1944 to 1949 through one Raghavulu (P.W. 12) and under direct cultivation by themselves from 1949 to 1953-54 and from 1928 to 1943 they were let out to ryoti on short term leases of 2 or 3 years and that too, by changing the tenants. In the circumstances, the Tribunal has found that the landholders intended to resume the land for personal cultivation and use even during the period when it was let out on short term leases to different tenants.

23. In the circumstances, our answer to the second question is that the land in question is a private land but not a ryoti land and the appellant has not acquired any rights of occupancy.

24. In the result, the appeal merits dismissal and we, hereby dismiss the same with costs to respondent No. 3. Advocate's fee Rs. 250.

25. Appeal dismissed.