

(1968) 04 KL CK 0019

In the High Court Of Kerala

Case No : C.R.P. No's. 675, 676, 677, 678, 1174 and 1176 of 1966 and O.P. No's. 4668 and 4669 of 1968

Chori Ouso and others

APPELLANT

Vs

Sasoon Helegua and others

RESPONDENT

Date of Decision : 05-04-1968

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala Land Reforms Act, 1963 — Section 2, 2(38), 2(60), 31, 31(1)
Transfer of Property Act, 1882 — Section 10, 10(iii), 105, 108(b), 108(b)

Citation : (1968) KLJ 397

Hon'ble Judges : V. Balakrishna Eradi, J; T.S. Krishnamoorthy Iyer, J; M. Madhavan Nair, J

Bench : Full Bench

Advocate : M.K. Narayana Menon, C.S. Narayanan in C.R.P.675/66 and 676/66 677/66, 678/66, P.K. Kesavan Nair, K.K. Narayana Pillai in C. R. P. 1174 and 1175 of 1966, T.N. Snbramania Iyer and T.V. James, in O.P. No. 4668 and 4669 of 1966, for the Appellant; A.S. Krishna Iyer, A.K. Ramaseshadrinathan For respondents, in C. R. Ps. 675/66 677/66 and 678/66, S.K. Brahmanandan For respondents in CRP. 676/66, M.M. Abdul Khader For respondent in CRP 1174/66, P.N. Sankaranarayana Pillai For Respondent in CRP. 1175/66, M.K. Narayana Menon, M.P. Menon and C.S. Narayanan For respondents in O.P. 4668 and 4669 of 1966, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Krishnamoorthy Iyer, J.—The common question that arises in all the cases is whether a Varamdar defined in the latter portion of Section 2, sub-section (60) of the Kerala Land Reforms Act, 1963 (Act 1 of 1964) has got the right to file an application for the determination of "fair rent" u/s 31 of the said Act. Section 2 (13) of Act 1 of 1964 defines "fair rent" as meaning "the rent payable by a cultivating tenant u/s 27 or Section 33 of the Act. In the orders which are the subject-matter of C.R.Ps 675 to 678 of 1966 the Subordinate Judge took the view that the cultivating tenant has no such right. Though same question is

raised in C.R.Ps. 1174 and 1175 of 1966 the point was not raised before the appellate Judge. In the original petitions which challenge the orders of the Land Tribunal, Moovattupuzha, the Land Tribunal conceded the right to the "varamdar".

2. The latter portion of Section 2 (60) of the Kerala Land Reforms Act, 1963 (Act 1 of 1964), hereinafter referred to as the Act, defines "varamdar" as meaning the person who undertakes cultivation under a varam arrangement" and according to the: earlier part of the same provision "varam" means "an arrangement for the cultivation of nilam with paddy and sharing the produce, made between the owner or other person in lawful possession of the nilam and the person who undertakes cultivation under such arrangement, and includes the arrangements known as pathivaram, pankuvaram and pankupattom". According to Section 2 (38) of the Act, nilam means "land adapted for the cultivation of paddy".

3. Section 31 (1) of the Act enabling the cultivating tenant or any landlord to apply for determining the fair rent in respect of a holding reads:

The cultivating tenant or any landlord may apply, in such form as may be prescribed, to the Land Tribunal for determining the fair rent in respect of a holding.

S. 31(2) of the Act prescribes the procedure for dealing with the application. The determination of fair rent has to be in terms of Ss. 27 and 33 of the Act. The said provisions before their amendment by Act 9 of 1967 are in these terms:

S. 27 "Fair rent.....(1) The fair rent in respect of a holding shall be the rent payable by the cultivating tenant to his landlord and it shall be the rent calculated at the rates specified in Schedule III applicable to the class of lands comprised in the holding or the contract rent which ever is less.

Explanation-Where the fair rent in respect of a holding has been determined, under any law in force immediately before the 21st January, 1961, the fair rent so determined shall be deemed to be the contract rent for the purposes of this sub-section.

(2) Notwithstanding anything contained in sub-section (1), the fair rent in respect of a holding, where the cultivating tenant or an intermediary is holding under a small holder shall, at the option of the smallholder, be-

(a) the rent calculated at the rates specified in Schedule III applicable to the class of lands comprised in the holding: or

(b) where the fair rent in respect of the holding has been determined under any law in force immediately before the 21st January, 1961, such fair rent, or, where fair rent has not been so determined, 75 per cent of the contract rent:

Provided that the fair rent payable by a cultivating kanamdar or a cultivating customary verumpattamdar shall not exceed the michavaram payable by such

kanamdar or the rent payable by such customary verumpattamdar as the case may be

S.33. "Agreement as to fair rent. -Notwithstanding anything contained in the foregoing sections, it shall be competent for the landlord and the tenant to agree as to what shall be the fair rent payable in respect of the holding and, where such an agreement signed by the landlord and the tenant is filed with the Land Tribunal the Land Tribunal shall pass orders determining such agreed rent as the fair rent in respect of the holding:

Provided that the agreed rent shall not be the fair rent under S. 27, in respect of the holding:

Provided further that where there are intermediaries or other persons having an interest in the holding, the landowner, the cultivating tenant and all the intermediaries and other persons interested shall be parties to such an agreement:

Provided also that this section shall not apply to a case where the landlord is a religious, charitable or educational institution of a public nature.

Section 27(2) of the Act has been deleted by Act 9 of 1967

4. Section 31 of the Act insists that the determination of fair rent has to be done at the instance of the cultivating tenant or any landlord. It is therefore necessary to find out who is a cultivating tenant for the purpose of Section 31 of the Act.

5. "Cultivating tenant" defined in Section 2(8) of the Act means "a tenant who is in actual possession of, and is entitled to cultivate, the land comprised in his holding" The words "tenant", "possession", "cultivate" and "holding" occurring in Section 2 (8) the Act have also been defined in sub-section (57), (45), (7) and (17) of Section 2 of the Act.

6. In *Mohammed Ali v Ahammed Sait* (1967 KLT. 485) a Division Bench of this Court discussed the nature and extent of the rights of a varamdar under the provisions of Act 1 of 1964 in the nilam given to him for cultivation in connection with his right to maintain a complaint for criminal trespass against the owner. The head-note of the decision reads thus:

A varomdar has been salvaged and brought into the fold of the real tenant by S. 10. So the possession in relation to land must enure to his benefit also. It must necessarily follow that the legal incidents which flow from possession in relation to a "tenant" must enure to the varomdar also, since he too has been brought under the category. It is true that the status of a tenant is conferred on the varomdar by the device of a deeming provision but that does not disqualify him from claiming the benefits, rights and privileges that an ordinary tenant is entitled to claim under the Act. He is a "cultivating tenant" and the land held by him is a "holding" and he can apply to the Land Tribunal for fixation of fair rent and he has also the right under S. 53 to purchase the landlord's rights. His rights are

also heritable and alienable as is seen from Sec. 50. None of these incidents would attach itself to a licensee. It would, therefore, be improper to equate the varomdar with a licensee. The above decision did not decide the question raised before us but only assume without expressly deciding that a varamdar is a cultivating tenant and the nilam held by him is a holding.

7. A lease is not a mere contract but is a transfer of an interest in immovable property. Section 105 of the Transfer of Property Act defines lease as a transfer of right of enjoyment immovable property "for a certain time" or in "perpetuity" for consideration. The Section recognizes also a lease of immovable property in consideration of a share of crops. There was considerable discussion at the Bar regarding the incidents of a varam transaction and the status of a varamdar under the general law of the State as against the owner of the land which the former is cultivating. The fundamental conception of a lease is that it is the separation of the right of possession from ownership. Salmond in his book on Jurisprudence (eleventh edition by Glaville Williams) observed at page 464:

A lease, in this generic sense, is that form of encumbrance which consists in a right to the possession and use of property owned by some other person. It is the outcome of the rightful separation of ownership and possession. We have seen that possession is the continuing exercise of a right, and that although a right is normally exercised by the owner of it, it may in special cases be exercised by some one else. This separation of ownership and possession may be either rightful or wrongful, and if rightful it is an encumbrance of the owner's title.

8. In every lease there is an implied contract that the lessee will be put in possession of the land by the lessor. The term "lease" imports a transfer of an interest to enjoy the property. One of the essential conditions of a lease is that the tenant should have the right to the exclusive possession of the land. Ordinarily the test of exclusive possession determines, the character of a lease. The use of the word "enjoy" instead of "possess" in Section 105 of the Transfer of Property Act does not mean that no possession to the lessee is necessary to constitute a lease. The term "enjoyment" in the Section is used only for showing that a bare right to the usufruct is not a lease. Section 108 (b) of the Transfer of Property Act which deals with the duty of the lessor to put the lessee in possession of the property is however subject to the opening words of the Section under which the parties can exclude the operation of that clause. But that does not mean that the parties can agree that the lessee can have no right of possession. If the parties so agree, then the transaction will not be a lease. In *G-G. in Council v. Indar Mani* (AIR.1950 EP 296) a Division Bench of the East Punjab High Court said:

Now, from the definition of "lease" in S. 105, T.P. Act, 1882, it is clear that the essential feature of a lease is that it is a transfer of a right to enjoy immovable property for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised. Indeed, the fundamental conception of a lease is

that it is the separation of the right of possession from ownership and though the section uses the word "enjoy" instead of the word "possess" there is no authority for holding that it contemplates the exclusion of possession when it refers to enjoyment. The word "enjoy" must therefore, be taken to include possession. No doubt, S. 108(b) which deals with the lessor's duty to put the lessee in possession of the property, is subject to the opening words of the section under which the parties can exclude the operation of any particular clause by express contract. But this only means that the lessor's duty of putting the lessee in possession can be excluded by express contract. It does not mean that the parties can agree that the lessee is to have no right of possession. If they do so, then the transaction would not be a lease.

9. There cannot therefore be any doubt regarding the essential characteristics of a lease. The learned counsel opposing the aim of the varamdars relied on some decisions to establish the legal incidents of varam transaction that the interest of the varamdar is only to cultivate the land and share the produce, a varamdar has no possession or control of the land and that there is no transfer of any interest in the land in his favour. In Criminal R. P. 245 of 1104 22 T.L.J. 28) a Division Bench of the Travancore High Court took the view that a landlord who has let his land on pathivaram is in joint possession of the standing crop with the lessee. In Kunhayyappan v Chatha 9 Coch. L.J. 418 the view was taken by the Chief Court of Cochin that a pankuvaramdar has no possession of the land which he cultivates and that his true legal character is of a licensee. The decision in Kunhayyappan v Chatha IX Cochin. L. J. 418 was cited with approval by Raman Nayar, J. in Balan v State 1959 K. L. T. 885 (2). In Ouseph v Kunjathu 1951 KLT 44 a Division Bench of the Travancore - Cochin High Court held that "an agreement for the cultivation of land under which a person is to cultivate another's land and the two are to share the produce in certain properties may be a lease if there is an intention to transfer and interest in the property; but if there is no such intention such agreement cannot create a lease and the matter is as held in Brahnamoyee Baramani v Munsur, AIR. 1920 Calcutta 548, one purely of construction in each case". In Brahnamoyee Baramani v Munsur, A. I. R. 1920 Cal 548 it was decided that the contract between the parties was not a lease because of the absence of a covenant in the contract to pay rent and the absence of a clause creating an interest in the land in favor of the defendant. The contract was held to be only a profit sharing arrangement by which the defendant who cultivated the land undertook to give a share of the profits to the owner and keep the remainder as his remuneration. These decisions do not lay down that all varam transactions are only licenses and not leases. The question must depend upon the construction of the contract between the parties.

10. But here we are only concerned with the rights of a varamdar as defined in S. 2(60) of the Act. It was pointed out that because of S. 2(60), S. 8, and S. 10(iii) of the Act a varamdar is a person having only a right to cultivate the land and that these provisions do not recognize any possession or right to possession of the land in the varamdar. In view of this, the submission was that a varamdar

is not a tenant and therefore not a cultivating tenant entitled to apply for fixing fair rent. Varam as already noticed is defined by the Act as an arrangement for the cultivation of nilam and sharing the produce made between the owner or other person in lawful possession of the nilam and the person who undertakes, cultivation under such arrangement. It was pointed out on behalf of the varamdar that it is not correct to say that the definition does not recognize any possession in the varamdar on the basis of the arrangement since S. 2(60) contemplates only the state of things at the time of entering into the arrangement. Under the definition clause no transfer of possession or no right of possession to the Varamdar is necessary for the creation of a varam arrangement. By the definition of varam and varamdar in S. 2(60) of the Act, it has to be held Varamdar is not a tenant.

11. But "tenant" defined in S. 2(57) of the Act includes a person who is deemed to be a tenant under S. 2, S. 8 and S. 10 (iii) of the Act. It is therefore necessary to reproduce those provisions:

S. 2(57) "tenant" means any person who has paid or has agreed to pay rent or other consideration, for his being allowed by another to possess and to enjoy the land of the latter and includes-

a....

b....

c

d...

e...

f....

g...

h...

i...

j. a person who is deemed to be a tenant under S.4, S.5, S.6, S.7, S.8, S.9 or S. 10.

S.8. "Certain persons who were cultivating land on varam arrangement to be deemed tenants,-Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of court, any person who, by virtue of the provisions of S. 6 of the Kerala Stay of Eviction Proceedings Act, 1957, was entitled to cultivate any nilam after the 11th day of April, 1957, and was cultivating the nilam at the commencement of this Act shall be deemed to be a tenant, notwithstanding the expiry of the term fixed under the Parana arrangement".

S.10, ""Certain other persons to be deemed tenants, Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of court, the following classes of persons shall be deemed to be tenants:-

(i) -

(ii)

(iii) a varamdar;

(iv)

(v)

A varamdar does not satisfy the definition in the body of S. 2(57) as a person allowed to possess and enjoy the land of another. But he is included in the definition of "tenant" by the device of an inclusive provision in S. 2(57) of the Act.

12. It is a well-known rule of interpretation that the word "include" or "includes" is used as a word of enlargement and ordinarily implies that something else has been included which falls outside the general language that precedes it and to add to the general clause a species which does not naturally belong to it. In Craies on Statute Law (Sixth Edition), page 212, it is observed thus:

There are two forms of interpretation clause. In one, where the word defined is declared to "mean" so and so, the definition is explanatory and prima facie restrictive. In the other, where the word defined is declared to "include" so and so, the definition is extensive. In the matter of the Petition of Nasibun (1882) 8 Cal 534, the court observed:

The word "includes" has an extending force, and does not limit the meaning of the term to the substance of the definition.

The Privy Council in *Dilworth v Commissioner of Stamps* (1899) A. C. 99 at 105 said:

The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.

In *Mellows v Low* (1923) 1 KB. 522 at 526, Mc. Cardie, J. observed:

In any view the word "includes" as used in para (g) is not a term of limitation or precise definition; it means what it says, -that it includes the matters thereafter mentioned: in other words, it is a word of enlargement rather than of restriction.

13. A person deemed to be a tenant under S. 8 or S. 10 (iii) of the Act is therefore a tenant under the Act. A varamdar is lit us a cultivating tenant if the expression "tenant" in S. 2 (8) is understood in the light of the definition clause in S. 2 (57) of the Act.

14. But the learned counsel opposing the claim of the varamdar submitted that in view of the qualifying words, with which S. 2 of the Act opens, a strict adherence to the definition clause in S. 2(57) of the Act to interpret the word "tenant" in S. 2(8) will lead to repugnance. To substantiate their contention it was pointed out that the two essential requisites emphasized by S. 2(8) of the Act, namely "actual possession" and "holding" are absent in the case of varam agreement and a varamdar cannot therefore be considered a cultivating tenant for the purpose of making an application for fixation of fair rent. The submission was that a varamdar defined in S. 2(60) has no "actual possession" of any land and the land he cultivates is not a "holding" and S. 2(8) of the Act is therefore not attracted.

15. S. 2(45) of the Act which defines the term "possession" reads thus:

possession in relation to land includes occupation of land by a person deemed to be a tenant under S.4, S.5, S. 6, S.7, S.8, S.9 or S.10 It was contended on behalf of the varamdar that since S. 2 (45) of the Act itself postulates occupation of land in the varamdar mentioned in S. 8 or S. 10(iii) of the Act, such occupation is actual possession of the land he is cultivating for the purpose of S. 2(8) of the Act. The counsel contending against the varamdar submitted that conferment of possession or right to possession of the nilam to the varamdar is not necessary for a varam agreement referred to in the Act and any occupation of the nilam by a varamdar cannot be inferred merely by the implications contained in S. 2(45) of the Act. It is true that S. 2(60) of the Act does not contemplate any transfer of possession or right to possession of the nilam in favor of the varamdar. If at all, S.2(60) of the Act only shows that even after the varam arrangement the varamdar has no legal possession of the land. But the said provision does not indicate that subsequent to the varam arrangement, a varamdar has not even any occupation in the nilam. The decision in *Parameswaran Kartha v Ouseph* 1958 KLT 359 relied on by the learned counsel for the owners only shows that a varamdar has no legal possession of the land he cultivates, that no interest in the land is created in his favour and that the varam arrangement does not amount to a lease under 3. 105 of the Transfer of Property Act. *Raman Nayar, J. in Dudachan v Sreenivasa Kini* 1963 KLT. 408 while considering the definition of "possession" under S. 2(4d) of Act IV of 1961 which is almost similar to S. 2(45) of the Act pointed out that the said provision makes

it clear "that a varamdar like any other licensee has only a right of occupation which is not possession in the legal sense of that word although it is called possession for the purposes of Act." In Ramanatha Aiyar's Law Lexicon of British India, the meaning of the term "occupation and possession" is stated thus:

Occupation includes possession as its primary element, but it also includes something more legal possession does not, of itself constitute an occupation. The owner of vacant house is in possession, and may maintain trespass against anyone who invades it; but as long as he leaves it vacant he is not in occupation; nor is he an occupier (per *Lush J. R. v. St. Pancrast* 2 Q.B.D. 588). There is a distinction between "occupation" and "possession", because there may be a legal or constructive possession where there is no actual occupation.

In *The Madras Anjuman Islamia of Kholwad v The Municipal Council of Johnnesburg* (1922) 31 M L T 114 their Lordships of the Judicial Committee said :

The word "occupy" is a word of uncertain meaning. Sometimes it denotes legal possession, in the technical sense, as when occupation is made the test of rateability, and it is in this sense that it is said in the rating cases that the occupation of premises by a servant, if such occupation is subservient and necessary to the service, is the occupation of his master (*The Queen v. Sparrell*, (1865) LRI Q.B.72),. At other times "occupation" denotes nothing more than physical presence in a place for a substantial period of time, as where a person is said to occupy a seat or how or where a person who allows his horses or cattle to be in a field or to pass along a highway is said to be the occupier of the field or highway for the purpose of S. 68 of the Railway Clauses Act, 1845 (*Dawson v. The Midland Railway Company*, (1872) LR 8. Exch. 8. and *Luscombe v Greatwestern Railway Company*. (1899) 2 Q.B. 313. Its precise meaning in any particular statute or document must depend on the purpose for which, and the context in which it is used.

A varamdar has to remain in the nilam to carry on the cultivation operations for a substantial period during the season for which he is given the right to cultivate. This is sufficient to establish occupation by the varamdar in the nilam. This occupation is what is recognised as actual possession by the definition of the term "possession" in the Act itself. It is not accurate to call a varam as a merely naked license. It is something more than a license. It is a license coupled with a grant.

16. It was also contended that if the term "holding" in S. 2(8) is construed in the light of the definition of that expression in S. 2(17) of the Act a varamdar cannot be included in the term "cultivating tenant" as the land he is cultivating is not a holding. It was pointed out that to constitute "holding" under S. 2(17) of the Act there should be a demise and in the case of varam there is no demise. S. 2(17) of the Act which defines "holding" reads:

holding" means a parcel or parcels of land held under a single demise by a tenant from a landlord and shall include any portion of a holding as above

defined which the landlord and the tenant have agreed, or are bound under S. 48 or otherwise to treat as a separate holding.

The word "demise" is not defined in the Act. No doubt, it is used commonly in India to denote a transfer by lease. But if the word "tenant" in S. 2(17) is interpreted in the light of the definition of "tenant" in the Act., the land in respect of which a varam right is given will be a holding under the Act. Further S. 2 of the Act is only subject to the qualifying clause "unless the context otherwise requires". Even if there is any inconsistency because of the definition of "holding" in S. 2(17) of the Act, the term "holding" in S. 2(8) of the Act will have to be given a meaning consistent with the context in which the term is used. It therefore follows that a "varamdar" defined in the latter part of S. 2(60) of the Act is a cultivating tenant as defined in S. 2 (8) of the Act.

17. The view we have taken gains support from the rates prescribed in Schedule III of the Act for fixing the fair rent in accordance with the terms of S. 27(1) of the Act. Item I(viii) in Schedule III deals with nilam where fishing is carried on for part of the year by a varamdar and the rate of fair rent provided in column (3) of Schedule III for this class of land is aggregate of rent fixed as for nilam and - of the gross annual income derived from fishing in such manner as may be prescribed. The rate of fair rent for the different classes of nilam is stated in item 1(i) to (ix) in Schedule III of the Act. S. 27 read with Schedule III of the Act envisages the determination of fair rent for the nilam cultivated by a varamdar as well.

18. S.13(1) of the Act deals with the right of the tenants to fixity of tenure. The section reads:

Notwithstanding anything to the contrary contained in any law, custom, usage or contract, or in any decree or order of court, every tenant shall have fixity of tenure in respect of his holding, and no land from the holding shall be resumed except as provided in Ss. 14 to 22.

The benefit of S. 13(1) of the Act is available to all tenants including cultivating tenants. In view of the definition of "tenant" in S. 2(57) of the Act the benefit should be available even to a person who is deemed to be a tenant under Ss. 8 and 19(iii) of the Act. Though at one stage of the argument some of the counsel appearing for the owners took up the extreme position that a deemed tenant under S. 8 or S. 10(iii) of the Act is not entitled to the benefit of S. 13(1) of the Act, the matter was not pursued by them. It is also not possible to contend that S. 2(57) of the Act has no application to interpret the expression "tenant" in S. 13(1) of the Act. An indication that a deemed tenant under S. 8 or S. 10(iii) of the Act is taken in by S. 13(1) of the act is given by the other provisions in the Act. S. 35 of the Act provides for rent payable to a landlord when Land Tribunal has not determined fair rent. The said provision reads thus:

S. 35. "Rent payable when Land Tribunal has not determined fair rent-Where in a case the rent payable in respect of holding has not been determined by the Land

Tribunal, either under S. 31 or S. 33, the landlord shall be entitled to receive and the tenant shall be bound to pay the rent that was payable immediately before the commencement of this Act.

Explanation.-For the purpose of this section, "the rent that was payable immediately before the commencement of this Act", in the case of varamdar shall mean the average of the share of the landlord in the produce for the three years immediately preceding such commencement, or, where the varamdar was not cultivating the land continuously for the said period of three years, the share of the landlord for the year in which the varadar, cultivated the land last, immediately before such commencement.

The Explanation to the section was relied on by the counsel for the varamdar to show that it implies that the varamdar has a right to have the fair rent fixed. On the other hand, the counsel for the owners submitted that there is no such implication. According to them, the Explanation to S. 35 of the Act only prevents the owners from realising from the varamdars any amount more than that fixed by S. 35. If so, the said provision will apply to the quantum of rent payable by a varamdar after the Act. The term "tenant" in S. 35 of the Act must therefore include also a person deemed to be a tenant under S. 8 or S. 10(iii) of the Act. If the term "tenant" in S. 35 is susceptible of that interpretation we do not find any reason to interpret the term "tenant" occurring in S. 13 (I) of the Act in a different manner. We are therefore of the view, that S. 13(1) confers fixity on a varamdar also. This view will gain strength if the history of legislation in regard to varamdar is traced from Act I of 1957 to Act I of 1964.

19. If a varamdar is entitled to fixity under S. 13 (1) of the Act the owner of the nilam should have a corresponding right to resume the land from the former as provided in Ss.14 to 22 of the Act. This is clear from Sec. 13(1) of the Act itself.

20. Ss.53 to 72 of the Act deal with the purchase of the landlord's right by cultivating tenants. S.53(I) of the Act reads:

Subject to the provisions of sub-section (2), a cultivating tenant (including the tenant of a kudiyruppu) entitled to fixity of tenure under S. 13, shall be entitled to purchase the right, title and interest of the landowner and the intermediaries, if any, in respect of the land comprised in his holding.

There is a proviso to this Section and since it is unnecessary for our discussion it is not repeated. S. 65 of the Act is a special provision regarding the purchase of the rights of a religious, charitable and educational institution of a public nature by a cultivating tenant. S. 65(2) fixes the annuity payable to the institution in consideration of the vesting in the Government of its right, title and interest in respect of a holding and the proviso to S. 65(2) of the Act reads:

Provided that where, in respect of a holding held by a tenant referred to in S. 4, S. 5, S. 6, S. 7, S. 8, S. 9, S. 10 or S. 11 there was no stipulation for payment of any rent immediately before the 21st January, 1961, the annuity shall be an

amount equal to 41/2 per cent of sixteen times the fair rent in respect of the holding determined under S.31.

The above proviso indicates that in respect of a "tenant referred to in S. 8 or S. 10 of the Act" the annuity payable has to be decided on the basis of fair rent determined under S. 31. If no fixation of fair rent is possible in the case of a varamdar the proviso to sub-section (2) of S. 65 will be unnecessary. The result is that it will not be possible to enforce the provisions of S.65 of the Act in regard to varamdars.

21. Again S. 73 of the Act which prescribes a method of discharge of arrears of rent accrued due from a tenant provides in the Explanation to sub-section (1) of S. 73 that "for the purposes of this sub-section, arrears of rent due from a varamdar shall be calculated on the basis of the average of the share of the landlord in the produce for the three years immediately preceding the commencement of this Act or, where a varamdar was not cultivating the land continuously for the said period of three years, the share of the landlord for the year in which the varamdar cultivated the land last immediately before the commencement of this Act. It will be remembered that this Explanation is almost similar to the Explanation to S. 35 of the Act. S. 73(1) of the Act opens with the clause "all arrears of rent accrued due from a tenant".

The expression "tenant" in view of the Explanation to the Section should necessarily include a person even deemed to be a tenant under S. 8 or S. 10 (iii) of the Act who is only the varamdar.

22. The above discussion shows that fixity of tenure in S. 13(1) of the Act is available to a varamdar also. The right of resumption under Ss. 14 to 22 is available to owner of the nilam against the varamdar. The right of surrender by a tenant under S. 51, purchase of landlord's right by cultivating tenants under Ss. 53 to 72, the right to discharge arrears of rent under S.73 and the prohibition of future tenancies under S.74 of the Act are intended to apply to a varamdar also. In all these provisions what we find is only the use of the specific expression "tenant" or "cultivating tenant". In none of these provisions we find the specific reference to "varamdar". The intention of the Act is clear that all the benefits conferred on a tenant are given to the varamdar as well. We therefore hold that a "varamdar" defined in the latter part of S. 2(60) is a "cultivating tenant" entitled to file an application for fixation of fair rent under S. 31 of the Act.

23. It is unnecessary to consider the contention raised on both sides regarding the scope and ambit of the legal fiction because of the declaration of a "varamdar" as deemed tenant under S. 8 and S. 10(iii) of the Act. The Act does not stop with merely declaring a "varamdar", a deemed tenant by those provisions but goes further and by the device of the inclusive definition such a person is included in the definition of the "tenant" in the Act itself. It is therefore unnecessary to consider the extent of the operation of the deeming provision in S. 8 and S. 10(iii) of the Act.

24. The Civil Revision Petitions and the Original Petitions have therefore to be disposed of in the light of our finding. The appellate Judge by the orders which are the subject-matter of C.R.Ps. 675 to 678 of 1966 disposed of the appeals only on the preliminary ground based on the competency of the varamdar to apply for fixation of fair rent and not on the merits. We therefore allow C.R.Ps. 675 to 678 of 1966 and remand L.T.A.S.Nos. 6 to 9 of 1965 to the file of the Subordinate Judge's Court, Cochin, for disposal on the merits.

25. In the view that we have taken we have only to dismiss C.R.Ps. 1174 and 1175 of 1966 and we do so accordingly. In the Original Petitions the petitioners therein who are the same filed Land Tribunal Appeals 33 and 34 of 1966 on the file of the Sub Court, Parur, against the orders of the Land Tribunal sought to be quashed in the writ petitions. Subsequent to the filing of the original petitions the appeals before the Sub Court, Parur, were dismissed because of the memo filed by the petitioners withdrawing them in view of the filing of the writ petitions. Since we have held that the application for fixation of fair rent by a varamdar is maintainable, in the exercise of our jurisdiction under Article 227 of the Constitution we set aside the orders dismissing Land Tribunal. Appeals 33 and 34 of 1966 and direct the Subordinate Judge of Parur to take back the appeals to his file and dispose of the same on the merits and in accordance with law. The Original Petitions are dismissed subject to these observations. We do not make any order as to costs in any of the cases.