
(1971) 08 MAD CK 0002
In the Madras High Court

K. Gopalachari and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 06-08-1971

Acts Referred:

Pudukottai (Settlement of Inams) Act — Section 2(11)

Citation : (1972) ILR (Mad) 5 : (1972) 85 LW 170 : (1973) 1 MLJ 90

Hon'ble Judges : V.V. Raghavan, J

Bench : Division Bench

Judgement

V.V. Raghavan, J.—This batch of writ petitions relate to the validity of the Tamil Nadu Inam Estates (Abolition and Conversion into

Ryotwari) Amendment Act (XXIII of 1969). The allegations in each of these writ petitions are almost the same and for the sake of convenience

we set out the allegations in W.P. No. 6 of 1970. The petitioner owns in Perungudi Vattam, Thirumayam Taluk, Pudukottai Division, Tiruchirapalli

District punja, and nanja lands of an extent of 25 acres known as Kadayakudi alias Vichitraraya Raghunatha samudram. There lands were

acquired by the joint family of which the petitioner was a member by purchase from the alienees of the original inamdars or their descendants. The

petitioner got the above lands for his share at the partition in the joint family.

2. In the year 1888 Pudukottai Darbar framed rules for the settlement of inams known as Pudukottai Inam Settlement Rules, 1888 similar to the

Madras Inam Settlement Rules, 1859. Under the said Pudukottai Inam Rules, inams were converted into assessed lands on enfranchisement and

permanent pattas were issued in respect of such lands. The prescribed assessment was payable to the Government direct and not through any

intermediary. The petitioner's inam lands having thus been enfranchised, the petitioner was paying the assessment thereon to the Government. The petitioner's contention is that these lands are ordinary freehold lands. While so, the Pudukottah State was merged in the State of Madras on 3rd March, 1948. Thereafter, Pudukottai (Settlement of Inams) Act (XXIII of 1955) was passed to provide for the settlement of inams in the merged territory of Pudukottai in the State of Madras. u/s 2 of the Act, all the inams in the merged territory of Pudukottai which were granted, confirmed or recognised by any former ruler of that territory, and which have continued as inam up to the commencement of the Act, have been recognised and confirmed as inams by the State Government. Section 3 provides that all lands held on inam tenure at the commencement of the Act in the merged territories of Pudukottai shall be settled in accordance with the principles laid down in the rules and orders contained in the Standing Orders of the Board of Revenue for the time being applicable to the settlement of inams in the rest of the Madras State. Subsequently, the Madras State levied full assessment on all lands in the merged territory and the petitioner's lands also became fully assessed. In 1963, three enactments namely, the Madras Inams Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1963), the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act (XXX of 1963) and the Madras Inams (Supplementary) Act (XXXI of 1963), were passed. Act (XXVI of 1963) provides for the acquisition of the rights of landholders in inam estates in the State of Madras. Act XXX of 1963 provides for the acquisition of the rights of inamdars in minor inams in the State of Madras and the introduction of ryotwari settlement in such inams. Act XXXI of 1963 provides for the determination of questions whether any non-ryotwari area in the State of Madras is or is not an existing inam estate, a part village inam estate, a minor inam or whole inam village in Pudukottai. The petitioner and persons similarly situated like him made applications for the grant of ryotwari pattas in respect of such lands which they claimed to be in their possession. In some cases ryotwari pattas were issued and in other cases proceedings were pending. While so on the representation by ryots of the Pudukottai area, the State of Madras appointed a Special Officer with a view to make an investigation into the character of lands held as inams in the Pudukottai territory. The Special Officer on examination

recommended 116 part inam villages to be brought within the purview of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari)

Act (XXVI of 1963). Accepting the recommendation, the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Amendment Act

(XXIII of 1969) was passed. The aforesaid Act received the assent of the President on 14th November, 1969 and it was published in the Fort St.

George Gazette on 21st November, 1969.

3. In the present batch of writ petitions the petitioners seek to attack the validity of the Tamil Nadu Inam Estates (Abolition and Conversion into

Ryotwari) Amendment Act (XXIII of 1969) on the following grounds : (1) The Pudukottai inam estate having vested in the Government, on

enfranchisement it was no longer an estate on 16th February, 1963 when Madras Act XXVI of 1963 came into force and Madras Act XXVI of

1963 as modified by the impugned" Act is inapplicable to such lands. (2) In the guise of an amendment the impugned law really takes away the

benefit which already accrued to the petitioners under Madras Act XXX of 1963 and it is thus a legislative device to deprive the Inamdar of his

right to get a patta under Madras Act. XXX of 1963 and the impugned law is a piece of colourable legislation offending the petitioner's

fundamental rights under Articles 19 and 31 of the Constitution. (3) The impugned enactment is unconstitutional, as there is. no public purpose to

warrant the enactment; nor does it satisfy the requirements of Article 31 (2) of the Constitution. (4) The impugned law not being a law for

acquisition of land by the State or acquisition by, the State of any estate or any rights therein on the extinguishment or modification of any such

rights, Article 31-A of the Constitution has no application.

4. The Deputy Secretary to Government, Revenue Department, has filed a counter affidavit on behalf of the Tamil Nadu Government supporting

the validity of the impugned enactment The principal contentions put forward on behalf of the Government are : The enfranchisement under the

Pudukottai Inam Rules, 1888 cannot take away the inam character of the lands, as it is only subject to the concession still attached to the grant

which is not completely extinguished. As a result of the representation from ryots that part villages under Act XXVI of 1963 should not be treated

as minor inams, the Government appointed a Special Assistant Settlement

Officer in G.O. Ms. No. 1559, Revenue, dated 6th September, 1967, for the purpose of reinvestigation into the character of inams in Pudukottai area and for examining whether any area in Pudukottai satisfied the definition of part village inam estate as defined u/s 2 (11) of Madras Act XXVI of 1963 and more particularly the inams notified under Act XXX of 1963. On the report of the officer, the grants included in Schedule I-A to the impugned enactment were made. The intention of the Legislature in excluding the inams from being disputed under Act XXXI of 1963 is mainly due to the fact that the tenure of the inams was subject to a detailed enquiry by the Inam Settlement Officer appointed under the Pudukottai (Settlement of Inams) Act, 1935 and reinvestigation by the Special Assistant Settlement Officer appointed for the purpose. (2) The impugned enactment is only ancillary to Act XXVI of 1963 so as to bring the 116 inam estates treated wrongly as minor inams without proper basis quite contrary to the tenure of the inam. (3) Article 31-A of the Constitution saves the impugned legislation from attack on the ground of constitutional transgression based on Articles 19 and 31 of the Constitution.

5. Mr. Vedantachari who appeared for the petitioners, before dealing with the question, traced the history of the various enactments relating to abolition of inams in Tamil Nadu. The first enactment referred to by him is Madras Act XXVI of 191-8 which dealt with inams which fell u/s 3 (2) of the Madras Estates Land Act, 1908. The second enactment, Act XXVI of 1963 relates to inams which became estates under the amendments to the Madras Estates Land Act in 1936 and 1945. The third enactment, Act XXX of 1963, deals with minor inams. The fourth enactment Act XXXI of 1963, provides a machinery for the determination of the question whether any non-ryotwari area is or is not an existing inam estate, a part village inam estate, a minor inam or a whole village in Pudukottai, We shall now deal with the relevant provisions of the aforesaid enactments. We are not concerned in the present case with inam estates as defined in Section 3 (2)(d) of the Madras Estates Land Act to which alone the Madras Estates (Abolition and Conversion into Ryotwari) Act 1948, applies, and therefore we do not propose to deal with the Abolition Act, 1948. Section 2 (4) of Act. XXVI of 1963 defines ""Existing inam estate as meaning an inam village which became an estate by virtue of the Madras

Estates Land (Third Amendment) Act, 1936. Section 2 (7) defines

inam estate"" as meaning an existing inam estate or a new inam estate. Section 2 (9) defines ""new inam estate."" as meaning a part village inam estate

or a Pudukottai inam estate. Section 2 (11) defines ""notified area"" in relation to an inam estate. Section 2 (11) defines ""part village inam estate"" as

meaning a part of a village (including a part of a village in the merged territory of Pudukottai) the grant of which has been made, confirmed or

recognised by the Government. Explanation 1 (b) to Section 2 (11) is relevant and it runs as follows:

Where a grant as an inam is expressed to be only in terms of acreage or cawnies, or of other local equivalent, the area which forms the subject-

matter of the grant shall not be deemed to be a part village inam estate.

Section 2 (14) defines ""Pudukottai inam estate"" as meaning an inam village in the merged territory of Pudukottai and specified in Schedule I and

includes such other whole inam village in the said territory as the Government may, by notification from time to time specify. The inams which were

meant to be brought under this enactment were 1936 inams and part village inam estate or Pudukottai inam estate. Act. XXVI of 1963 came into

force on 2nd June, 1965. The effect of the notification of the inam estate under the said Act is that the entire inam village shall stand transferred to

the Government and vests in them free of all encumbrances. Section 9 of the Act provides for the grant of ryotwari pattas to a landholder in the

case of an existing inam estate and also in the case of a new inam estate. Section 10 deals with lands in respect of which a ryot is entitled to

ryotwari patta in the case of an existing inam estate and also in the case of a new estate. The other provisions contained in Act XXVI of 1963 are

more or less of the same pattern as those in the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. Under Act XXX of 1963,

the rights of inamdars to minor inams in the State of Madras were sought to be acquired with a view to introduce ryotwari settlements in such

inams. Section 2 (5) defines ""inam"" as meaning a grant of melwaram in any inam land or a grant of both the melwaram and the kudiwaram in any

inam land which grant has been made, confirmed or recognised by the Government. ""Minor inam"" is defined in Section 2 (9) and the relevant

portion of the definition contained in Section 2 (9) (c) (iii) with which we are

concerned, reads as follows:

any inam recognised and confirmed u/s 2 of the Pudukottai (Settlement of Inams) Act, 1955 (Madras Act XXIII of 1955), but not including a new

inam estate as defined in Clause (9) of Section 2 of the Inam Estates Abolition Act and situated in the merged territory of Pudukottai.

The vesting of minor inams in the Government is u/s 3 (b). Sections 8 and 9 deal with the grant of ryotwari pattas to every person who is lawfully

entitled to the kudiwaram in the inam land, immediately before the notified date. As already stated Act XXXI of 1963 provides for the

determination of questions whether any non-ryotwari area in the State of Madras is or is not an existing inam estate, a part village inam estate, a

minor inam or a whole inam village in Pudukottai. In 1965 Madras Act XI of 1965 was passed amending Madras Act XXVI of 1963. Section 2

of Act XXVI of 1963 was amended by omitting the words "'and includes such other inams in the merged territory as the Government by

notification from time to time specify'". After Section 73 of the principal Act, namely, Act XXVI of 1963, Section 73-A was added conferring

power on the Government by notification from time to time to include in Schedule I any whole inam village in the merged territory of Pudukottai.

The consequence of such inclusion was also stated therein. The amending Act further provided for substitution of a new schedule for the existing

Schedule I to the principal Act. The need for further amending the principal Act, Madras Act XXVI of 1963, is clear from the following statement

of Objects and Reasons accompanying the Bill which became Act XXIII of 1969:

The Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1963), applies to all iruwaram inam estates, part village inam

estates and certain whole inam villages in the merged territory of Pudukottai specified in Schedule I of the Act. There have been repeated

representations to the Government by the ryots of Pudukottai area that most of the inams which have been dealt with under the Madras Minor

Inams (Abolition and Conversion into Ryotwari) Act, (XXX of 1963) are part inam villages and they should also be brought within the scope of

Tamil Nadu Act XXVI of 1963. The Inamdars also preferred counter representations contending that even the villages already brought within the

scope of Tamil Nadu Act XXVI of 1963 should be taken away from its purview.

The Government considered both the representations and appointed a Special Officer to investigate into the tenure of these inams in Pudukottai area. The Special Officer, after a thorough examination of the whole matter, recommended that 116 part inam villages will have to be brought within the purview of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1963). The Government have decided to accept the recommendation of the Special Officer and to bring these 116 part inam villages within the purview of Tamil Nadu Act XXVI of 1963 and to amend the Act suitably.

All these 116 part inams which are proposed to be brought within the purview of Tamil Nadu Act XXVI of 1963 are now treated as minor inams.

They have vested in the Government under the provisions of the Madras Inams (Abolition and Conversion into Ryotwari) Act (XXX of 1953), on the appointed day under that Act. The question is as to how the proceedings already taken or pending under Madras Act XXX of 1963 should be

treated. The Government have decided that the amending legislation should be deemed to have come into force in respect of these part inams on

the appointed day under Madras Act XXX of 1963 subject to a proviso that, where in respect of any such inam estates the operation of the Act

has been stayed or interrupted, then the date from which the Government are in uninterrupted possession should be deemed to have come into

force in respect of such inam estate. It is also proposed that every order passed in any proceeding taken under Madras Acts XXX and XXXI of

1963 in respect of any such estate shall be deemed to be of no effect and any such proceeding pending on the date of the publication of any

proposed Act should abate and the amount paid, if any, under Madras Act XXX of 1963 to any person should be recovered with interest as if it

were an arrear of land revenue.

6. The impugned Act contains six sections. Section 3 amends Section 2 of Act XXVI of 1963 by the addition of the words ""other than a

Pudukottai inam estate specified in Schedule I-A"" after the words "" in relation to an inam estate "" in Clause (10) of Section 2 and also the addition

of Section 10-A defining ""notified date"" in relation to a Pudukottai inam estate specified in Schedule I-A as meaning 15th February, 1965. Section

2 (11) is also amended by insertion of the words ""but not including such of the

inam areas in the said territory as are specified in Schedule I-A

after the words ""merged territory of Pudukottai"". Section 4 of the impugned Act amends Section 73-A of Act XXVI of 1963 by substituting the

words ""and every order passed in any proceeding taken under that Act in respect of that inam village shall be deemed to be of no effect and if any

proceeding taken under that Act is pending on the date of such inclusion, such proceeding shall abate"" for the words ""and every proceeding taken

under that Act and pending in respect of that inam village shall abate"". Section 5 of the impugned Act seeks to insert a new Section 73-B in Act

XXVI of 1963 and it is to the effect that the provisions of Acts XXX and XXXI of 1963 shall be deemed never, to have applied to a Pudukottai

inam estate specified in Schedule I-A, that every order passed in any proceeding taken under the Acts in respect of that inam estate shall be

deemed to be of no effect, and that if any proceeding under the Act is pending on the date of the publication of Act XXVI of 1969 in the Fort St.

George Gazette, such proceeding shall abate. Section 75-B also provides for recovery of the amount paid under Madras Act XXX of 1953 as if it

were an arrear of land revenue. Section 6 of the impugned Act inserts Schedule I-A in Act XXVI of 1963 giving inam area with reference to title

deed numbers or survey numbers.

7. The first question raised by Sri Vedantachari that the inam estate having vested in the Government on enfranchisement there was no longer an

inam estate on 16th February, 1963 for application of Madras Act XXVI of 1963 and the amendment thereto, has been fully considered by this

Court in Sri Vedaranyaswaraswami Devasthanam and Others Vs. State of Madras and Others, . Following the above decision we hold that the levy

of assessment cannot be regarded as amounting to resumption of the inam and does not result in abrogation of the inam tenure. The inam tenure is

preserved and there is no substance in this contention.

8. The learned Counsel dealt with the second question, namely, that the impugned enactment is only a legislative device to achieve the object of

depriving a minor inamdar in a particular area of his right to obtain a ryotwari patta on the basis of his kudiwaram u/s 9 (1) of Act XXX of 1963.

In this connection the learned Counsel referred to the decision of the Supreme Court in The State of Bombay and Another Vs. The United Motors

(India) Ltd. and Others, , where speaking for the Bench, Patanjali Sastri, C.J., observed:

Whenever, then, a section of the people in a locality, in assertion of an adverse claim, disturb a person in the quiet enjoyment of his property, the

Bihar Government would seem to think that it is not necessary for the police to step in to protect him in his enjoyment until he is evicted in due

course of law, but the Legislature would intervene by making a "law" to oust the person from his possession. Legislation such as we have now

before us is calculated to drain the vitality from the rule of law which our Constitution so unmistakably proclaims, and it is to be hoped that the

democratic process in this country will not function along these lines.

In that case, their Lordships followed a decision of the Supreme Court, in Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, ,

where it was held that, in singling out two groups of persons consisting of two ladies and their children out of those who claimed to be related to

the late Nawab and preventing them from establishing their rights under the personal law which governed the community, in Courts of law, the

Waliuddowla Succession Act, 1950 was discriminatory, that there was no rational or reasonable basis for the discrimination, and that the Act

contravened the provisions of Article 14 of the Constitution and therefore it was void. The next decision cited by the learned Counsel in Kochunni

v. States of Madras and Kerala, which dealt with the validity of the Madras Marumakathayam (Removal of Doubts) Act, 1955. The impugned

Act did not purport to modify or extinguish any right in an estate. But the object of the enactment was only to declare particular sthanams to be

Marumakathayam tarwads and the property pertaining to such sthanams as the property of the said tarwads. The Act declared particular sthanams

to have always been tarwads and their property to have always been tarwad property. As the impugned Act did not effectuate any agrarian reform

and regulate the rights inter se between landlord and tenants, the Supreme Court held that Article 31-A of the Constitution had no application.

Mr. Vedantachari laid considerable stress on the decision of the Supreme Court in Maharana Shri Jayvantsinghji Ranmalsinghji etc. Vs. The State

of Gujarat, , In that case the petitioner's case was that, as a result of the provisions of the impugned Act, certain non-permanent tenants were

deemed to be permanent tenants as from the commencement of the Bombay Taluqdari Tenure Abolition Act, 1949 and thereby became entitled to acquire on payment of six times the assessment or rent instead of at least the minimum of twenty times the assessment the rights of an "occupant within the meaning of Section 5-A of the Act. The petitioner's contention was that it had substantially deprived the petitioners of the rights which they acquired on tillers" day (1st April, 1957) by reason of the provisions contained in Section 32 and other relevant sections of the Bombay Tenancy and Agricultural Lands Act, 1948, as amended from time to time. It was contended that the deprivation had resulted in the violation of certain fundamental rights of the petitioners such as those guaranteed under Articles 14, 19 and 31 of the Constitution, that the impugned Act was a piece of colourable legislation in the sense that under the guise of changing a rule of evidence it had in effect taken the petitioner's property without payment of compensation and given it to another, and that the legislation in question did not come within any entry of the two legislative lists under which the State Legislature was competent to make laws. After discussing the questions raised in detail, their Lordships hold that under the guise of defining a permanent tenant or changing a rule of evidence what has been done is to reduce the purchase price which became payable to the landholders on 1st April, 1957. This decision is not applicable to the present case. Relying upon the aforesaid decision, Mr. Vedantachari contends that the substance of the legislation is to deprive a minor inamdar of his right to obtain ryotwari patta on the basis of his kudiwaram right, as in Pudukottai all the grants made are expressly stated to be kudiwaram lands. Section 8 (1) of Act XXX of 1963 would enable the inamdar to obtain patta merely on the basis of the kudiwaram grant and the effect of the impugned legislation is to take away the benefits which accrued to the minor inamdar under the enactment and to include the Pudukottai inams within Act, XXVI of 1963. Under Act XXVI of 1963, actual cultivation is the test for the grant of patta to which an inamdar may not be in a position to establish in a majority of cases. In the guise of amending the enactment, the law takes away the rights of the inamdar to get patta which vests in him under Act XXX of 1963. Mr. V.K.T. Chiri who appeared for the petitioner at the later stage, contended that the impugned enactment is not a law

providing for acquisition of property and consequently Article 31-A cannot be called in aid to support the impugned legislation. The learned

Counsel referred to the following passage at page 594 in *Sawer's Australian cases*, 3rd Edition:

Modern legislators have adopted with enthusiasm the practice of deeming things to be that which they are not, and in so far as the legislation is

made by a Parliament with untrammelled powers, or within the plenary powers conferred upon a Parliament whose powers, like those of the

Commonwealth Parliament, are limited by a Constitution, effect must be given to the notional conditions thereby created. But upon a constitutional

question the Court must consider the real substance and operation of the legislation, and if in substance and operation it is an enforcement or step

in the enforcement of existing rights and obligations, then the legislation, however disguised, is an exercise of judicial power.

(*Vide Rola Co. (Australia) Proprietary Ltd. v. The Commonwealth* 69 C.L.R. 185, . The next contention of Mr. V.K.T. Chari is that, while the

petitioner's lands would be covered by Act XXX of 1963, by reason of the impugned enactment the said lands are sought to be governed by Act

XXVI of 1963. In this connection, reference is made to Section 2 (9) of Act XXVI of 1963 which was left untouched under the impugned Act

and consequently the object was sought to be achieved by adding to the definition of "Pudukottai inam" the words "such of the inam areas in the

said territory as are specified in Schedule 1-A". This addition of the words, the learned Counsel points out, will be ineffective to achieve the object.

While Act XXVI of 1963 defines "existing inam estate", "new village inam estate", "part village inam estate" and "Pudukottai inam estate" under

Sub-clauses (4), (9), (11) and (14) of Section 2 respectively, the impugned enactment only seeks to enlarge the definition of "Pudukottai inam

estate" by including such of the inam areas in the said territory as are specified in Schedule 1-A. Section 2 (9) defines "minor inam" as meaning any

inam recognised and confirmed u/s 2 of the Pudukottai (Settlement of Inams) Act, 1955 but not including a new inam estate as defined in Clause

(9) of Section 2 of Act XXVI of 1963. Therefore, what originally vested under Act XXX of 1963 is now sought to be taken away and included in

Section 2 (14) of Act XXVI of 1963. The other provision of the impugned Act, namely, Section 5 only seeks to give effect to the above objective.

9. The further contention of Mr. Chari is that retrospective operation should not have been given. But, as stated above, when Section 2 (14) of Act XXVI of 1963 is sought to be enlarged by including grants of less than a village, we do not see anything wrong in giving retrospective operation to the said determination.

10. The learned Advocate-General defended the validity of the impugned Act only under Article 31-A of the Constitution. The contention of the learned Advocate-General is that by reason of Act XXVI of 1958(sic)(XXIII of 1969?) giving retrospective effect, it is as if the amendment formed part of Act XXVI of 1963 which related to the acquisition of rights of landholders in inam estates in the State of Madras and introduction of ryotwari settlement in the said estates. The learned Advocate-General referred to the decision of the Supreme Court in *Khajamian Wakf Estates etc. Vs. State of Madras and Another*, , which upheld the validity of Acts XXVI and XXX of 1963 as being completely protected by Article 31-A from challenge on the ground that they violated Articles 19 and 31 of the Constitution. The learned Advocate-General also referred to the judgment of the Supreme Court in *State of Bihar Vs. Rameshwar Pratap Narain Singh and Others*, , and relied on the following passage therein:

Lastly, it was contended that long before the date of the amending Act, the "estates" had ceased to exist as a consequence of the notifications issued u/s 3 of the parent Act and consequently whatever was being acquired in 1959 could not be a right in an "estate". Here also we have to take note of the fact that the impugned provisions of the amending Act were made retrospective with effect from the date of the original enactment so that we have to project ourselves to 25th September, 1950, the date of the original enactment and consider whether on that date the law provided for acquisition of a right in an "estate." Undoubtedly the "estates" did exist on that date and so the acquisition retrospectively provided for from that date was acquisition of a right in an estate.

The learned Advocate-General cited the decision of the Supreme Court in *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, . The facts in that case are : The Income Tax Officer, by his order dated 9th October, 1952, assessed the respondent for the assessment year 1952-53 and gave him credit for Rs. 50,603-5-0 as

representing interest on tax paid in advance u/s 18-A (5) of the Income Tax Act. On 24th May, 1953, the Indian Income Tax (Amendment) Act, 1953, came into force adding a proviso to Section 18-A (5) of the Act to the effect that the assessee was entitled to interest not on the whole of the advance tax paid by him but only on the difference between the payment made and the amount assessed. The amendment Act provided that it shall be deemed to have come into force on 1st April, 1952. The Income Tax Officer, acting u/s 35 of the Act, rectified the assessment order holding that the assessee was entitled to a credit of only Rs. 21,157-6-0 by way of interest on the tax paid in advance as a result of the retrospective operation of the amendment in Section 18-A (5), and issued a notice of demand against the assessee for the balance of Rs. 29,446-9-0. The assessee filed a writ petition in the High Court for the issue of a writ prohibiting the appellants from enforcing the rectified order and notice of demand. The High Court issued the writ holding that Section 35 was not applicable to the case. The Supreme Court, on appeal, upheld the Income Tax Officer's order exercising the power u/s 35 and rectifying the mistake. In dealing with the true legal effect of the retrospective operation of the amendment Act, their Lordships referred to the following observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1952) A.C. 109,

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs ; it does not say that having done so, you cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

The Supreme Court held that the effect of the retrospective operation of the amendment Act is that the proviso inserted by the said section in Section 18-A (5) of the Act would, for all legal purposes, have to be deemed to have been included in the Act from 1st April, 1952.

11. We accept the contention of the learned Advocate-General that Article 31-A of the Constitution saves the impugned legislation from the attack

of constitutional transgression based on Articles 19 and 31. The learned Advocate-General did not deal with the other contentions raised by the learned Counsel for the petitioners. We are, therefore, not expressing our opinion on the other contentions put forward by the learned Counsel for the petitioners.

12. The writ petitions fail and are dismissed with costs (one set). Counsel's fee Rs. 250.