

(1922) 01 MAD CK 0014
In the Madras High Court

Jarugumilli Brahmayya by mother and next friend
Rajeswaramma

APPELLANT

Vs

Challaghali Achiraju

RESPONDENT

Date of Decision : 24-01-1922

Acts Referred:

Madras Estates Land Act, 1908 — Section 6

Citation : AIR 1922 Mad 373 : (1922) 43 MLJ 229

Hon'ble Judges : Walter Salis Schwabe, J;Phillips, J;Oldfield, J;Devadoss, J

Bench : Full Bench

Judgement

Walter Salis Schwabe, K.C., C.J.—The question referred to the Full Bench is, ""Where a Zamindar makes a post settlement inam grant of a

portion of a village with both varams on a permanent kattubadi, is the grantee a landholder within the meaning of Section 3(5) of the Madras

Estates Land Act?"" It is not part of the duty of the Full Bench to answer hypothetical questions; and this question must be read, in the light of the

facts of the case, to mean ""where a Zemindar makes a post settlement inam grant of a portion of a village on "the terms of the document of

February 7th, 1875, Exhibit A, is the grantee a landholder within the meaning of Section 3(5) of the Madras Estates Land Act?"" By that document

the Zamindar of Pittapur assigned to the grantee a portion of the village with a cist of Rs. 58 in perpetuity and to be used,as the grantee pleased.

Before that date there had been a grant to another for a-terra on a cist of Rs. 158. Rs. 100 was stated in the document to be struck off as the

grantee proved himself worthy of the Rajah's favour and had been rendering services properly. It is not clear to me that by this document the

Zemindar granted both varams. The words "Melwaram" and "Kudiwaram" seem

to be properly used for a landlord's and tenant's share of the produce of land, and it also seems that these terms are, in their strict meaning, only properly applicable when the one bears a proportion to the other. The payment by the tenant of a fixed rent or cist is inconsistent with any such proportionate division; and I venture to doubt if the terms are properly applicable at all when a fixed rent is payable. They are, however, loosely used to represent the landlord's and the tenant's interests in the land, but this also must be qualified by adding the word hypothetical, because, if there is a fixed rent, it would seem that that is not necessarily the melwaram. In such a case, the melwaram is said to be the proportionate amount the landlord would receive according to the custom of the locality, if he, in fact, was receiving a proportion. Similarly, I am told that the kudiwaram is not what the tenant gets in fact, but what he would, by the custom of the locality, get. It is, however, said that in a case where there is a fixed rent only if the rent payable is the full rental value, it is properly described as melwaram and the tenant's right is only then properly called kudiwaram. This can hardly be correct, because ex hypothesi the melwaram, properly so called, is a proportionate amount and cannot be fixed, for a sum which in a full year may represent properly the proportion, in a lean year would not. It is to be observed that the word "melwaram" is not used in the statute and the word "kudiwaram" is used only once and then without, definition. Whatever may be the proper interpretation of the word melwaram, I cannot see that it can in this case be said to have been granted by the document. It was argued that, if Rs. 158 had been fixed as the rent, then the melwaram would not have been granted at all; but that as a rebate of the rent was granted in consideration of past services, it must be taken that the melwaram was granted to the tenant. I could understand the argument that a part of it must then have been granted, but I do not follow the argument that it was granted as a whole. Therefore I do not think the question as framed really arises.

2. The question to be decided turns on the definition of "landholder" in Section 3(5). In Section 3(2) there is a definition of estate and the definition does not include a portion of a village. A "landholder" is defined as a "person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any

transfer from the owner." The effect of the Act is to oust the jurisdiction of the Courts in respect of many matters between landholders and the actual cultivators; and it is" a well-known canon of construction that there is a strong leaning against construing a statute as ousting or restricting the jurisdiction of the ordinary Courts, and it follows that, if there are two meanings which could equally well be given to a statute by one of which the jurisdiction is ousted and by the other not, the construction to be adopted is the latter. There has been so great a difference of opinion among the Judges who have had to construe this Act that it is difficult to say that the section does not bear either of the two meanings, and it would be sufficient to rest my judgment, on the ground that this section is "open to both the constructions. But, in my judgment, the grantee of this property is not a person ""owning an estate or part thereof."" I think that the land is part of an estate, but, in my judgment, the grantee or, as he is called, ""minor inamdar"" does not own the estate but holds it in perpetuity for the payment of what is properly described as a fixed rent. Further it is not at all clear that the Zamindar has parted with all rights in the land other than that of receiving this fixed rent; for instance, the right to minerals probably remains in the Zamindar. Owner is not a word of art but an expression in common use. I think if the question were put, ""who is the owner of the land, - the Zamindar or Inamdar?"" , the answer would be, ""the Zamindar"". In taking the view that such an Inamdar is not a person owning the estate, I am supported by nearly all the Judges before whom this point had come.

In *Gadadhara Das Bavaji v. Suryanarayana Patnaik* I.L.R.(1921) M. 677, Ayling J., who has taken the opposite view to that which I am taking, puts it clearly thus: ""As regards the definition of "landholder" it may be conceded at once that, so long as the Zamindar reserves to himself a quit rent, the Inamdar cannot be regarded as the owner of the lands in the ordinary legal meaning of the term.

3. The question remains whether this Inamdar is a person entitled to collect the rent of this portion of the estate by virtue of any transfer from the owner. In my view, these words were introduced in order to bring in quite a different class of persons, such as, purchasers of part of an estate, mortgagees and what are called farmers of the whole or portions of an estate, and, in my judgment, were not aimed at persons in the position of

this grantee at all. I do not think it correct to say that this grantee is entitled to collect rent by virtue of any transfer. If there is any rent collected from any one else, it is not by virtue of the transfer but by virtue of some lease or other disposition of the property made by the Inamdar himself. It follows, in my judgment, that the answer to the question referred to the Full Bench read as, as I have stated above, it should be read, is in the negative.

Oldfield, J.

4. The question referred is difficult and the considerations arising are evenly balanced. I regret therefore that I cannot follow my Lord in adopting the presumption against a construction of the statute, which would oust the "jurisdiction of the Civil Courts, as in any material degree a basis for the decision. For the matter in issue is not only plaintiff's right to sue in one Court or another, although it is true that it is before us in that form. But our conclusion will determine further whether Section 6, Estates Land Act, regulates his relation with defendant, his tenant; and, if we hold that plaintiff is a landholder, defendant will be able to plead that he has a permanent right of occupancy in the land.

5. The question referred is set out in the judgment just delivered; and with all respect I am unable to deal with it in any form other than that, in which it is stated in the order of reference. For we are empowered by Appellate Side Rule 3 to express our opinion only on the question referred, the one alternative authorized being, what has not been suggested to us, a final decision of the case with or without rejection of the finding, on which the referring Judges were agreed and which they were competent to reach. In fact I feel no difficulty in connection with the wording of the reference, since the use in it of the expression ""both varams"" is unambiguous in its context. For, whatever meaning may in other connections be assignable to the terms ""varam"", ""melvaram"" and ""kudivaram"", the meaning attached to ""both varams"" by the referring Judges is clear, It is that expressed by one of them in one of the decisions with which we are concerned:

6. When we say that the grant was of both varams, we merely mean that the rights of the grantee were not limited by the necessity of respecting the rights of any person possessed of the kudivaram at the time of the grant.""
Gadadhara Das v. Suryanarayana Patnaik I.L.R.(1921) Mad. 667 .

Shortly a grant of both varams is a grant of the fullest right, which can be conceived as vested in the grantor.

7. The grant of both varams, which is the subject of the reference, is however further qualified by its description as a grant by way of inam. The

normal incidents of the inam tenure have, so far as we have been shown, never been the subject of any exhaustive judicial definition and in the

conflict of authorities, with reference to which this case comes before us, attention is directed almost exclusively to one of those incidents, the

liability of the inamdar to the grantor for quit rent. That liability was relied on in argument here and by Wallis, C.J, and Kumaraswami Sastri, J. in

Gadahara Das v. Suryanarayana Patnaik I.L.R.(1921) Mad. 667 and Spencer and Odgers, JJ. in Yeditha Bhupatiraju and Another Vs. Bhavaraju

Venkataratnam and Others, and it is material, not only with reference to the question of ownership, but also because there can be only one

occupancy right and therefore only one landholder and one ryot in respect of the same land, within the definition of the latter terms in Section 3(5)

and (15); and, if the quit rent payable by the inamdar to the grantor is rent, they, not (as defendant contends) the inamdar and his tenant will be the

landholder and ryot.

8. Of the cases cited in the judgments above referred to. Venkataswara Yattiappah Naicker v. Alagoo Mootoo Servagaren (1861) 8 M.I.A. 327;

Maharajah of Vizianagaram v. The Collector of Vizagapatam 27 M.L.J. 278 and Kshetrabaro Bissoyi v. Sobhanapuram Harikristna Naidu 20

M.L.J. 417, none seems to me with all respect relevant to the question of ownership, since the first and second do not deal with a grantee's rights

generally, but only with his right to separate registration under a special Act in order to establishment of his separate responsibility for his share of

the peishkush, the judicial Committee in the first statedly restricting the effect of the language it used-and the third decided with reference to

Madras Act III of 1895 only that the permanent lease of a service inam was not a transfer of ownership, and not anything as to the character of the

inam itself. And they are of no greater assistance with reference to the character of an inam quit rent. For the grant in the first is described as a

perpetual lease; in the third discussion of the incidents of the inam leased was unnecessary; and in the second, although an inam with a quit rent was

in question and they are referred to as a perpetual lease and a favourable rent in the judgment, the distinction, with which we are now concerned,

would not have affected the conclusion.

9. That distinction has been recognised by authority and can be traced in the history of the law, In *Suryanarayana v. Appa Row* I.L.R.(1892)

Mad. 40 relied on by Spencer, J. in the judgment above eked, it was no doubt held generally that an inamdar was the tenant of his grantor for the

purpose of Act VIII of 1865, the law then in force. But in *Lakshminarayana v. Venkatrayanam* ILR (1886) M. 116 the decision was that

inamdars, who are not cultivating tenants, are not subject to the ordinary obligation of tenants, to exchange pattah and muchilika. These decisions

were however superseded on the passing of the present Estates Land Act, in which by Section 3(11)(c) rent was defined as including for the

purpose of various sections and without distinction between different descriptions of inamdar ""quit rent, jodi, poruppu and the like payable by an

inamdar as such to the landholder""; and the fact that it was then thought necessary to include quit rent in the definition by specific reference

indicates an intention that it should not be regarded as rent in the ordinary sense or with reference to Section 3(5) and (15) or Section 6, but in

order only to make the remedies available against the inamdar, which the specified sections provide. Lastly by the amending Act of 1909, which

was given retrospective effect, Section 3(11)(c) was expunged; and the proper construction of the change is in my opinion, not that the content of

the substantive definition of rent was, without alteration in its terms, enlarged, but only that the right to the remedies, conceded by the law in its

original form, was withdrawn. Consistently with this view Spencer and Krishnan, JJ., held in *Singarazu Venkata Subramaniyam v. Rajah of*

Venkatagiri (1919) 11 L.W. 523 with reference to the application of Section 61 that quit rent is not rent, as defined in Section 3(11) in its present

form. Quit rent and rent alike can be expressed only in money; and the former is not necessarily merely the latter reduced. The right of the grantor

to it may not be identifiable with any known to modern English tenancy law and the use of the term ""quit rent"" in this connection may be obsolete in

England; but an analogy with it may be found in the quit rent, payable on an English estate in fee simple on the commutation of an original liability

for service. William's Law of Real Property, 22nd Edition, 55, 58. The law standing thus, the liability of the inamdar for quit rent need not be regarded as inconsistent with his character as a landholder under the Act. There are ordinarily however, it was not disputed at the hearing, other incidents of the tenure, which are equally important, the inability of the grantee to alienate inconsistently with the terms of the grant and the right of the grantor to reenter consistently with them; that is in the case of a personal inam such as we are concerned with at present, on failure of heirs to the grantee or in the case of a service inam in default in the performance of service, On the question whether in the case before us there is such a right of re-entry the referring Judges are silent. But, if the reference does relate to inam subject to these incidents, there may be some reason in a country, in which estates subject to reversionary right, such as a Hindu widow's, are common, for regarding the ownership contemplated in Section 3(5) as comprehensive and as unaffected by the rights of re-entry or reversion above referred to. It is however unnecessary to pursue these considerations, because I have come to the conclusion that an inamdar with both varams of a part of a village is in any case a landholder u/s 3(5), because he is a person entitled at least to "collect the rent by virtue of a transfer from the owner or his predecessor in title." That such an inam grant confers rights in the property granted short only of ownership, including the right to enjoy it in every ordinary way, either directly or through other persons admitted as tenants was not disputed before us and has not been doubted in any previous decision. Such a grant would therefore ordinarily carry with it the right to collect rent from tenants after their admission: and I accordingly deal next with the special considerations, on which plaintiff's argument has mainly turned and which arise from the facts that his grant is of both varams and of a part only of the estate. Those considerations are, as I understand them, that the legislature has by Section 3(2) (d) refused to apply the Act to villages outside the large estates specified in Section 3(2)(a)(b)(c), where the grant consists in both varams, in pursuance of a principle, which must be followed in the construction of other provisions including Section 3(5) and (11) and cannot be abandoned on the ground that a part only of a village is in question. With all respect, the answer to this is firstly that the recognition of any such principle by the Legislature cannot be inferred from the materials available,

when it could easily have been expressed and when in fact, as Wallis, C.J. admitted in *Gadadhara Das Bavaje. v. Suryanarayana Patnaik* 41

M.L.J. 97 the treatment of a large class of cases in Section 3(2)(e) is irreconcilable with it. Mere conjecture (and nothing more definite has been

offered us regarding the nature of the inams contemplated by the draftsman in Section 3(2)(d) and the reasons for his apparent failure to place

minor and major inams of the same description on the same footing) can serve no useful purpose. The language, with which we are directly

concerned, that of Section 3(2), is unambiguous and nothing in it gives affirmative support to the construction, by which it is proposed to correct it.

Such support is, however, it is urged, to be found in Section 3(5), because the words ""by virtue of any transfer from the owner"" restrict its

application to transferees under mortgages with possession or other documents, which confer directly the right to collect rents and exclude grantees

of both varams. But such a Construction has not been justified by reference to use of similar words in a similar sense in other statutes; and it is not

in my opinion possible to hold that the very general language employed was intended to impose a restriction, which could have been, but was not,

expressed or is in any degree inapplicable to grantees, whose grants are transfers from the owner, entitling them to enjoy the land firstly by

admitting and subsequently by collecting rent from those, who are to carry on the cultivation. Spencer J. in *Yeditha Bhupatiraju and Another Vs.*

Bhavaraju Venkataratnam and Others, was pressed by the anomaly involved in regarding the transferee as collecting rents from himself, although

Ayling, J. in *Gadadhara Das Bavaje v. Suryanarayana Patnaik* 38 M.L.J. 342, opined that it would be pedantry to speak of his doing so. If I may

expand the meaning of the latter, it is that no necessity to speak of his doing so can arise, because there can be no question of the application of the

Act at the; time, when the kudivaram is granted or until tenants have actually been admitted. Taking this view, I hold in accordance with the current

of authority referred to by Sadasiva Aiyar, J. in his judgment in *Gadadhara Das v. Suryanarayana Patnaik* 38 M.L.J. 342 that the latter portion of

Section 3(5) is applicable to grantees, such as plaintiffs, because they are entitled to collect the rents of a portion of an estate, as defined in Section

3(2)(a).

10. It remains to refer to two other provisions of the Act, the explanations to Section 6 and the exception to Section 8 relied on by Kumaraswami

Sastri, J. in *Gadadhara Das v. Suryanarayana Patnaik* 38 M.L.J. 342 as preventing an inamdar, who has acquired an interest in the kudivaram,

from losing his right therein by the grant of permanent tenancy to his sub-tenants, the learned judge adding that ""it was never the intention of the

legislature that persons who acquired rights of permanent occupancy or who acquired them by virtue of the inam grant, should lose the benefit,

simply because they get an interest in the melvaram as well"". These sections and the explanations of them are undoubtedly difficult of construction;

and it is a question whether the explanation to the former and the first clause of the latter can be reconciled, *Vide Muthu Reddi and Others Vs.*

Muthu Venkatapathi eddi and Another, . But with all deference, the exception to Section 8 is not now and was not in the case before the learned

Judge in question, because Section 3(2)(d) was not and is not applicable, and the only other provision dealing with the simultaneous acquisition of

the rights of the landholder and occupancy ryot is Section 8(1), under which the person acquiring these rights is to hold as a land-holder. On the

other hand, if it is permissible to refer to the policy of the Act as collected from these sections, the result of such reference is clearly against plaintiff.

For u/s 8(3) the merger of the occupancy right under Sub-section (1), Sub-section (2) not being at present in question, Is not to have the effect of

converting ryoti land into ""home farm land""; and it is evident that the refusal to recognise a grantee of both varams as a landholder would enable the

zemindar, the original owner of the estate, to convert all available vacant land into land, to which the provisions of Section 6 would be inapplicable

and which would be indistinguishable from ""home farm land,"" by transferring both varams to persons under his control. It is no doubt no conclusive

reason for refusing to give a particular interpretation to a statute, that such interpretation would facilitate evasion of its provisions. But it is at least

reason for hesitation before that interpretation is adopted.

11. For these reasons I would answer the reference in the affirmative, holding that the grantee is at least entitled to collect the rent of a portion of

an estate within the meaning of the latter part of Section 3(5).

Phillips, J.

12. The question that has been referred to us is as follows: ""Where a Zamindar makes a post settlement inam grant of a portion of a village with

both varams on a permanent "kattubadi, is the grantee a landholder within the meaning of Section 3 Clause 5 of the Madras Estates Land Act?

Before referring this question, the two learned Judges who referred it considered the language of the grant and decided that it was not a permanent

lease on a favourable rent and that it was a grant in inam with both varams of the land. In fact Odgers, J. says ""for some reasons I wish it had been

possible for me to hold that Exhibit A amounted only to the grant of a lease at a favourable rent, but I think the terms of the grant must be

construed against this view"". It is in my opinion somewhat questionable whether it is open to this Bench to disregard this finding of the referring

Judges as they had already determined the point them-selves. Assuming however that it is open to us to do so, I must agree with them that the

grant is not a permanent lease. The grant admittedly is of ryoti land within the Zemindari of Pithapur which is an estate within the meaning of

Section 3 Clause (2)(a) of the Madras Estates Land Act. A quit rent was imposed upon the grantee and it is contended that this is in fact a rent

reserved to the owner and that the grant is merely a permanent lease on favourable terms. I think it is clear that quit-rent is not rent within the

meaning of the Estates Land Act. Under the Act as originally passed "rent" included Yodi, Kattubadi, Poruppu and the like payable by the

inamdar as such to the landholder and these terms are equivalent to the English word "quit rent." This provision was omitted by virtue of the

Amending Act of 1909 and now rent does not in terms include payments such as these. This amendment of the Act seems to me to exclude such

payments from the definition of rent. Even in English law, it is recognised that an estate in fee simple may be liable to pay quit rent (vide Williams on

Real Property, page 55) and in this country I think it must be recognised that grants in inam are not really in the nature of leaseholds. There are

various kinds, sometimes granted free of any payment such as Sarvamanyam, sometimes on payment of half assessment such as ardhmanyam and

sometimes an arbitrary sum is fixed for payment or it may be that services are to be rendered. "Inam" in itself means a gift. Inam tenure appears to

me to be in the nature of a ""grant"" varying in its terms. We see that under the Enfranchised Inams Act of 1862 the Government surrendered its

reversionary rights to the inamdars in consideration of an equivalent annual emit rent and I do not think that an enfranchised inam can be deemed to

be a mere leasehold estate. The question as to the nature of the estate held by the inamdar, I will consider in dealing with the definition of

"landholder." It is not contended that the holding with which we have to deal is one within the meaning of Section 3(1) of the Estates Land Act but

the contention for the Respondent is that it forms part of an estate within the meaning of Clause 5 of that section. I do not think much purpose will

be served in interpreting its language by any reference to the intention of the legislature for that is not by any means clear from the Act itself and we

see that in many instances it is very difficult to reconcile the language of one section with another, for instance Section 6 (explanation) and Section

8(1). It is suggested that the definition of "estate" is more important than the definition of "landholder." When the Legislature framed its definition of

"estate" it meant to include all the lands with which the Act was meant to deal. According to the preamble, the Act is one to amend and declare the

law relating to the holding of land in estates in the Presidency of Madras, It cannot be disputed that it deals with holdings of lands situated within an

estate and not merely with holdings of complete estates. The person mainly dealt with under the Act is what is called a ryot and he is a person who

holds for the purpose of agriculture ryoti land in an estate. I do not therefore think that we must attach more importance to the definition of "estate"

than to the definition of "landholder" with whom and with whose relations to his tenants the Act is mainly concerned. When we come to the

definition of "landholder", we find that it means a person owning an estate or part thereof and includes every person entitled to collect the rents of

the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title. The appellant inamdar in this case is

certainly not a person owning an estate within the definition of Section 3 Clause 2 and it is argued that he is not the owner of part thereof. The

lands which were granted to the inamdar in this case were admittedly ryoti lands in a permanently settled estate and undoubtedly form

geographically a part of the estate. The question turns therefore upon the meaning of the word "owning." In construing this section, Wallis, Chief

Justice, in *Gadadhara Das v. Suryanarayana Patnaik* 38 M.L.J. 342 was of opinion that when and so long as a full owner in making a grant

reserves an interest to himself, as by way of rent, he and his successors continue to be owners, no matter how insignificant may be the interest he

reserves to himself. He relies on a case reported in *Maharaja, of Vizianagaram v. The Collector of Vizagapatam* 27 M.L.J. 278, to which he

himself was a party. That case was concerned with a deed granting a mokhasa patta and it was held that the grant did not amount to transfer of

ownership so as to enable the grantee to have his lands separately registered under Act I of 1876. In that case reliance was placed on the decision

of the Privy Council in *Venkateswara Yettiappah Naicker Alagoo Moottoo Servagaren* (1861) 8 M.I.A. 327, but the Privy. Council were dealing

with a case of permanent lease and also the question of registry. The question really in my opinion is whether the word "owning" under Clause 5

must necessarily mean owner of every conceivable right in the estate or whether the present inamdar to whom a grant of the land was made subject

to a payment of quit rent to the Zamindar can be deemed to be owner. In two cases recently decided by the Privy Council in *Suryanarayana v.*

Patauna 36 M.L.J. 585, and *Upadrashla Venkata Sastrulu v. Divi Seetharamudu* 37 M.L.J. 42, it was held that a grant in inam in the absence of

any restrictions must be deemed to be grant of the land itself subject to the existing rights of occupancy. In the latter case their Lordships

considered the question whether the grant was a grant of the land revenue alone to a person not having permanent right of occupancy or whether it

vested in the grantee the whole proprietary interest in the property, and they came to the conclusion that the inam grant carried with it not the land

revenue alone but the whole proprietary interest in the property. These two cases were no doubt cases where the grant was made free of any

payment but I do not think that reservation of payment to the grantor can alter the nature of what is granted. In the present case the land is assigned

to the grantee who is to bring the land to profit as he pleases, and peacefully and hereditarily enjoy the same, the only reservation being that a

"Sist", as it is called, of Rs. 58 is fixed thereon. There is no doubt in this case that it was not a grant merely of the melvaram for admittedly it was a

grant also of the kudivaram or tenant's interest in the land, and I am prepared to hold that it was a grant of the Zamindar's proprietary interest. It

may also be argued that the Zamindar himself is not the absolute owner for we see under Regulations 25 and 31 of 1802 that the right of the ruling

power to the estate was set out and by Regulation 25 of 1802 permanent grants were made to Zamindars but the Government reserved an annual

payment to itself which in such cases is termed peishkush. The Government did reserve something to itself and if we apply the argument that any

interest reserved by the owner prevents the grantee from obtaining ownership, it follows that the Zamindar himself has not full right of ownership. In

construing the word "owning", therefore, I do not think that we can say that it means the ultimate owner who has reserved even the smallest right

for himself. What, I take it, must be reserved is not a mere payment but some actual interest in the land itself. In the present case, quit rent cannot

be recovered by the Zemindar under the summary provisions of Act 1 of 1903 and although it may be called a charge upon the land it does not in

my opinion amount to an interest in the land. I may also refer to Tadikonda Buchi Virabhadrayya Iyyavaru and Others Vs. Sonti Venkanna alias

Venkata Ramudu and Others, , where it was held that the ownership vested in the Agraharamdar and that only the right to payment of annual jodi

was reserved to the Zemindar. If I am right in this contention, it is unnecessary to decide the further question as to whether the appellant comes

within the meaning of the second part of the definition of "landholder", namely a person entitled to collect the rents of the whole or any portion of

the estate by virtue of any transfer from the owner. It is not suggested that in this case there has been any actual transfer of the right to collect rent

and that is not what the section says. It depends on whether by virtue of any transfer from the owner the transferee is entitled to collect the whole

or any portion of the rents of the estate. No doubt the definition of rent is "whatever is lawfully payable in money or in kind or in both to a

landholder for the use or occupation of land in his estate for the purpose of agriculture". Importance has been attached to the use of the word "his"

before "estate", but it appears to me that this is rather straining the meaning of the section, It is not denied that a mortgagee in possession would be

a person entitled to collect the rents and would be a landholder within the meaning of the Act. It cannot be said that he has a right to collect the

rents of his own estate, The right to collect rent is a right to collect rent which but for the transfer would be payable to the landholder in his (namely

land-holder's) estate. We see that rent is whatever is lawfully payable for the use or occupation of land. Before this present grant was made, the

land-holder was collecting the rents on this land which is ryoti land. u/s 4 of the Act a land-holder is entitled to collect rent in respect of all ryoti

land in the occupation of a ryot, u/s 27, if a question arises as to the amount of rent payable by a ryot, he shall be presumed, until the contrary is

shown, to hold at the same rate land under the same conditions as in the last preceding revenue year. u/s 28, in all proceeding u/s this Act the rent

or rate of rent for the time being lawfully payable by a ryot shall be presumed to be fair and equitable. The Act therefore contemplates the

existence of lawful rent payable on all ryoti lands - and this implies the right of the land-holder to collect such rent. If however he transfers the land

this transfer carries with it the right to collect rent from any tenants then on the land or who may subsequently be admitted; therefore by virtue of

the transfer the grantee obtains the right to collect the rent on a part of his (that is the land-holder's) estate. In the present case the grantee being

entitled to both varams, he is entitled to admit tenants to possession and to collect from them rent which rent would previously have been payable

to the grantor. I would therefore hold that the appellant does, come within the definition of "land-holder" under the Act.

13. If I am wrong in my interpretation of the word "owning" in this clause, it would follow that the holder of the Estate defined in Clause 2(e) would

not be a land-holder within the meaning of the Act. This is recognised by Wallis, Chief Justice, in his Judgment and he gets over the difficulty by

saying that such estate holder must be recognised to be a land-holder for purposes of the Act not because he comes within the definition as owning

an estate but because it would be repugnant to the subject or context to apply the strict definition of land-holder to such cases. The difficulty is

obviated by my interpretation of "owning". Prior to the passing of Act I of 1908, Act VIII of 1865 was applicable to estates, finder that Act minor

inamdars were definitely declared to be land-holders. Until 1908 therefore the appellant in this case would have been deemed to be a land-holder,

and in the new Act he is not specifically excluded. If he is not a land-holder he must be a ryot for admittedly lie was granted permanent right of

occupancy. The definition of a "ryot" is a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the

landholder the rent which is legally due upon it. It has been held consistently that an inamdar is not a tenant for many purposes. Vide

Lakshminarayana Panlulu v. Venkatrayanam I.L.R.(1897) Mad. 116, Lakshminarasimham Pantulu v. Sree Sree Ramchandra Mardaraja Devo 24

M.L.J. 290, and Rajah, of Venkatagiri v. Subbiah (1921) 44 M.L.J. 530 .

14. There are also very many provisions in this Act which cannot be applied to the appellant if he is a ryot. For instance, u/s 26(3) the rent now

payable by him could be enhanced by the successor of his grantor and the Zamindar can apply the provisions of the Act for compelling the

payment of the quit rent but it is not seriously argued that these provisions are applicable in the case of appellant. Therefore the only other

alternative is that the appellant and his holding are not at all governed by the Act and that the land granted to the appellant is withdrawn from the

provisions of Estates Land Act. It is admitted that the land was ryoti land when the grant was made and I think it would be necessary for the

appellant to show very clearly that that land had. altered its character by being given by the landholder to the present grantee. The policy of the Act

is apparently to treat land which has once been "ryoti" as always "ryoti". The estate holder has no right to convert it into his own private land, for

there are many incidents attaching to the occupation of "ryoti" land which do not apply to the occupation of other lands, the land-holder being very

much restricted in his dealings with the former, I should therefore need very strong evidence that the landholder can alter the nature of a ryoti land

within his estate by making a grant of it to a dependant or other person on favourable terms. I do not think that it is necessary in the view I hold to

discuss this question at greater length and I only deal with the point because it is not irrelevant to consider whether there is any other position other

than that of land-holder which Appellant can hold to obtain a result by a process of exclusion.

15. I would therefore answer the question in the affirmative, and I do so the more readily because it is in accordance with the earliest decisions of

this Court, and I think that in cases of ambiguity like this the principle of "stare decisis" is of importance and that any change should be left to the

legislature if it so thinks ht.

Devadoss, J.

16. The question referred to the Full Bench is ""where the Zamindar makes a post settlement mam grant of a portion of a village with both varams

on a permanent kattubadi, is the grantee a land-holder within the meaning of Section 3(5) of the Madras Estates Land Act"". The appeal in which

this question arose is against the decree of the Temporary Subordinate judge of Cocanada who reversed the decree of the District Munsif of

Peddapuram holding that the post settlement minor inamdar popularly known as Darmila Inamdar was a landholder and that the Civil Court had no

jurisdiction to entertain a suit instituted by him to recover possession of the land with mesne profits from a tenant holding over after the expiry of the

lease. In order to decide this question - Is post settlement minor inamdar a landholder or not? - the object and scope of the Estates Land Act has

to be considered.

17. The Act was the outcome of agitation against the ruinous litigation that went on for years on account of the unsettled nature of the tenures in

Zamindaris in this presidency. The Zamindar in almost all cases tried to make out that the tenants were merely tenants at will, while the latter

contended that they were permanent tenants not liable to be evicted at the will of the Zamindar. In order to remedy the evil some changes were

deemed necessary, and the most important of them was the introduction of the principle that the tenants occupying what is known as ryoti land in

proprietary estates on the date of the passing of the Act acquired by virtue of Section 6 of the Act occupancy right in the holding. It can be

gathered from the general scope of the Act that it was the intention of the legislature to give permanency of tenure to tenants. Under the old Act

VIII of 1865 the definition of the term "landholder" included "Inamdars". The question whether minor Inamdars come within the purview of the

present Act is not free from difficulty. It is agreed on all hands that minor Inamdar is not an estate holder within the meaning of Section 3(2) of the

Act. The difference of opinion is only as regards his being a landholder or not within the meaning of Section 3(5). My answer is he is not. Without

taking into consideration the policy of the Act or the circumstances which led to the passing of the Act, it is abundantly clear from the definition of

the word "estate" in Section 3(2) that the legislature intended to exclude minor inams from the operation of the Act. The word "estate" is

elaborately and clearly defined in Section 3(2) as follows:

Estate"" means.-

- (a) any permanently settled estate or temporarily settled Zamindari;
- (b) any portion of such permanently settled estate or temporarily settled Zamindari which is separately registered in the office of the Collector;
- (c) any unsettled palaiyam or jagir;
- (d) any village of which the land-revenue alone has been granted in inam to a person not owning the kudivaram thereof, provided that the grant has been made, confirmed or recognised by the British Government, or any separated part of such village;
- (e) any portion consisting of one or more villages of any of the estates specified above in Clauses (a), (b) and (c) which is held on a permanent under -tenure.

18. Clause (d) makes it quite clear that in order to bring the inams within the operation of the Act the following conditions are necessary: (1) it must be a village; a whole village or a separated part of such village; (2) land revenue alone should have been granted as Inam; (3) that the grantee was not the owner of the kudivaram at the time of the grant; (4) the grant is recognised or confirmed by the Government. The minor inam does not fulfil any of these conditions.

19. It is argued that the legislature in enacting Clause 5 overlooked the definition of estate in Clause (2). Is it likely that the legislature which took care to exclude minor inams from Clause 2(d) of Section 3 would have framed the definition of "landholder" in such a way as to include within its ambit minor inams? It is contended that the legislature is capable of such lapses, but such an argument cannot hold good with regard to the Estates Land Act. It is a well known principle of interpretation of statutes that the Sections of an enactment should be construed as far as possible so as not to make the provisions of the enactment inconsistent with one another. That construction should be adopted which would make the enactment a reasonable and workable one. The landholder is denned thus: Landholder means a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent Court, or of any provision of law. That is, the landholder is one owning (1) an estate (2) or part of an estate (3) or entitled to collect the rents of the whole or any portion of the estate. There

cannot be a part of an estate unless the whole is an estate. It is urged that a minor inam situated within the ambit of a Zamindari is part of an estate, The fallacy of the argument lies in this. It is not the physical situation that is contemplated by the section. If that was so it may, with equal reason, be contended that every ryot's holding is part of an estate for it is situated within the Zamindari. The word "estate" does not mean land but all the rights, liabilities and duties attaching to or incidental to certain classes of tenure as defined by Section 3(2). The words "part of an estate" have been put into the definition of landholder so as to include the transferee of a portion of the estate either by operation of law or by act of parties. An Inamdar is not a transferee of the whole or any portion of the estate. A minor Inamdar pays some amount to the Zamindar which amount is variously termed jodi, kattubadi, poruppu, quit-rent, etc. The transfer from the owner contemplated by the clause is not a transfer of the rent of a fraction of each holding, but of the whole rent of an estate or a portion of the estate. A minor inamdar therefore does not come within the last part of Clause 5.

20. In this connection it is necessary to consider some other provision of the Act in order to see that the term landholder was not intended to include minor Inamdar. Section 6 introduces a radical change in favour of the tenant. Under Madras Act VIII of 1865 the tenant was not given any occupancy right which he did not previously possess. In almost every case before the Courts the tenants contended that they had occupancy rights and the Zamindar or Estate-holder that they were only tenants at will. By Section 6 all persons in occupation of ryoti land on the date of the passing of the Act or who were let into occupation by the landholder after the passing of the Act became occupancy tenants. The minor inamdar; in most cases is possessed only of a few acres of land and it could not have been the intention of the legislature to deprive him of the tenant's right the moment he let in somebody to cultivate the land, Most of the minor inams are to Brahmins or to people of other classes who are not tillers of the soil and the construction of the Act so as to include them within the operation of Section 6 would not only work a great hardship but would be repugnant to several other provisions of the Act. When land was granted as Inam the obvious intention of the grantor was to enable the grantee to

enjoy the produce of the land. The contention that the Zamindar by granting an inam on a favourable tenure makes the grantee a landholder is

repugnant to the idea of the grant of the land to the Inamdar. By explanation to Section 6 a person owning kudivaram right does not lose it by

subsequently holding the land as landholder. If, a Zamindar grants as inam kudivaram right to a person and subsequently by another document

grants a melvaram right or a portion of it, the Inamdar does not lose his kudivaram right. If the grant is made by the same document it is said that

the Inamdar does not acquire thereby the kudivaram right, Such a construction is repugnant to the terms of grant and is unreasonable. The

exception to Section 8 gives a clue to the interpretation of Clauses 2 and 5 of Section 3 of the Act. In the case of an inamdar coming under Clause

2(d) of Section 3, the acquisition of him by of the kudivaram right in any land either before or after the passing of the Act makes such land cease to

be a part of the estate. If the Inamdar is the grantee of both the varams he is not an estate holder. If he is the grantee of the melvaram alone and he

subsequently acquires kudivaram right also the land in respect of which he has both the varams ceases to be part of the estate. If that be the

intention of the legislature as is apparent from the sections, is it reasonable to contend that the legislature framed the definition of landholder so as to

include a minor inam within its purview? No doubt we have to see what the words of Clause 3 of Section 3 import, but in interpreting that clause

we have to give it such meaning as is consistent with what follows and what precedes it. If two constructions are possible that construction should

be adopted which would not conflict with the meaning of what precedes and what follows. This is also consistent with the general scheme of the

enactment. In *Colquhoun v. Brookli* (1889) 14 A.C. 493 at p. 506, Lord Herschel says: "It is beyond dispute too, that we are entitled and indeed

bound when construing the terms of any provision found in a statute to consider any other, parts of the Act which throws light upon the intention of

the legislature and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart

from the rest of the Act". In the course of the answer to a question submitted to the Judge of the King's Bench Court by the House of Lords Best,

C.J. observes: "The intent of the legislature is not to be collected from any particular expression but from a general view of the whole of an Act of

Parliament." : 3 Bingham 193 at page 196. How statutes should be construed is put succinctly by Lord Haldane in *Inland Revenue Commissioners*

v. Herbert (1913) A.C. 326 : My Lords, in approaching the controversy as to the meaning of these sections, I think it worth while to recall a

principle which ,must always be borne in mind in construing Acts of Parliament, and particularly legislation of a novel kind. The duty of a Court of

law is simply to take the statute it has to construe as it stands, and to construe its words according to their natural significance. While reference may

be made to the state of the law, and the material facts and events with which it is apparent that Parliament was dealing, it is not admissible to

speculate on the probable opinions and motives of those who framed the legislation, excepting in so far as these appear from the language of the

statute. That language must indeed be read as a whole. If the clearly expressed scheme of the Act requires it, particular expressions may have to

be read in a sense which would not be the natural one if they could be taken by themselves. But subject to this, the words must be given their

natural meaning, unless to do so would lead to a result which is so absurd that it cannot be supposed, in the absence of expressions which are

wholly unambiguous, to have been contemplated". Blackburn J. (afterwards Lord Blackburn) observes in *Rein v. Lane* L.R. 2 Q.B. Cas. 144 "It

is, I apprehend in accordance with the general rule of construction in every case, that you are not only to look at the words but you are to look at

the context, the collocation, and the object of such words relating to such a matter, and interpret the meaning according to what would appear to

be the meaning intended to be conveyed by the use of the words under such circumstances. "The principle that ought to guide the Court in

construing statutes is clearly laid down by Coleridge, J in. *In the matter of the Parish of St. Pancras* 6 Ado and Ell. Vol. 6 p. 7 : "It is, in my

opinion, so important for the Court, in construing modern statutes, to act upon the principle of giving full effect to their language, and of declining to

mould that language, in order to meet either an alleged convenience, or an alleged equity, upon doubtful evidence of intention, that nothing will

induce me to withdraw a case from the operation of a section which is within its words but clear and unambiguous evidence that so to do is to fulfil

the general intent of the statute; and also that to adhere to the literal interpretation is to decide inconsistently with other and over - ruling provisions

of the same statute. When the evidence amounts to this, the Court may properly act upon it; for, the object of all rules of construction being to

ascertain the meaning of the language used, and it being unreasonable to impute to the legislature inconsistent intents upon the same general subject

matter, what it has clearly said in one part must be the best evidence of what it has intended to say in the other; and, if the clear language be in

accordance with the plain policy and purview of the whole statute, there is the strongest reason for believing that the interpretation of a particular

part inconsistently with that, is a wrong interpretation. The Court must apply in such a case the same rules which it would use in construing the

limitations of a deed it must look to the whole context, and endeavour to give effect to all the provisions enlarging or restraining, if need be, for that

purpose, the literal interpretation of any particular part"". Again Lord Selbourne lays-down the rule thus. ""The more literal construction ought not to

prevail, if it is opposed to the intentions of the legislature, as apparent by the statute; and if the words are sufficiently flexible to admit of some other

construction by which that intention will be better effectuated"". Caledonian Railway Co. v. North British. Railway Company (1881) 6 A.C. 114 .

In discussing the effect of Section 23 of the Bankruptcy Act of 1869, Earl Cairns says: ""It is said that the 23rd section of the Act of 1869

produces, this result, and I admit freely that the section seems to me capable of that construction. No doubt if you read it literally it does seem to

provide that, ""When any property of the bankrupt acquired by the trustee under this Act consists of land of any tenure burdened with onerous

covenants,"" ""the trustee may, by writing under his hand, disclaim such property, and upon the execution of such disclaimer the property disclaimed

shall"" ""if the same is a lease, be deemed to have been surrendered on the same date"" - ""the date of the order of adjudication"". It says, ""shall be

deemed to have been surrendered,"" it does not say ""shall be surrendered"" but there shall be a statutory fiction gone through, the result of which is

that the lease shall be deemed to have been surrendered on that date. It is possible that that may mean that to all intents and purposes, as between

all persons, persons actually concerned in the bankruptcy and those not so concerned, it shall be a surrendered lease and shall be altogether out of

the case. But on the other hand is that the only interpretation? For that purpose your Lordships, I think, must consider what the object of this

provision is. Why is it that there is this statutory fiction introduced? The section obviously is not one which has been prepared with much care or

skill, or which she was indeed that the persons who were preparing it had fully present to their minds the various cases with which they had to deal.

But is this necessarily the only construction of which the Act admits? I say that we must look to what the purpose is. Now I take it that the purpose

of this section, and indeed the purpose of the whole statute, is in the first place to clear and discharge the bankrupt in cases where it is proper that,

he should be discharged from liability; in the next place to facilitate as early as possible the distribution of the property which is to be divided

among the creditors and the winding up of the bankruptcy; and in the third place, to protect the trustee from any liability to which he might be

subject and to which he ought not to be subject beyond what is necessary for the purpose of accomplishing the two prior objects. If therefore the

statute can admit of any construction limited to these particular objects, we must consider whether that is not a construction preferable to the first

to which I have referred. The first construction requires us, if the section is taken literally, to do that for which there is no motive, and as to which

there can be no explanation given, that is to say to destroy the rights and property of third persons, without accomplishing any beneficial object

whatever for the purpose of the bankruptcy. * * * Where there are two constructions, the one of which will do, as it seems to me, great and

unnecessary injustice, and the other of which will avoid that injustice, and will keep exactly within the purpose for which the statute was passed, it

is the bounden duty of the Court to adopt the second and not to adopt the first of those constructions." Hill v. East and West India Dock Co.

(1884) 9 A.C. 448.

21. I have stated the principles of construction of statutes at some length in order to show what the duty of the Court is in interpreting the

provisions of an enactment which are either not quite clear or which are opposed to other provisions as well as to the general scheme and policy of

the Act as gathered from the Act itself. A literal interpretation of the term landholder so as to include minor Inamdar is opposed to the clear

intention of the legislature as can be gathered from the definition of the word "estate" and the provisions of Sections 6 and 8 of the Act. The only

interpretation consistent with the provisions of the rest of the Act is the one adopted by Wailis, C.J. in his judgment in *Gadadharadas Baraji v.*

Suryanarayana Patnaik 38 M.L.J. 342. It is unnecessary to examine in detail all the cases on the point. There is considerable authority for the

position that a post settlement minor Inamdar is not covered by the Estates Land Act and there is equally considerable authority against that

position. I propose to deal only with the earliest and the latest of the authorities for the contention that such inams are within the purview of the Act.

In *Appalanarasimmha v. Sanyasi* I.L.R.(1914) Mad. 33, *Sundara Aiyar and Sadasivaier, JJ.* held that a Darmila inamdar was a landholder within

the meaning of Section 3(5) of the Estates Land Act though the inam may not be an estate u/s 3(2). It appears from the judgment that what was

granted as inam in that case was only a portion of the melvaram right and not the kudivaram as well. The learned Judges observe at page 35: ""The

plaintiff is undoubtedly a person entitled to collect rents of a. portion of the estate of Sangam Valasa as an under tenure-holder. If he is liable to pay

kattubadi to the Zamindar, is such a person holding under him and entitled to collect the rents of a portion of the Zamindari a lessee or a

usufructuary mortgagee of the whole or portion of the Zamindari? The definition of landholder clearly includes every person entitled to collect rents

of any portion of an estate by virtue of any transfer. The plaintiffs by reason of transfer of the lands in question from the Zamindar as an under-

tenure are persons entitled to collect the rent of the land."" ""It is plain from the reasoning of the learned judges if there was no rent to be collected at

the time of the grant, in other words, if there was no tenant on the land having an occupancy right, it may be presumed that they would not have

held that the inamdar was a landholder. The definition of rent in Clause 11 of Section 3 makes it apparent that there should be at least two persons,

the person entitled to receive it and another bound to pay it. When the Inam is of land in which no one has an occupancy right, what is granted is

the kudi right plus a portion of the inelvaram right. It would be doing violence to the language to say that an Inamdar who gets vacant land occupies

a dual position, that of a kudivaradar and melvaramdar. Can it be said that the kudivaram right could never be his because the inam includes a

portion of the rent or melvaram? Who is the owner of the kudi right when the inamdar cultivates the land himself? Can it be contended that the

moment he asks any one to cultivate it because he could not do it himself the right which was as it were dangling in the air pounces upon the cultivator and clothes him with the rights of an occupancy tenant by virtue of Section 6? When a minor inam is of land-I am strongly of opinion that the grantor does confer upon the grantee the kudivaram right and forgoes a portion of his melvaram right, The grantee owning the kudivaram right can never lose it by his acquiring a portion of the melvaram right. The view taken by the learned Judges has been followed in several cases. This view is dissented from in several cases which it is unnecessary for my purpose to examine at length. It is sufficient to deal with the Full Bench case of Gadadhara Das Bavaji v. Suryanarayana Patnaik 41 M.L.J. 97, where the majority of the Full Bench held that where a Darmila Inamdar is a grantee of both varams he is a landholder within the meaning of Section 3(5). Ayling, J says at page 687. ""We must assume that at the time of the Inam grant, the lands were either lying waste or were cultivated by a (mere) tenant at will - in any case there was no one in possession whose occupation could not be terminated at the pleasure of the Zamindar or his grantee. What was the effect of the grant? It seems to me it was to place the inamdar in the same position as his grantor, subject only to the liability to pay quit rent which prevented him from being viewed as an owner of an estate. * * * in fact when we say that the grant was of both varams we merely mean that the rights of the grantee in respect of the land were not limited by the necessity of respecting the rights of any person possessed of the kudivaram at the time of the grant."" With the greatest possible respect I am unable to agree with this view. When a grant is made of both varams, the grantee becomes possessed of both and he cannot be divested of what vests in him by his letting some one into possession of the land. The land does not lose the character of the ryoti land but the Inamdar is a ryot himself with the right to pay not the full melvaram but something in lieu of it according to the terms of the grant. The fallacy underlying the argument is the assumption that by the grant of Inam the Zamindar transfers his right to the Inamdar in respect of the land granted. If you look at the grant as one of land itself the assumption becomes groundless. The learned Judge was evidently pressed by the authority of the decisions referred to by him at page 686 which perhaps made him take the view he did. Would it be reasonable to say that the legislature intended

to keep out of the purview of the Act inams consisting of one or more villages when both varams are granted but not inams of only a portion of a

village though the grant is of both varams? After the decision of the Full Bench reported in Gadadhara Das Babaji v. Suryanarayana Patnaik I.L.R.

(1921) Mad. 677 a Bench of this Court consisting of Spencer and Odgers, J.J. held in Yeditha Bhupatiraju and Another Vs. Bhavaraju

Venkataratnam and Others, that a minor inamdar possessing kudiveram as well as melvaram right was not a landholder within the meaning of

Section 35). As my view is the same as that of Wallis. C.J. and Kumaraswami Sastri J. in Gadadhara Das Bavaji v. Suryanarayana Patnaik ILR

(1921) Mad. 677 and that of Spencer and Odgers, JJ. in Yeditha Bhupatiraju and Another Vs. Bhavaraju Venkataratnam and Others, I do not

think it necessary to examine their arguments in detail.

22. It has been argued by Mr. Ramadoss that if an inam is a grant of melvaram at a favourable rate it is liable to be determined u/s 23 on the death

of the grantor. The inams stand on a different footing from the tenancies created u/s 26. The inam is a gift for charitable, religious or other good

purpose or for past services and therefore the provisions of Section 26 do not apply to inams. No doubt an inam grant might be challenged by the

successor of the grantor if the law governing the grantor and the successor permits such a course. It is unnecessary to decide the question raised by

Mr. Satyanarayana whether a minor inamdar is a ryot within the meaning of Section 3(15).and whether the jodi or kattubadi he pays is rent within

Clause 11 of Section 3. On a full consideration of the cases as well as the relevant provisions of the Act, I come to the conclusion that where a

Zamindar makes a post settlement inam grant of a portion ""of the village with both varams on a permanent kattubadi, the grantee is not a

landholder within the meaning of Section 3(5) of the Madras Estates Land Act.

23. I therefore answer the question ref