

(1952) 04 MAD CK 0011

In the Madras High Court

Case No : Civil Miscellaneous Petition No's. 13245 of 1950 and 2615 and 2616 of 1951

K. Somasundaram and Others

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 22-04-1952

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(2)

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 2(7)

Citation : AIR 1953 Mad 246 : (1952) 65 LW 702 : (1952) 1 MLJ 202

Hon'ble Judges : Subba Rao, J;Krishnaswami Nayudu, J

Bench : Division Bench

Advocate : M. Sundaram, R. Kesava Aiyangar and K. Parasaram, for the Appellant; Govt. Pleader and T.R. Arunachalam, for the Respondent

Judgement

Krishnaswami Nayudu, J.—C.M.P. No. 2615 of 1951 and 13245 of 1950: These petitions are for issue of writs of certiorari and they arise

out of proceedings taken under the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948. In C.M.P. No. 2615 of 1951 the

village of Sudiyr in the Paramakudi taluk of the Ramanathapuram District has been declared to be an Inam Estate under Act 26 of 1948. The

contention of the petitioners is that it is not an inam estate and the Government has no jurisdiction to apply the provisions of the Act to the said

village. From the Inam Fair Register (Ex. A. 1) it will be seen that the entire village of Sudiyr was granted originally as Dharmasanam inam in

1774. In 1794 one Marudu Servakaran the then Dewan of Sivaganga purchased a portion, that is, 11 1/2 vritties, and granted it for the support of

Sudiyr chatram. A portion of the village was therefore owned as Dharmasanam and the remaining extent was owned by the chatram. At the time

of the Inam settlement, two title deeds were issued one for the Dharmasanam portion and the other for the chatram portion to two different persons and for two different purposes. The total extent of the village being 723-63 acres, an extent of 210-56 acres was reserved for communal purposes and a further extent of 4-16 acres was already granted as minor service inam. The remaining extent of 503-94 acres was originally granted as Dharmasanam inam. At the time of the confirmation in view of the subsequent purchase and re-grant to the Sudiyr chatram, out of 508-94 acres, 398-48 acres was confirmed as belonging to Dharmasanam inamdars, 76-85 acres for the chatram and the balance of 33-61 acres was shown as belonging to the chatram, but enjoyed as Dharmasanam. On these facts, both the Inam Settlement Officer and the Estates Abolition Tribunal held that the original grant being of a whole village, the confirmation when it recognised the title of the Dharmasanamdars to the portion owned by them, was of the whole village and that therefore it was an inam estate.

2. In C.M.P. No. 13245 of 1950, the entire village of Perungarai, Paramakudi taluk was granted as Dharinasanam. From the Inam Pair Register, which refers to the copper plate patta of the village, it is found that the Mahajanams said at the time of the Inam. Settlement that the Zamindar had arbitrarily resumed a portion of the inam, kept it in his possession, granted a part of the resumed portion in support of the Sudiyr chatram & granted the remaining portion to one Muthukakkan as personal inam. The Inam Commissioner found at the time of the inam settlement that the portion held by the chatram was three shares and that the remaining two shares continued as Dharmasanam. In the extract from the inam register, it is found in column 14 that the extent of the Dharmasanam was 512-99 acres and of the chatram was 21-00 acres. It may be noted that in arriving at 512-99 acres it is mentioned as Dharmasanam Perungarai area minus chatram lands, and while arriving at 21 acres, it is mentioned Sudiyr chatram minus Dharmasanam lands. In columns 15, 17, 18 and 19 the names of 41 individuals are mentioned as shareholders and the members of the different families, who are entitled to the Dharmasanam, are given. In columns 21 and 22 separate quit rents for the Dharmasanam and the chatram are fixed.

3. In this case, the Settlement Officer held that the original grant being of a whole village, two title deeds were issued at the time of the Inam

Settlement only because subsequent to the original grant two portions of the village were granted for different enjoyment one by the Dharmasanam

and the other by the chatram, and that the grant was of a named village as inam and of the whole village and therefore It was an estate. But on a

further contention of the Inamdars that both the warams were granted as inam, the Settlement Officer held in their favour declaring that the village

was not an estate u/s 2, Clause (7) of the Act 26 of 1948. Though the order of the Settlement Officer is in favour of the petitioners in this petition,

it is stated that notwithstanding the said declaration, the revenue officials insist on collection of rents from the ryots, and it is contended that they

have no jurisdiction to interfere with the collection as it is not an inam estate.

4. It is therefore for determination whether the Dharmasanam grants of Sudiyr and Perungarai villages are inam estates as denned in Section 2

Clause (7) of Act 26 of 1948. "Inam estate" is defined in the said Act "as an estate within the meaning of Section 3 Clause (2) (d) of the Estates

Land Act, taut does not include an inam village which became an estate by virtue of the Madras Estates Land (Third Amendment) Act, 1936.

Section 3, Clause (2) (d) of the Madras Estates Land Act comprises within the term "estate".

any inam village of which the grant has been made, confirmed or recognised by the British Government, notwithstanding that subsequent to the

grant, the village has been partitioned among the grantees or the successors-in-title of the grantee or grantees."

An inam village does not therefore become an estate under the Act unless the grant of the village has been made, confirmed or recognised by the

British Government. Therefore, in a case where there has already been a grant by a sovereign other than the British Government the inam village

granted becomes an estate only on confirmation or recognition by the British Government. Sudiyr village was granted as Dharmasanam to one

Ganapathi Battar and from Ex. A. 1, the extract from the Fair Inam Register, it is seen that the Dharmasanam grant was confirmed on 12-6-1867

and title deed No. 1918 was issued, while the chatram portion of the said village of Sudiyr was confirmed earlier on 15-2-1865 and a title deed

No. 1806 was granted and a separate jodi was fixed for the chatram portion. Both the Dharmasanam portion and the chatram portion are portions of the village of Sudiur. The original grant was of both the portions in 1774 but in 1794 there was a purchase by the Dewan of Sivaganga and a grant of the chatram with the result that in effect the grantee of the village of Sudiur alienated a portion to the representatives of the grantor, who in turn granted it to the Chatram. It may be taken in so far as Sudiur is concerned that the original grant was of the whole village of Sudiur. In the case of Perungarai also, it was a grant as Dharmasanam by the Zamindar of Sivaganga and it was a hereditary grant. It appears from the copper plate referred to in the Inam Fair register that the entire village was granted as Dharmasanam. There was a subsequent resumption of a portion and a re-grant to the Sudiur chatram. In the case of Perungarai, the original grant was of the whole village. But could it be said in view of the resumption of the portion of the grant that the grant by Sivaganga Zamindar to Dharmasanam was of the entire village? There is no alienation in this case by the grantee, but a resumption and regrant resulting in the grant reducing itself to the portion of the village and not to the whole village.

5. I will proceed to examine the case of both these villages on the assumption that the original grant for Dharmasanam was of the whole village and that subsequent to the original grant, there have been alienations and re-grants. From the extracts of the Inam Fair Register in respect of both, the villages it is seen that the confirmation by the British Government was separately made on different dates in the case of Sudiur village, but at the same time in the case of Perunagarai village and in both the cases two separate title deeds were issued. The confirmation was of two extents in the said villages in favour of two different individuals under two separate title deeds. In the case of Sudiur, 398-48 acres in the village and another 33-61 acres have been confirmed for the Dharmasanam under title deed No. 1918 on 12-6-1967 subject to payment of quit rent of Rs. 154 and a Jodi of Rs. 172-6-0 while 76-85 acres were confirmed in favour of the Chatram and a title deed No. 1806 was granted on 15-2-1865 subject to a payment of quit rent of Rs. 13 and a jodi of Rs. 311-4-3. In the case of Perungarai similarly 512-99 acres being a portion of the Perungarai village were confirmed for the Dharmasanam and 21 acres being a portion of the same village were confirmed for the Sudiur chatram. The entry in

column 14 of the Inam Fair Register relating to the Perungarai village makes it clear that the entire portion of the village excluding lands reserved for communal and other purposes have been divided as such and confirmed in favour of the Dharsanamdars and the chatramdars. From these documents it will be seen that what is confirmed by the British Government. In favour of the Dharmasanandars is not the whole village of Sudiur or Perungarai, but only portions of those villages and It is therefore a case where the grant was of the whole village, but the confirmation was not of the whole village but portions of the village, as the confirmation is expressed in terms of the areas in the villages, not in terms of the names of the villages.

6. It is for consideration whether this is sufficient to satisfy the requirements of Section 3, clause (2) (d) of the Madras Estates Land Act. A reading of the plain language of Section 3, Clause 2(d) would show that the confirmation or recognition must be the grant of an inam village. It is not the confirmation of an inam, but of an inam village, and the village that is contemplated is a revenue unit or of a whole village. The inam village is what has been usually termed a major inam as contrasted with minor inams, that is the whole inam villages as opposed to grants of lands, in inam villages which are considered to be minor inams. Minor inams have been held not to come within the definition of an "estate", but whole inam villages have been brought under the Act and have been held to come within the definition of "estates".

7. In --Narayanaswami Naidu v. Subramaniam", 39 Mad 683, the learned Judges observed as follows:

The definition in Sub-section 2, Clause (d) was obviously intended to exclude from the definition of "estate" what are known as minor inams, namely, particular extents of land in a particular village as contrasted with the grant of the whole village by its boundaries. The latter are known as whole inam villages." The existence of "minor inams" in whole inam villages is very common and if these inam villages do not come within the definition of "estates" almost all the agraharam, shrotriyam and mokhasa villages will be excluded. This certainly cannot have been the intention of the Legislature. These minor inams are generally granted for services to be rendered to the village or to the owner and that seems to be the nature

of the minor inams in this case.

But what is intended to be covered under the definition are whole inam villages and not portions of inam villages and this is made clear by the

explanation (1) to Section 3(2) (d) of the Act, which is as follows:

Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an

estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenures or

been reserved for communal purposes.

8. The difficulty having arisen in recognising certain villages as inam villages by reason of the exclusion from the grant itself of certain lands granted

on service or other tenure or lands reserved for communal purposes, this explanation was introduced by the Amending Act II of 1945. It has been

established by a number of decisions that for an inam village to constitute an ""estate"", it is necessary that the grant must be of a named village and

must comprise the entire area of the village from which only certain lands, which have already been granted for service or other tenure or reserved

for communal purposes, could be excluded. If besides these lands there were certain grants of lands from the village, then it would not be a case of

grant of a named village. In the present case, the question whether there has already been a grant of a portion of the village for service or other

tenure or grant for communal purposes would not arise, as the grant in favour of the chatram was subsequent to the original grant. This exclusion

provided for in the Explanation I of Section 3(2)(d) has been permitted for the reason that the lands excluded are lands granted on service or other

tenure or reserved for communal purposes, which really are not taken away from the village proper though they are excluded from the grant for the

reason that the lands reserved for communal purposes intended for the use of the villagers as also the service of persons to whom the service

tenures are granted are similarly utilised for the inhabitants of the village. The exclusion therefore has been restricted to the lands reserved for

communal purposes and to service or other tenures.

9. There is some difference of opinion as regards whether the expression ""other tenure"" should be considered as ""ejusdem generis"" with the words

service tenure"" or independent of it. Mahajan J. in -- "District Board Tanjore v.

Noor Mohamed Rowther", 65 L. W. 98 holds that, ""The expression "other tenure" in the Explanation should ordinarily be construed "ejusdem generis" with a service tenure owing to the reason that these service tenures usually are resumable and in case of resumable tenures the reversionary right in the land remains in the grantee and therefore even if such resumable tenures are excluded from the grant, in substance the grant can be deemed to be of the whole village. The same cannot be said of lands reserved for communal purposes."" (9a) In the same decision Chandrasekhara Aiyar J. observes that it is unnecessary to hold that the words or other tenure"" in the Explanation to Clause (d) of Sub-section (2) of Section 3 must be construed "ejusdem generis" with ""service"", and that they are, in his opinion, wide enough to include lands granted as personal inams.

10. In our High Court in -- "Suryanarayana v. Venkatadu", 62 L. W. 279 Panchapagesa Sastri J. observed as follows:

It is argued for the appellants that as there-were minor inams and also some poromboke, which was not included in the grant, the inam could not be taken to be a whole inam village and it was further argued that Madras Act II of 1945 could not apply in favour of the defendants, because the minor inams were not service inams, but were Dharmadayam and personal inams and also because poromboke which was excluded could not be regarded as lands reserved for communal purposes. I do not see why personal inams like Bhattavrithi inams and Dharmadayam inams to the.

temple would not come under the expression ""other tenure"" in explanation (1) to Section 3(2)(d) of the Estates Land Act.

11. I am unable to find that poromboke lands are of the same category as Dharmadayam or personal inams and that poromboke lands being]ands over which no individual has any right could be regarded as lands reserved for common purposes, whereas personal inams like Bhattavrithi inams are grants which are not for service.

12. In -- "Basavayya v. Theerthaswamilu Varu", 63 L.W. 921 Viswanatha Sastri J. while not agreeing with Panchapagesa Sastri J. in his observation in -- "Suryanarayana v. Venkatadu", 62 L. W. 279 that personal inams might fall within the category of lands held on service or other tenure within the meaning of explanation (1) to Section 3(2)(d) of the Act, however, does not express any opinion as to whether the term ""other

tenure"" would include in it personal inams.

13. Bhattavriti inams are not grants which could be said to be connected with service or intended for communal purposes. Dharmasanam is like

an Agraharam grant, where a village or portion of a village is granted to Brahmins, who might be of different families, but a Dharmasanam like

Agraharam grant does not necessarily mean the whole of a village. It is a kind of subsistence grant at a fixed favourable rent held by the grantees

and their successors in shares. In the present cases, the confirmation being not of the original grant as such in the sense of confirmation of the whole

village, but confirmation of parts, would it be sufficient to bring it within the language of Section 3(2)(d) of the Act? It may be argued that the grant

has been confirmed and that what all is required is that there must be confirmation of the grant, but not the confirmation of the grant as such of a

whole village. I do not consider that a reading of the section would lend itself to that construction. If the British Government makes the grant, then

that would be sufficient to make it an ""estate"" and the making of the grant must be of an inam village and inam village must be of a whole village and

a named village. If that is so, the confirmation must necessarily also pertain to what could be granted to make it an estate, namely, of an inam village

being a whole and a named village. The word ""confirmation"" means to ratify. Ratification has therefore to be complete and not in parts and must

therefore refer to the whole and not to a portion. The confirmation that is intended u/s 3(2)(d), is confirmation of the grant of a whole village, and if

at the time of the confirmation, the whole village is not available to the Dharmasanamdars for confirmation and the confirmation taking shape by

issue of title deed in respect of a portion of the village, it could not be confirmation as required under the section.

14. The principle underlying the section is made clear by the explanation that what would constitute an estate is a grant of a named village, which

has been held to denote a whole village. A village is defined in Section 3(9) of the Act as

any local area situated in or constituting an estate which is designated as a village in the revenue accounts and for which the revenue accounts are

separately maintained by one or more karnams or which is recognised by the Provincial Government or may hereafter be declared by the

Provincial Government for the purpose of this Act to be a village, and includes any hamlet or hamlets which may be attached thereto.

A hamlet, sometimes known as ""Khandriga"" in some parts of the country, though part of a village, cannot be treated as a village by itself. A grant of

a ""Khandriga"" of a village would not amount to a grant of a village. Similarly, confirmation of a hamlet or ""Khandriga"" would not amount to

confirmation of the grant of a village. Therefore, confirmation of a portion of the area covered by the village, as in the present case, would not

amount to confirmation of an inam village.

15. The position of what are called minor inams grant of portion of lands of a village by the original grantor or grantee as to whether they form part

of an estate has been considered in certain decisions, all of which are of single judges.

16. In -- "Viswanadhan Bros v. Subbaiya", 1945 1 M.L.J. 443, Kuppuswami Aiyar J. had occasion to consider the case of a grant of a minor

inam by the grantee of a Bhattavriti shrotriya inam. In that case, at the time of the inam settlement, the minor inam which comprised one acre was

separately treated" and confirmed as inam and a separate title deed was Issued. On the question whether a lessee of a piece of land which formed

part of the minor inam could claim that it was land in an estate within the meaning of Section 3(2)(d), Madras Estates Land Act, it was held that

merely because the land in question formed part of the original grant of an entire village, it cannot be said that at the time when it was recognised, it

was part of the Inam in favour of the aghaharamdar which was recognised or confirmed by the British Government and hence the land in question

cannot be deemed to be part of an estate. After referring to the provision of law, namely, Section 3(2)(d) of the Act, the learned Judge observes:

The answer to the question as to whether the confirmation or recognition by the British Government was in respect of the entire inam village or of

only a portion is the basis for the decision as to whether the land was an estate or not.

17. It is therefore seen that to make an inam grant an estate, the principle to be applied is whether the confirmation or recognition by the British

Government was in respect of the entire inam village or of only a portion. That appears, to me, with respect, to be the proper way of approach to

the question.

13. This decision was followed by Happen J. in "C. R. P. No. 727 of 1945," where the land in question formed part of a whole inam village, but

had been the subject of a separate grant by the mokhasadar. With reference to a similar contention that it was an estate, the learned Judge

observed that "as the minor inam was confirmed separately it was not included in the Inam which was confirmed as a whole and could not be

regarded as a part of the estate which that inam is by virtue of the confirmation.

19. In -- Yamujala Mangamma and Another Vs. Kalyanapu Appadu and Another, where two parcels of lands comprised in an inam village were

treated even before the Inam settlement as separate grants and at the time of the settlement the lands were confirmed under two title deeds, it was

held that the lands comprised under one of the title deeds did not form part of an "estate" within the meaning of the Madras Estates Land Act, and

that the tenant thereof could not claim occupancy rights. Shahabuddin J. says at page 249:

The contentions of the learned advocate for the petitioner are these: (1) The very fact that the heading of the extract is "extract of inams in the

village of Sitharamudupeta Agraharam" indicates that what was mentioned in the extract Ex. P. 8 was not the whole extent of that village but that

there were other inams alsoIn any case, the note made by the Inam Commissioner clearly indicates that the old accounts showed the five

"writtis" as a separate devadayam grant. This circumstance in itself is sufficient for rejecting the claim of the defendants that the grant was of a

whole village. (2) Even if it be considered that the original grant was of the whole village there can be no doubt that at the time of the confirmation,

i.e., the inam settlement the whole village was not regarded as a single inam but as two distinct inams and there the lands in question do not form

part of an estate".

With reference to the heading which is similar to the extracts filed in the present case as extract of inam in the village the learned Judge observes :

The heading which has been referred to already is significant. The word "in" does indicate that there were other inams also in that village. In --

Satti Suri Reddi and Others Vs. Kolachina Agnihotrudu and Another, relied upon by the petitioner with regard to a similar heading it was observed

that it itself indicates that various lands in the village were held under inam grants In any case the second contention of the learned counsel

for the petitioner has to prevail. According to the definition of an estate mentioned above what has to be seen is whether the confirmation or

recognition by the British Government was in respect of the entire inam village or of only a portion".

After referring to the observation of Kuppuswami Aiyar J. in -- "Viswanatham Bros v. Subbayya", 19 15 I MLJ 443 already quoted here and to

the decision of Happell J. in C.R.P. No. 727 of 1945 and agreeing with the same, the learned Judge says:

In both these cases there were two title deeds issued at the time of the Inam Commission & in those cases the original grant was of a whole

village. In the present case as stated already the accounts prior to the Inam settlement indicated to the Inam Commissioner that the two extents

were treated as two separate grants, thereby indicating that the grant was not a single one at the outset. However, there were two title deeds at the

time of the settlement. In my opinion these decisions apply to the facts of this case, also and the lands in question did not form parts of an estate".

Satyanarayana Rao J. in S. A. Nos. 1771 and 1772 of 1945 agreed with the view taken by Kuppuswami Aiyar J., in -- Burugu Viswanadham

Brothers Vs. Yarru Subbaiya, . In that case the question was; whether an extent of 3 acres 84 cents formed part of an estate or not. It was held

that it did not, for the reason that when these two grants were confirmed it must be taken that the Government did not treat the minor inam as part

of the Agraharam grant but as being outside its purview.

20. In -- "Bamaswami v. Jagannathasami", 1950 1 M. L. J. 18, where the question for decision was whether 7 acres and 33 cents in

Sankarashanapuram agraharam was an estate, following the decision of Kuppuswami Aiyar J. in --"Viswanatham Bros v. Subbaiya", 1845 1 M.

L.J. 443, I held that it would not be part of the inam village simply because it is situated in the village of Sankarashanapuram and that such property

would not come under the definition of "estate" in Section 3 (2) (d) of the Act.

21. Certain observations of mine in that decision are relied upon by the learned Government Pleader and he points out that while I held that 7 acres

33 cents which was a minor inam did not form part of the estate, I observed that

the Agranaram of Sankarashanapuram minus 7 acres and 33 cents

would be an estate. What I said was:

The question for decision is whether this item of 7 acres 33 cents would come under the definition of "estate" as defined in Section 3 (2) (d) of the

Madras Estates Land Act. Section 3 (2) (d) includes in the word "estate" any inam village of which the grant has been made, confirmed or

recognised by the British Government notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the

successors in title of the grantee or grantees. The village of Sankarshanapuram has not been granted by the British Government as it is found that it

was granted by Kamadana. Kayanam Garu in about 1731 A. D. But it has been recognised by the British Government, by the Inam Commission,

and the recognition is in respect of the village of Sankarshanapuram to the extent of 247 acres 35 cents in any event excluding 59 acres 53 cents of

which the 7 acres 33 cents is a portion. It cannot therefore be said that this is part of the inam village of Sankarshanapuram. Further these lands

cannot be said to be a named village as defined in Section 3 (2) (d) and Explanation I read together",

But I further observed as follows:

The village of Sankarshanapuram would be an inam village coming under the definition of the word "estate" since it is a village the grant of which

was recognised by the British Government and a separate title deed was issued and would still be an estate because it is a grant of an inam village

notwithstanding that it did not include certain lands such as poromboke and other lands mentioned in the title deed. But that would not make the 7

acres 33 cents also part of that Sankarashanapuram inam village. It is not a named village and since a separate title deed has been issued in respect

of the minor aghaharamdar it cannot be said to be part of the major inam of Sankarashanapuram".

What had to be determined in these cases was as to whether the 7 acres 33 cents would be an estate. Applying the principle of Section 3 (2) (d)

and Explanation I, it was assumed that the village of Sankarashanapuram excluding 7 acres 33 cents was the grant of a whole village and therefore

an "estate". That observation, however, was not really necessary for the decision of the case excepting to support the argument that 7 acres 33

cents is part of a village and not the whole village. It could not be said that in that case the question was as to whether confirmation of the

Agraharam portion was of an estate or not, as it did not fall to be decided in that case. But I made it clear by referring to the observation of

Kuppuswami Aiyar J. in -- Burugu Viswanadham Brothers Vs. Yarru Subbaiya, , namely that the question as to whether the confirmation or

recognition by the British Government was in respect of the entire inam village or only of a portion would be the basis for a decision as to whether

the land is an estate or not. I consider that is the real and proper test and applying that test to the present case, there can be no doubt that the

Dharmasanam portion which was confirmed by the British Government could not be an ""estate"" within the meaning of the Act.

22. The grant in C. M. P. No. 13245 of 1950 relating to Dharmasanam grant of Perungaral will stand on a stronger footing, as there has not been

any alienation by the grantee, but there is a resumption of a portion of the village by the grantor and re-grant to the chatram. In that case, even the

grant could not be said to be of a whole village and a named village as the result of the resumption and re-grant to the chatram would reduce itself

to the grant being of a portion of the village and not of the whole village of Perungaral.

23. To constitute an ""estate"" not only the grant must be of the whole of the named village but the confirmation must be similarly of a whole and

named village as required under Explanation I of Section 3 (2) (d) of the Act, and if there is a grant of a whole village and confirmation only of a

part, it could not be an ""estate"" within meaning of the Act.

24. But it is contended that, if subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee

or grantees that would not take away the village from being an estate. The partition among the grantees or the successors in title may be after the

grant that is the original grant. In the case of Perungarai, from the extract from the register of Inams it is found that so far as Dharmasanam portion

of the village is concerned in columns 16, 17, 18 and 19, 41 persons are mentioned as members of the families that are entitled to the inam for

which one title deed is granted and for the chatram portion a separate title deed is granted. The fact that it is owned by several shareholders in

severalty has not therefore affected confirmation, but the confirmation is made by the grant of one title deed. But that would not be sufficient to hold that the portion of the grant confirmed by the title deed would be an "estate" since it does not comprise the whole village. Whether the alienees from the grantees after the original grant would be successors in title or whether the words "successor in title" refer only to the heirs do not really arise as affecting the decision of the question raised, since assuming that under the term "successors in title" alienees are included, the crucial point of time is the confirmation; when in spite of alienations it would have been open to the British Government to confirm the title of the alienees by the grant of a single title deed. The existence of any partition or of any alienations subsequent to the grant could not have any material bearing in considering as to whether the grant which is confirmed is an "estate" or not. It is the title deed that mainly determines the extent and scope of the grant and from the title deed, one has to find out whether what the title deed covers is the grant of a whole village or only a part of a village. In this case, there being, two separate title deeds for two different portions of the village neither of them could be said to be an "estate". In the view I am taking of this question as to whether Dharmasanam grants in these villages are inam estates within the meaning of the Estates Abolition Act, the other question as to whether the grants comprise of both the warams or not does not require to be considered. In the result, the proceedings taken by the Government purporting to act under the Madras Estates Abolition Act and the Madras Rent Reduction Act are without jurisdiction and are liable to be quashed.

25. SUBBA RAO J.: I have the advantage of reading the judgment prepared by my learned brother. The facts have been fully stated therein and it is not necessary to restate them. The applications are argued on the assumption that the original grant was of the whole village, but the Inam Commissioner confirmed them in different parts and issued separate title deeds. It is also disputed that the separate title deeds exhausted the entire village. The question is whether the lands covered by either of the title deeds are parts of an estate within the definition of Section 3(2) (d) of the Madras Estates Land Act before the said section was amended by the Madras Estates Land (Third Amendment) Act, 1936. Section 3(2) (d)

before the said amendment read as follows:

Any village of which the land revenue alone has been granted in inam to a person not owning the kudiwaram provided that the grant has been made, confirmed or recognised by the British Government or any separate part of such village.

26. Unhampered by judicial decisions, I shall now proceed to consider the scope of the definition on a construction of the plain words used in the said sub-section and in the light of the historic background of the inam grants.

27. To come under the definition vis-a-vis the question raised in the case, the grant of the village should have been made, confirmed or recognised

by the British Government. During the rule by Hindu rajahs, they used to make grants of land either rent-free or on favourable rent for the support

of charitable institutions, for the sustenance of Brahmins and for the maintenance of officers etc. This practice was followed by the Moghul

Government. The British Government also made similar grants but they were very few and that system was discontinued. The British Government

found that there were various grants of inams the original whereof was lost in antiquity and made various attempts to investigate their title and

systematise the tenures. Finally, in the year 1858, they appointed the Madras Inam Commission. The commissioner made an elaborate enquiry,

formulated rules and to a large extent investigated the titles and stabilised the tenures. The preparation of the inam register was described by the

judicial committee as a great act of State. The investigation was based upon not only oral evidence but on the Collectors' records, the standard

inam registers and the accounts of the taluks from the earliest to the most recent period. The Inam Commissioner after satisfying himself about the

origin of the tenure either on the basis of the original grants or on the ground of long possession, confirmed the inam grants and, in some cases,

enfranchised them. It is not necessary to go into details of the investigation or the manner in which the rate of quit rent was ascertained and fixed.

Suffice to say that the Inam Commissioner after satisfying himself, in accordance with the rules framed for the purpose, confirmed the grants or

enfranchised them as the case may be, and issued a title deed to the inamdar, or if they were in the hands of different persons, different title deeds

to them. The word "confirmed" in the sub-section has always been understood

to be the confirmation of the grant by the Inam Commissioner.

28. The other word ""recognised"" is not free from ambiguity. One of the attempts made by the British Government for regularising the inams

unauthorisedly made by earlier Native Rulers was to issue Regulation 31 of 1802 where under all grants made prior to 26th February 1768 were

deemed to be valid and all persons holding such lands would continue to hold them without let or molestation. It has been held that the lands before

that specified date were recognised by the Government within the meaning of Section 3(2)(d) of the Madras Estates Land Act. See -- Ramalinga

Mudali and Another Vs. T.S. Ramasami Ayyar, . There was a conflict of judicial opinion on the question whether any positive act on the part of

the Government was necessary to bring in a case within the meaning of the word ""recognition" or whether it was enough if the Government

acquiesced in continuance of the inam. It is not necessary in this case to consider that question or express my definite opinion thereon. But the

decisions indicate that the acceptance of service or the jodi by the Government would be an act of recognition by the Government. It therefore

follows that the grant of a village should have been made by the Government, and in a case where the grant was made by some other ruling power,

it should have been ""confirmed or recognised"" by the British Government in the sense indicated above. The emphasis lies on the fact that the grant

of a village so made must be confirmed or recognised. The section does not prescribe the mode of confirmation or recognition; nor does it say that

the confirmation must be by a single act of the Government. The essential factor is that the entire grant should be confirmed; not parts of the grant.

29. The definition itself Indicates that if in the origin the grant was of a whole village, notwithstanding the fact that separate parts went into the hands

of different persons by partition of alienation, nonetheless the parts continued to be parts of an estate. This emphasises the aspect that the origin of

the grant is the decisive factor not the subsequent treatment of it. If the inam Commissioner found the village in possession of different individuals

with derivative titles, what was more natural and equitable than his issuing separate title deeds? He confirmed the grant of the entire village, but

recognising the existing facts, issued separate title deeds. The subtle distinction in the mental process adopted by the Commissioner, namely,

confirmation of the whole village but issuing two distinct title deeds does not appeal to me if it is admitted that the original grant was of the whole village. The resultant was the same. The grant of the entire village was confirmed; the process adopted by the Commissioner for convenience or in recognition of the subsequent titles is not a relevant circumstance.

30. The aforesaid view will be further reinforced and clarified if the steps in the process of recognition are pursued. Suppose there was a grant of an entire village and that subsequent to the grant, by reason of various alienations it was in possession of different persons. The Government continued to collect the quit rent in proportionate shares from the owners of the different parts. It is difficult to argue that the grant of the village was not recognised from the mere fact that the Government realised the revenue due to the Government separately from the various holders. The separate collection of the revenue by the Government on the basis of the jodi originally fixed would certainly constitute recognition of the original grant of the village.

31. If the construction suggested by the learned counsel for the petitioners is accepted, it will lead to many anomalies. It is now settled law that notwithstanding the existence of certain minor inams, the subsequent grant of an entire village and its confirmation by the British Government would bring it within the definition of an estate. But if the entire village was granted but the minor inams were carved out subsequent to the grant and if the minor inams were separately confirmed, the rest of the village, even though confirmed, would not be an estate. If the British Government made a grant of the village and the village so granted was split up into different parts by alienations, every bit would be part of an estate. If the British Government confirmed and recognised by issuing one title deed, every bit of it would be part of an estate; but if it confirmed it but issued separate title deeds recognising the pre-existing alienations, the entire village would cease to be an estate within the meaning of the Act. In my view all these anomalies can be avoided if the emphasis is laid on the grant and its confirmation and not on the process adopted by the Commissioner. I would like to lay down the following simple formula which would steer clear of all the difficulties: First find out whether the original grant was of the whole village. If it is established, the next question is whether the confirmation or

recognition was of the entire grant or a part of the grant. If the entire grant was confirmed or recognised, the process of confirmation or recognition or the fact that different title deeds were issued, or the grant was recognised by separate acts should not matter, for, in either case, the original grant which was of the entire village should be confirmed or recognised by the British Government. Anyhow as I am not differing from my learned brother, it is not necessary for me to pursue the line of reasoning suggested to me in greater detail.

32. My learned brother relied upon the judgments of single Judge, Kuppuswami Aiyar J. Shahabuddin J. Happell J. and Satyanarayana Rao J. in support of his judgment. He has added his weighty opinion to the views expressed in the long catena of cases cited. The legislature in enacting Act 26 of 1948 must be deemed to have knowledge of the case law and interpretation the learned Judges of this Court put upon the provisions of Section 3(2)(e) and with that knowledge adopted the definition of an estate in the Estates Land Act before the Third Amendment in Act 26 of 1948. They must be presumed, therefore, to have accepted the interpretation put upon the definition by the courts. In view of the consensus of judicial opinion on the interpretation of the section and in view of the fact that the legislature presumably accepted that opinion, I do not think I am justified at this stage to strike a different note for it may unsettle or at any rate, introduce confusion in the settled law on the subject. With great reluctance, for the aforesaid reasons, I am not prepared to disagree with the conclusion arrived at by my learned brother.