

(1993) 10 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 3939 of 1988

Cheekere Kariyappa Poovaiah

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-10-1993

Acts Referred:

Coorg Land and Revenue Regulations, 1899 — Regulation 167, 167 (1), 42, 45, 47 (1)
Karnataka Land Revenue Act, 1964 — Section 101, 70, 99

Citation : (1993) ILR (Kar) 2959 : (1994) 4 KarLJ 165

Hon'ble Judges : S.B. Majmudar, C.J.; R.V. Raveendran, J.; M. Ramakrishna, J

Bench : Full Bench

Advocate : A.K. Subbaiah, for the Appellant; Seshagiri Rao, for R-1 to R-4 and S.S. Sripathy, for R-5, for the Respondent

Judgement

S.B. Majmudar, C.J.—This Petition in the first instance was referred to a Division Bench consisting of Mr. Justice N. Venkatachala and Mr. Justice K. Shivashankar Bhat, by order of the learned Single Judge, Hanumanthappa J., dated 4.7.1991. The Division Bench in turn by order dated 4.10.1991 referred it to a Special Bench. This is how it has been placed before this Bench for disposal. It was to be heard with Writ Appeal No. 956/90, which is already disposed of by us by a separate Judgment Machettira Machaiah and others Vs. Machettira Kariappa and another, .

2. So far as this Petition is concerned, the Points that arise for our Consideration are as under:

(1) Are the holders of Bane Lands in Coorg upon Jamma tenure, the owners thereof?

(2) Whether Rule 167(1) of the Coorg Land and Revenue Regulation 1899 continues in operation despite the repeal of the Regulation by Karnataka Land Revenue Act, 1964?

(3) To what relief the petitioners are entitled to ?

3. In order to appreciate the grievances posed by the petitioners, it is necessary to note a few introductory facts leading to these proceedings.

Seven petitioners have made a grievance against Respondents -State of Karnataka and its officers viz., The Deputy Commissioner of Kodagu District, Madikeri, the Tahasildar - Virajpet Taluk in the same District and the Revenue Inspector of Srimangala Hobli, Virajpet taluk of the same District. The grievances centre round certain written instructions and observations contained in Government letters Ex.D. and E, and Memo Ex.F. to the Petition. Annexure-D is a copy of the letter dated 10.12.1981 written by the Revenue Commissioner & Secretary to the Government of Karnataka, Revenue Department -Vidhana Soudha - Bangalore, to the Deputy Commissioner, Kodagu District. It recites that Bane lands including Jamma-Bane lands are Government lands. The holders of Bane lands enjoy certain privileges to extract green leaf and timber etc., for the better cultivation of their wargs (wet) lands. The Bane holders have no proprietary right over the Bane lands. Letter Annexure-E is a copy of the Government letter from the Revenue Commissioner and Secretary to Government of Karnataka, Revenue Department addressed to all the Deputy Commissioners in the State, it is dated 20th November, 1986. It calls for certain information about the lands, the alienation of which is prohibited. This information is to be furnished to the concerned Sub-Registrars. Information is to pertain to lands granted, Inam lands and other lands. It is to be supplied to Sub-Registrar to enable him not to register the transfer of these lands. The Memo-Annexure "F" is issued by Deputy Commissioner Kodagu District, Madikeri, calling upon the Tahasildars to inform the Sub-registrars to refuse to register the documents and sale deeds relating to sale of lands held on Jamma tenure and Jamma Bane lands covered under Rule 164 of Coorg Land and Revenue Regulation, as according to Deputy Commissioner such lands cannot be alienated without the prior permission of the authorities. The letter calls upon the Tahasildars to impress upon the Sub-registrars that such deeds should not be received for registration and to refuse to register the documents so presented and public also to be informed about this situation.

4. The petitioner's grievances against the impugned letters-Memo are highlighted in the Petition. It will be useful to have a glimpse at the main basis of their grievances.

According to the petitioners, they are of Kodavas (Coorgs) by community and holders of Jamma land both wet and Bane. It is their case that occupants of Bane lands have proprietary rights. The stand taken by State Authority as reflected in the impugned documents has created serious social tension and also unsurmountable problems for the holders of lands on Jamma tenure - both Bane and wet lands. Petitioners are not claiming any individual relief in the Writ Petition except petitioner No. 1, but they are seeking relief for the benefit of larger interest of the community to which they belong. Their case further is that the ancestors of Coorg of bygone age who tamed wilderness that turned Kodagu

from primeval forest and swamps into smiling farms and fertile fields, had their land holdings and homesteads before the advent of Wodeyar Rajas of Kodagu. Petitioners contend that their ancestors were given grants of Bane lands by the then Wodeyar King Lingarajendra and these Bane lands became a part of their occupancy as waragdars or wet-land holders. Even the British after annexing Coorg to East India Company in 1834, recognised these grants by the Ex-Raja and issued Sanads to their ancestors. That with passage of time these Bane lands were converted into coffee plantations by coffee cultivation. Full assessments were levied by British Revenue Officers, thus they became entitled to hold these Bane lands as lawful occupants of unalienated lands paying full assessment and the same position continued even during the time of the operation of Coorg Land & Revenue Regulation 1899 and even after its repeal in 1964, by Karnataka Land Revenue Act of 1964 the position did not change. The petitioners therefore as lawful holders of Jamma Bane lands were entitled to deal with their lands as occupants owners. That the impugned letters/memo sought to raise a cloud on the petitioners proprietary right of these lands and hence the Petition for declaration that the stand of the State that Jamma Bane lands holders in Kodagu District have no proprietary rights is inoperative and void, and that Circulars issued by respondents are illegal and therefore unsustainable in law and for issuance of appropriate Writ or order or direction in the nature of Mandamus directing respondents 3 and 4 -the Tahsildar and the Revenue Inspector - to transfer the patta of the lands bearing Survey No. 4/1 of Tavalageri village in favour of petitioner-1 who has purchased the same from its lawful owner under a registered sale deed.

By a separate application (I.A.No. II) the applicant N. Bose Mandanna had also requested the Court to permit him to join as a party-respondent to this Writ Petition supporting the Writ Petition. That application is allowed and accordingly the said applicant (N. Bose Mandanna) is joined as respondent No. 5 supporting the petitioners. Sri. S.S. Sripathy, learned Counsel appearing for him, has fully supported the contentions advanced on behalf of the petitioners.

5. The learned Counsel for the petitioners vehemently contended that Jamma Bane land holders in erstwhile Coorg territory which has now become Kodagu District in the State of Karnataka are not trespassers nor have they limited interest in these lands. That these Jamma Bane lands were assigned to their ancestors by the then Raja by lawful grants and these grants were recognised by the British Government when Coorg was annexed to East India Company from 1834 and the subsequent Rules and Regulations issued by the British Administrators did not change the position, nor is the position changed in the Karnataka State by the enactment of the Karnataka Land Revenue Act, 1964, and therefore impugned Circulars are liable to be quashed and the declarations as prayed for should be granted to the petitioners.

6. Learned Senior Counsel appearing for the respondent-authorities on the other hand vehemently contended that on a correct connotation of the term "Jamma

Bane lands" it should be held that mere privileges were granted to Jamma Bane holders during the regime of Coorg Kings as well as at the time when Coorg was administered by Britishers, They had limited privilege of plucking the leaves of the trees standing on the Bane lands. That they could also for their own domestic purposes take necessary wood of the trees but they had no other right in the Bane lands. They were neither owners of sub-soil nor the owners of the trees standing on the Bane lands. That these limited privileges or concessions and also exemption from payment of land revenue assessment cannot be treated as full ownership rights over the Bane lands. That alienation of such Bane lands had to follow requisite procedure of obtaining prior permission from appropriate authority and if that was not done, such sale deeds effected in connection with the lands could not be registered. Therefore no fault can be found with impugned Circulars or letters issued by the authorities. It was further contended that even after the repealing of the Coorg Regulation of 1899 by Karnataka Land Revenue Act 1964, in view of Section 202(2), Rule 167 found in Chapter-VI of the Coorg Regulation 1899, still continued to operate and hence alienee of privileged Bane land had to pay to the Government as Nazarana a sum equal to 5% which subsequently was raised to 20% of the sale value of the land alienated and if that was not done the sale deeds could not be registered.

In the light of the aforesaid rival contentions the three Points for Determination which we have mentioned at the outset of the Judgment will have to be considered.

7. POINT NO.1 : For the purpose of this Petition we may take it as an admitted position on record, that the petitioners are holding Jamma Bane lands in Coorg District, that earlier their predecessors in title were also holding Jamma bane lands in erstwhile Coorg State which was subsequently taken over by the Britishers.

MEANING OF JAMMA BANE LANDS :

The question is as to what was the nature of these Jamma Bane lands and what rights flew from the holding of such lands. For answering this question it will now be necessary to have a peep at the history of the Jamma Bane tenure that existed during the time of erstwhile Coorg State and thereafter during the time it was taken over by East India Company and was ruled by Governor General in Council and later by Viceroy after 1857. In the book-lets named and styled as Revenue Settlement of Coorg 1910, is found, Chapter-V which deals with rights in land in Coorg. Paragraph-88 which is the first paragraph in the Chapter reads as under:

"The revenue system in Coorg is ryotwari, i.e., Government deals with an individual, who is assumed to be acting on his own account and not to be a middle man. Accordingly a ryot who has acquired possession of land is allowed to retain it as long as he pays the Government dues. Even when he becomes defaulter only such portion of his land is sold as is sufficient to cover the amount

due."

It is further stated therein :

"Not withstanding the ryotwari system, there are numerous peculiar tenures whereby the revenue administration is complicated. They have been described by various writers, but in order to render the different portions of this report more intelligible a detailed description of the various tenures will be reiterated."

In paragraph 90 it is observed that :

"Each rice-cultivated valley is known as a kovu divided in the Raja's time into plots called wargs averaging about 1 1/2 acres in extent."

Then follows paragraph 91 which refers to Bane. It reads thus :

"A considerable area of the adjacent forest land was considered necessary for grazing, leaf, manure, firewood and timber for agricultural purposes, and was allotted by the Rajas for each wargs in blocks varying from a few acres to 300 acres or more. These allotments were recorded in the revenue accounts of the Rajas" sists under the name bane. This land may not ordinarily be cultivated, and only the usufruct of the tree growth is allowed."

Dealing with Jamma tenures, paragraph 103 of same Chapter recites thus :

"The jamma tenure is the principal special tenure in Coorg and concerns no less than 40088 acres of the wet land as well as the banes attached thereto. Its origin has been traced by Sri J.B. Lyall in his "Note on tenures in Coorg and surrounding Countries" dated 14th May 1885. Briefly expressed, it was originally a military service tenure under which land was held on payment of half assessment in consideration of military or semi-military service to be rendered when demanded. Jama lands were granted largely by Rajas, and to a smaller extent by the British Government until 1895 when it was ordered by the Government of India that no more land should be given on this tenure. The consideration has now become nominal but the privileges are continued."

In paragraph 111 it is stated :

"The term "alienated bane" or "alienated hitlumanedala" refers to bane land or hitlumanedala which has been alienated apart from the wet land to which it was originally attached; such land is liable to assessment from the date of alienation and the rights of the holder in timber are the same as in the case of bane. In other respects it is held on the sagu tenure."

In the same Chapter in paragraph 101, sagu tenure is referred to as ordinary ryotwari tenure of land held on full assessment as contrasted with privileged tenures which have for various reasons been so freely granted in the past that the sagu tenure only represents 43 per cent of the total holdings. It becomes clear that as compared to sagu tenure, Jamma tenure is a privileged tenure as the tenure-holder has to pay only half the normal assessment and that it covers

the wargs to which may be attached the concerned Bane land. So far as Bane land is concerned it is free from assessment.

Sir J.B. Lyall, the British Expert on tenure in Coorg and surrounding Countries put-up a note on 14.5.1885 in connection with the nature of the Bane tenure that existed in Coorg region. That note is found at Appendix-IV to the Coorg Revenue Manual, 1954 Edition and which contains Coorg Land Revenue Regulation 1899 and the Rules issued thereunder. Paras 1 to 4 of the said note read as under :

"1. The bane question, as it now stands in Coorg, is a very complicated one and with it is connected the question of making a survey or survey settlement of Coorg. The tenure by which bane was held developed from the old state of the country, and has been now much affected by the great change of circumstances. The changes which have most complicated matters are :

Firstly, the rapid growth after annexation, of the industry of coffee planting, followed by the substitution -

(a) of a system of fixed acreage assessment of coffee lands in place of a transit or exercise duty and

(b) of a system of sale by auction of waste lands required for coffee planting in place of free grants of such land.

Secondly, the great increase in value of dry or forest land and of timber owing to the introduction of new crops, the increase of population, and the opening of roads.

The question now has several sides; a forest side and a land revenue side, a side in respect to banes to be granted in future, and another in respect to those granted in the past. To explain the whole case it is necessary to describe the old system of assessment which is still in force and to attempt to determine what were the original characters of the jama and sagu ryots" tenures in respect to their wargs of rice fields and their bane or forest lands attached, and how far we have altered or can alter them; and for the determination of these questions it is also advisable to see how similar tenures have been treated in the surrounding countries.

2. Coorg lies along the summit of the Western Ghats and is an undulating country of densely wooded hills and slopes, intersected by small swamp valleys most of which have been converted into rice fields. These rice fields are divided into plots of various sizes known as wargs. The word means a holding, or rather an account or entry in the Government books. When Coorg was annexed in 1834 we found that in Coorg proper almost every wargs or holding of rice fields had a block of adjacent forest land attached and said to be granted for the supply of wood, grass and vegetable manure. These blocks are demarcated with what are known as Raja's stones and are referred to in the sist or revenue records of wargs or holdings of rice fields maintained by the Raja's revenue officials (and

still preserved) as appended to such holdings under the name of bane.

These banes varied in size from 300 acres or more to 4 to 5 acres, and their area bore no close proportion to the areas of the wargs to which they are attached. Outside Coorg proper the holders of the wargs depended for their supply of wood, grass, etc., upon the adjacent forests: sometimes a particular block of forests was in a more or less vague way recognised to be the urudve or village forest of a certain number of holdings: sometimes there was no such localization of the source of supply, but in the sist papers, in the place where the notice of the bane holding would occur in Coorg proper, an entry of the word "aramaneparambu", i.e., Palace waste, is to be found, meaning that there is no bane and that the holding is supplied from the State waste.

3. Throughout Coorg proper the climate is too moist and rainy for ordinary cereals, and rice may be said to have been the only crop formerly grown. The bane lands in Coorg were, therefore, at annexation, all waste and generally covered with thick forest, except for a patch of garden near the family house in which a few orange and plantain trees were planted and vegetables grown. The land revenue assessment was, therefore, as was natural, imposed only upon the wet lands or rice fields. In that part of Coorg to the north and east which is outside Coorg proper, a similar arrangement in the way of assessment prevailed, though in this tract, owing to a slightly drier climate and a more open country, other crops than rice were cultivated to a small extent. In this tract the wargs or holdings consisted not of rice fields with banes attached but of blocks containing wet or rice land and dry land (i.e. sloping lands, part forest, part roughly cultivated) in about equal proportions. The assessment was, however, based as in Coorg proper, upon an estimate of the yield of the rice land only, nothing being charged on account of the yield of the dry cultivation except where a man took up dry land separately from wet or rice land.

4. This is still how the assessment stands in Coorg, for we have maintained unchanged the system of assessment we found in force. In Coorg proper, the full or normal cash assessment was supposed to be equal to one tenth of the gross produce of the rice fields but was really higher as the estimate of yield was too high. In the other tract one-sixth of the gross produce of the rice fields was the assumed standard. But in Coorg proper, all true Coorgs of the families deemed fit to render military service were allowed. In consideration of such service to hold as many wargs as they could undertake at half rates. They had to pay a fee called "nazarana kanike" on taking up a new warg, and could not sublet or claim remission for failure of crop.

These men were known as jama ryots, in distinction from the sagu ryots who held their rice fields at full rates (getting remission, however, for harvests in which a field bore no harvest) and who were bound to perform services to the State of a menial kind. The sagu ryot held his wargs in virtue only of a simple order of a revenue official, known as saguvali chit. The Rajas do not seem to have considered the sagu ryot's tenure to be a fixed one: they seem to have

often assigned their land to jama ryots who could then turn the sagu ryot out. The jama ryots got a sannad or grant from the Raja granting them the right to hold the wargs with bane attached for ever, on payment of the revenue assessed."

In paragraph 9 of the notes Sir J.B. Lyall has traced the history of grant of these bane lands to their holders as under :

"The Ikkeri Rajas of Coorg became jenmis of the whole country in the place of the Nayahs, and hence the fact that all the waste and forest of Coorg, except the blocks attached to rice fields as bane, was the full property of the Rajas. They continued the existing state of things, except that when strong enough they made the military ryots pay half rates of revenue instead of holding free. They granted them jama sannads for their wargs and banes, or for new wargs just as their cousins, the Bednur Rajas, granted the Canara ryot mulpatta sannads for his wargs and kumaki lands: in both cases the grantee paid the same fee called nazarana kanike. In fact it seems quite clear that the tenure of the mulgar ryot of Canara and of the jama ryot of Coorg was in the main the same in respect of property in the soil. The High Court of Bombay said of the mulgar of Canara that "he enjoys an hereditary and transferable property in the soil and cannot be ousted so long as he pays the revenue assessed on his land." This is true of the jama ryot, with the exception that he was not allowed by the Raja to transfer or sublet; but these restrictions had references, I believe, to the feature in his tenure which differed from that of the mulgar; this was the fact that he only paid half revenue, and would take up as much land at that rate as his family could manage: this privilege had to be guarded by restrictions. The sagu ryot was decidedly a crown tenant rather than a proprietor. The same term was in fact applied to the jama ryot by some observers. Lieutenant Connor in his Survey Report of 1815, writing of the jama Coorgs, remarks that there may probably have been at some former time a more complete form of private property in Coorg analogous to that of Malabar, but that the despotic rule of Rajas had reduced it to an hereditary right of occupancy, which was, however, very clearly recognized. Appended to this Note there will be found an extract copy of a report to the Government of India dated the 30th August 1834, from Lieutenant-Colonel Fraser, the first Commissioner of Coorg, which shows that neither sagu nor maja wargs were then transferable, and explains very clearly why it was thought right and safe to continue to the proper Coorgs, the privilege of taking up more lands on the jama tenure. The prohibition of subletting was a corollary to this privilege: therefore, when permission to subject to a certain extent was granted in Mr. Bowring's time, it was provided that no jama ryot who sublet could take up more land on that tenure. The prohibition of subletting applied, however originally to the sagu wargs, as well as to the jama, as will be seen from Captain LeHardy's excellent report of 1835, which also shows that if the jama ryot left his wargs temporarily uncultivated, the Government could by custom let it temporarily on sagu tenure to another ryot. This report of Captain LeHardy is the only report of those times which mentions the bane lands; he calls it forest land unassessed

but attached to the wargs, to which it supplies wood, manure, etc. I think I have shown that the jama ryot's tenure, though similar in origin to the mulgar tenure of Canara, was inferior in respect to property in the soil as being less free and complete. It was, therefore, still more inferior to the jenmi tenure of Malabar to which it has sometimes been compared."

Proceeding further Sir J.B. Lyall poses in paragraph-10 a question whether the assessment on the wargs should be held to cover dry cultivation, especially of Coffee, in the bane or forest land attached to the wargs, not only when such cultivation is insignificant in area and value, but when it is very considerable. On this question Sir J.B. Lyall supplies the answer in paragraph-12 at page 166:

"As to the second question, the old jama sannads issued before or after annexation no doubt grant a certain area of rice land assessable at a certain sum with bane attached, to be enjoyed for ever on payment of a specified sum, which is the revenue at the reduced jama rate. But these sannads properly interpreted grant the bane as forest land to be held unassessed while used as auxiliary to the assessed wargs for the supply of forest products. This was the view taken by Captain LeHardy (who calls the bane unassessed land), and all the Coorg Superintendents who have reported on the subject have considered the tenure of the bane to be in this respect distinct from that of the wargs. Captain Taylor did indeed, in 1865, at first adopt the view that the jama sannads precluded assessment of cultivation in bane land; but he afterwards came to the conclusion that any large extent of cultivation of such land would be an infringement of the tenure which would justify assessment of the excess, and proposed the rule of assessment of coffee above 10 acres in extent which was embodied in the rules of 1865 for assessment of Coffee lands. This was, I think a very liberal and fair interpretation of the tenure. It recognized the fact that by old practice a certain small amount of cultivation not enough to alter materially the forest character of the land had been allowed free, but drew the line at a liberal margin above this.

We have also the precedent of what has been done in South Canara and Malabar to guide us. Though the assessment of the wargs in those districts has not yet been revised, the Government has held itself justified in assessing independently new cultivation in the kumaki and parambu lands attached to wargs which answer to the bane of Cobrg.

There is another reason, independent of the interpretation of the sannad and the origin of the tenure, for rejecting "the claim that all cultivation in the bane is covered by the assessment on the wargs." This is that the order of 1865 declaring the excess above 10 acres assessable was of the nature of a fair and liberal compromise. The consideration for it, was the abolition of the halut duty which was paid by the coffee grown on these banes as well as elsewhere. For these reasons, I think, the claim can be safely rejected; but I would not now go back (in respect to banes hitherto allotted) from the further concession made in respect to jama banes by Sir Richard Meade in 1875, and the result will be that only a few jama banes, the holders of which have converted them into large

coffee gardens regularly cleared and cultivated, will be assessable."

We may also usefully refer to the Chief Commissioner's Report dated 17.3.1983 addressed to the Secretary to the Government of India, Revenue and Agricultural Department, Simla. This is brought on record at page 25 of Book No. 11 in the Writ Petition dealing with Standing Orders issued by the Britishers. The relevant paragraphs thereof are paragraphs 3 & 4 at page 26 and paragraph 15 at page 27. They read as under:

"4. On the submission of Coorg to the British Government, lands held by the Jamma Ryots were confirmed to them on the Jamma tenure, as it existed in the days of the Coorg Rajahs. The Chief Commissioner does not, in the least desire to interfere in any way, with lands now held on the Jamma tenure, but he is very strongly of opinion that the time has arrived when, in the interests of the Province, a stop should be put to the acquisition of new lands on the "Jamma" tenure, and to the conversion into that tenure of lands held on the "Sagu."

5. The practice hitherto has been to allow any person of the Coorg nationality to acquire fresh lands on the Jamma tenure, to any extent he chose to ask for; and even to convert into "Jamma" any "Sagu" lands he happened to acquire by purchase. It is a practice Sri James Gordon believes craftily obtained by the Coorgs from British Officials, one, for which there is no authority, one that did not obtain and would not have been tolerated for a moment, under the rule of the Rajahs of Coorg."

"15. In the meantime under the circumstances represented, Sri James Gordon has no hesitation in asking the sanction of the Government of India to repealing Rule 23 under reference and to the substitution in its place of the following rules.

1st. "No land held on "Sagu" tenure shall hereafter be allowed to be converted into land held on the Jamma tenure."

2nd. "No new lands whatever, whether cultivated or waste shall be granted on "Jamma" tenure. Provided that the Chief Commissioner of Coorg may, in any special case, grant to a "Jamma" Ryot on the "Jamma" tenure Government immemorial waste lands, not exceeding 5 acres of additional land in every ten years."

In the proceeding of the Chief Commissioner of Coorg dated 18th May, 1885, are found the instructions for dealing with certain cases of coffee cultivation in Banes heretofore allotted. That is brought on record at page No. 56 of Book-II in this Writ Petition. The said book pertains to Standing Orders issued by Britishers. In these instructions it has been laid-down that:

By ancient custom in this part of India in making grants or leases of wargs or holdings of paddy flats or swamp land, a block of adjacent forest or waste land was attached as an appendage to the wargs in order to supply the holder with the leaf, manure, firewood, timber and grazing required for the service of the wargs. Such lands were known in Coorg Proper as bane lands and in Carrara and

Malabar as Kumaki or Perambu lands."

In para 5 page-56 of Book-II it is laid down as under:

"In Coorg under the Rajas the only cultivation in bane lands consisted of a few orange trees and of small plots of fruit or vegetable garden near the houses. These were not assessed, but Lieutenant Connor in his Survey report mentions that some contribution in kind of the fruit and vegetable produce was levied through the head-men of villages, and was used by the Raja for palace use and for feeding his officers and servants. No trees were sold from bane lands in those days; it was impossible as they were unsaleable."

In the same instructions at paragraph 6 it is observed as:

"..... But as the Coorg bane-holders had in former times cultivated some small part of their banes without paying assessment, Mr. Bowring, the Chief Commissioner, after fully considering the representations, decided that in relieving them from the halat, the privilege of cultivating coffee in bane free of assessment upto maximum of 10 acres should be conceded to them. This provision was accordingly included in the rules for assessment of coffee land issued in 1865 and the halat was thereupon abolished. In the same year Mr. Kerr, the Superintendent, issued his two circulars, specifying the terms on which banes would be granted in future, and ruling that in the case of an estate consisting of several wargs, that the proprietors would not be allowed the privilege of holding 10 acres of coffee free for each wargs....."

Thereafter, in para 11 Rules for guidance are laid down. Rules 2 and 3 thereof are material and therefore they are extracted as under:

"Rule 2:

The provision in Rule XI of the Rules for the assessment of coffee land issued in 1865, which exempted from assessment cultivation of coffee in Coorg's bane lands not exceeding 10 acres in extent, was based (as the rule says and as the correspondence shows) upon the theory that the sannads held by jamma Coorgs showed that their wargs with bane attached were assigned to them in hereditary property to be held at a permanently fixed charge. The concession was, therefore, at first intended for jamma ryots only, but it was thought proper as a pure matter of grace to extend it to the case of sagu ryots whose tenure under the Rajas was that of ordinary tenants only, and who hold no such sannads. But in both cases the privilege was granted to the bane holder personally, not to be transferred for a profit, but to him and his heirs after him to be enjoyed by them hereditarily so long as the bane is attached to the wargs for whose service it was originally granted. By the customary law of Coorg, no jamma ryot can transfer his jamma lands; if he does transfer them, all privileges which he enjoyed in such lands are forfeited and the land is liable to full assessment. It follows, therefore, that when a jamma wargs together with the bane, attached or any part of the bane, has been alienated (i.e., transferred by sale, lease, or

mortgage), the sagu or full rate of assessment should be imposed on the wargs and the whole area in the bane cultivated with coffee should be assessed. The same rule should ordinarily apply to the assessment of coffee cultivation in sagu-bane lands alienated with the wargs, for though a power of transfer is now recognised in the case of holders of sagu wargs, yet the privilege of holding 10 acres of bane free of coffee assessment is not transferable. To rule otherwise would be to concede more to the sagu holder than to the jamma ryot, though the privilege was given to the former only because it had been first conceded to the latter who was thought to have some claim as of right to such privilege. When therefore, a sagu ryot alienates his wargs and bane to a man of superior means who intends to use the land mainly for the purpose of coffee cultivation, all coffee cultivation in such land should be assessed; if, however, the transfer is between two cultivating ryots of the same class, and the new holder is not a coffee planter except on the small scale on which all ryots cultivate coffee, then the privilege may be conceded afresh to the transferee by order of the Commissioner, and coffee not in excess of 10 acres may be excused from assessment."

Rule 3:

"It is an admitted incident of ryots" holdings in Coorg that bane land is in character auxiliary to the wargs and was granted to be held as an appendage to it. It was primarily, if not entirely, allotted to supply the wargs with the leaf manure, grass, fuel and timbers, required for its service, and on this account no separate assessment in addition to that on the wargs of rice land was imposed upon it. It follows that if a bane or part of a bane is alienated apart from the wargs to which it belongs, the tenure is infringed and the land transferred becomes liable to assessment if cultivated like any other unassessed land. All cultivation in bane land so alienated should be assessed with land revenue at the appropriate rates."

Rule 6 deals with Rights in trees of Bane lands:

"Rule 6:

No claim will be made for value of trees heretofore felled either upon bane alienated and unalienated, or upon land not recognized as bane, because it was allotted to a fictions warg. Such value will only be recovered in the case of encroachment on Government land not allotted as bane. The custom in Coorg is that bane holders have an exclusive right to use for their own requirements, free of charge, all trees on their banes, except sandal, which is a Government monopoly. But it is an incident of the tenure that the bane and timber on it were granted for the supply of the agricultural and domestic requirements of the holder, and not for sale. If, therefore, timber is sold, the tenure is infringed, and the Government has the right to seize and detain the wood till seignior age at the rates prescribed in the Forest Department is paid. This rule will apply to all bane land alienated for unalienated as heretofore, and should be carefully enforced. It

is admitted in the Coorg Memorial to be in accordance with custom, and similar rules prevail on land of similar tenure in Canara, Malabar, and Mysore."

Explanation about Jamma tenure is found in the books titled "THE LAND SYSTEMS OF BRITISH INDIA" "Being a Manual of The Land-Tenures and of The Systems of Land-Revenue Administration Prevalent in the Several Provinces." The Manual is prepared by B.H. BADEN-POWELL, Late of the Bengal Civil Service, and one of the Judges of the Chief Court of the Punjab. In that Manual at Vol. III in Book-IV is found discussion regarding THE RAIYATWARI AND ALLIED SYSTEMS, in Chapter-11 thereof deals with, Land tenures that were existing in Coorg. Relevant discussion is found at page-479 of the volume. Dealing with the traditions existing in Coorg learned Author observed:

"It is a tradition that Coorg was divided between the Kodagas and their hereditary priesthood, the Amma-Kodagas. After the accession of the Haleri Rajas, the leading classes, as I said, though ceasing to be rulers, yet continued to hold land on a more favourable tenure than others."

Proceedings further, the learned Author observes:

"Coorg lies along the summit of the Ghats, and it is in "Coorg proper" or "inside the barrier" that the true Kodagas live and have their lands. "Outside the barrier" is the larger area to the north-east, and a narrow strip below Ghat on the east side, forming Yelu-savira-shima, and two "hobalis" of the Nanjarajpatna taluk."

"Naturally in such a country there are narrow wet valleys all filled with rice-fields, and there are woodlands on the slopes above, which may or may not be suitable to the cultivation of vegetables, plantains, oranges, or coffee. On these slopes are the "bane" lands attached to holdings, which will presently be described. In the outer drier parts, it is quite possible to raise millet and other dry crops on the slopes."

Then Author deals with the Jamma Tenure and observes;

"The Kodagas having, as I said, ceased to be a ruling class, clung to their land as landlords, with the privilege of paying to the supreme ruler only half the full revenue. This tenure is now called the "jamma" tenure. The name is supposed to be derived from the Sanskrit "janmam" - birth; just as was the case with the Malabar landlord-tenure. But this derivation seems to me doubtful, for the Sanskrit word janmam means simply "birth", but does not include any notion of "birth-right" or Inheritance". I cannot help thinking it more likely that the term originated when the Mysore conquest had made Persian terms more familiar; and the name is perhaps some corruption of "jamin" i.e., zamin-land, or (possibly) of "zimma" (that which is held in charge or trust), or even connected with the term "jamma" or assessment total. However this may be the "jamma" is now a proprietary tenure distinguished by paying only half the ordinary assessment, or Rule 5 per 100 battis of waste land."

"Land held on this tenure cannot be sold, mortgaged, or alienated in any way without the sanction of Government. The reason of this is that the land cannot be held on this tenure except by the privileged classes. A sanad is granted for every holding, and a succession fee, "nazarana kanike", is paid on receiving the sanad, in three yearly instalments; also a fee called "ghatti-jamma" on taking possession. This is no doubt a relic of the quasi feudal tenure which was introduced when the Coorg Chiefs had to submit to a foreign Raja. The land is also held on condition of rendering service if required."

Proceeding further he writes;

"The land was all divided into farms called "warg" or "warga"- and each jamma landholder held one or more "wargad", according to the size of the family group."

In sub-para VI the learned Author in the same Chapter deals with Bane lands. He has made following observations in connection with these lands:

"It has already been mentioned that with every holding of jamma land (and the same is true also of sagu land) in Coorg proper, the holder acquires the use of an appurtenant plot of "bane" land-that is, a plot of forest land varying (and not always according to the size of the principal holding) from 4 or 5 to 300 acres. It is now, by rule, limited to double the area of the principal holding. The bane is located on the slopes above the valley where the rice-cultivation is, or somewhere near it, and it is destined to supply the wargs-holder with grazing, timber, firewood, and above all with bamboos, branches, and herbage, which he burns on the rice-fields to give ash-manure to the soil. But the produce must be strictly used for the supply of the agricultural domestic wants of the holder; and if timber, is sold, the tenure is infringed, and Government has a right to demand seignior age on the wood. Sandalwood trees found in bane land are always reserved as the property of Government. In the sannad, it is virtually a part of the property. In the sagu tenure there is no sanad; but the attached area of bane must be held and used subject to the same conditions. Under these circumstances, the bane cannot be regarded as actually the property of the tenure holder, nor, on the other hand, as land at the disposal of Government. It is rather land which is held as an appendage to a wargs or estate, or to a sagu holding, in a sort of trust, or on condition for a certain use "

1. The official definition is this:

"Bane is forest land granted for the service of the wargs or holding of rice-fields to which it is allotted, to be held, free of revenue; for grazing leaf manure, firewood, and for timber required in the warg."

It will be observed that this plan of allotting an area of wood-land to support the rice-cultivation is found in Kannaar and Malabar (kumbaki and parambi) and also in other parts-e.g. in Bombay (the "warkas" number of the Konakan, and the rab-lands elsewhere) and in Chutiya Nagpur in S.W.Bengal. It marks a sort of natural stage in the progress of tillage from shifting cultivation by burning the forest, to

permanent agriculture; the use of ash-manure is still considered necessary. Artificial manure is not available, and the dung of oxen is not used; it is dried for fuel, even where wood is abundant, because of its slow burning and smouldering."

Had the bane so remained, there would be nothing more to be said about it. In old days, in Central Coorg at any rate, no one wanted to cut trees for sale, for they had no market value; no one cultivated the bane, beyond raising a few orange or plantain trees, or ploughing up parts where it was possible to raise a little dry cultivation which was not thought worthy of notice; hence the bane, as an appendage, did not subject the holding to any further revenue-assessment. But in time the land became more valuable, and people began to sell the trees, or what is more, to cultivate coffee. So long as this was done without general clearing, it did little harm; but in time, as larger clearances were made, the utility and natural purpose of the bane were threatened; and moreover the people soon attempted to alienate the land itself selling or leasing it to coffee-planters; and when this was found profitable, fictitious "wargas" were imagined and bane applied for under that pretence, and then used for coffee-planting.

The question of preventing these abuses soon arose, and "bane" rules are now in force as regards assessment. It has for some years been allowed, as a concession, to cultivate coffee on ten acres in the bane without charge; and in 1875 a further concession was made to "jamma" bane, so that coffee might be cultivated even in excess of ten acres, provided that the bushes were planted under the natural forest without removing the large trees. All cultivation in excess of this is assessed."

The aforesaid discussion clearly shows that Bane tenure conferred certain privileges to the holders and it did not give them full proprietary rights in them so long as they were held as Bane lands attached to the wargs whose appendage they were. That such Jamma Bane holder had to pay half assessment on the wargs land. But so far as Bane land attached to it was concerned he was holding it free of assessment and he could allow his cattle to graze, remove leaves from trees which will supply manure and could also remove fire wood and timber required for domestic and agricultural purposes so long as he continued in possession of wargs land to which bane was attached. It is also seen from the report of Powell that right of Jamma Bane holder was less than that of full proprietor, he had also no right in the trees save and except as aforesaid and he could fell trees only on payment of seignior age charges to the Government.

Now, the Question that arises for the Consideration is as to how these holders of Bane lands over years changed their position qua these Bane lands and what was the effect of this changed position on the privileges they had enjoyed qua these lands. This question can be better examined in the light of four different periods of time during which the holders of Bane tenure continued to deal the Bane lands:-

- (I) Position of Jamma Bane holders prior to 1886;
- (II) Position of Jamma Bane holders between 1886 and 1899;
- (III) Position of Jamma Bane holders under 1899 Regulation till 31.3.1964.
- (IV) Position of Jamma Bane holders after 1964 Act (from 1.4.1964);

It would be convenient to examine these situations periodwise.

8. FIRST PERIOD:

Prior to 1886 in most of the Coorg territory which was annexed to the territories of East India Company, Jamma Bane holders after 1834 were enjoying the aforesaid limited privileges regarding the use of these lands, they had no right to cultivate the lands. They had no right in the trees standing thereon and their only privilege was to pluck the leaves of the trees and to utilize wood for domestic or agricultural purposes. We have already seen this while referring to Sir J.B. Lyall's note of 1885. During earlier times when the Coorg Rajas were ruling and even after the Coorg was annexed by East India Company, the Jamma Bane holders enjoyed limited rights in these lands as indicated therein. It is pertinent to note that erstwhile State of Coorg was annexed to East India Company in 1834. In the aforesaid note of J.B. Lyall is found an extract from letter dated 30th August 1834, from Lieut.Col.J.S.Fraser, Commissioner of Coorg, to W.H.Macnaughten, Esq. In that letter Mr. J.S. Fraser, notes that:

"Unoccupied land in Coorg is considered as the property of the Sovereign, Granted to a subject, it becomes his property (though not alienable to another person) as long as he cultivates it and pays his tax to the Government. In failure of this, or in the case above stated, the land reverts to the Sovereign, to be disposed of in any manner he thinks proper."

Referring to Jamma ryots the letter recites in paragraph-15:-

"The article in this Code of Rules which has most exerted my attention is that which grants to jama ryots the privilege of claiming land to any indefinite extent, upon the jama tenure of paying five rupees per annum for every 100 bhattis. But this, it is said, has always been allowed, and it is certainly expressly provided for in the Hukumnama of Virarajendra as the following extract will show, which I have had translated from the original."

Petitioners have also produced at Annexure-A an English translation of the Jamma sannad issued to one of the Jamma holders on 31.5.1842. The sannad has been issued by Major-General Mark Cubbon, Commissioner for the affairs of Coorg, under the Government of the East India Company. It recites that:

"As you have represented that no Jamma Sannads has been granted to you for land granted on Jamma tenure in the days of the Rajas though the tax at that rate was regularly paid by you and as you have applied for a Sannad nirup it is hereby ordered that:

"The land cultivated by you in the said village and containing an area of 165 battles as per schist accounts with bane and barike attached thereto as described below:- 2nd piece lying to the south of the said separated from Kaniendravad of Kaiendravaraga and adjoining the 1st piece of Kaiendravad.

1 piece separated from Ammachamandavade of Ammachamandavarga and lying in the North thereof.

Two pieces making together one vade with a house site of Ammachamanda.

1 Parambu bane lying adjacent to and to the South of Mukkattira Kuriyambane attached to Peggendavarga,;

And it further recites that :

"As you have obtained these on Jamma tenure according to the established custom of the Country, you can enjoy the same yourself, your sons and grandsons, hereditarily by paying assessment annually to Government at the rate of Rs.5 or 2 pagodas and 10-16 fanams for 165 battles, and live happily."

Petitioners have also relied upon English translation of one grant made by Lingarajendra Wodier in 1809AD. It is styled as Annexure-J. It reads:

"Lingarajaendra Wodier and grandson of Appaji Rajendra Wodier of the Bharadwaja Gotra, Aswalayana Sutra, Urkshakanu-kadhyaya, grants this deed of gift by pouring water accompanied with gold as an offering to Shiva and Parvati, to Thirmaleshwara Bhatta and Narana Bhatta sons of Subba Bhatta and grandsons of Venkatesh Bhatta of Vasishta Gotra, Bhodyana Sutra, Yejushakhadhyaya, at the auspicious occasion of the lunar eclipse, the Medappanda Bhoomi (wetland) of 105 Bhattles assessed at 2 1/2 pagodas and 1 1/4 fanams, situated in Koopathoor village, of Halrinad which was endowed upon Brahmin Thirmaleshwara Bhatta at the time of the lunar eclipse as a free gift by pouring water. The Appaya's Bhoomi (wetland) of 200 Bhatties assessed as 5 pagodas endowed upon Narana Bhatta as a free gift by pouring water as an offering to Dakshinamoorthy Deity, both the lands aggregating 305 Bhatties assessed at 7 1/2 pagodas and 1 1/2 fanams, together with their banes and Barges with the eight rights of full enjoyment viz., hidden treasure, underground stores, springs, timber-tree, stones of minerals, present profit, future profit, actualities and possibilities and everything which are within the four limits of the said wetland, bane and Barike have been granted as a free gift by pouring water as an offering to Shiva in order that the same may be enjoyed till the sun and the moon last and the following hymn of blessing be repeated at the praying hours (morning, noon and evening).

This shows that during the times of Wodeyar Rajas Banes which were attached to wargs or wet lands were gifted by way of full ownership. However, that was not recognised by the East India Company when it took over administration of Coorg in 1834 and thereafter limited rights were recognized over the Bane lands by the British Rulers. Therefore, reliance placed by learned Counsel for the petitioners

on the old grants made by Rajas remains of historical significance only and has no legal efficacy for deciding their legal rights in the Bane lands. The situation that prevailed prior to 1886 in connection with the rights of Bane holding vis-a-vis the Bane lands is further highlighted in Chapter-V pertaining to Banes found in proceedings of the Chief Commissioner of Coorg dated 21.5.1886. It recites that:

"In Chief Commissioner's Proceedings No. 824 C.166, dated 18th May, 1885, certain rules, with instructions, were issued for dealing with cases of coffee cultivating in banes theretofore allotted.

It was observed in paragraph 10 of these proceedings that "the case of jamma bane lands which the wargsdars may, subsequent to Sir R. Meade's order of 26th February 1875, have planted with coffee in excess of 10 acres, not in primeval shade, but after felling the forest trees for the purpose, has been left to be disposed of subsequently when orders are received on the reports submitted to the Government of India.

The Officiating Chief Commissioner having been duly empowered, now directs that all cultivation in jamma banes in excess of 10 acres, not in primeval shade, but after felling the forest trees for the purpose, shall be liable to assessment.

Rule 9 of the rules promulgated in Proceedings No. 324C-166, dated the 18th May 1885, for the treatment of sagu banes heretofore allotted, applies to jamma banes also; consequently, if a jamma warg has two or more bane quite apart, each of them shall be treated as a separate bane."

Then follows:

"The Officiating Chief Commissioner further issues for information and guidance the following Rules for the grant of bane in Coorg.

"1. Bane is forest land granted for the service of the wargs or holding of rice fields to which it is allotted, to be held free of revenue for grazing, leaf manure, firewood, and for timber required in the warg.

2. Hithal manedala is forest land granted as an appendage to the wargs to which it is allotted to be held free of revenue as a site for houses, backyard, cattle sheds and garden.

3. When a warg is applied for, it shall be surveyed and measured in acres and the the allotment of bane will not be made until the warg land has been properly prepared for rice cultivation and rice has been sown in it; but a plot not exceeding one acre may be allowed at once as hithal manedala.

4. The maximum area which may be allotted as bane will be double the area of the warg on account of which it is granted, and the maximum area which may be allotted as hithal manedala will be two acres. Provided that the area allotted as hithal manedala shall in no case be greater than one-sixth of the area of the warg.

5. Each allotment of bane of hithal manedala being attached to a particular warg, the said bane or hithal mandedala cannot be alienated, temporarily or permanently, from the warg. If a wargs holder has, by his tenure, power to alienate, temporarily or permanently, his wargs fields or a part thereof by gift, sale, mortgage, or lease (other than a lease of fields from year to year to a tenant on waram tenure) and done so alienate his wargs fields or part thereof, the bane and hithal manedala lands attached to the warg, or a proportionate part of them, must be transferred with the wargs lands. Otherwise, the tenure of the said bane and hithal manedala lands will be infringed and forfeited, and the Government will be entitled either to resume possession of the said lands, or any part thereof, and dispose of them by auction or to regrant them or any part of them, to the wargs holder on the tenure of waste lands sold by auction after realizing from the estimated value of trees and the price of the land at the average rate at which waste land has been sold in the three years previous, and after imposing upon the land regrant, assessment of land revenue at the maximum rate prescribed for waste land granted for cultivation. In the same way if bane or hithal manedala lands are alienated in the sense above described; apart from the warg, the tenure of the alienated lands will be forfeited and Government will have the like power either of sale by auction, or of assessment and grant to the actual holder, after realization of value of trees and land as aforesaid.

6. The cultivation of coffee or other garden crops, and the planting of orange or other fruit trees, will be allowed on hithal manedala land. The cultivation of coffee or other crops, the forming of gardens or orchards, and the erection of buildings other than cattle sheds are prohibited in bane lands. In the case of breach of this rule, the tenure of the bane will be infringed and forfeited, and Government will have the power either to resume and sell by auction the entire bane or any part of it or to regrant the entire bane, or any part of it, to the holder, on the tenure of waste land sold by auction for cultivation, after realizing from him, first, the full estimated value of trees standing thereon on previously felled for clearance; secondly, the value of the land at the average rate for which waste land was sold in the three years previous; and thirdly, a penalty not exceeding half the value of the land so calculated.

7. The bane holder will have the exclusive right of cutting and felling, without any charge, for his own domestic and agricultural requirements, all wood and timber on his bane and hithal manedala except sandal, which is a Government monopoly. But he will have no right to cut or fell wood or timber for sale or barter or for the use of any one but his own household and servants. In case any wood or timber is disposed of in breach of this rule, the Government will be at liberty either to realize the full estimated value from the bane holder and to seize and detain the timber and sell it by auction.

8. If the bane holder has lands or houses in two or more villages and wishes to transport wood or timber cut in one village for use in another, he must obtain a

pass which will be given free of charge by the Parpattigar. In default of such pass, the wood or timber may be seized, and forfeited to Government.

9. Bane is granted for the supply of forest produce and in commutation of rights and privileges in Government forest lands. Therefore, no ryot to whose wargs land is allotted as bane can claim, on account of that warg, any right or privilege in a Government forest, unless the title-deed of the bane mentions that any particular privileges are left unaffected by the grant.

10. Bane and hithal manedala land must not be marked out for allotment to a wargs by an officer without a written order from the Commissioner, and the wargs holder must not take possession of bane marked out till he has got his title-deed from the Commissioner. In case of breach of these prohibitions, the Government will be at liberty, either to take possession of the land and sell it by auction or otherwise dispose of it, or to treat the wargs holder in accordance with the rules applying to persons who encroach on Government waste.

11. Banes and hithal manedala grants will be demarcated with stones at the expense of the wargs holder, and if the Commissioner thinks it necessary a survey and map will be made also at his expense.

12. The right to mines and minerals in bane and hithal manedala lands with right of access and other reasonable conveniences for working mines or quarries by its own agents or through lessees is reserved to Government. But full compensation will be paid to the wargs holder for all surface damage done and the wargs holder will be at liberty to dig for the use for his own building requirements, free of charge, any stone which he may find on the land."

In proceedings of Chief Commissioner Coorg dated 27th July 1881 at Serial No. 62 is found the following observation;

"The portion of the bane land so alienated will be withdrawn from the Jamma tenure and included in Government lands. The houses built thereon will be fully assessed at Mohaturfa rates."

At Serial No. 68 of the Proceedings of the Chief Commissioner of Coorg it is found a letter from the Chief Commissioner of Coorg addressed to the Secretary to the Government of India, Foreign Department Simla, dated 24.4.1871, in paragraph-3, thereof it is provided:

"In the case of Jamma holdings the proprietors are allowed to cultivate a maximum area of ten acres of such holdings with Coffee without payment of assessment thereon. If such cultivation exceeds ten acres it is liable to the ordinary rates of assessment fixed by the Rules."

In the proceedings of the Chief Commissioner of Coorg in Chapter-VII dealing with the Coffee Estates at Serial No. 66 are found Rules for assessment of coffee lands at Coorg that were issued somewhere in the year 1865, the 11th Rule reads as under:

"XI. As the Bane lands of the Coorgs are comprised in their tenures which pay a fixed rent they are not to be ordinarily subject to the assessment on coffee lands; but when cultivation is over 10 acres, the excess is to be considered to be separated from the tenure and shall count for assessment from date of cultivation."

In the proceedings of the Chief Commissioner of Coorg, (Revenue)-dated 18th May 1885, to which we made a reference earlier is found a Circular-letter No. 324 dated 18.5.1895, which deals with the possession of bane-holder who has put bane land to coffee cultivation. In para VI of the said circular it is observed as under:

"6. When the cultivation of coffee began to extend in Coorg, a halat or excise duty was revived and imposed by Government on all coffee wherever grown. Such halat duties were formerly levied in Coorg and the surrounding countries on many products of value whether grown in garden land or in the forests, and were sometimes considered a substitute for the waram or share in kind to which by ancient custom the State in India is entitled on all cultivation. In 1862 the coffee planters complained that the levy of the halat was troublesome, and that it fell heavily on the land in bearing, ranging, from rupees 1 to 7 1/2 per acre according to the class of cultivation. It was then decided to substitute for the halat a cash assessment on coffee cultivation at the rate of rupees two per acre from date of full bearing. But as the Coorg bane holders had in former times cultivated some small part of their banes without paying assessment, Mr. Bowring, the Chief Commissioner, after fully considering the representations, decided that in relieving them from the halat, the privilege of cultivating coffee in bane free of assessment upto a maximum of 10 acres should be conceded to them. This provision was accordingly included in the rules for assessment of coffee land issued in 1865 and the halat was thereupon abolished. In the same year Mr. Kerr, the Superintendent, issued his two circulars, specifying the terms on which banes would be granted in future, and ruling that in the case of an estate consisting of several wargs, that the proprietors would not be allowed the privilege of holding 10 acres of coffee free for each warg, but would enjoy 10 acres free for the whole estate only, unless the Superintendent, after enquiry with reference to the size of the wargs, allowed a larger area to be held free. In 1878 the Chief Commissioner ordered these circulars to be republished and notified, but as they had not been thoroughly published before, he directed that they should take effect from the commencement of that year only."

In para 8 of the same Circular the following observations are found:

"On the 25h January 1875 the Chief Commissioner Sir Richard Mede, with reference to petitions presented by certain jamma ryots, granted a further concession excusing jamma ryots from being assessed in respect of bane land cleared and planted with coffee upto that date even when above 10 acres free of assessment if the planting was made in primeval shade without injury to the large trees. These concessions were granted to jamma banes only, sagu banes

being left subject simply to the Rule of 1865. In consequence of this order the proceedings which had commenced for the general survey and assessment of coffee cultivation in banes were suspended."

Then follows para 11 which lays-down the Rules for guidance. Rules 2 and 3 are material, they read as under:

"2. The provision in Rule XI of the Rules for the assessment of coffee land issued in 1865, which exempted from assessment cultivation of coffee in Coorg's bane lands not exceeding 10 acres in extent, was based (as the rule says and as the correspondence shows) upon the theory that the sannads held by jamma Coorgs showed that their wargs with bane attached were assigned to them in hereditary property to be held at permanently fixed charge. The concession was, therefore, at first intended for jamma ryots only, but it was thought proper as a pure matter of grace to extend it to the case of sagu ryots whose tenure under the Rajas was that of ordinary tenants only, and who hold no such sanads. But in both cases the privilege was granted to the bane holder personally, not to be transferred for a profit, but to him and his heirs after him to be enjoyed by them hereditarily so long as the bane is attached to the wargs for whose service it was originally granted. By the customary law of Coorg, no jamma ryot can transfer his jamma lands; if he does transfer them, all privileges which he enjoyed in such lands are forfeited and the land is liable to full assessment. It follows, therefore, that when a jamma wargs together with bane, attached or any part of the bane, has been alienated (i.e., transferred by sale, lease or mortgage), the sagu or full rate of assessment should be imposed on the wargs and the whole area in the bane cultivated with coffee should be assessed. The same rule should ordinarily apply to the assessment of coffee cultivation in sagu-bane lands alienated with the warg, for though a power of transfer is now recognised in the case of holders of sagu wargs, yet the privilege of holding 10 acres of bane free of coffee assessment is not transferable. To rule otherwise would be to concede more to the sagu holder than to the jamma ryot, though the privilege was given to the former only because it had been first conceded to the latter who was thought to have some claim as of right to such privilege. When therefore, a sagu ryot alienates his wargs and bane to a man of superior means who intends to use the land mainly for the purpose of coffee cultivation, all cotton cultivation in such land should be assessed; it, however, the transfer is between two cultivating ryots of the same class, and the new holder is not a coffee planter except on the small scale on which all ryots cultivate coffee, then the privilege may be conceded afresh to the transferee by order of the Commissioner, and coffee not in excess of 10 acres may be excused from assessment."

"Rule 3":- It is an admitted incident of ryots' holdings in Coorg that bane land is in character auxiliary to the wargs and was granted to be held as an appendage to it. It was primarily, if not entirely, allotted to supply the wargs with the leaf manure, grass, fuel and timbers, required for its service, and on this account no separate assessment in addition to that on the wargs of rice land was imposed

upon it. It follows that if a bane or part of a bane is alienated apart from the wargs to which it belongs, the tenure is infringed and the land transferred becomes liable to assessment if cultivated like any other unassessed land. All cultivation bane land so alienated should be assessed with land revenue at the appropriate rates."

The aforesaid discussion pertaining to period prior to 1886 based on the relevant material available on record concerning that period shows that after 1834 when Coorg was annexed to East India Company's territory in India, limited rights were granted and recognised for Bane holders. The Bane lands were not alienable; the Bane holders would enjoy the privilege of exemption from payment of assessment so long as Bane lands remain attached to the wargs which was held by them on payment of half assessment as Jamma warg. They had no rights in the trees, they could remove leaves of the tree for manure and utilize wood to a limited extend for domestic and agricultural purposes. They had no rights in the soil, they could not cultivate the lands but if they did upto 10 acres, cultivation was permitted, cultivation beyond which would make Bane lands bear full assessment. It is pertinent to note that the only penalty which a Jamma bane holder suffered if he unauthorisedly cultivated the land was that he would lose the privilege of exemption of payment of land revenue and his land would be fully assessed: Thus, he would become an occupant of fully assessed unalienated land. That position obtained upto 1886 when new Rules were framed for grant of Jamma Bane lands. That will take us to the consideration of Period No. 2.

9. PERIOD:2-BETWEEN 1886 TO 1899

So far as this period is concerned the treatment meted-out by British Administration to the Jamma Bane holders in Coorg can be culled-out from the proceedings of the Chief Commissioner found in Chapter-V pertaining to banes incorporated in connection with the Standing Orders, Rules etc., in the Revenue Code for Coorg. In that Chapter at Serial No. 59 is reproduced a letter dated 21st May 1886 issued by the Chief Commissioner's office at Coorg. That letter gives a graphic picture of the existing condition of Bane land holder's rights. It also defines the Rules laid-down for grant of banes in Coorg obviously from the date of promulgation of these Rules. We have extracted the entire letter earlier.

Below the letter are found forms of title deed for Bane, or Bar and Hithal Manedala, grants, and below the said form is also four proforma of declaration by the wargs holder while he is being grants Bane land. They read as under:

FORM OF TITLE - DEED FOR BANE, OR BANE AND HITHAL MANEDALA, GRANTS

As you..... of thevillage, of the.....nad, (hobli) of thetaluk, have applied to me for the grant ofacres of lands bane (or..... acres as bane and acres) as hithaf manedala) for the service of your wargs of battis oracres of land, in thevillage, of thenad, (hobli) of thetaluk, held by you on.....tenure under.

Title-deed No..... dated.....

Saguvali Chit No..... dated

I, Commissioner of Coorg, under the authority vested in me by the rules for the grant of bane and hithal manedala lands dated 21st May 1886, "and in accordance with the terms and provisions of those rules, of which a copy is printed on the back of this title-deed, do hereby grant you.....acres of land as bane (oracres of land as bane andacres as hithal manedala) situated in the same village (orvillage, of thenad (or hobli) of thetaluk)

Bounded on the North by South by..... East by..... West by

to be held by you as an appendage to the said wargs upon the tenure described in the said Rules and subject to all the conditions and liabilities therein stated.

Signature of the Commissioner,

DECLARATION BY THE WARG HOLDER.

I..... son of..... of the caste resident of thevillage, acknowledge that I have received the above described.....acres of bane land (.....acres of bane andacres of hithal manedala land)

to be held as an appendage/appendages to the above mentioned wargs on the tenure and subject to all the conditions and liabilities described in the rules for grant of bane of which a copy is printed on the back of this title-deed.

Signature of wargs holder.

In the same Chapter is found at Serial No. 63 proceedings of the Chief Commissioner of Coorg, dated 15th July 1886. That incorporates revised Rules for the Assessment of Coffee Cultivation in Bane Land. They read as under: -

I. Coffee cultivation in bane attached to unalienated wargs-jamma or sagu.

In jamma and sagu banes, 10 acres of coffee plantation should be excused from assessment; but, subject to the four provisions which follow, all coffee cultivation in excess of 10 acres should be assessed at full rates from date of order. The provisos are as follows:-

a. in the case of jamma banes, coffee cultivation in excess of 10 acres should also be excused, if it has been grown in primeval shade without felling of forest trees to open out the land;

b. in assessing coffee cultivation in unalienated banes, half or quarter rates, i.e., 1 rupee or 8 annas, may be used if the coffee is scattered and roughly planted, not in made garden but on forest land more or less uncleared;

c. land in which coffee was planted but has died out, or in which the trees are beyond bearing, may be excused from assessment if the bane holder has done his best to cut down to root out the coffee bushes and to restore the forest aspect of the land;

d. if it is found that two distinct and separate banes have been granted in former times to a holding of rice fields, shown in the schist papers as a single warg, 10 acres of coffee cultivation may be excused from assessment in both banes, if the wargs is a large one.

II. Coffee cultivation in bane land alienated with the wargs -whether the wargs was in such cases originally a jamma or a sagu warg, the whole area cultivated with coffee in the bane should be assessed at full rates from the date of the order of assessment. The Commissioner may, however, make an exception by special order in the case of a transfer of a complete wargs and bane between genuine cultivating ryots, where the coffee cultivation is on a small scale and only subsidiary to the rice cultivation.

III. Coffee cultivation in bane alienated apart from the warg. -All coffee cultivation in such land should be assessed at full rates from the date of the order of assessment. Every kind of cultivation in such land is liable to assessment.

IV. Special rule to allow of simplification of tenure in case of alienated wargs and bane land. - In the case of alienated wargs and bane land, or bane land only, if a person having possession by purchase or other permanent deed of transfer of a large holding of such land wishes, for the sake of simplification of tenure, to have it assessed like a grant of waste land, the Commissioner may assess it accordingly if no loss of revenue to Government" is involved. In such cases the whole area, waste and cultivated, will be assessed at full coffee rates; but progressive assessment, as by the waste land rules; with effect from the date of first alienation of the land, may be substituted, if the holder desires and agrees to pay up all arrears by that calculation. On the assessment being accepted, a title-deed may be granted in the form used for grants under the waste land rules; but full property in trees, including right to sell reserved kinds without payment of seignor age, will not be conveyed, unless the holder pays for the standing trees at a valuation.

V. Fictitious wargs and banes. - These are new holdings, and are sufficiently described in Clause (5) paragraph 11 of the Proceedings of the 18th May 1885. They are not to be treated as genuine wargs and banes, but are to be recognized as what they really are, that is waste land obtained for coffee cultivation, and the tenure is to be changed. The whole of area, cultivated and uncultivated, is to be assessed at full coffee land rates with effect from the date of the order of assessment; but if the holder asks for the progressive assessment allowed by the waste land rules, he may get it if he agrees to assessment from date of first grant of wargs and bane, and to pay all arrears due by such calculation."

In the Report on the Land Revenue Settlement of Coorg issued in 1910, we find

in Chapter-V, rights in lands. We have already made a reference to the said Report earlier while dealing with the nature of Bane lands. In paragraph-111 of Chapter V of the said Report the term alienated Bane is considered and it has observed, the term "alienated banes" and alienated "hithulmanedala" refers to Bane land or hithulmanedala which had been alienated apart from the wet land to which it was originally attached, such land is liable to assessment from the date of alienation and the rights of the holder of timber are the same as in the case of Bane. In other respects it is held on the sagu tenure.

In the Revenue Code of Coorg are found Rules dealing with the coffee cultivation. In the Petition at page No. 107 and 108, we find these Rules. We may produce with advantage the relevant Rules:

"Rule 10: The following terms are at present used for lands held for coffee cultivation -

(a) Unalienated banes (jama, sagu, jodi, jaghir, umbli) of which ten acres may be cultivated free of assessment.

Explanation - These banes are still attached to their wet lands, and have been obtained by the owners prior to 21st May 1986. Cultivation not exceeding ten acres is exempted from assessment. But there are a few exceptional cases, (i) Europeans who own such lands cannot claim this privilege, (ii) a few Native coffee planters have also been debarred from this privilege. As long as the bane is uncultivated no assessment can be levied. The owner of such bane has the exclusive right of cutting and felling without any charge for his own domestic and agricultural requirements in the village in which the wargs is situated, all wood and timber on his bane, except sandalwood, which remains the property of Government. But he has no right to cut or fell timber for sale or barter, or for the use of any one but his own household servants, or to remove it into another village even for his own use without permission of the Commissioner.

Firewood may be removed to another village under a pass granted by the Forest Officer.

(b) Unalienated banes (jama, sagu, jodi) having no area free.

Explanation - These banes were obtained by purchase or otherwise subsequent to 21st May 1886, and the whole area cultivated is liable to assessment. As long as the banes are uncultivated no assessment can be levied. As regards the right to timber they are subject to the same conditions as those obtained prior to 21st May 1886 [see Rule 10(a)].

(c) Alienated banes.

Explanation:- Coffee cultivation in these banes is assessed from the date of cultivation at Rs. 2 or Rs. 2-4-0 per acre. The uncultivated area is assessed at Re.0-4-0 the acre. Many of these banes were obtained for grazing only and are not fit for cultivation.

The right to use timber in alienated banes and hithulmanedala is restricted only to domestic and agricultural purposes as in the case of unalienated banes and hithulmanedala, unless the owner pays the value of the timber in the manner laid down in the rules made for the disposal of waste lands.

(d) Paisari lands - as distinguished from Government paisaria.

Explanation - These lands have all been granted by Government under the waste land or other rules. If bought under the waste land rules they are held free from assessment for 4 years, then they pay Re.1 per acre. From the 4th to the 12th year, from the 13th year they are liable to the full rate, namely, Rs. 2 per acre. All timber has been paid for and the holder has a right to sell and dispose of it.

(e) Hitlumanedals intended for dwelling places of agriculturists.

In Hitlumanedals all cultivation within one acre is free of assessment.

The owner of a hitlumanedala may fell for his own use in the village, in which the rice land is situated, any wood in his hitlumanedala, except sandalwood, but cannot remove it into another village, even for his own use without permission of the Commissioner.

Explanation:- Hitlumanedals are attached to wet lands and are intended for dwelling places for agriculturists. They vary in size from 1 /4 to 13 acres or more.

(f) Alienated hitlurnanedalas.

See explanation for alienated banes

(g) House-sites for non-agriculturists (called Bidukulas).

These are paying house tax according to the class of occupant ranging from Re.0-4-10 to Rs. 3-3-3 for the house-site as long as the sites are occupied.

If the site remains vacant for more than 5 years, house-tax is charged at the rate of Rs. 1-2-0 instead of at Re.0-4-10 per annum.

If cultivated the land is liable to assessment at the ordinary rates.

(h) Cardamom land (i) geni matles (ii) coffee saguvali malles.

The former are leased from time to time by the Commissioner and the resultant revenue is credited to the Forest-department, The lessee has no right to the land or timber.

These malles are situated chiefly within and in a few cases outside the reserved forest.

The latter are situated in the Western Ghats and were granted for coffee cultivation. But as coffee failed, cardamom has almost entirely replaced it. Timber has been redeemed.

(i) Government paisan's.

These are waste lands belonging to Government and include the following lands:-
Devarakandus, Urudves and Urambalas.

Rule 11. As the designations used to represent the tenures of these various clashes of land have been found unsatisfactory, the following will be used in future in the settlement and revenue registers;

Terms now used Terms to be used hereafter.

(a)

Unalienated bane (jama, sagu, jodi, jaghir, umbli) with acres free.

(a)

Privileged bane (jama, sagu, jodi, jaghir, umbli)

(b)

Unalienated bane (jama, sagu, jodi) without free allowances.

(b)

Unprivileged bane (jama, sagu, jodi)

(c)

Alienated bane.

(c)

Alienated bane.

(d)

Paisari

(d)

Sagu land ("redeemed" or "unredeemed" according as timber has been paid for or not)

Note-

This land being subject to different conditions as regards the right to dispose of timber, distinction should be made between redeemed and unredeemed sagu land.

(e)

Unalienated hitlumanedala.

(e)

Hitlu.

(f)

Aliented hitlumneda

(f)

Alienated hitlu.

(g)

House-site alias bidukula

(g)

House-site.

(h)

Cardamom malles.

(i) Geni alias leased malles.

(ii) Coffee saguvali malles.

(h)

(i) Leased cardamom malles.

(ii) Cardamom sagu.

(i)

Government Paisari

(i)

Paisari."

From the aforesaid evidence produced before us for culling-out the rights and obligations of holders of Jamma Bane lands in Coorg, it becomes clear that the existing Jamma Bane holders were permitted to hold these lands as an appendage to the wargs land held by them on Jamma tenure, that is on payment of half revenue assessment, they had not to pay any assessment on the appended Bane. These Bane lands were broadly classified into two categories:

(a) Alienated bane, which had by then ceased to be a bane, because of alienation from the wargs or because of its being put to coffee cultivation and subject to assessment.

(b) Bane proper. They remained as an appendage to wet land or wargs land and which given limited right to bane holder to remove leaves from the trees and to use timber for domestic, and agricultural purposes without having any right in the land. This type of bane tenure consisted of two sub-categories.

(i) Privileged bane. Wherein the Government permitted bane-holder to cultivate land upto 10 acres without paying any assessment; and

(ii) Unprivileged. Where no cultivation whatsoever was permitted, meaning thereby that part of the bane-land exceeding 10 acres could not be brought under cultivation and such bane land was also held free of assessment by the bane-holder. It becomes also clear that so far as bane falling under category - "a" is concerned, because of its non-user as bane as adjunct to wargs- land it ceases to be bane-land simpliciter and bane tenure for such land was liable to be forfeited and it would be granted to bane-holder on payment of full-assessment.

While so far as Jamma bane lands are continued to be privileged or unprivileged Bane, they retained all the characteristics of a genuine Bane land with limited rights and privileges granted to their privileged holders. It is also pertinent to note that from 1885 onwards a policy decision was taken by the authorities not to grant any fresh lands on Jamma tenure. In fact all the subsequent grants would be on sagu tenure. It is no doubt true that the aforesaid Rules found in the proceedings of Chief Commissioner of Coorg dated 21st May, 1886, referred to future grants of Bane in Coorg, but they also clearly indicated the position regarding existing Jamma Banes which were allowed to be continued in possession of the Jamma Bane holders after 1886 by the British Administrators, The same position continued till 1899 when the Coorg Regulation was promulgated.

10. PERIOD-III: That takes us to consideration of the position of Jamma Bane holders for the third period, viz., between 1899 to 1964. So far as this period is concerned, it starts from the promulgation of Coorg Land and Revenue Regulation, 1899, and stretches upto 1964 when the said Regulation was repealed by Karnataka Land Revenue Act 1964. We have therefore to turn to consideration of the salient features of Coorg Regulation, of Coorg Revenue Manual, published by State of Karnataka in 1954, contains Coorg Land and Revenue Regulation (I of 1899) and the Rules issued thereunder. It is a Regulation said to amend and declare the law in force in Coorg in respect of land and revenue. Its preamble recites that:

"WHEREAS it is expedient to amend the declare the law in force in Coorg with respect to the making and maintenance of records-of-rights in land, the assessment and collection of land revenue, and other matters relating to land and the liabilities incident thereto; it is hereby enacted as follows:"

The term "land" is defined by Section 3(3) to include:

"land" includes benefits to arise out of land and things attached to the earth or permanency fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of estates or other defined portions of territory;

Sub-section 5 of Section 3 defines "holding" to mean:

"holding" means any area which has been separately assessed to land-revenue, or would have been so assessed if the land-revenue had not been released, compounded for or redeemed:"

Sub-section 6 of Section 3 defines "holder" or "landholder":

"holder" or "landholder" signifies the person who is in possession of a holding or any share or portion thereof or in the enjoyment of any part of the profits thereof and who is bound by law, contract or local usage to pay land-revenue direct to the Government, but does not include a tenant;"

Chapter-VII of the said Regulation deals with Government rights in Land, and encroachments on Public or Government Lands.

Section 42 of the said Regulation reads as under:

"All public roads, etc., and all lands which are not the property of others, belong to Government - All public roads or thoroughfares, bridges, ditches, dykes and fences on or besides the same, beds of rivers, streams, nallas and tanks, and all canals and water-courses, and all standing and flowing water, and all lands wherever situated, which are not the property of individuals or of aggregates of individuals legally capable of holding property, except in so far as any rights of such individuals may be established in or over the same and save as may be otherwise provided by any law for the time being in force, are, and are hereby declared to be, with all rights in or over the same or appertaining thereto, the property of the Government, and it shall be lawful for the (Assistant Commissioner) to dispose of such property as aforesaid in such manner as may be authorised by the Government, subject always to the rights of way and all other rights of the public or individuals legally subsisting."

Section 45 deals with the summary eviction in case of alienation of certain lands -

"Except with the permission of the Assistant Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise, and also sales, gifts, mortgages or release of maintenance shares of such lands in a family patta in favour of members of the same family are prohibited and the Assistant Commissioner may summarily evict any person from such lands if so alienated and take possession of them on behalf of the Government.

"Family" for the purpose of this Section means and includes direct descendants in the male line of the original grantee of the land.

Then follows Section 47, which is material. It deals with Rights of Government in mines, etc.-

"(1) Unless it is otherwise expressly provided by the terms of any grant made, or of any other instrument of transfer executed, by the Government, the right to all mines, minerals and quarries and to all earth oil and gold washings and sandalwood trees in all lands and to all subsoil rights in bane lands, and the right to take from all lands stones or material for repair of public roads, shall vest in the Government, and the Government shall have all the powers necessary for the

proper enjoyment or disposal of such right.

(2) If for the purpose of the exercise of any of the rights referred to in this section, either by the Government or by any person acquiring such rights from the Government, any land in the holding or enjoyment of others is required, such land may be acquired in accordance with the provisions of the Land Acquisition Act, 1894; and whenever, in the exercise of any of the rights aforesaid any damage is caused to any landholder by the disturbance of the surface of such land, such landholder and the Government are unable to agree as to the amount of compensation to be paid to the former in respect of such damage, the amount shall be determined in accordance with the said provisions."

As per Section 60 found in Chapter-IX dealing with the collection of Land-Revenue and Other demands, it is provided that:

"Arrear of revenue - (1) When an instalment or a part of an instalment of revenue is not paid on or before the day prescribed by or u/s 57, the Assistant Commissioner may at once levy the instalment or the part of the instalment, as the case may be, in addition to such charge by way of penalty and as costs of process as may be authorised by rules made by the State Government.

(2) Any sum leviable under Sub-section (1) shall, for the purposes of this Chapter, be deemed to be an arrear, and the land-holder from whom it is leviable, to be a defaulter."

Section 66 deals with mode of recovery of arrears of land revenue:

Time for making distraint-when the arrear has not been paid in pursuance of the terms of the notice of demand and no arrangement for securing the payment thereof has been entered into to the satisfaction of the Assistant Commissioner or of an officer empowered by the Assistant Commissioner in this behalf, the Assistant Commissioner, or an officer empowered by the Assistant Commissioner in this behalf, may order the distraint and sale of such movable property as is described in Section 61, Clause (d)."

Section 107 deals with the situation which may emerge after the holding has been sold for recovery of arrears from the defaulter and seeks to put the purchaser to action. Section further reads:

"(1) When the purchaser has been put into possession of the property sold, the proceeds of the sale shall be applied in the first place to the payment of any arrears due to the Government from the defaulter on the day on which the order confirming the sale became final, whether those arrears are of revenue or of sums recoverable as arrears of revenue, and the surplus (if any) shall be paid to the person whose property has been sold, or, if the property was owned by more than one person then to those persons either collectively or according to the extent of their respective interests, as the Assistant Commissioner thinks fit.

(2) The surplus shall not, except under an order of a Court, be paid to any

creditor of a person whose property has been sold."

Section 110 deals with the effect of sale on lands held revenue-free or at favourable rates-and provides that:-

"When jama or umbli land, or other land held wholly or partially free of revenue, is sold under this Chapter, whether for the recovery of an arrear due in respect thereof or for the recovery of any other sum, the privileges attaching to the tenure of the land with respect to the assessment of land-revenue shall be extinguished by the sale:

Provided that in the case of land the revenue of which is assigned to a temple or other institution, the assignment to the temple or institution shall not be affected thereby."

Rules are also framed under the said Regulation in exercise of the powers vested in the State Government for making Rules u/s 143 of the Regulation.

Turning to the relevant Rules, first we may refer to Rule 96, it provides :

"The applicant for land for purposes subsidiary to cultivation (including bane) may pay the timber value on the condition detailed in Rule 94(i); but if he does not wish to do so, he may occupy the land and enjoy the personal usufruct of the tree growing on the land; but shall not otherwise interfere with them, and shall not cut or remove them for sale, except with the written permission of the Assistant Commissioner and on payment of the timber value in the same manner as an existing bane lands."

Rule 97 deals with the right of a holder of Bane land vis-a-vis timber found on the land; which is relevant for the purpose reads as under:

"97(1-6) (i) Holders of bane land who intend to redeem the timber standing on such bane land, either fully or partially and sell it through Government Agency, may apply to the Conservator of Forests, Coorg.

(ii) All such applications should be sent to the Conservator of Forests, Coorg, accompanied by a deposit of Rs. 10 in cases where the bane land on which the timber to be extracted does not exceed 5 acres and Rs. 50 in all other cases. This deposit will be forfeited to Government if the applicant subsequently withdraws his application.

(iii) The application should be accompanied by documents showing that the bane land is in the possession and enjoyment of the applicant and in cases where it is a share in the joint family property, the consent statement of the other adult members of family having interest in the property should be furnished. The applicant should also undertake to indemnify the Government against any loss due to any misrepresentation on his part about the ownership of the land.

(iv) The applicant shall be responsible to show correctly the boundaries of the land."

Rule 97(2) deals with power of Assistant Commissioner, it reads as under:

"The Assistant Commissioner may permit the alienation or cultivation of banes on the conditions noted in Rule 136. If it appears to him that such alienation or cultivation of bane lands will interfere with the tree-growth, he shall not give such permission except on payment of full timber value, under the procedure noted in Clause (I-A) above. If he is of the opinion that such alienation or cultivation will not interfere with the tree-growth, he may give permission for it, but no tree shall be cut subsequently on the land, except for the service of such wet land as is attached to the bane and for the private use of the wargdar without the permission of the Assistant Commissioner and payment of timber-value. If there is no objection to the grant of permission for the cultivation of bane which will entail the felling of the tree-growth, and the applicant is unable to pay the timber value, the Assistant Commissioner may, at the request of the applicant, order the Forest Department to remove all valuable trees which they require, and the applicant shall be entitled to cultivate the land after they have done so."

Sub-rule 3 of Rule 97 provides that the :

"The full timber-value shall be paid in all cases, if bane is separated or alienated without the permission of the Assistant Commissioner."

Rule 135 deals with land granted to Bane tenure, it reads as under:

"(1) Land is granted on bane tenure to facilitate the cultivation of wet land granted under Rules 128 and 129 or sold under Rule 142, (a) in the case of wet land previously allotted to that wet land as may be unoccupied (b) in the case of wet land not previously prepared for cultivation (hosagame), from any unoccupied unassessed land in the vicinity of the wet land.

(2) Conditions for Grant of bane - Grant of bane is subject to the following restrictions:-

(a) It shall not be made in the defunct Hoblis of Nanjarajapatna Kanve (Fraserpet Hobli) and Nidtha and Kodli (Sanivarasarite Hobli) where the tenure is not recognised.

(b) It shall not be made until the wet land has been properly prepared for a wet crop, and the crop sown upon it.

(c) The areas of land so granted shall not be greater than 15 acres or twice the area of the wet land in respect of which it is granted, whichever is less."

Rule 136 deals with conditions for the occupation and cultivation of unprivileged Bane - it reads as under:

"The Assistant Commissioner may permit the separation or alienation of bane on the following terms:-

(i) The conditions noted in Rule 134(1) and (2) will apply.

(ii) (a) If the wet land or any part of it is permanently alienated, the bane or a proportionate part will be transferred with it.

(b) On the separation of bane from the wet land to which it was previously attached, whether by alienation of the bane and retention of the wet land or vice-versa, the bane tenure will cease, and the land will be assessed at an occupation rate, of 4 annas per acre.

(c) The minimum area of bane, the separation of which from the wet land is prohibited, is twice the area of the wet land subject to a minimum of 15 acres.

(d) The separation or alienation of bane with the permission of the Assistant Commissioner is subject to the condition noted in Rule 97(2).

(e) If the wet land is deprived of bane in excess of the minimum area allowed under (c), the portion of bane improperly detached will be liable to penal assessment under Rule 149(2).

(iii) The Assistant Commissioner may permit the cultivation of bane on the following terms:

(a) Such cases as may appear to the Assistant Commissioner unobjectionable, on payment of assessment under the provisions of Rule 149 and after survey and demarcation.

(b) The Assistant Commissioner may allow the concessions noted in Rules 126 and 145.

(c) Cultivation of not more than 10 acres of bane, granted to genuine cultivating ryots before the 21st May 1886 and still held by them or their representatives by succession is allowed free of assessment, provided that the land to be cultivated-is in a compact block.

(d) The cultivation of bane with the permission of the Assistant Commissioner is subject to the conditions noted in Rule 97(2).

(iv) The Assistant Commissioner may, before giving permission for the separation, alienation or cultivation of bane, recover in advance from the applicant the cost of any survey or demarcation that may have to be made on the land. The advance will be adjusted towards the actual cost, when the survey and demarcation is completed.

(v) Separation, alienation or cultivation of bane without the permission of the Assistant Commissioner will entail the imposition of penal, assessment and the payment of full timber-value.

(Provided that, in unobjectionable cases, the Assistant Commissioner shall have discretion not to charge penal assessment, and may allow concessions at half the rate but for the full period admissible under Rule 126)."

Chapter-VI deals with lands held on privileged tenure: In that Chapter is found

Rule 167 which deals with privileged Bane and hitlu lands. It reads as under:

"RULE : 167: Privileged bane and hitlu lands -

(1) The alienator of privileged bane and hitlu lands shall pay to Government, as nazarana, a sum equal to 5 per cent of the sale value of the land alienated.

(2) Jaghir banes and hitlus may be cultivated free of assessment without limit, and without the permission of the Assistant Commissioner.

(3) On the hitlus of Yedavanad specified in the Raja's sist accounts, and not alienated by their original grantees or their representatives, cultivation of not more than 10 acres is allowed free of assessment; provided that the land so cultivated shall be in a compact block.

(4) In other respects the provisions of Rules 136 and 139 apply to privileged banes and hitlus."

In Appendix-1 proformas to certain Registers are provided. Form-II deals with jamabandi of Coffee, rubber, orange, pepper and cardamom lands. Referring to instructions regarding Column-II in the said proforma, following classification is made:

(a) Privileged bane (jama, sagu, jodi, jagir, umbli)

(b) Unprivileged bane (jama, sagu, jodi)

(c) Alienated bane.

(d) Sagu land ("redeemed" or "unredeemed" according as timber has been paid for or not.)

Form-III deals with jamabandi of unassessed area, etc., for..... In that Column No. 2 deals with tenure and the instruction regarding Column-II is to the following effect:

"Note: whether the land is bane or hitlu, and -the tenure (sagu, jama, jagir, etc.) of the wet land to which it is attached. In the case of Government lands the word "paisari" should be entered."

The Appendix-III of Coorg Regulation contains various definitions of terms contained in the Revenue Rules. We may usefully refer to the relevant definitions. The terms alienated Bane is defined as under:-

"Alienated bane: Land originally granted as bane, but which has become subject to assessment owing to its separation from the wet land for the service of which it was formerly held."

Bane is defined as:

"Forest land granted for the service of the holding of wet land to which it is allotted, to be held free of revenue by the cultivator for grazing, and to supply

leaf manure, firewood and timber required for the agricultural and domestic purposes of the cultivator, so long as he continues in possession of the wet land."

Jama bane is defined as : "Bane attached to jama wet land."

Jama land is defined as "Wet land assessed at one-half the normal (sagu) rate of assessment."

"Nazarana of Nazarkanike" is defined as fee, equivalent to 5 per cent of the value of the property, payable to Government when lands of privileged tenure are permitted to be alienated."

We are told that this fee was subsequently increased to 20%.

Paisari land is defined as "All waste and forest lands which are declared by Section 42 of the Coorg Land and Revenue Regulation to be the property of the Government, and which have not been notified in the Coorg Gazette as protected forests u/s 29 of Act XVI of 1927 or as forests reserved u/s 3 of the same Act."

Sagu tenure: is defined as "The ordinary ryotwari tenure."

Warg: means "a holding of wet land", and

Wargdar: means "the holder of a warg."

The aforesaid relevant provision of Coorg Land and Revenue Regulation (I of 1899) clearly indicated that so long as a Bane land remained attached to the wet land or the wargs whose appendage it was, it remained free from revenue assessment and the holder of Jamma Bane had to pay only one half of the assessment on the wargs land and that payment of half assessment entitled him to cultivate the wet-land on Jamma tenure and also to take usufruct of trees viz., leaves and also timber for his domestic purposes in exercise of privilege in respect to the attached bane.

But after the Bane became alienated, meaning thereby it got detached from the wargs by its alienation or even if it was being separately assessed to land Revenue on account of being put under cultivation of coffee or any other crop, the Bane land became an alienated Bane and did not restrict the holder to exercise only privilege rights over the Bane, but gave him all the rights subject to limitations attached to the occupancy of an occupier or holder of unalienated land paying full land revenue assessment thereon. Hence, it must be held that whatever might have been the position during the time of Rajas ruling Coorg or whatever might have been the position between 1834 when Coorg was attached to East India Company and upto promulgation of Coorg Regulation 1899, after the later Regulation was promulgated the position of Jama Bane holders vis-a-vis their Jarna Bane projected the following picture:--

1) The Jama Bane lands got classified into 3 categories:

(a) Privileged Jama Bane lands:- Those Banes attached to wargs held on Jama tenure which the Bane holders were permitted to cultivate upto 10 acres without

payment of assessment.

(b) Unprivileged Jama Bane: They were such Banes attached to Jama wargs tenure in respect of which the Bane holder was entitled to exercise only the privileges relatable to Bane. But he was not entitled to cultivate any part of such Bane land and was not liable to pay any assessment.

(c) Alienated Bane: Land originally granted as Bane, but which became subject to assessment, on ceasing to be the appendage of wargs land to which it was earlier attached. That happened: (a) On account of the alienation of the Bane independently of the wargs to which it was attached or vice-versa; or (b) when the Bane was brought under cultivation and the Revenue Authorities charged full assessment on such cultivated Bane. If cultivation was done on such Bane without previous permission of the Commissioner or exposit-facto permission in cases contemplated by the proviso to Rule 136 Clause (v) extracted earlier, apart from full assessment even penal assessment could be levied from the holder of such alienated Bane. But there is no provision in the Coorg Regulation for forfeiting the Bane to the Government except in the case of Bane granted under the Rules dated 21.5.1886 to which Section 45 applied. In fact scheme was to regularise their occupation of cultivated alienated Bane on payment of full assessment and penal assessment if any. The holder of such alienated cultivated Bane became an occupant under the Coorg Regulations being holder bound to pay to the Government land revenue. He had all the rights, privileges and obligations of an ordinary holder of unalienated fully assessed land.

11. The aforesaid scheme of the Coorg Regulation and the clear picture of different types of Jama Banes which is projected bring-out one salient fact, that in case of privileged or unprivileged Banes which were not alienated and erstwhile Bane holders of such Bane lands continued to have limited privileges qua the Bane lands held by them viz., that they had to use the attached Bane for servicing the holding of the wet land which was held by them on Jama tenure and that he could use this Bane for grazing, supply of firewood and timber required for the domestic and agricultural purposes of the cultivator, so long as he continues in possession of the wet land, and he could use this Bane for aforesaid limited purpose without any liability to pay any land revenue. It is also pertinent to note that in such privileged or unprivileged Bane, the concerned holder had no interest or right in the sub-soil of the Bane as clearly laid-down by Section 47 of the Regulations referred to earlier. He had also no interest in the wood of the trees standing on the Bane save and except taking wood for the limited domestic purposes, and for purposes of agriculture. He had no right to take the wood of trees for any commercial or other purposes unless he has paid the full timber value for cutting such trees, meaning thereby the trees were clearly shown to have been belonging to the Government, the timber of which could not be utilised by Bane holder unless he pays full price for the timber of such trees. This amounted to sale of timber wood by the Government to the concerned Bane holder. Such Banes held on privilege tenure also could not be

alienated without paying nazarana as per Rule 167 to the Government. That also indicated that such Bane holders had no proprietary interest in the land and when they wanted to alienate such privileged Bane lands held by them they had to pay nazarana to the Government apart from obtaining permission from the concerned authority u/s 45 and if that was not done he would be liable to be summarily evicted from such Bane, as that would be considered to be a Bane land, land revenue of which was considered to be wholly released. Therefore, on a conjoint reading of Sections 42, 45 and 47(1) of the Regulation and Rule 167 of the Rules framed thereunder, it becomes clear that holder of a Jama Bane land which was not alienated and which was either a privileged Bane or unprivileged Bane, was not proprietor of this Bane. But he had limited privilege as indicated in the definition of Bane found in the Regulation and therefore in the light of Section 42 such unalienated privileged or unprivileged Bane continued to vest in the Government.

12. This conclusion of ours is not in any way whittled down by Sub-section 2 of Section 47 of the Regulation as it deals with a situation wherein for exercising any sub-soil rights in Bane lands mentioned in Sub-section 1 Section 47, it becomes necessary either for the Government or any person acquiring rights from the Government to acquire any land in the holding or enjoyment of others. Then such land can be acquired under the provisions of Land Acquisition Act, 1894. This Sub-section 2 naturally contemplates acquisition of some other lands and not acquisition of Bane lands itself as it continued to remain in the ownership of the Government Working of Sub-section 2 of Section 47 could better be highlighted by an illustration.

13. Supposing unalienated Bane land is held by a person, the sub-soil rights in which belong to Government. The Government enters into a contract with a Contractor permitting him to mine subsoil mineral found in the Bane-land and if such contractor had to approach the Bane land through the land of somebody else, then to the extent somebody else's land viz., neighbour's land is to be utilised by way of passage for approaching the Bane land, that much portion of the land in possession of the neighbour could be acquired under the Land Acquisition Act, Section 47(2) cannot be read to mean that compensation is to be paid to the holder of unalienated Bane land by acquiring the Bane land as that situation would never arise in view of the fact that Bane land itself remains vested in the State.

14. A similar conclusion was reached by a Division Bench of this Court consisting of CHANDRASHEKHAR and VENKATARAMAIAH, JJ, in the case of STATE OF KARNATAKA v. T.V. RAMARAJU NAIDU 1975 (2) KARLJ 205 analysing the relevant provisions of 1899 Regulation. The Division Bench speaking through VENKATARAMAIAH J., as he then was clearly held that the rights of the petitioners before the Division Bench who are claiming proprietary rights over the Bane lands were not of proprietary nature. That they had only limited privileges but they were not the owners of Bane lands and trees thereon. This conclusion

was reached by the Division Bench on considering the provisions of Coorg Regulation and connotation of the terms privileged and unprivileged Bane that emerged on the consideration of relevant back history of such tenure in erstwhile Coorg State. Referring to Sub-section 1 Section 47 of Coorg Regulation, the Division Bench held that:

"Section 47(1) deals with rights to minerals and sandalwood trees on lands which are granted. The provisions of that sub-section are subject to terms of grant of any land. The said sub-section is not intended to enlarge the rights of holders, but is only a rule of presumption regarding minerals and sandal wood trees. Any other construction would conflict with Section 42 referred to above and such a construction has to be avoided."

15. We respectfully concur with the aforesaid view expressed by Division Bench of this Court. We may mention at this stage that the aforesaid Decision was carried in appeal to Supreme Court. The Supreme Court Decision is rendered in the case of State of Karnataka and Others Vs. Mrs. Elizabeth Mayne and Others, The Supreme Court speaking through Chief Justice A.N.Ray confirmed the said Decision, in so far as it held that applications made by Bane holders for cutting and removing the wood under the Coorg Regulation on payment of requisite charges, prior to the repeal of the said Regulation by Karnataka Act of 1964 were maintainable and the Bane holders were entitled to cut and remove that wood, but applications made by them after the repeal of Coorg Regulation were not maintainable. Therefore, the ultimate Decision of the Division Bench rendered by this Court was upheld. Moreover, on this aspect State of Karnataka did not press its Appeal before the Supreme Court. However, the observations of the Division Bench speaking through VENKATARAMAIAH. J., in that case about ownership of Bane lands were held to be not necessary for deciding the controversy in those proceedings and therefore the question regarding rights of Bane holders qua the Bane lands, whether they were full proprietors or not was left open. Paragraph 14 of this Judgment is required to be noted:

"We, therefore, hold that we affirm the conclusions of the Division Bench of High Court as stated in paragraph 59 of the judgment and make it clear that the observations and opinions expressed by the Division Bench on the nature and tenure of Bane lands and rights of the parties will not bind the parties on these questions in future. It will be open to both parties, namely, the appellants and respondents to urge their rival contentions on these questions if in future there will be any dispute between the parties."

16. The learned Counsel for petitioners was therefore right in submitting that despite the confirmation of the Decision of the Division Bench by the Supreme Court on the aspects covered by paragraph 59 of the Report of the Division Bench, the question as to the proprietary rights of the Bane holders in the Bane lands is still open for consideration before us. We agree with him and that is the reason why we have gone into the consideration of this question on its own merits and have reached the aforesaid conclusion. That conclusion is quite

parallel to the conclusion on the very point reached by Division Bench in the said Decision and in our view it was well justified in the light of the historical background of Jama Bane tenure when examined in the light of Coorg Regulation of 1899, as noted earlier we have reached the same conclusion to which the Division Bench reached on this relevant material and we therefore wholly concur with the said conclusion of the Division Bench on this point. However, we may hasten to add that the aforesaid Division Bench Judgment in *State of Karnataka v. T.V. Ramaraju Naidu*, supra was not concerned with the rights of alienated Bane holders as the very 3rd paragraph of Judgment made it clear that;

"Although in some cases the petitioners therein alleged that the bane lands held by them were assessed to land revenue, no material is placed to show that land revenue had been paid by them"

nor was the Division Bench concerned with the question whether on the erstwhile Bane land if cultivation was permitted and land was fully assessed and Bane and become alienated Bane, holders of such alienated Bane had any proprietary interest in the Bane land. The Division Bench had to consider only a short question whether the holders of privileged or unprivileged Bane had any interest in the trees standing thereon and for answering that question the Division Bench considered the relevant material and reached the aforesaid conclusion. As we have shown earlier, so far as holders of alienated Bane lands are concerned who have converted these Banes either with permission or without permission of the Deputy Commissioner, they had cultivated the Bane lands and had put them under coffee cultivation or cultivation of any other crop and when full assessment was charged from them by the concerned Revenue Authorities at the relevant time for the conversion of their use, their holding of such Bane became holding of alienated Bane by them and they became ordinary occupants of unalienated land which was fully assessed to land revenue and they acquired rights subject to all obligations of a holder of an unalienated land paying full assessment and all such privileges and benefits as occupants became available to them under Coorg Regulation 1899. So far as rights of such alienated Bane holders were concerned they were not hit by Section 42 of the Coorg Regulation. This was subject to the rider that they had no ownership rights over the trees naturally growing on these Bane lands and subject to the further rider that they had no sub-soil rights in such Bane land. They can be said to be enjoying limited proprietary right of cultivating these lands on payment of full assessment and also cutting and removing the crop grown on these lands, whether it was coffee crop or any other crop. That much proprietary right or ownership right was available to such occupants of alienated Bane lands even during the time the Coorg Regulation 1899 held the field.

17. PERIOD IV:- We may turn to the consideration of the changes if any, brought about by Karnataka Land Revenue Act, 1964.

The said Act was to consolidate and amend the law relating to land and land revenue administration in the State of Karnataka. Its Preamble stated that:-

"WHEREAS it is expedient to consolidate and amend the law relating to land, the assessment and recovery of land revenue, the land revenue administration and other matters hereinafter appearing;

BE it enacted by the Karnataka State Legislature in the Fourteenth Year of the Republic of India as follows:-"

The enactments specified in the schedule to Section 202 were repealed. In this schedule at Serial No. 15 is found, Coorg Land Revenue Regulation 1899. We may refer to the relevant provision of the said Act. Section 2 is the definition Section and it provides unless the context otherwise requires the definitions of the various terms given thereon would be applicable for interpreting the provisions of the Act. Section 2 Sub-section 11 defines "to hold land" and "to be a land-holder" or "holder" of land means to be in lawful possession of land, whether such possession is actual or not.

Section 2 Sub-section 12 defines "holding"

"means as portion of land held by a holder".

Section 2 Sub-section 14 defines land as under:

"land includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages or other defined areas;"

Section 2 Sub-section 19 defines "occupation"

"means possession, and "to occupy land" means to possess or take possession of land;"

Section 2 Sub-section 20 defines "occupant"

"means a holder in actual possession of unalienated land other than the tenant"

Provided that where the holder in actual possession is tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant;

Explanation to Section 2(20) reads as under: -

(Explanation-A ryotwari pattadar in the Madras Area and Bellary District, a pattadar or shikmidar in the Hyderabad Area and a holder or land-holder in the Coorg District shall be deemed to be an occupant of such land for the purposes of this Act.)

The next relevant Section is Section 67 which is found in Chapter-VII dealing with the land and land revenue, reads as under:

"Section 67; Public roads etc., and all lands which are not the property of others belong to the Government-

(1) All public roads, streets, lanes and paths, bridges, ditches, dikes and fences,

on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nallas, lakes and tanks and all canals and water-courses and all standing and flowing waters and all lands wherever situated which are not the property of individuals or of aggregate of persons legally capable of holding property, and except in so far as any rights of such person may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be with all rights in or over the same or appertaining thereto, the property of the State Government."

Explanation: In this section, "high water mark" means the highest point reached by ordinary spring tides at any season of the year.

(2) Where any property or any right in or over any property is claimed by or on behalf of the State Government or by any person as against the State Government it shall be lawful for the Deputy Commissioner, or a Survey Officer not lower in rank than a Deputy Commissioner after formal inquiry to pass an order deciding the claim.

(3) Any person aggrieved by an order made under Sub-section (2) or in appeal or revision therefrom may institute a civil suit contesting the order within a period of one year from the date of such order and the final decision in the civil suit shall be binding on the parties."

It becomes at once clear that Section 67 of this Act is almost parallel to Section 42 of the Coorg Regulation. The next relevant Section the Section 70 which deals with "right to mines and mineral products to vest in Government"- it provides as under:

"Save as otherwise expressly provided under any law in force before the commencement of this Act or under the terms of any grant made or of any other instrument of transfer executed, by or on behalf of the Government for the time being, the right to mines, minerals and mineral products, shall vest absolutely in the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No. 67 of 1957), have all the powers necessary for the proper enjoyment or disposal of such rights."

We may the turn to Section 79 dealing with Regulation of supply of firewood and timber for domestic or other purposes, it reads:

"(1) In any village or land in which the rights of the State Government to the trees have been reserved u/s 75 subject to certain privileges of the villages or of certain classes of persons to cut fire wood or timber for domestic or other purposes and in a land which has been set apart u/s 71 for forest reserve subject to such privileges, and in all other cases in which such privileges exist in respect of any alienated land, the exercise of the said privileges shall be regulated by such rules as may be prescribed, or by orders to be made either generally or in

any particular instance by the Deputy Commissioner or by such other, officer as the State Government may direct. In any case of dispute as to the mode or time of exercising such privileges, the decision of the Deputy Commissioner or of such officer, shall be final.

(2) Notwithstanding anything contained in Sub-section (1) but subject to such general or special orders that may be issued by the State Government from time to time, the privileges that are being enjoyed either by custom or under any order such as privileges in respect of Kumki lands, Bane lands and Kane lands in South Kanara District, Betta lands and Hadi lands in North Kanara District, Kan and Spooina Betta lands in Mysore Area, Jamma and Bane in Coorg District and Mothashal wet lands in Hyderabad Area shall continue."

Section 99 deals with rights of occupants, it states that :

"An occupant is entitled to the use and occupation of his land for the period, if any, to which his tenure is limited, or if the period is unlimited, or a survey settlement has been extended to the land in perpetuity, conditional on the payment of the amount due on account of the land revenue from the same, according to the provisions of this Act or of any rules made thereunder, or of any other law for the time being in force, and on the fulfilment of any other terms or conditions lawfully annexed to his tenure:"

Section 101 deals with occupancy right and shows that it is transferable and heritable - it provides as under: -

"Subject to the provisions contained in Section 37, and to any conditions lawfully annexed to the tenure and save as otherwise prescribed by law, an occupancy shall be deemed to be a heritable and transferable property."

As Section 101 is subject to the provisions contained in Section 87, we may therefore take look at Section 87, which deals with Land Revenue to be paramount charge on the land-Section 87 reads as under:

"(1) Arrears of land revenue due on account of the land by any land holder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or the holding together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land or permanently fastened to anything attached to the land, liable to forfeiture and the order in this behalf may be made by the Tahsildhar.

(2) On the making of an order of forfeiture under Sub-section (1), the Tahsildar may, subject to the provisions of Section 163, levy all sums in arrears, by sale the occupancy or the holding or otherwise dispose of such occupancy or holding under rules made by the State Government in this behalf.

(3) Such occupancy or holding, when disposed whether by sale as aforesaid or otherwise under rule referred to in Sub-section (2) except by restoration to the defaulter shall unless the Tahsildar otherwise directs be deemed to be freed from

all tenures, rights, encumbrances and equities theretofore created by the occupant holder or any of his predecessors in title in favour of a person other than the Government or in any way subsisting against such occupant or holder, but so as not to affect the rights of kadim tenants or permanent tenants alienated holdings in respect of such occupancy or holding."

18. The aforesaid provisions of 1964 Act clearly show that even after Coorg Regulation was repealed when the 1964 Act came into force, if a holder of Jamma Bane land, whether privileged or unprivileged was holding the said Jama Bane land in the same condition then his privileges in Jama Bane land which existed earlier viz., utilising this land as an appendage to wargs Jama holding for servicing the said wargs and for enjoying privilege free of land revenue and also utilising the Bane land for grazing of his cattle and for supplying leaf manure, fire-wood, timber required for domestic and agricultural purposes of the cultivator so long and he continued in possession of the wet land, were all preserved and continued to remain vested in him even after 1964 Act. That position is exemplified by Section 79 especially Sub-section 2 thereof to which we have already made reference. Therefore, the status-quo-ante regarding privileges of Jama Bane land holder qua Jama Bane land as such as existed during the operation of 1899 Regulation continued to operate after 1964 Act but it never got enlarged into full-proprietary ownership of such holders qua their Jama Bane land. On the contrary the right to trees growing on the land which had continued to vest in the Government earlier did not get divested nor did it vest in Jamma Bane holder under 1964 Act and even sub-soil which did not vest in the Jama Bane holder under 1899 Regulation also did not get vested in the Jamma Bane holder. On the other hand as per Section 70 of the Act they all continue to remain vested absolutely in the State Government. We must however add one rider to this position. If, during the time of operation of 1899 Coorg Regulation or even prior thereto, the Jama Bane land had ceased to be a Jamma Bane as such and had become an alienated Bane and had got detached from the service yoke of the wargs land to which earlier it was attached and if it was fully assessed, irrespective of the fact whether such separation of the Jamma Bane from the wargs land to which it was attached was sanctioned under Rule 136 of the Coorg Rules by Deputy Commissioner or not, and whether any penal assessment was levied on such Jamma Bane holder or not, such Bane land holder could not be said to be having only limited privileges qua such alienated Banes. On the contrary if the Jamma Bane holder was the holder of any alienated Bane on the coming into force of Karnataka Land Revenue Act, 1964, he became an occupant of such fully assessed erstwhile Jamma Bane land and was entitled to all the rights and obligations of an occupant-holder of an unalienated land paying full assessment to the Government and therefore he became an occupant of such land within the meaning of Section 2(20) of the Act and got all the rights of such occupant as laid down by Sections 99 and 101 of the Act. In this connection we may also refer to one aspect of the matter which was brought to our notice and on which there cannot be any controversy.

19. During the time when Regulation 1899 was holding the field and even thereafter on many occasions the State of Karnataka acquired the rights of Jamma Bane land holders under Land Acquisition Act. Our attention was invited to the Coorg Gazette of 1956 to show a few samples of such Notifications. One such Notification found at page-39 of the Coorg Gazette refers to Government Notification dated 30-12-1955 seeking to acquire one privileged Jamma Bane land Survey No. 24/1 under the provisions of Land Acquisition Act. Similarly, at page No. 89 is found a Notification dated 2.2.1956 by which certain privileged Jamma Bane lands were sought to be acquired u/s 4(1) of the Land Acquisition Act 1894. Third such Notification is found at page No. 93. It refers to acquisition of privileged Jamma Bane land u/s 4(1) of the Land Acquisition Act. Similarly, such another Notification dated 20-2-1956 is found at page 94 of the Gazette. At page 117 is found a Notification dated 6.3.1956 seeking to acquire privileged Jamma Bane lands u/s 6 of the Land Acquisition Act 1894. Relying on these Notifications it was vehemently contended by learned Counsel for the petitioners that these acquisition proceedings themselves show that the Government Authorities treated holders of privileged Jamma Bane lands as having proprietary interests, otherwise there would have been no occasion for the Government to acquire these lands. Now, it must be noted that even a privileged Jamma Bane holder had some interest or privilege in the Jamma Bane land though he may not be a full proprietor thereof. As we have noted earlier he had certain privileges flowing from his occupation of privileged Jamma Bane land. This type of privileges would necessarily show some restricted interest in these lands. If the Government wanted to abolish even these privileges and concessions which were otherwise giving some interest to the Jamma Bane holders, then they had to acquire such interests in these lands under Land Acquisition Act, and obviously compensation was payable to such privileged Jamma Bane holders by evaluating their limited interest and not the full interest as the proprietor. Therefore, from the mere fact that these privileged bane lands were put to acquisition it cannot be inferred of necessity that holders of such Jamma Bane lands were treated by the Government to be the full owners of such lands. As we have seen earlier except these limited privileges and concessions in privileged Jamma Bane lands they had no right in the sub-soil, they had no ownership of the trees growing thereon. They cannot even cultivate these lands. Therefore, they had merely the right to enter upon the lands to collect the leaves to utilise as manure or for collecting wood for domestic or agricultural purposes and nothing more. This limited privilege or right, if had to be acquired, had to be evaluated and paid for, consequently the acquisition notifications covering these lands would be an equivocal act and cannot be treated to be acknowledging the full proprietary right of privileged jamma bane holders in such lands. It is axiomatic that a full proprietary ownership of land would entitle the owner to be the proprietor of all the sub-soil rights upto the centre of the earth, all surface rights on the land, all the rights in the usufruct of the land, full rights in all the trees standing on the land save except reserve trees and he would be owner of the air-column upto the sky over that land. Such types of rights were never made available to the

privileged or unprivileged Jamma Bane land holder during the time of Britishers after 1834 who administered Coorg nor during the time from 1899 when Coorg Regulation held the field and also never thereafter when 1964 Karnataka Act was enacted.

20. We may in this connection refer to one argument advanced by the learned Counsel for the petitioner. He submitted that in *State of Karnataka v. T.V. Ramaraju Naidu*'s case (supra), a Division Bench of this Court placing reliance on the note of J.B. Lyall on Tenures in Coorg and Surrounding Countries, dated 14th May 1885 held that the holder of privileged or unprivileged Bane lands could be compared to the holders of kumki lands in South Kanara to show that such holder of land has no proprietary interest but the right of the holder is to use the wood free of charge for his own use, and that if he sells the wood, he must pay seignior age, and the same situation prevailed in connection with Bane lands in Coorg.

Placing reliance on the Decision of the Supreme Court in *State of Mysore and Others Vs. K. Chandrasekhara Adiga and Another*, it was submitted that the aforesaid view of this Court in *Ramaraju Naidu*'s case is not correct as the Supreme Court in terms held that the holders of Kumki lands have some proprietary rights in the lands which they held and therefore the Decision of the Madras High Court taking the contrary view or even the Decision of this Court placing reliance on the Madras Decision can no longer be held to be laying down good law. In the aforesaid case, the Supreme Court was considering the interest which the kumki land holders had in the kumki lands in South Canara who were occupying these lands under Madras Board of Revenue Standing Orders and Land Grant Rules framed thereunder. SARKARIA, J., speaking for the Bench in this connection made the following observations:

"23. Although styled as "privileges" kumki rights are recognised by these statutory Rules and the Standing orders aforesaid. They are property rights notwithstanding the fact that their scope is restricted and their exercise is subject to these statutory Rules. Therefore, these rights could be curtailed, abridged or taken away only by law and not by an executive fiat."

It, therefore, becomes clear that the observation of Mr. J.B. Lyall, in his note that kumki landholders had no interest in the land and on which observation the Division Bench in *T.V. Ramaraju Naidu*'s case (supra) placed reliance, cannot survive any further. However, still the question remains as to whether the holders of unalienated Bane lands, could be said to have full proprietary ownership of these lands. As we have discussed earlier, it is impossible to come to that conclusion in the light of the historical tracing of this tenure prior to and under the Coorg Regulation 1899 and also under 1964 Karnataka Act, all of which contra indicate such a conclusion.

21. Our attention was then invited by the learned Counsel for the petitioner to a Decision of a learned Single Judge of this Court in *E.G. WHITE AND ORS. v. THE*

STATE OF KARNATAKA AND ORS. 1979 (2) KARLJ 233 SWAMI, J. as he then was, held as follows:

"Where bane lands had become alienated and assessed to land revenue and thus ceased to be bane lands, the title to such of the trees that stood on the lands on the date of the said lands ceasing to be bane lands (in 1882-83) continue to vest in the State Government.

But the Government cannot claim title to the trees that have been grown on the lands after the lands became alienated bane and the malki of such trees including the trees grown from the stumps or roots of the trees cut and removed vest in the owners and they will be entitled to cut and remove the same without paying the value of the timber or obtaining the value of the timber or obtaining transport passes in accordance with the Karnataka Forest Act,"

Now, in so far as the aforesaid Decision takes the view that title in the trees that stood on the lands on the date on which the Bane lands ceased to be Bane lands and became alienated Bane, remained with the State Government, no exception can be taken to the said view. However on the facts of the present case, we are not concerned with the future controversy whether the erstwhile Bane land owners can claim ownership of trees growing out of the stumps or roots of the trees cut and removed. We do not express any opinion on the correctness of the view on this aspect as found in aforesaid Decision of SWAMI, J., and we leave that question open.

22. Now the stage is reached for us to have a stock of the situation. The aforesaid discussion regarding the rights of the Bane land holders in the background of the relevant periods during which the Bane tenure existed in erstwhile Coorg State and thereafter leads us to the following conclusions :

(i) So long as Jamma Bane land owner occupied the Bane land as an adjunct of the wargs land to which it remained attached, he had a limited interest or right in the said Jamma Bane land, namely, to enjoy the privilege of non-payment or revenue, privilege of grazing his cattle in the land, privilege of taking leaf manure from the leaves of the trees standing on the land for the purpose of supplying it as a manure to its wargs land, privilege of taking fire wood and timber fire wood and timber required for his agricultural and domestic purposes.

(ii) Such privileges enjoyed by the Jamma Bane holder do not entitle him to any sub-soil rights in the Jamma Bane land nor had he any interest of right in the standing trees and he could not utilise these trees for commercial purpose without payment of full timber value to the Government. He was also not the owner of the air column above the surface of the land. If the holder of a privileged Bane land sought to alienate his land he had to follow the procedure laid down by Rule 167 of Coorg Land Regulation 1899, which held the field prior to 1964 and if that was not done, the holder of privileged Jamma Bane land becomes liable to be summarily evicted as per Section 45 of the Coorg Land Regulation 1899, during the time when the said Regulation held the field.

iii) Once such Jamma Bane land ceases to be a Jamma Bane, whether privileged or unprivileged and became an alienated Bane, on the Jamma Bane being detached from the service of the wargs land under the orders of the authorities passed under Rule 136 of the Coorg Rules, the holder of such alienated Bane becomes entitled to cultivate the Bane land as a separate holding on payment of full assessment and his rights and obligations qua such land became that of an occupant of an unalienated fully assessed lands and he became entitled to all the rights and subject to all obligations of holder of such land governed by the provisions of Coorg Regulation of 1899, in the first instance, and later under the Karnataka Land Revenue Act, 1964.

iv) Even if a Jamma Bane holder got his Bane land detached from the wargs land by voluntarily putting the land under cultivation of coffee or any other crop, and got it fully assessed and paid such assessment, even if he had not obtained orders of the authorities under Rule 136 of the Coorg Land Revenue Rules, the Bane land held by him had to be treated as alienated Bane and all that he had to pay to the Government was full assessment as well as penal assessment if any that could be imposed on him and full timber value as laid down by Rule 136(5) of the Rules framed under the Coorg Land Revenue Regulation, 1899, and the alienated Bane held by him was not liable to be forfeited to the Government.

ANSWERS

In view of the aforesaid conclusion to which we have reached, it becomes obvious that the Point No. 1 will have to be answered in the negative by holding that holders of Jamma Bane lands both privileged and unprivileged are not full owners thereof but have limited privileges qua these lands as indicated above, subject to the rider that once these Jama Bane Lands became alienated Bane, the holders of such alienated Bane became entitled to the rights and obligations of occupants of unalienated fully assessed lands and were governed for that purpose by the provisions of the Coorg Land and Revenue Regulations so long as they held the field and thereafter they were entitled to the rights and subject to the obligations of the holder and occupant of unalienated fully assessed lands as per the Karnataka Land Revenue Act, 1964.

POINT NO :2

23. So far as this Point is concerned it is already noted that Coorg Land and Revenue Regulations 1899 came to be repealed by Karnataka Land Revenue Act 1964 by virtue of Section 202(1) of the Act.

24. Now the question is whether after such repeal Rule 167 can still survive for covering future transaction in connection with privileged Bane lands held by the concerned persons governed by such tenure.

The learned Senior Government Advocate appearing for respondent/State submitted that the Rule would still survive firstly on account of the Proviso Clause-b to Section 202(1) of the Karnataka Act and secondly as per Section

202(2).

We shall therefore first deal with Proviso (b) of Sub-section 1 Section 202 of the Karnataka Act. The Proviso lays-down that subject to the provisions of this Act, the repeal shall not affect;

"(b) any right, privilege, obligation or liability acquired, accrued or incurred under such enactment or law";

A mere reading of said provisions shows that if any right, privilege, obligation or liability under Rule 167(1) of the Coorg Land and Revenue Rules framed under Coorg Land and Revenue Regulation 1899, was acquired, accrued or incurred prior to operation of 1964 Act, then such right, privilege, obligation or liability could survive after the repeal. That obviously would mean that if any transaction regarding alienation of a privileged Bane had taken place prior to the coming into operation of Karnataka Act of 1964, then it could be said that the said Rule 167 had previously operated qua such transaction and the State Authorities had acquired a right to recover nazarana as laid down by Rule 167(1) of the erstwhile Coorg Land Revenue Rules and in that eventuality it could be said that concerned Bane holder had incurred obligation or liability to pay such nazarana. But on the facts of present case there is no such situation, The State authorities insisted that even after the repeal of parent Regulation 1899, Rule framed thereunder would survive its repeal for all times to come and even after 1964, for the first time say, after one decade or two decades or more if the holder of a privileged Bane land wants to alienate his land, he must pay nazarana as laid down under erstwhile Coorg Land Revenue Rules.

It is impossible to accept this contention. This would amount to holding that despite the repeal of the parent legislation, the Rules framed thereunder would survive for all times to come thereafter and would cover all future transactions at any distant point of time. On the express language of the Proviso to Clause (b) of Section 202(1) such contention cannot be accepted. In this connection we may note that a Constitutional Bench of the Supreme Court in the case of Keshavan Madhava Menon Vs. The State of Bombay, had an occasion to consider the repeal of the statute. Though the majority of the Constitutional Bench took the view that the offence committed under a previous Constitutional Law could be pressed in service even after the Constitution came into force and the accused could be booked, so far as the effect of repeal of a statute is concerned there was unanimity in the opinion amongst the Judges constituting the Constitutional Bench, that once a statute is repealed it gets obliterated from the statute book and consequently neither the statute nor any Rules thereunder could be relied upon for covering future transactions. First plank of the argument of the learned Senior Government Advocate for sustaining the operation of Section 167(1) of the Coorg Land and Revenue Rules after the regulation itself was repealed by 1964 Act cannot be sustained and must be rejected.

25. The second plank of his argument is based on Section 202(2). So far as that

provision is concerned it starts with a non-obstinate clause and states that notwithstanding anything contained in Proviso to Sub-section 1 but subject to any notification u/s 201, anything done or action taken (including any appointment, or delegation made, land revenue, non-agricultural assessment, fee or cess, settled, fixed or imposed, notification, order, instrument or direction issued, rule or regulation made, certificate obtained or permission granted) under any enactment or law repealed by Sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

It is nobody's case that any Notification is issued u/s 201 of the Karnataka Act in connection with continuance of Rule 167 of the Rules framed under the repealed Coorg Regulation. The learned Senior Standing Counsel for the State only relied upon the provision of Section 202(2) of the Act, in so far as it states that anything done including any rule or regulation made under the repealed enactment shall be deemed to have been done under the corresponding provision of the Karnataka Act and therefore Rule 167 of the Rules framed under the Coorg Regulation would continue in force until superseded by any fresh Rule enacted under the Karnataka Act. It is impossible to agree with this contention. The reason is obvious. Only such Rule or Regulation under the erstwhile repealed Coorg Regulation would continue after the repeal of the Regulation which will have a corresponding provision in the Karnataka Act.

We therefore, suggested to the learned Senior Counsel for the State Government to point-out any corresponding Rule or provision under the Karnataka Act which can supply a peg on which Rule 167 of the erstwhile Rule under Coorg Regulation can be hanged. He was not in a position to point-out any such corresponding provision in the Karnataka Act. Now, it may be noted that Rule 167 of the Rules framed under Coorg Regulation deals with the contingency where the holder of a privileged Bane wants to alienate privileged Bane held by him. There is Section 45 of the Coorg Regulation which provides that except with the permission of the Assistant Commissioner recorded in each case in writing under the general or special orders of the State Government, the alienation of lands of which the land revenue has been wholly or partly assigned or released by sale, gift, mortgage or otherwise would be prohibited. Therefore, Section 45 of the Coorg Regulation will have to be read with Rule 167 of the said Regulation. Both of them deal with the same subject namely the procedure by which a privileged Bane land holder can alienate his Bane land. There must be a corresponding provision on the same subject matter in the Karnataka Act of 1964 and the Rules framed hereunder. There is no such provision on this aspect. Consequently, Rule 167 framed under Coorg Regulation could not be saved u/s 202(2) as sought to be contended by learned Senior Counsel for the State. However, he placed implicit reliance on the Division Bench Judgment of this Court rendered in the case of T.N. MEDAPPA AND ORS. v. THE STATE OF MYSORE AND ANR. 1971(2) Mys.L.J. 520 which had denied the question whether Rule 167 of the Coorg Rules framed under Coorg

Regulation could continue to operate after the repeal of the Coorg Regulation. The Division Bench speaking through CHANDRASHEKHAR J., as then he was, has made the following observations:

"Neither Sub-section (2) of Section 79 of the Revenue Act which provides for continuation of the privileges in Bane lands nor any other provision of the Revenue Act, is inconsistent with Sub-rule (1) of Rule 167. Nor has it been shown that any rule has been made under the Revenue Act superseding that sub-rule. Hence, Sub-rule (1) of Rule 167 continues to operate notwithstanding the repeal of the Regulation and the liability of an alienor of Bane land to pay Nazarana, continues to be valid."

As we have held that Sub-rule (1) of Rule 167 is not ultra vires of the Regulation and that sub-rule continues to be in force even after the repeal of the Regulation, it follows that the impugned notice Ex.B., and the impugned Government Order, Ext.D, were in accordance with law."

26. Now, it is obvious that neither the Clause-b of the Proviso to Sub-section 1 of Section 202 nor Sub-section 2 of Section 202 can be of any help to save Rule 167 as we have already shown earlier. No rights, privileges, obligations, liabilities, can be said to have been incurred by anyone or can be said to have accrued to any one under Rule 167 after the repeal of the parent Regulation. Similarly Sub-section 2 of Section 202 will not save Rule 167 as there is no corresponding provision in the Karnataka Act to which such a Rule can be attached. The Division Bench with respect has wrongly assumed that unless there is any inconsistent provision in the Karnataka Act, such a Rule can operate. That is not the language of Sub-section 2 of Section 202. On the contrary the language of that provision is only that Rule will be saved which has a corresponding provision in the Act, so far as the field on which it operates is concerned. As we have indicated earlier the field on which Rule 167 would operate is a field pertaining to alienation of privileged Bane lands by their holders. On this topic there is no corresponding provision in the Karnataka Act. It appears that the Division Bench with respect seems to have assumed that for the purpose of applicability of Section 202(2) the provision analogues to Section 24 of Karnataka General Clauses Act, 1899 operated. The said Section 24 reads as under:

"24. CONTINUATION OF ORDERS ETC., ISSUED UNDER ENACTMENTS REPEALED AND RE-ENACTED:-

Where any enactment is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed enactment, shall so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-

law made or issued under the provisions so re-enacted."

A mere look at the said provisions shows that if there is any express provision regarding orders, Rules, etc., issued or framed under repealed provision, in the repealing Act itself, then Section 24 of the General Clauses Act will not apply. In the present case there is an express provision providing otherwise as found in Section 202(2) of the Karnataka Act and consequently Section 24 of the Karnataka General Clauses Act cannot be applied. If it had applied, then it would have been possible to urge that the Rule under the repealed provision insofar as it is not inconsistent with the provision re-enacted may continue in force. But in the present case we will be governed by Section 202(2) which will not permit continuance of any Rule under the repealed enactment unless there is a corresponding provision in the repealing Act. It is difficult to appreciate how the Division Bench in the aforesaid Decision persuaded itself to hold that unless there is any inconsistent provision in the repealing Act the old Rule will apply. It is therefore easy to visualise that perhaps the Division Bench had in its view the provision of Section 24 of the Karnataka General Clauses Act without expressly stating so. As we have seen earlier Section 24 of the Karnataka General Clauses Act is out of picture. Consequently, it must be held that, with respect the Division Bench was in error when it took the aforesaid view in the case of T.N. Medappa and Ors. v. State of Mysore and Anr..

27. The upshot of this discussion is that Rule 167 of the Rules framed under the Coorg Regulation would not survive after the repeal of Coorg Regulation by Karnataka Land Revenue Act, 1964.

Point No. 2 therefore will have to be answered in the negative.

POINT NO:3.

28. That takes us to the consideration of the last question as to what reliefs can be given to the petitioner.

29. In view of our findings on Points No. 1 and 2 the petitioner will be entitled to the following declarations:-

(i) That the holder of Jamma Bane land whether privileged or unprivileged will have limited privileges in Bane lands which are attached to Jamma wargs for servicing which, they are held. Those limited privileges will be:

(a) to hold the Jamma Bane lands free of revenue;

(b) to utilize the said land for grazing of cattle;

(c) to take leaf manure from the trees for the purpose of utilising it for agricultural purposes on the wargs lands;

(d) to take fire wood and timber required for the agricultural and domestic purposes of Jamma Bane holders.

These are their limited privileges or rights which the Jamma Bane holder can

enjoy qua the Bane land. They will have no ownership rights over sub-soil nor the trees growing on these lands, nor will they be owners of the air-column above the surface of the soil.

(ii) It is also declared that the alienated Jamma Bane lands which have ceased to be appendage to the warg, for servicing of which they were earlier held and which are put under cultivation and are fully assessed to land revenue, will be held by the holders of such alienated Jamma Bane lands as holders of occupancies of unalienated fully assessed lands and such occupants will be entitled to all the rights and will be subject to all the obligations of occupant-holders governed by the provisions of Karnataka Land Revenue Act 1964 and the Rules made thereunder.

Now, so far as the reliefs prayed for in the Petition is concerned, the first prayer, prayer (a) in prayer Clause-13 deals with the declarations about the right of the Jamma Bane land holder in their lands; that prayer will stand granted in aforesaid terms.

So far as the prayer (b) is concerned, Annexures-D, E and F are sought to be quashed:

Annexure-D is a copy of a letter written by Revenue Commissioner & Secretary to the Government of Karnataka, Revenue Department, Vidhana Soudha, Bangalore, to the Deputy Commissioner, Kodagu District, dated 10.12.1981. It states that Bane lands including Jamma-Bane lands are Government lands and that Bane holders have no proprietary right over the Bane lands. That letter insofar as, it covers even alienated Bane lands which are fully assessed to land revenue and are under cultivation, cannot be sustained and is quashed. What he stated in the letter will be restricted and confined only to the rights of Jamma Bane land holders who are still occupying Jama Bane lands as such which are not under cultivation and are not fully assessed and only held as an appendage to the Jamma wargs by such Jamma Bane holder. Only in such lands which are privileged Jamma Banes or unprivileged Jamma Banes that the limited rights indicated in this Judgment will be available to the holders of such Jamma Banes.

So far as letter Annexure-E is concerned, it solicits some information from the Deputy Commissioners. No fault can be found in this connection and therefore the prayer for quashing Annexure-E is refused.

So far as prayer for quashing Annexure-F is concerned, it is seen that by Annexure-F the Deputy Commissioner, Kodagu District, has issued a direction to the Sub-Registrars functioning under the Registration Act not to register the sale deeds relating to lands held on Jamma tenures. It is obvious that such a direction cannot be issued by the Deputy Commissioner to Sub-Registrars who are functioning as statutory authorities under the Registration Act. Such directions, apart from being totally uncalled for, are without jurisdiction. The Memo Annexure-F is therefore quashed.

So far as prayer (b) is concerned, it stands granted accordingly.

So far as prayer (c) is concerned, it seeks for a direction to respondents 3 and 4 to transfer patta of lands regarding Survey No. 4/A of Tavalageri Village in favour of petitioner-1 who has purchased it from its original owner under registered sale deed. That prayer cannot be granted at this stage. It will be for respondents-3 & 4 to consider the question whether the transaction is a permissible one in the light of what is stated in this Judgment and the reliefs granted to the petitioners in connection with Jamma Bane lands and having examined that question respondents 3 and 4 will proceed in accordance with law in connection with the transfer of the patta of the land bearing Sy.No. 4/A of the Tavalgeri village which is sought to be transferred in favour of petitioner-1 on the basis of the registered sale deed.

Prayer "C" will stand granted to the aforesaid limited extent.

In the result the Writ Petition is allowed to the aforesaid extent with no order as to costs in the facts and circumstances of the case.