
(1970) 11 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 1308 of 1963 and 690 of 1967 and W.A. No. 411 of 1969

Pamidimarri Chenchulakshmma

APPELLANT

Vs

The Estates Abolition Tribunal Nellore and Others

RESPONDENT

Date of Decision : 17-11-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1972 AP 1

Hon'ble Judges : N. Kumarayya, C.J.;Sambasiva Rao, J;Gopalrao Ekbote, J

Bench : Full Bench

Advocate : C. Seetharamayya, P. Anjaneyulu, P.V.R. Sarma, T.S. Narasimgarao, E. Subhrahmanyam, K. Paravtisam and A. Panduranga Rao, for the Appellant; Govt. Pleader, P. Babulu Reddy, E.P.K. Sithamani, M.V. Ramana Reddy and V. Jogayya Sarma, for the Respondent

Judgement

Sambasiva Rao, J.—W. P. No. 1308 of 1963 has come up before us is a Full Bench by reason of a reference made by Kumarayya, J., (as he then was) and Madhava Reddy, J., W. P. No. 690/67 was directed by our learned brother Krishna Rao, J. to be posted with the former petition and hence it has accompanied the former petition is coming to the Full Bench. In the same manner our brothers Obul Reddi and Madhava Reddy, JJ., directed W. a. No. 411 of 1969 to come up with the first of the Writ Petitions and that way it has also been brought before the Full Bench.

2. W. P. No. 1308 of 1963 concerns a land of Ac. 3-04 cents in extent comprised in R. S. No. 101/3 which was formerly Survey No. 48 in chintalapalem Villages, Kavali Taluk. That village was notified and taken over as an estate by the State of Andhra Pradesh under the Madras Estates Abolition Act (XXVI of 1948) on 1-7-1959. It is claimed by the Writ Petitioner that one Koti Reddy Narapareddy and she were the owners of the lands in the village, each having a half share therein. However, Narapareddy alone sold. on 21-6-1951, the entire extent of Ac. 3-04 cents to respondents 3 to 5. But, he himself made an application u/s 20-A of the Madras Estates Land Act to the District Collector, Nellore, on 1-4-1953 for

permission to convert the Ac. 3-04 cents of land, which was described in the village accounts as Kunta Poramboke (Pond poramboke) into ryoti land. By his order of 27-11-1953 the Collector rejected the request. After the abolition of the Estates, the purchasers, viz., respondents 3 to 5 applied to the Assistant Settlement Officer, Nellore u/s 11 3 to 5 applied to the Assistant Settlement Officer, Nellore u/s 11 (a) of the Abolition Act for a patta for the entire land of Ac. 3-04 cents. That officer and in further revision the Settlement Officer rejected the application on the ground that they should apply u/s 15 of the Act. In accordance therewith an application was filed and an enquiry was made u/s 15. The present writ petitioner objected to the granting of a patta on the ground that the land was tank-bed land and as such a communal land and consequently no patta could be granted in respect of it. In the alternative, she set up a claim for a patta in her own favour for half of the land in the event of respondents 3 to 5 being granted a patta. After holding an elaborate enquiry and making a local inspection, the Assistant Settlement Officer held that the land in question was sand-witched in the midst of other wet lands of the ayacut and that from its situation it could not have served any communal purpose at any time. Section 20-A of the Estates Land Act was introduced only in the year 1934 and previous to that the landholder was not obliged to obtain the permission of the Collector to occupy any waste or poramboke land in an estate. In this view that Officer granted a patta to respondents 3 to 5. after a pointing out that the land had been cultivated even prior to 1934. In the appeal preferred by the Writ Petitioner the Estates Abolition Tribunal, Nellore (Viz, the District Judge, Nellore) found that the land was tank-bed by about the year 1902 but in course of time got silted up and was brought under cultivation. He found that the petitioner and his predecessors-in-title were in possession of the land at least since the year 1939. He also opined that since Section 20-A of the Estate Land Act came into existence only in the year 1934. no land-holder was obliged to obtain permission of the Collector to occupy any waste or Poramboke land in his estate before that date. Thus, the Tribunal affirmed the conclusion of the Assistant Settlement Officer and held that respondents 3 o 5 were entitled to a ryotwari patta for the land u/s 13 (b) (iii) of the Abolition Act. Aggrieved by this order of affirmance of the Tribunal, the Writ petitioner has brought this writ petition praying that the order of the Tribunal granting a patta to respondents 3 to 5 be quashed,.

3. The land in question in W. P. No. 690 of 1967 is Ac. 72-60 cents in the village of Sarvareddipalli, Proddatur Taluk, Cuddapah District. It bears Paimaish No. 87. It is alleged that this land was originally a Dasabandham tank. In the year 1901 the lands under the ayacut of this tank were transferred to the ayacut of a new channel called "Chaped Channel" and the channel feeding the tank was purchased by the Government from its owners. Thus from 1901 the Tank ceased to be a source of irrigation. The petitioners, who are shrotriendars, began to cultivate portions of the tank in or about the year 1914. In 1941 an agreement was entered into between the shrotriendars and the former ayacutdars under the tank under which the rent payable by the ayacutdars was reduced by Rupees

0-8-6 Ps. in the rupees since they were not receiving irrigation water from the tank. Thereafter it is alleged, the tank-bed was levelled up and the entire extent of Ac. 72-60 cents was cultivated. The ayacutdars had no more any necessity to draw water from the tank and in fact they completely gave up their irrigation rights in the tank by virtue of the agreement of 1941. When a notification u/s 3 of the Madras Estates (Reduction of Rent) ACT XXX of 1947 was issued on 7-2-1951, these lands were included in the list of ryoti lands and an assessment of Rs. 1-4-0 per acre was fixed. However, the village was taken over on 1-10-1951 under the Estates Abolition Act. Even then the lands comprised in Paimaish No. 87 were treated as ryoti lands and included in the holding of the petitioners. But, the District Collector issued an order to the Estates Manager, Proddatur dated 1-4-1953 directing him to "expunge these lands from the holding of the petitioners on the ground that the permission of the Collector u/s 20-A of the Estates Land Act had not been obtained at the time of conversion of the tank-bed land into ryoti land. Steps under Sections 6 and 7 of the Land Encroachment Act were also taken on 6-4-1953. The Estates Manager held that they were entitled to compensation and not to a patta. Then an appeal was preferred before the Revenue Divisional Officer who said, in his order dated 27-3-1954, that an application u/s 15 of the Abolition Act might be filed. Accordingly an application was filed before the Assistant Settlement Officer, who by his order dated 13-2-1955 refused to grant a patta on the ground that conversion as required u/s 20-A of the Estates Land Act had not been obtained. Thereupon an appeal was preferred to the Tribunal which remanded the matter back to the Assistant Settlement Officer to make an enquiry into the 1941, agreement and decide the case only after such consideration. When the matter went back the Assistant Settlement Officer, by his order dated 27-9-1956. held that the 1941 agreement was genuine and Section 20-A of the Estates Land Act did not apply to the Lands. Consequently, he granted a patta in favour of the petitioners. Aggrieved by this Order, the Government preferred an appeal to the Tribunal which by its order dated 21-3-1967 allowed the appeal holding that Section 20-A applies to the case and, therefore without an order under that provision the lands could not be converted into cultivable lands. This writ petition is filed challenging the said order of the Tribunal. This is opposed by the Government. Their contention is that the order of the Tribunal allowing their appeal is correct and that the land. once it is tank bed cannot be converted into or treated as ryoti land unless there was permission u/s 20-A of the Estates Land Act to convert it in to ryoti.

4. W. A. No. 411 of 1969 is directed against the order of Krishna Rao. J., in W. P. No. 2906 of 1968. There a rough patta was granted to the appellant (first respondent in the writ petition) by the Assistant Settlement Officer in respect of Ac. 2-24 cents in Benkili Village, Baruapeta Estate, Srikakulam District after the rejecting the objection of the first respondent, on the ground that the land in question is tank-bed land and it cannot be treated as a ryoti land. The Settlement Officer. however, by his order dated 26-3-1967 cancelled that patta.

In revision the Director of Settlements confirmed the order of cancellation. In further revision the Board of Revenue restored the order of the Assistant Settlement Officer and directed the granting of patta to the appellant. Thereupon the first respondent filed the Writ petition in this court challenging the order of the Revenue Board. Our learned brother Krishna Rao. J., allowed the appeal and quashed the order with a direction to the Revenue Board to hear and dispose of the revision petition afresh after considering the documentary evidence in detail. In the course of his order the learned Judge observed that.

"The definition contained in the Estates Land Act does not require that the tank should be used as such in order to exclude a tank-bed from the category of the ryoti land. There is no evidence that the Zamindari or the inamdar took proceedings under the Act to covert the tank-bed area into ordinary ryoti land. Apprehending that, that observation might affect his chances in his revision petition before the Revenue Board. the appellant has preferred this writ appeal, questioning the correctness of the view taken by our learned brother."

5. It is thus to be seen that the contentions of the Petitioner in W. P. No. 1308 of 1963 and of the State opposing W. P. No. 690 of 1967 are identical. while the arguments of the respondents in W. P. No. 1308 of 1963 the petitioners in W. P. No. 690 of 1967 and the appellant in W. A. No. 411 of 1969 are similar. The petitioner in W. P. No. 1308 of 1963 confined her submission only to the extent that no patta could be granted to the first respondent u/s 13 (b) (iii) of the Abolition Act and gave up the alternative claim that in case the first respondent in granted a patta she should also be granted a patta in respect of half the land. Thus, the principal contention in these three matters is whether a patta could be granted u/s 13 (b) (iii) of the Abolition Act for a land which is originally which our learned brother considered necessary to be decided by a Full Bench. In amplification to their contention it is submitted by the petitioner in W. P. No. 1308 of 1963 and the Government that no ryotwari patta could be granted in respect of tank-bed land u/s 13 (b) (iii) of the Estates Abolition Act, as that provision excludes non-ryoti lands from its purview. In the absence of a permission u/s 20-A of the communal land like tank poramboke into ryoti land was possible. Mere cultivation of the land as agricultural land whether from 1934 or from 1939 would not alter the character of the land which is originally tank bed. It is, however, argued for the other side that when tank bed fallen into dispute by the time the Abolition Act came into force and was not serving the purpose for which it was originally intended and there was only wet land in the place of the tank the erstwhile land-holder who is admittedly a Proprietor of all communal lands in his estate entitled to a patta in respect of such land u/s 13 (b) (iii).

6. Before we begin to consider this main point under debate we may conveniently dispose of a preliminary objection raised by the respondents to the maintainability of W. P. No. 1308 of 1963. It is submitted that the petitioner has no locus standi to file the writ petition because, though she was one of the

erstwhile landholders, the estate was abolished on 1-7-1959 and ever since then she had no more interest. This objection is stated in the following terms in the counter affidavit.

"I submit that the writ petitioner has no locus standi to file this writ petition as she is not the resident of Chintalapalem. She has been residing at Kavali which is 20 miles away from Chintalapalem for the last 40 years. She has no manner of interest at Chintalapalem after the estate was abolished and taken over by the Government on 7-1-1959. On this ground alone the Writ petition is liable to be dismissed."

It is pointed out that there is no reply to this assertion and, therefore, there averments should be taken as true. But, the said allegation of the respondent need not necessarily lead to the conclusion that the petitioner has no more interest in the land now in question. The respondent has not chosen to allege that the petitioner does not own any lands in the village. The mere fact that she is now living at Kavali, even if true, does not take away her interest in the suit land if she continues to have some lands in the village. Quite apart from that, she is admittedly one of the erstwhile properties of the village and is entitled to a half share therein. If the land is communal, the petitioner as landholder is certainly interested in it. She is entitled to a share in the compensation payable on the abolition of the Estate. Moreover, the facts we have stated disclose that it was she that objected, even before the Assistant Settlement Officer, for granting a patta to respondents 3 to 5. Once again it was she that carried the matter in appeal to the appellate Tribunal. It is significant to note that respondents 3 to 5 took no objection either before the Assistant Settlement Officer or before the appellate Tribunal on the score that she had no locus standi to object to the granting of patta or to prefer an appeal before the Tribunal. When her appeal was rejected by the Tribunal she has filed a writ petition challenging the correctness of the order. It has been repeatedly held by the Supreme Court that a person who seeks to file a petition under Article 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest; it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof. (Vide *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*,). From the facts we have stated above there is no doubt that the petitioner has been certainly prejudiced by the order of the Tribunal dismissing her appeal and, therefore, her writ petition is certainly maintainable.

7. Despite this authoritative pronouncement strong reliance is placed upon the view taken by Basi Reddy, J., (as he then was) in *Chintalapalli Sreeramulu v. The Estates Abolition Tribunal*, W. P. No. 1427 of 1963, D/- 31-8-1967 (Andh Pra). Therein the learned Judge observed that the Writ petitioner there had no locus

standi to challenge the correctness of the order of the Tribunal because in respect of the lands for which patta had been granted neither the petitioner nor the other objector laid any claim to a ryotwari patta nor did they claim that the lands were communal lands in which they had any direct or indirect interest. But, such is not the case before us. It is to be remembered that the petitioner herself laid a claim to a ryotwari patta for half of the land if respondents 3 to 5 also are to be given one. Further, she claims the lands as a communal land in which she as the former landholder had interest. It is also significant that Basi Reddy, J., himself who had expressed this view about the maintainability of the Writ petition, has referred this self-same writ petition to a Division Bench. Either no objection as to the maintainability of the Writ petition was raised before him or if raised the learned Judge rejected it. In any view of the matter this objection as to the maintainability of the Writ petition and the locus standi of the petitioner has no substance whatever.

8. Now, coming to the main point in dispute a ryotwari patta is sought in respect of the lands in question u/s 13 (b) (iii) of the Estates Abolition Act. and in the cases where pattas were directed to be granted such directions were given under the said provision. The objection to the granting of pattas is that the tank bed lands are outside the purview of the said provision. It is, therefore, necessary to notice the relevant provisions of the Abolition Act. The Abolition Act of 1948 received the assent of the Government General on 1st April, 1949 and was published in the Official Gazette on 19th April, 1949. Section 3 (b) lays down:

"The entire estate (including minor inams post-settlement or presettlement) included in the assets of the zamindari estate at the permanent settlement of that estate: and communal lands and porambokes other non-ryotwari lands; waste lands, pasture lands; Lanka lands forests; mines and minerals; quarries; rivers and streams, tanks and irrigation works; fisheries; and ferries, shall stand transferred to the Government and vest in them free of all encumbrances; and the Madras Revenue Recovery Act, 1863, the Madras Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate;" clause (c) provides:

"all rights and interests created in or over the estate before the notified date by the principal or any other land-holder, shall as against the Government cease and determine."

Thus on an estate being abolished. the entire estate including communal lands and porambokes and other-non-ryoti lands and waste lands. tanks and irrigation works became vested in the Government free of all encumbrances. Though the entire estate thus became the property of the Government and all the former rights and interests in or over the estate ceased and determined as against the Government, provision is made in the Act for granting of ryotwari pattas in respect of certain categories of lands. Section 11 recognizes the rights of Ryotes to ryotwari pattas in respect of ryoti and lanka lands. Section 12 provides for the recognition of the rights of landholders to ryotwari pattas in zamindari estates.

Section 13 refers to the right of the land-holder to get ryotwari pattas in respect of some categories of lands in inam estates. It is to be noted that the three villages with which we are now concerned and which have been taken over by the State were inam estates. The parties are, therefore, in agreement that pattas in these cases, if at all, could be granted only under this provision. Likewise Section 14 deals with the granting of ryotwari pattas to landholders in respect of lands in under-tenure estates. Section 15 requires that the Settlement Officer shall examine the nature and history of all lands in which the landholders are entitled to ryotwari pattas under Ss. 12, 13 and 14. In the present cases, such enquiries have been held and in the light of the facts and circumstances as found in those enquiries that the questions now canvassed have to be decided and the rights of the parties be adjudicated upon.

9. Sections 12 and 13 of the Abolition Act which refer to the rights of landholders to ryotwari pattas in zamindari and inam estates respectively have identical provisions. Clause (a) declares the right of the landholders to a ryotwari patta in all lands including lanka lands, which immediately before the notifying date belong to him as private lands or stood recorded as private lands in the concord records, provided they have not been subsequently converted into ryoti lands. Clause (b) deals with three categories of lands. The first subclause is concerned with lands which were included in the holding of ryot but have been acquired by the landholder by inheritance or succession, provided the landholder has kept them under his cultivation, from the date of acquisition or the first day of July, 1945, whichever is later. Likewise, sub-clause (ii) refers to all lands which were included in the holding of a ryot but have been acquired by the landlord by purchase, exchange or gift etc., provided that he has cultivated such lands himself from 1st July 1945. In regard to lands coming under sub-clause (i) and (ii), it must be further shown that the landlord has been in direct and continuous possession of the lands from the latter of the two dates viz., the date of his acquisition or the first day of July, 1945. It is common ground that none of the above clauses governs the rights of the parties and have no application in the present cases. The claim is made and asserted only under sub-clause (iii) of clause (b) of Section 13 and we will, therefore, read it in full. It is as follows:

"13. (b) (iii) all lands (not being (i) lanka lands. (ii) lands of the description specified in Section 3, clause (16) sub-clauses (b) and (c) of the Estate Land Act, or (iii) forest lands) which have been abandoned or relinquished by a ryot, or which have never been in the occupation of a ryot, provided that the landholder has cultivated such lands himself, by his own servants or hired labour with his own or hired stock, in the ordinary course of husbandry, from the 1st day of July, 1945 and has been in direct and continuous possession of such lands from the date."

We are not here concerned with the explanation.

10. Now by analysing Section 13 what we find is the following: The landholder is entitled to pattas in respect of the following categories of lands: (1) his private

lands which include his private lanka lands; (2) lands which he has acquired by inheritance or succession under a will, though they were properly included or ought to have been included in the holding of a ryot; (3) land which have been acquired by the landholder by purchase, exchange or gift; and (4) lands which have either been abandoned or relinquished by a ryot or which have never been in the occupation of a ryot provided the landholder has himself cultivated such lands from the first day of July, 1945. These four categories can be reduced to three broad categories; viz., (1) private lands as such (2) lands which had been included in the holding of a ryot but have been subsequently acquired by the landholder either by inheritance or succession under a will or by purchase, exchange or gift; (3) lands which were never in the occupation of a ryot or which had once been in his occupation were subsequently abandoned or relinquished and which the landholder has personally cultivated from 1st July, 1945. From the last category three classes of lands are excluded. They are, (1) lanka lands (2) lands bearing the description specified in Section 3 (16) (a) (b) and (c) of the Estates Land Act; (3) forests lands. A plain reading of sub-cl. (iii) makes the said exclusion of the three classes of lands from its purview clear. The excluded classes of lands are shown in brackets and the brackets begin with the words "not being". The intention of the legislature to exclude the three classes of lands which are contained in the brackets and follow the words "not being" from "all lands" which are referred to in sub-clause (iii) is manifest. Otherwise there is no purpose in using the words "not being" immediately after "all lands". The expression "all lands not being lanka lands etc. Could only mean that the sub-clause is dealing with such of those lands which are not lanka lands etc. It is clear to our mind that (1) lanka lands; (2) lands coming within the description of Section 3 (16) (a) (b) and (c) of the Estates Land Act and (3) forest lands are specifically excluded from the purview of sub-clause (iii).

11. The same exclusion was made in Section 12 (b) (iii) also. The purpose behind including such classes of lands from the lands in respect of which the landholders are entitled to ryotwari pattas is obvious. These three classes of lands serve general purposes and provide facilities and amenities to the community at large. Lanka lands in so far as they are private lands of the landholder or within the occupation of a ryot are dealt with in clause (a) of Section 12 and 13 of clause (b) of Section 11. The other lanka lands, the lands coming within the ambit of section 3 (16) (a) (b) and (c) of the Estate Land Act and Forest lands are obviously intended to be kept at the disposal of the Government so that they could be dealt with by the State as the representative of the community, in a manner which would be most advantageous to the public at large. On abolition, the entire estate including all communal lands, non-ryoti lands, waste lands, lanka lands, forest, tanks and irrigation works vests in the Government by virtue of Section 3 (b) Excepting those lands in respect of which ryots or land-holders are entitled to get ryotwari pattas, the rest of the estate continues to be the property of the Government. Because the three classes of lands are essential for the community's life. they are specifically excluded from the categories of ,lands

in respect of which ryotwari pattas could be granted. It is generally well known what are lanka lands and forest lands. In so far as the lands specified in clause (a) (b) and (c) of section 3 (16) of the Estate Land Act are concerned, a reading of that provision would make their communal character abundantly clear Section 3 (16) says:

"Ryoti land" means cultivable a land in an estate other than private land but does not include:

(a) beds and bunds of tanks and of supply, drainage surplus or irrigation channels:

(b) threshing-floor, cattle-stands, village-sites and other lands situated in any estate which are set apart for the common use of the villagers;

(c) lands granted on service tenure either free of rent or on favorable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists."

The Cl. (16) specifically excluded from the scope of ryoti land these three varieties of lands, such lands are obviously required for communal living and activities of the people who live in that locality.

12. We are now concerned in these matters with tank beds which are covered by sub-clause (a). As is well known, tanks are used for more than one purpose. People require their waters not only for their own drinking purposes but also for their cattle. Besides, large areas of lands are irrigated with the aid of tank water. Seed beds are also grown with the aid of water from the tanks. Tanks are also used for letting drainage surplus into them. It is thus manifest that tanks serve very essential purposes of the community. That is why the maintenance of irrigation works like tanks has always been considered as a duty cast upon the Government and also its right to regulate the waters therein has been well recognised. (Vide *Fischer v. secy. of State for India*. ILR (1909) 32 Mad 141. As the Privy Council declared in *Madras Railway Co. v. Zamindar of Carventingaram*. (1874) 22 Suth. WR 279 (PC) the public duty of maintaining tanks and of constructing new ones in many places was originally undertaken by the Government of India and upon a settlement of the country has, in many instance devolved on the zamindars. The zamindars have no power to do away with these tanks in the maintenance of which large numbers of people are interested, but are charged under Indian Law, by reason of their tenure, with the duty of preserving and repairing them.

13. The Estates Land Act itself, which was enacted in the year 1908. provided in Sections 139 to 143 for maintenance of the irrigation tanks and other works by the zamindar. it has further taken the precaution of conferring power on the Collector u/s 20 to decide whether any land comes within the description of Section 3 (16), (a), (b) and (c), and whether there are any customary rights therein. A right to file a suit questioning the correctness of the Collector's

decision is also provided under sub-section (ii). Further in 1934 two sections viz., Section 20-A and 20-B were introduced in the Act by the Madras Estates Land (Amendment) Act, 1934, Sections 20-A confers power on the District Collector to declare on an application made either by the landholder or a ryot or any other person interested, that any land or any portion of any land which is set apart for any of the purposes referred to in sub-clause (a) (b) and (c) of Clause 16 of the Section e, is no longer required for its original purpose. He is also conferred with the power to direct in writing that any such land or any portion thereof may be used for any other specified communal purpose, or if such land is not required for any communal purpose that it be converted into ryotwari land or landholders' ryoti land according to the revisionary rights in such land. But the proviso required the Collector. before making any such declaration or direction, to consider whether there are any customary rights in the lands. Sub-section (2) of that section says that without the written order of the Dist. Collector under Cause (b) of sub-section (1) no land which is set apart for any of the purposes referred in sub-clause (a) and (b) of Clause (16) of Section 3 shall be assigned or used for any other purposes. At the same time, care is taken to declare that nothing contained in the sub-section shall affect or take away or be deemed to take away the customary rights of the landholder or ryots in the use of any such land. Section 20-B confers on the District Collector to acquire land for communal purposes. It is thus seen that great sanctity is attached to these lands which are generally called "communal lands" and to the customary rights of the landholder as well as the ryots in the use of such lands. Sub-section (2) of 20-A imposes a bar on any land, which is set apart for the purposes mentioned in sub-clause (a) & (b) of clause (16) of Section 3 being assigned or used for any other purposes. Accordingly, great care has been taken by the Government in issuing instructions to its officers in regard to the disposal of tank bed lands in Board standing Orders Nos. 15 and 16.

14. The great anxiety shown in the Estates Land Act to preserve the communal lands as indicated in Sections 20, 20-A and 20-B will be shown in greater relief when they are compared with the original Section 20. The said three sections were substituted in the Act for the original Section 20 by Section 14 of the Madras Estates Land (Amendment) Act, 1934. Section 20 as it originally stood and which was replaced by the aforesaid three sections was in the following terms:

"Threshing floors, cattle-stands, village sites, and other lands situated in any estate, and other lands situated in any estate which are set apart for the common use of the village shall not be assigned or used for any other purpose without the written orders of the District Collector subject to such rules as the local Government may make in this behalf.

EXPLANATION: Any land which has been so set apart by the land-holder subsequent to the permanent settlement shall report to the land-holder when, in the opinion of the Collector, it is no longer required for any communal purposes.

Survey as to Tank beds; Nothing in this section shall apply to tank beds in any estate or affect the rights of the land-holder over them."

The provision, as it then was, excluded tank beds in any estate from the operation of the section and further declared that nothing contained therein would affect the right of the land-holder over the tank beds in his estate. But by substituting old section 20 with new section 20 and 20-A. the legislature put an end to the exemption given in the also brought in line with other communal lands like threshing floors, cattlestands, village site etc., for the lands described in Section 3 (16) (a) of the Estate Land Act, viz., beds and bunds of tanks and irrigation & drainage channels are specifically brought into the ambit of Section 20 and 20-A. It is, therefore, very plain that at least from the time the Amendment Act of 1934 came into force, tank beds could not be covered by the landholder or any person interested by themselves into ryoti lands or lands serving any other purpose. In fact by virtue of sub-section (2) of Section 20-A no tank bed land, like other lands mentioned therein, can be assigned or used for any other purpose without the written order of the District Collector under sub-section (1) (b) of that section.

15. It is in the light of this legal position that the contention put forward for the respondents in W., P. No. 1308 of 1963 the petitioner in W. P. No. 690 of 1967 and the appellant in W A No. 411 of 1969 has to be examined. Their argument as we have already mentioned, is that if the tank had fallen into issue by the time the Abolition Act came into force and was not serving the purpose for which it was intended the landholder is entitled to a ryotwari patta u/s 13 (b) (iii). Since the landholder was the proprietor of all such communal lands, it is submitted, the land would revert back to him as his absolute property when the communal purpose for which it was originally intended was no more served by the time the Abolition Act was brought into effect. They argue that on the abolition of the Estate the original character of the lands ceased to exist and, therefore, when pattas are applied for u/s 13 of the Abolition Act, the land-holder would be entitled to a ryotwari ;patta if the lands were not actually being used as tank bed at that time. They lay emphasis n the words "not being" which precede the enumeration of the three classes of lands contained in sub-clause (iii). Those words according to them bring out the intention of the legislature that if on the date of the coming into force of the Abolition Act. the lands were not in fact actually used as tank beds etc. they would come within the purview of that clause. In our view this argument is without substance. It has to be remembered that right upto the time the estate was notified and taken over and the Abolition Act was applied to it the Estates Land Act was in force in respect of the estate. That is why not only in Sections 12 and 13 but in very many other provisions of the Abolition Act reference is made to the Estates Land Act. It is logically and naturally so because the Abolition Act was abolishing what were considered and defined as "estates" by the Estates Land Act. Therefore, the significance of the communal lands being referred to in Section 13 (b) (iii) as "lands of the ascription specified in Section 3 (16) (a) (b) and (c) of the Estates Land act

should be properly appraised. It clearly means that all those lands which came within the scope of Section 3 (16) (a) (b) and (c) of the Estate Land Act, as on the date of the Abolition of the Estate are taken out of the lands in respect of which pattas could be granted to the landholder u/s 13 (b) (iii). If that were not the intention of the legislature, then it would have been easy for it to have said that all lands which were not, on the date of the application of the Abolition Act to an estate a serving communal purposes for which they were set apart would be included in the purview of that provision. There is no indication whatever in sub-clause (iii) as to the requirement that these lands should be in actual use on the date of the Abolition Act for the purposes for which they were actually intended. In the absence of any such indication and in view of the plain language used in the provisions by excluding lands bearing the description specified in Section 3 (16) (a) (b) and (c) of the Estates Land Act. It is manifest that it is not further necessary that the lands should have been in actual use for purpose for which they were set apart on the date of the Abolition Act. It follows that if they were lands bearing that description mentioned in Section 3 (16) (a) (b) and (c) on the date of the application of the Abolition Act to the estate, then no patta could be granted u/s 13 (b) (iii). As we have stated earlier if any land was set apart as a tank bed or for any other communal purpose mentioned in Section 3 (16) of the Estates Land Act and continued to be so till 1934, it would remain as tank-bed or other communal land, unless there was an order of the District Collector permitting its conversion into any other land or for any other purpose made u/s 20-A of the Estates Land Act. In the absence of such an order, no land belonging to the categories mentioned in Section 3 (16) (a) and 9c) shall be assigned or used for other purpose as laid down by sub-section (2) of Section 20-A. Further, the customary right of the ryots in the use of such land would also continue unimpaired. If such was the position in respect of any land as on the date of the application of the Abolition Act to the estate, then it is excluded from the purview of Section 13 (b) (iii) and no patta could be granted in respect whereof under that provision. We cannot agree with the contention that the character of tank-bed would alter when the Abolition Act is applied to an estate. Whether it was in actual use as a tank or not on the date of the abolition, it would continue to be treated as tank bed, if as, on the date of the Abolition Act it was a land coming within the description of section 3 (16) (a) of the Estates Land Act.

16. We must also take notice of a further submission based on the use of the present tense in the words "land which is set apart" in Section 20-A. From this it is attempted to be argued that only lands which are actually used as tank beds that come within the operation of Sec. 20-A. If they were not used as tank beds then they cannot be treated as lands which are set apart as tank-beds. Therefore, there was no need to seek the permission u/s 20-A. If any were not used as tank beds then they cannot be treated as lands which are set apart as tank-beds. Therefore, there was no need to seek the permission u/s 20-A for conversion. We have already referred to the provisions of Section 20, as it originally stood before

Sections 20, 20-A and 20-B were introduced in 1934 by the amending Act. That original provision also contained the same words which are set The plain meaning of the words can only be that any land which stands set apart for any communal purpose cannot be converted excepting by adopting the procedure u/s 20-A. They refer only to the character and nature of the lands and not to the actual use to which they were put on the date of the application u/s 20-A. In any case, if a land was tank bed or any other communal land by 1934, it was land set apart for the purpose for which it was intended as on that date, and it could not be converted to any other use or purpose excepting by an order u/s 20-A (1) (b). We cannot, therefore, uphold this contention put forward by the erstwhile landholders.

17. If it is further submitted that the tank beds in question have not only fallen into discussion but the land-holders concerned have been cultivating them as regular wet lands for a considerable time before the Abolition Act came to be applied to the estates and, therefore, the lands in question should be treated as cultivable lands and not communal lands. If any cultivation was conducted by the landholders in these lands which are tank beds coming within the scope of Section 3 (16) (a) without obtaining the permission u/s 20-A of the Estates Land Act, then such cultivation was unauthorised and illegal. The land holders cannot be permitted to convert their unauthorised and illegal use of the lands into a basis for acquiring a legal right u/s 13 (b) (iii). It cannot be countenanced that by authorising (unauthorisedly?) and illegally putting tank bed lands to some other use, the landholders could change their character and bring them within the scope of Section 13 (b) (iii).

18. The following principles emerge from the aforesaid discussion; Lanka Lands, lands of the description specified in Section 3 (16) (a) (b) and (c) of the Estates Land Act, and forest lands are excluded from the purview of Section 13 (b) (iii) of the Abolition Act and no ryotwari pattas could be granted to the land-holder under that provision in respect of those lands. The mere non-user of the communal lands for the purposes for which they were intended and set apart, as on the date of the application of the Abolition Act to the estate is not material and does not alter their communal character, if, by the time the Abolition Act came to be applied to the estate in which they are situated, they were lands coming within the description specified in Section 3 (16) (a) (b) and (c) of the Estate Land Act. Despite the discussion to which they have fallen and despite the other users they have been unauthorisedly and illegally put to they would nonetheless continue to be lands belonging to the category specified in Section 3 (16) (a)(b) and (c) of the Estates Land Act in the absence of any order u/s 20-A (1) (b) of the Estate Land Act.

19. We will now proceed to consider some of the decided cases which have a bearing on the problem. In *Boluswamy v. Venkatadri Appa Rao* 47 Ind. Cas 594 : AIR 1919 Mad 579 a Division Bench of the Madras High Court held that:

"In using the expression "tank-beds" in Section 3 (16) of the Madras Estates

Land Act the Legislature was alluding to such class of tank-beds as are cultivatable, that is, as are being capable of being cultivated when the tank has become dry or when there is no water in the tank in certain years."

In *Gopiseti Narayanaswamy v. Chodavapapu Kumanna* 51 Ind. Cas 318 : AIR 1920 Mad 893 a Division Bench of the Madras High Court opined that Section 3 (16) of the Madras Estates Land Act suggests its application to land which had not lost its character as tank-bed when the Act came into force. Whatever be the correctness of this decision in the light of the subsequent case law, the principle laid down in the case has no application to the problem on hand because according to the findings recorded by the lower authorities to which we shall presently advert. the lands ceased to be tank-beds and came to be cultivated after the year 1934 only.

21. The Privy Council, held in *Naganna Naidu v. Pitchayya* 56 Ind App 346 : ILR 52 Mac 797 : AIR 1929 PC 249 that tank-bed land which was leased out by the landholder to a tenant did not cease to be non-ryoti.

22. Another Division Bench of the Madras High Court held in *Meeralli Ambalam v. Shanmugha Raheswara Sethupathi* 66 Mad LJ 338 : ILR 57 Mad 593 : AIR 1034 Mad 221 that

"What certain plots of land in the higher portion of a tank-bed situated in a zamindari were submerged in normal times after rainfall every year but were brought under cultivation in other seasons the lands did not cease to be tank-bed merely because cultivation was so carried on."

Nor did they attain the character of ryoti by reason of their assignment by the landholder for purposes of cultivation. This is, however, a case which arose before the Amendment Act of 1934 and when Section 20 stood in its original form. While considering the scope of the provision in Section 20 that "nothing in this section shall apply to the tank-beds in any estate or affect the rights of the land-holder over them." the learned Judge observed that it reserved the beds for cultivation, but that did not mean that tank-beds, by being so assigned, become converted into ryoti land. Tank-beds having been excluded from "ryotiland" by the definition of that term, the Judgment proceeded to state, it was considered necessary to confer certain powers in respect of the tank beds in express terms. The provision in question could not, therefore, have the effect of converting the tank-bed into ryoti. The learned Judges also observed that the contention that a certain land may at the same time be both tank-bed and ryoti cannot possibly be accepted. It was however, urged for the landholders that the learned Judges in this case held the view that although any specified land might be within the ambit of a tank-bed, it might on account of abandonment cease to possess that character. It is true that the learned Judges referred to their own decision in *S. A. Nos. 1288 to 1292 of 1929 (Andh. Pra)*. in support of their said observation. But what exactly is meant by abandonment was not explained in the case. Could it mean that mere non-user would tantamount to abandonment? Though it was not

clarified in the judgment I does not appear to be the intention of the learned Judges, judging from the later observations. They indeed decided that mere assignment of tank-beds for cultivation did not convert them into ryoti land and that a certain land could not at the same time be both tank-bed and ryoti. We, therefore, understand this decision as meaning that "abandonment" could be done only through as a process known to law but not by mere non-user. We do not, therefore, think that this would in any way help the landholders in contending that mere non-use of a tank-bed as a tank would have the effect of abandoning it and converting it into some other land.

23. In *Ramaswamy Goundar and Another Vs. Ramaswami Goundar and Others*, ; Leach C. J. and Lakshmana Rao, J. considered the scope of sections 20, 20-A and 21 of the Estates Land act after the 1934 amendment. There the landholders of an estate filed the suit to establish their right to cultivate the bed of a tank in their estate when the tank became dry in the hot weather. The suit was contested by the ryots who denied that the land holders possessed that right. The learned Chief Justice speaking for the Court stated that where the proprietary right of the land-holders in the tank beds were unaffected by custom the ryots of the village had no interest in the land apart from the right to use, for the purpose of their holdings, the water contained on the land. Accordingly the landholders were entitled to cultivate such parts of the bed of the tank as became exposed when the water receded in the dry season, provided that the cultivation did not prevent the water spreading when the rains came. Neither Section 20-A nor Section 21 had any application to the case. This right of the landholders was in pursuance of their proprietary interest in the estate including the tank beds. After referring to *Meeralli Ambalam and Another Vs. R. Shanmugha Rajeswara Sethupathi alias Naganatha Sethupathi Avergal, Rajah of Ramnad and Another*, ; it was stated in the judgment that that case was concerned with Section 20 before its amendment in 1934. In the section as it originally stood, it was stated that nothing in it shall apply to tank-bed in an estate or affect the rights of the landholder over them. This statement had been omitted from the amendment section, but the omission did not affect the landholder's rights as a proprietor. Of course, these rights might be affected by custom, but no custom existed in the case before them. But, this does not mean that a landholder could convert a tank bed into non-tank-bed land except in the manner provided in Section 20-A . This decision only recognises the landholder's right to use the tank bed for cultivation so Long as such user does not interfere with the use of the land as a tank-bed. Therefore, it follows that a landholder cannot convert a tank bed into any other land by merely putting it to other user.

24. Learned Counsel for the landholders, however, laid great emphasis on the observation of the learned Chief Justice that in that case they were not concerned with a land which was no longer required for its original purpose. From this they want to infer that had the tank ceased to serve its original purpose the decision would have been different. we do not think that the observation has that effect. The observation intended to state the fact as it existed and it had no

material bearing on the principle which the learned Judges laid down.

25. In *K.S. Lakshmipathy Nayakar Vs. The State of Madras and Another*, ; a Full Bench of the Madras High Court held that a tank bed in an estate is not a communal poramboke, but the landholder's rights would be retracted in a tank which is the source of irrigation for the lands in the estate. The landholder is under an obligation to ;reserve maintain and repair such tanks and the ryots will have a right over the tank in the nature of an easement. As the object of the Madras Estates Abolition Act is to convert the zamindari Estate into ryotwari tenure, the provisions of the Act should be understood in relation to the purpose. If the tank was a source of irrigation for other lands, the tank would be Government property and the landholder will not be entitled to obtain a patta for the not be entitled to obtain a patta for the same although the land on which it same although the land on which it stands or the surrounding land may be the private land of the landholder and to which he may be entitled to a patta. Thus, if it was originally a tank-bed land intended to save as a source of irrigation even for the landholders in surrounding lands a ryotwari patta could not be granted to the landholders. But, it would be considered as the property of the Government after the abolition of the estate.

26. It is pointed out by the learned counsel for the landholders that the purpose being vesting the tank beds in the Government on abolition of the estate are to see that there would be equitable distribution of the water amongst the various patadaras and that ownership of the irrigation sources would provide an important head of taxation which would bring increasing revenue to the States. But, when the tanks had ceased to be sources of irrigation, these purposes would be defeated and that, therefore, there was no further point in vesting them in the government. We are not impressed by this argument. To that use the Government would put these erstwhile sources of irrigation in future will have to be decided by it after taking into consideration the sources of irrigation available in the area and other factors. It cannot be prejudged that the lands would be thoroughly unless. That could be decided only by an appropriate authority and in such cases Section 20-A of the Estate Land Act constituted the District Collector as such an authority. When it was not submitted for his decision, it should follow from the provisions of that Act that the lands continued to be tank-beds. Another observation of the Bench that if it is found that having regard to its size and the quantity of water, it is nothing more than a well or a pond, the landholder will be entitled to have it included in the patta of the land of which it is a part is also emphasized. But we fail to see how this observation made in the context of a tank constructed by the landholder in his own private lands for the purpose of irrigating his own lands would help the landholder's contention before us. Dealing with such a tank, the learned Judges of the Full Bench held it if was a small tank and was laid in the private lands of the landholder. he would be entitled to have it included in the patta for the land for which it is part.

27. A Division Bench of our High Court consisting of Chandra Reddy. C. J. and

Jaganmohan Reddy, J. (as he then was) held in *Y. Sivarama Prasad v. State of Andhra Pradesh* (1960) 1 AnWR 40 : 1960 An LJ 188 that it is difficult to postulate that a tank could be regarded as a private land notwithstanding its situation in the middle of other lands to which the landholder could claim a ryotwari patta. That the tank bed is appurtenant to other lands belonging to the landholder is not decisive and does not lead to the conclusion that it is also cultivable land.

28. In *Gopalan v. Estates Abolition Tribunal*. (1960) 2 Mad LJ 182 : ILR (1960) Mad 333; the applicability and scope of Section 13 (b) (iii) arose for consideration before a division Bench. There was a tank. But owing to the inclusion of the lands irrigated by it in the ayacut of Cauvery-Mettur project the inamdar began to cultivate the tank-bed long prior to 1st July. 1945. There was however, no order of the District Collector, u/s 20-A of the Estate Land act permitting the conversion of the land. The purchaser from one of the inamdars claimed ryotwari pattas in respect of the tank-bed. His contention was that the tank was not in actual existence and had been abandoned as such on account of the inclusion of the lands of the Inam in the Cauvery Mettur project. Repelling this contention Ramachandra Iyer J., who spoke for the Court observed that

"When at the date of the commencement of the Estate Land Act an irrigation tank exist in an estate, the tank would continue to be a tank-bed notwithstanding the cultivation thereof by the landholder. Such cultivation is allowed by reason of the right of the proprietor over the property (without prejudiced to the rights, if any, of the ryots), and not because the land gets converted into a ryoti or private land. The existence of a proprietary right in the tank which enabled the landholder to cultivate the tank-bed land is, by itself, of no importance for the purpose of determining the scope of the statutory rights which would be claimed u/s 13 (b) (iii) of Madras Act (XXXVI of 1948). Prior to 1934 what was a tank-bed on the date when Madras Act (1 of 1908) came into force continued as tank-bed land S.20-A. inserted in the Act (1 of 1908) by the Amending Act (Madras Act VIII of 1934) provided for the conversion of the tank beds. among other communal lands, into ryoti lands. It could be so converted only by an order passed by the District Collector u/s 20-A and till such an order is made, the land would not lose its character and become ryoti land by mere non-user of the tank. where no such order had been made until the date of notification of the estate under (Madras Act (XXVI of 1948) the land must be held to retain its character as tank bed within the meaning of Section 3 (16) (a) of the Estate Land Act and would come within the scope of the land excluded by Section 13 (b) (iii) of the Madras Estates (Abolition and Conversion into Ryotwari) Act. 1948."

This case is on all fours with the cases were now considering and the view of the learned Judges fully accord with the opinion we have expressed above.

29. Advantage is ought to be taken of the following observation of the learned Judges at page 186 by the Learned counsel for the landholders.

"On its terms the provisions of the Section (Section 20-A) would apply to all cases where there was a tank on the date when the Madras Estates Land Act came into force."

If there was no tank when the Act came into force, it is argued, there would be no question of applying Section 20-A. But this observation does not help the landholders because in this case the findings are that the tanks continued to exist even after 1934. It is true, as the learned Judges observed, the landholder as proprietor might have certain rights for cultivation of the bed of a tank so long as he continued to be the holder of that estate. But once that estate is abolished the tank bed would vest in the Government.

30. A similar view was expressed by Satyanarayana Raju, C.J. and Chandra Sekhara Sastry. J. in *Veerabhadra Rao, v. Board of Revenue*. 1965 2 An WR 286; It was a case where the assignees of a tank-bed land applied for a ryotwari patta u/s 11-A of the Abolition Act. Accepting the finding of the lower-tribunals that the lands in dispute were tank-bed lands, the learned Judges held that the assignment of tank-beds situate in the upper-reaches of a tank for purposes of temporary cultivation will not convert them into ryoti land by reason of such cultivation only; they will retain their character of tank-beds which are within the purview of Section 3 (16) of the Madras Estates Land Act.

31. Stress is, however, laid on behalf of the landholder on the observation of the Division Bench that the appellants have not succeeded in establishing that the lands in dispute were at any time abandoned and that they were converted into ryoti. They want to read the word abandoned in this decision as meaning falling into disuse. But, this submission ignores that the learned Judges have categorically stated in the same sentence that it was not established that the lands were converted into ryoti. The learned Judges were obviously refrained by the absence of any order u/s 20-A. Thus, the above observation does not support the contention that mere non-user would alter the character of the land.

32. In *Valathar Mooppanar v. Board of Revenue* (1966) 1 Mad LJ 354; Chandra Reddy. C. J. & Natesan J. were dealing with a claim of a ryotwari patta u/s 11 in respect of tank-bed. The learned Judges held that a tank is outside the purview of ryoti land and that from Section 3 (g) of the Abolition Act it is abundantly clear that a ryot is entitled only to such rights as were conferred on him under the Act and that the Act does not contemplate the issue of a ryotwari patta in respect of a tank.

33. In *C. Venkata Subbayya v. Paladugu Anjayya* (1967) 2 AnWR 165; one of us, viz., Gopalrao Ekbote was considering a second appeal which arose out of a suit filed by the representatives of the ryots of a former zamindari village for a declaration that certain lands were communal lands and that they were being used by the ryots for the purpose of irrigation and draining off their surplus water till the village was taken over under the Abolition Act. It was further alleged that the Estates Manager, after abolition, permitted the appellant in the second

Appeal to be in possession of the lands and that did not alter the communal nature of the land. The appellant, however contended that the character of the land as communal land had changed into ryotwari after the permission was given to him by the Estate Manager to cultivate and that the lands were no more required for any purpose for which they were originally intended. Nothing that till the date when the estate was notified no order converting the communal lands into ryoti lands was at any time passed by the competent authority, Gopal Rao Ekbote, J., held that the irresistible conclusion was that till that date the lands continued to be communal lands. Therefore even after the estate was abolished the communal land despite such abolition, continued to be a communal land and that no ryotwari patta could be granted in respect of such land.

34. Constructing the same provisions of the Madras Estates Land Act, the Orissa High Court held in *Subbarana Paridani v. State of Orissa* ILR (1968) Cal. 20 that the cessation from the original use of tank-bed land would not result in automatic reversion in the landlord without the Collector's order. The learned Judge even went further the held that u/s 3 (16) beds and bunds of tanks would not be ryoti land even if not s apart for common use f villagers and that the landlord had no right to grant ryotwari patta in respect of such lands. We thus find overwhelming support to the view we have taken.

35. We have already referred to the endeavours of the learned counsel for the landholders to draw support from some observations made in some of the cases considered above. In addition they have brought to our notice the following cases:

36. In *Samayan Servai v. Kader Moideen* AIR 1991 Mad 506 ; a Division Bench consisting of Phillips and Napier JJ., observed that there the maintenance of a storage tank is unnecessary and the ryote under the ayacut get their accustomed supply from other sources and no damages was caused to them by the tank-bed being used for cultivation or for purposes other than the storage water, the zamindar is under no obligation to preserve the tank for the storage of water. But, this is a decision rendered before the Madras estate Land Act was amended in 1934. Ever since Section 20-A was incorporated in the Act no tank bed could be convert into any other land except by following the procedure and obtaining an order thereunder. This decision will not, therefore e of any us to the landholders in their present contention.

37. The *State of Madras v. Estatement Abolition Tribunal*. (1958) 2 Mad LJ 585 is relied on. The decision deal only with certain lands near a tank-bed that were liable to submersion when the tank was at full level. The learned Judges held that the initial presumption in such cases is that the lands formed part of the tank-bed. But, in many cases it may not be so. Even lands that are liable to submersion could be privately owned as patta lands in ryotwari areas and the position in this respect in zamindari villages can in no way be different . In order to decide whether the lands are really ryoti or tank-bed considerations like their registration cultivation for a long period would all be valuable pieces of evidence.

Thus the decision mainly concerned itself whether a particular piece of land was ryoti land or tank-bed land. It is of no help to decide the question whether a land, which was admittedly tank-bed by 1934 could be converted into private land or other land without an order u/s 20-A of the Estate Land Act and whether the patta could be granted in respect thereof under the abolition Act.

38. Lastly, a very recent decision of our learned brother chinnappa Reddy J., in *M. Venkataratnamma v. State of Andhra Pradesh* (1970) 1 An WR 86 is placed before us. That was also a case where the landholder applied for a patta u/s 13 (b) (iii) of the Abolition Act for a land which was at one time tank-bed and procedure u/s 20-A of the Estates Land Act was not taken. Our learned brother read 13 (b) (iii) as saying that in order to be excluded from the applicability of section 13 (b) (iii) the lands must be shown to be bed or bunds of tank etc. either on 1st July, 1945, or on the date when the Estates Abolition Act came into force. Such construction became possible by construing the latter part of section 13 (b) (iii) which starts with the words "which have been abandoned or relinquished by a ryot".....as qualifying the three classes of lands which are excluded from a scope of clause (iii). In other words, according to the learned Judge, only such of those land which fall within the three excluded classes of lands which have been cultivated by the landholder himself, in the ordinary course of husbandry from the first day of July, 1945 and have been in his direct and continuous possession from that date come within the exclusion and in respect of all other lands pattas should be granted. We are unable to agree with our learned brother in this construction. The latter portion of that clause which starts with the "words which have been abandoned or relinquished by a ryot"; in our view, qualify the words "all lands" and not the excluded lands. Otherwise, it would merely mean that under sub-clause (iii) all lands without any description are brought within the right of the landholder for securing a patta. Then the position would become anomalous and untenable. It is difficult to believe that in respect of all the categories of lands mentioned in clause (a) (b) (i) and (ii) so many qualifications are added to the words "all lands" and in sub-clause (iii) alone such qualifications are omitted and are added only to the excluded lands. Further, if that were the intention of the legislature, clauses (a) (b) (i) (ii) are otiose because under sub-clause (iii) a landholder will be entitled to get pattas in respect of all lands excepting in regard to the three classes of excluded land as qualified by the latter portion of that provision. It is also to be noted that the exclusion are indicated in a bracket and the words "which have been abandoned or relinquished" began after the bracket indicating the exclusion. We have, therefore, no hesitation in holding that the latter part of Section 13 (b) (b) (iii) does not govern the excluded lands. From the construction laid by our learned brothers stemmed the position of law he stated. It is as follows:

"In order to be excluded from the applicability of section 13 (b) (iii) the lands must be shown to be beds or bunds of tanks etc. either on 1st July, 1945 or on the date when the Estates Abolition act came into force. The question of the character of land either at the inception of the Estates Land Act or during the

period when that Act was in force would be irrelevant The question to be determined in cases arising u/s 13 (b) (iii) of the Estates Abolition Act is whether the tank is in actual existence or whether it has been abandoned on the date when the Abolition Act came into force. Of course the mere fact that cultivation is being carried on whenever there is no water in the tank or whenever the tank is not in full or the mere fact that cultivation is being carried on unlawfully to the detriment of the ayacutdars does not mean that the tank has been abandoned. Where, however, tank has ceased to be used for storage of water for purposes for which it originally served as a tank it cannot be said that the tank bed retains its character as tank bed land."

39. For the reasons we have stated above at length we are unable to agree with our learned brother in this exposition of law and except it as laying down the correct law.

40. These are all the decisions cited and we are convinced that the view stated by us is the only one possible under the circumstances.

41. Now coming to the findings recorded by the Tribunals in the cases before us, it was found in W. P. No. 1308 of 1963 by the Tribunal that:

"The evidence is that at least since the year 1939 the land was under the exclusive possession and enjoyment of the petitioners and their predecessors-in title."

Admittedly there was no order u/s 20-A for conversion of the lands into ryoti. Though one of the original owners applied for such a permission on 1-4-1953 the Collector, rejected that application and the order became final. Thus, we find that it is established that from 1939 alone the landholders have been in cultivation and that there was no permission for conversion u/s 20-A. The fact that a petition under that provision was filed and rejected would show that the Collector was not satisfied that the tank-bed could be converted into cultivable land. It is thus obvious that land comes within the category of lands excluded u/s 13 (b) (iii) of the abolition act.

42. Likewise in W. P. No. 460 of 1967 there was no permission given u/s 20-A of the Estates Land Act. In fact, the Assistant settlement Officer refused to grant patta on 13-2-1955 on the ground that there was no such order permitting conversion. It is only in 1941 there was an agreement between the landholders and the ayacutdars. Under that agreement alone the ayacutdars gave up their rights of irrigation under the tank and the landholders agreed to forego the corresponding portion of the revenue that was collected. It is thus obvious that till 1941 the tank continued to be of use at least in part. Thus this land also comes under the excluded category mentioned in Section 13 (b) (iii).

43. In W. A. No. 411 of 1969 there is no clear date as to what had happened. We do not find any grounds for interfering with the order of our learned brother remitting the matter back to the revenue Board. Now that the matter is going

back to the Revenue Board that authority will decide the case in the light of the principles were have laid down here and the circumstances of the case. For these reasons we hold that and the landholders in W. P. Nos. 1308 of 1963 and 690 of 1967 are not entitled to ryotwari pattas in respect of the lands under cultivation u/s 13 (b) (iii).

44. Sri Seetharamayya appearing for the petitioner in W. P. No. 1308 of 1963 also seeks to resist the granting of pattas to respondents 23 to 5 on the ground that the alienation in their favour is void as it is contrary to Andhra Pradesh (Andhra area) Estate, Communal Forest and Private Lands (Prohibition of Alienation) Act 1947. But, in view of our decision on the first point it is not necessary for us to go into this question.

45. In the result W. P. No. 1308 of 1963 succeeds & W. P. No. 690 of 1967 and W. A. No. 411 of 1969 fail. The successful parties will have their costs from the other side who contested the Writ Petitions. Advocates fee Rs. 200/- in each case.

46. Order Accordingly.