

**(1966) 12 MAD CK 0035**  
**In the Madras High Court**

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| S.K.M. Muhammed Mustafa Marakayar | APPELLANT  |
| Vs                                |            |
| Udayanachiammal and Others        | RESPONDENT |

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**Date of Decision :** 05-12-1966

**Acts Referred:**

**Citation :** (1968) ILR (Mad) 728 : (1967) 80 LW 424 : (1968) 2 MLJ 58

**Hon'ble Judges :** K. Veeraswami, J

**Bench :** Division Bench

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## Judgement

K. Veeraswami, J.—The third defendant, who is one of the legal representatives of the original mortgagor is the appellant. The first respondent as assignee of the suit mortgage, dated 9th September, 1937, sued on it and asked for sale of a part of the hypotheca in default of payment. Most of the allenees of parts of the hypotheca have been impleaded as defendants in addition to the legal representatives of the original mortgagor who died in about 1942. Various defences were raised of which the substantial one was whether the properties mentioned in the plaint B schedule were liable for the mortgage amount and whether the suit was not barred under the provisions of the Madras. Act XXVI of 1948. Among the other minor questions were whether the plaint B schedule properties formed part of the mortgage and whether the debtors were not entitled to the benefits of the Madras Act IV of 1938. On all these questions the 1st respondent succeeded.

2. The mortgage was by one S- K. Muhammed Aliar Marakayar for repayment of a sum of Rs. 15,000 on a number of items of properties of which Perayur village was one which was admittedly an undertenure estate in the zamindari of Ramanatha puram. The entirety of the village being the subject-matter of the mortgage there is no doubt that the pannai lands therein also would form part of the hypotheca On the other question as to the applicability of the Madras Act IV of 1938, no arguments have been addressed to us. We also think that the Court below on that question came to the correct conclusion. The matter in controversy thus turned only oil whether the pannai lands in the Perayur village could be

proceeded against in execution of the mortgage decree.

3. The zamin of Ramanathapuram was notified and taken over under the provisions of Act XXVI of 1948, with effect from 9th September, 1949 and the notification included the undertenure estate. The contention for the mortgagor before the Court below was that the effect of the notification u/s 3 (b) of the Act was that the undertenure village in its entirety on and from the date of the notification stood transferred to and vested in the State Government free of all encumbrances so that the rights of the mortgagee could only be worked out as provided by the Act and against the compensation awarded to the landholder in respect of the undertenure estate. On the other hand, what was urged for the Mortgagee was that compensation was paid by the Government only for the melvaram interest of the landholder and as, for the pannai lands, the landholder was entitled to get a ryotwari patta, there was only a change of tenure and no transference of ownership and that, therefore, execution could be levied against the pannai lands. The Court below relied on the terms of Section 59 (1) (b) and allowed execution,

4. The same contention is reiterated by the appellant before us but on slightly different reasoning. It is said that as a result of the notification the title of the landholder to the entirety of the undertenure estate was extinguished as such including the pannai lands and that having regard to the scheme of the Act, the remedy of the mortgagee whose rights cease as against the Government and against the interest of the landholder in the quondam estate is entirely confined to the compensation paid or to be paid to the landholder under the Act. If the landholder is entitled to a ryotwari patta for pannai lands and is granted one, that is a conferment on him under the provisions of the Act and is a new right. The bar u/s 59 is comprehensive so as to preclude the mortgagee from proceeding against the property for which the landholder has obtained, a ryotwari, patta even on the principle of substituted security. This argument is countered for the first respondent on the ground that the effect of the notification is a qualified one so far as ryoti or pannai lands are concerned, that in respect of such lands, patta granted to the landholder is related to his pre-existing title to the pannai lands and that in that sense there is continuity of ownership so that the erstwhile pannai lands are still available to be proceeded against in execution of the mortgage decree. It is also contended that even on the assumption that pannai lands too stood transferred to and Vested in the Government on the notification, after the grant of patta for such lands, they should be regarded as substituted for the original hypotheca and on this basis too, they could be proceeded against.

5. In order to appreciate the rival contentions. We have to notice the relevant provisions of the Act. The Madras Estates [Abolition and Conversion into Ryotwari] Act (Madras Act XXVI of 1948), was intended to provide for the repeal of the permanent, settlement, the acquisition of the right's of landholders in permanently settled and certain other estates in the then Province of Madras and

the introduction of ryotwari settlement in such estates. Section 2 defines an estate to include an undertenure or an inam estate. Section 3 provides for taking over all estates and describes also the consequences of taking over by notification. It opens with the words with effect on and from the notified date and save as otherwise expressly provided in the Act, repeals certain named enactments and by Clause (b) provides:

(b) the entire estate (including all communal lands and porambokes; other non-ryoti 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, 1864, the Madras Irrigation Cess Act, 1865, and all other enactments applicable to ryotwari areas shall apply to the estates;

Clause (c) is to the effect that all rights and interests created in or over the estate before the notified date by the principal or any other landholder, shall as against the Government cease and determine. Clause (d) of the section relates to taking possession and it says that on notification and after removal of any obstruction that may be offered, the Government may forthwith take possession of the estate and with it accounts, registers, muchilikas, maps, plans and other documents relating to the estate. But this clause has a proviso : .

Provided that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta:

(i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to Such patta;

(ii) if such person is a landholder, pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta.

Under Clause (e) the principal or any other landholder, and any other person, whose rights stand transferred under Clause (b) or cease and determine under Clause (c), shall be entitled only to such rights and privileges as are recognised or conferred on him by or under the Act. Clause (f) extinguishes on the notification the relationship of landlord and ryot as between them. Clause (g) says that any rights and privileges which may have accrued in the estate, to any person before the notified date, against the principal or any other landholder thereof, shall cease and determine, and shall not be enforceable against the Government or such landholders, and every such person shall be entitled only to such rights and privileges as are recognised or conferred on him by or under the Act. Pausing here for a moment, the effect of notification u/s 3 (b) is subject to the words save as otherwise expressly provided in the Act. Though the entire estate on notification shall stand transferred to and Vest in the Government free of all encumbrances, possession in the hands of a ryot of ryoti land or in the

hands of a landholder of lands for which he will be entitled prima facie to a ryotwari patta, is not, to be disturbed, pending a decision as provided under the Act on the character of the land. It is also to be noted that all rights and interests created in or over the estate before the notified date by the landholder shall cease and determine as against the Government and the persons whose rights and interests stand so transferred or determined" shall be entitled to such rights and privileges as are recognised or conferred on them by the Act. The same principle applies to persons in whose favour any rights and privileges have accrued in the estate before the notified date. Section II then provides for grant of ryotwari patta to ryots in possession of ryoti lands and certain other types of land mentioned therein. Once the character of the land is established under the section, the ryot shall be entitled to a ryotwari patta with effect on and from the notified date. Likewise a landholder, inamdar or an undertenure landholder Shall also be entitled to ryotwari patta for certain types of lands u/s 12 to 14 including pannai or private lands within the meaning of Section 3 (10) (a) of the Estates Land Act, 1908. Sections 18 and 19 cover taking over all buildings along with the estate with certain exceptions and Sections 19-A and 20 deal with persons admitted into possession of non-ryoti lands in certain circumstances and rights of certain lessees and others. We have then a bunch of Sections 24 to 39 which provide for determination, apportionment and payment of compensation. Compensation payable under these sections is a certain multiple of the basic annual sum which is the aggregate of certain specific components. One of such components is one-third of the gross annual ryotwari demand in respect of all lands in the estate in respect of which any person other than the landholder is entitled to a ryotwari patta as ascertained u/s 28 less the deductions specified in that section. That means that private land does not enter into this component, namely, gross annual ryotwari demand. In the same way another component of basic annual sum, namely, the average net annual miscellaneous revenue is also not inclusive of the source from lands in respect of which the landholder is entitled to a ryotwari patta. The reason for excluding private lands is obvious, for, those are lands for which the landholder shall be entitled to a ryotwari patta. That is the reason, why apparently, no compensation is paid for such lands. Section 41 deals with deposit by Government of compensation with the Tribunal and Sections 42 to 45 relate to apportionment of claims and their settlement against the compensation. There are other provisions as to how the compensation is to be deposited by Government including advance and interim payments. Sub-sections (1) and (2) Of Section 59 read:

59. (1) No claim or liability enforceable immediately before the notified date against the principal or any other landholder of an estate, or against any other person whose rights stand transferred to the Government in pursuance of Section 3, Clause (b) shall on or after that date, be enforceable against the interest he had in the estate; and all such claims and liabilities shall (after the date on which the deposit in pursuance of Section 54-A is made) be enforceable:

(a) against the interim payments or the compensation or other sums paid or

payable to him under this Act, "to the same extent to which such claims and liabilities were enforceable against his interest in "the estate immediately before the notified date; and (b) against his other property, if any, to the same extent to which such claims and liabilities were enforceable against such property immediately before the notified date.

(2) No Court, shall, on or after the notified date, order or continue execution in respect of any decree or order passed against the principal or any other landholder or any other person aforesaid, against the interest he had in the estate; and execution shall be ordered or continued in such cases in conformity with the provisions of Sub-section (1), only as against the interim payments or against the compensation or other sum or sums paid of payable to him as aforesaid, or against his other property, if any.

We shall presently deal with, what, in our opinion, is the effect of Section 59. The scheme of the provisions which we have briefly referred to, is, as we think, that with effect from the date of the notification or the date prescribed therein, the entire estate is transferred to and is vested in the Government. But this, as we mentioned, is subject to the provisions providing otherwise. What are those provisions and what is their effect? Notwithstanding the Vesting of the entire estate possession of lands for which ryotwari pattas shall have to be granted is not to be disturbed unlike the rest of the estate notified and taken over. The provisions relating to grant of ryotwari patta show that once the character of the land is determined, patta should perforce issue. In other words, the person in possession of lands for which he is entitled to a ryotwari patta will get patta not as a matter of grace but as of right which is recognised by these sections. Sub-sections (b) and (d) of Section 3 read with sections II to 14 to our minds make it clear that the Vesting of the estate absolutely in the Government on and from the notified date is subject to those provisions, namely that the person who shall be entitled to a ryotwari patta will not be disturbed from possession and once the character of the land is determined as ryotwari or those described in any of the Sections 12 to 14, in recognition thereof such person in possession of such lands shall be granted ryotwari patta. In effect both possession and title of person who is entitled to a ryotwari patta are saved from the effect of the notification u/s 3 (b) and the ownership in such lands continues in the quondam landholder notwithstanding the notifications and the fact that it is subject to determination of the character of the land for which he will be entitled to a ryotwari patta. The only change, however, brought about is not to the ownership but to the tenure of the land for which ryotwari patta is granted. Before notification such land was subject to payment of peshkush and after the notification, its character as private or ryoti land is destroyed and it will be held after the notification and determination of its character and grant of ryotwari patta as ryotwari land subject to payment of assessment as finally settled u/s 22. It was obviously for this reason that even in the computation of the quantum of compensation so payable such private lands were not taken into account and expressly excluded from that context. We do not rely upon this feature to establish continuance of

the ownership in the quondam landlord in such land but the exclusion from the computation of compensation of such lands appears to be logical because the ownership in such lands is" continued. The continuance of such ownership with the quondam landholder, though under an altered tenure, is quite in keeping with the intention of the Act which, as we mentioned, was directed to the abolition of the Permanent Settlement, the acquisition of the rights of landholders in permanently settled and certain other estates and to bring into being ryotwari settlement in such estates.

6. That was the view consistently taken by this Court so far. In Civil Miscellaneous Petition No. 8017 of 1950, and connected petitions the then learned Chief Justice and Venkatarama Ayyar, J., while rejecting the contention that the Act was ultra vires because among other grounds, it did not provide for compensation for pannai lands, observed:

This contention is, in my opinion, without substance. It is a matter of common knowledge that the income from the private lands was taken into account in fixing the peshkush at the time of the Permanent Settlement. So these lands were subject to peshkush. It is true that except for this burden the zamindar was enjoying the full income from these lands. But even under the provisions of the impugned Act the zamindar is allowed to continue to enjoy full income from these lands. Only, instead of the burden of the peshkush there is now the burden of ryotwari assessment. Surely the Zamindar cannot both have the lands and also ask for the income from the lands to be included in the computation, of the basic Annual sum. The ownership of the lands subject to, assessment is with the Zamindar.

Even more directly in point is *Seethalakshmi v. Krishnaswami* ILR (1961) Mad. 365, where similar question as in this case was decided. That was a case of a charge created for unpaid purchase price under a sale deed relating to the estate. After the estate was notified under Madras Act XXVI of 1948 and taken over, the landholder who had created a charge over the estate obtained ryotwari pattas for certain private or homefarm lands, in the estate u/s 12 of the Act. In a suit to enforce the charge, inter alia against such private or homefarm lands, it was contended that the lands could not be proceeded against as after the notification and taking over, they ceased to be private lands and ryotwari pattas had since been issued in respect of them. The lower appellate Court was not prepared to accept that contention and when the matter came up here in second appeal, an application for stay of the passing of the final decree came up before a learned single Judge of this Court who said that by virtue of the notification the Government had in no way put an end to, modified or altered the mutual rights between parties in regard to pannai lands over which the charge had been created and that the patta lands should be deemed to be substituted security for the pannai lands. But when the second appeal came up for final disposal before the same learned Judge, he considered that the appeal should be disposed of by a Division Bench as it raised a question of importance. It was accordingly heard

by a Division Bench to which one of us was a party. The contention was that the Act was a piece of expropriatory legislation and the Effect of the notification u/s 3 Was to completely destroy the rights inter se between the charge-holder and the persons who created the charge. The Division Bench did not accept this view as there was a provision entitling a mortgagee of an estate to obtain relief by payment of the amount due to him from and out of the compensation deposited by Government. On the more important aspect, the argument was that the pannai lands as such had ceased to exist and that though in respect of the same lands ryotwari pattas had been issued to the landholder they could not be deemed to be subject to the charge created by the landholder. Rejecting this contention, the Bench observed at page 267:

Under Section 12 of the Act in the case of Zamindari estate, the landholder shall be entitled to a ryotwari patta in respect, among other lands, of what can be established to be private lands within the meaning of Section 3, Clause (10) (a) of the Estates Land Act. If in this case ryotwari patta has been issued, it is only because they have been established to be private lands. If instead of issuing ryotwari patta the Government had taken the interest in these private lands and awarded compensation for them; surely it cannot be contended that the chargeholder will not be entitled to have the amount of compensation. If that be so, we fail to see why the charge holder should be deprived of his security over the same lands which though they have ceased to be private lands continue to be the property of the landholder. Only before the notification these lands were subject to the payment of peshkush along with other lands in the estate, but after issue of pattas they would ,be subject to the ryotwari assessment. This Court took this view in an early case, vide Civil Miscellaneous Petition Nos. 8017 of 1930, etc. and 1032 of 1951. We pointed out that the ownership of private lands must be deemed to continue with the Zamindar and there has only been a change of the nature of the burden on such lands. It follows that the charge would continue to subsist in respect of the private lands for which u/s 12 a ryotwari patta has been issued to the landholder.

7. This decision is conclusively against the appellant and in fact Sri Vedanthachari for the appellant did not contend that it is not so. But he relied on a decision of the Supreme Court and argued that in view of it, the view that found favour with this Court in the two cases could no longer prevail. We will deal with this contention presently. We find that before and after the decision of the Supreme Court relied on by the appellant, the Patna High Court has taken the view in two cases similar to that of this Court. The Patna High Court Was concerned with the provisions of the Bihar Land Reforms Act, 1950 and the effect of notification and taking over of the estates in relation to the ownership of bhumidari lands which had been subject to a charge prior to the Act. Mahanth Sukhdeo Das and Another Vs. Kashi Prasad Tiwari and Others, , Which was decided by a Full Bench of the Patna High Court held that under the provisions of that Act, a decree holder mortgagee of the interest of the proprietor, whose estate had vested in the State u/s 3 was entitled to proceed against the bakasht lands of the

proprietor comprised in the said estate for recovery of the dues under this mortgage decree and that the mortgagee could not be forced to seek his remedy as provided in Section 14 and to satisfy his mortgage debt out of the compensation payable under the Act. The Court referred to Sections 3 and 3-A under which the entire estate vested in the State absolutely and not only the right, title and interest of the proprietor or tenure-holder, but was of the view that the word vest did not imply that after the date of vesting no interest at all was left with the ex-proprietor or ex-tenure-holder. The Court further observed that this was because Section 4 was subject to the qualification enacted in Clause (a) of the same section which was to the effect that the proprietor or tenure-holder after the vesting should cease to have any interest in the estate or tenure other than the interests expressly saved by the provisions of the Act. One of the interests saved was what was laid down in Section 6 of the Act, namely, that bakasht land would continue to remain in possession of the ex-proprietor or tenure-holder but not in the character of bakasht lands but as ryoti lands. In view of this the Court held:

...the combined effect of Sections 3, 3-A, 4 and 6 is that the lands in cultivating possession of the intermediaries do not vest absolutely in the State but remain with the intermediaries and will be deemed to be settled with them. The right of the State so far as those lands are concerned is restricted only to realisation of rent that may be assessed on such lands in accordance with the provisions of the Act. (but it will not be entitled to resume bakasht possession of them)....

Section 4 (d) bars a suit in a civil Court for the recovery of any money due from such proprietor or tenure-holder the payment of which is secured by a mortgage of, or is a charge on, such estate or tenure.

8. The Patna High Court was of the view that the section did not stand in the way of the mortgagee-decree-holder proceeding against other properties included in the mortgage. Except for the fact that Section 6 of the Bihar Land Reforms Act says that while on and from the date of vesting all lands used for agricultural or horticultural purpose which were in khas possession of a proprietor or tenure-holder on the date of such Vesting, shall be deemed to be settled by the State with such proprietor or tenure-holder and such proprietor and tenure-holder shall be entitled to retain possession thereof and hold them as a raiyat under the State, the effect of the Madras Act appears to be the same, though the "Madras Act does not in so many words say that the lands, for which a landholder will be entitled to a ryotwari patta shall be deemed to have been settled on him by the State. As we already pointed out, Section 3 has made it clear that if the person would be entitled to patta he must not be dispossessed of the land until determination of the character of the land and Sections 12 to 14 have made it perfectly clear that once the character of the land is established, the person concerned shall be entitled to a ryotwari patta and this is with effect on and from the notified date. The grant of patta under those sections read with the protection of continued possession in our view is only in recognition of the



anterior title which is continued with different incidence from the standpoint of revenue and the relationship of landlord and tenant.

9. The second case decided by the Patna High Court, is Sidheshwar Prasad Singh and Others Vs. Ram Saroop Singh and Others, . There again, the Patna High Court held the same view as before, as to the effect of the notification u/s 4, in relation to private lands. Kanhaiya Singh, J., with whom Ramaswami, C. J., agreed, while the third learned Judge differed, observed:

The word " vest" has not got a fixed connotation and has to be construed in. the context of the provisions of a particular statute. Under the Bihar Land Reforms Act, though the estate of an intermediary vests in the State by virtue of Section 4 read with Section 6 ,the State does not become the full owner of the bakasht lands. The intermediary is entitled to retain possession of those lands and continues to be full owner thereof, having absolute and indefeasible right therein with full power of disposal. The only change effected is that instead of being a proprietor, he becomes a tenant and instead of revenue he pays rent.

10. That precisely was the View expressed by this Court in Seethalakshmi" v. Krishna. Swami ILR (1961) Mad. 265 The Patna High Court went on to say:

Where the entire estate is mortgaged and where that estate vests in the State and no interest in that estate is left with the mortgagor landlord, it is plain that the mortgagee is debarred u/s 4 (d) from realising his mortgage debt from the property that has vested in the State. In such a case he cannot also enforce the mortgage security against the other property of the mortgagor that has not vested in the State. The position, however, is entirely different where the entire interest of the mortgagor landlord in the estate does not vest in the State, but by virtue of Section 6 read with Section 4 of the Bihar Act some interests in the bakasht land are left with the mortgagor landlord. The mortgagee is entitled to follow that property, namely bakasht lands, and enforce the mortgage security against that property, on the ground of accession to the mortgaged property, if not, on the ground of substituted security.

11. The last observation was made, on the view that bakasht lands which were deemed to be settled with the intermediaries after the vesting of the estate constituted an accession to the mortgaged property, with the result that the mortgagee could proceed against such lands for satisfaction of the mortgage debt. The majority in this case accepted the view of the Full Bench in Mahanth Sukhdeo Das v. Kashi Prasad Tewari I.L.R.(1958) Pat. 918 . We do not think it necessary to go so far as to put it on the ground of accession, but it will suffice for our present purpose to say that under the Madras Act, the vesting on the notification of an estate in the Government is qualified by the other provisions of Section 3, particularly Clause (d), and Sections 12 to 14, with the result that the ownership in the private lands for which the landholder shall be entitled to ryotwari patta is not put an end to but continues in the landholder even after the taking over of the estate. The Allahabad High Court, in Rana Sheo Amber Singh

Vs. The Allahabad Bank and Others, , took the view that the bhumidari lands shall be deemed to have been settled by the State on and from the notified date, but u/s 18 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, could be proceeded against by the mortgagee as substituted security. But the Supreme Court in Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, , did not accept that view on a construction of particular provisions of that Act, especially those relating to taking over and its effect u/s 6 (h). In the view of the Supreme Court Section 6 (h) of that Act ruled out application of the doctrine of substituted security to enable the mortgagee to proceed against it.

12. We shall now proceed to consider whether Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, makes any difference to the View we have taken, as to the effect of the notification in relation to pannai or private lands. That case, as we said, related to the Uttar Pradesh Act. That was an Act to provide for the abolition of the Zamindari system, as Madras Act (XXVI of 1948), which involved intermediaries between the tiller of the soil and the State in the Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition and to make provision for other matters connected therewith. Chapter II of this Act covers acquisition of the interests of intermediaries and its consequences. Section 4 (1) provides for notification of estates and states that on such notification all notified estates shall stand transferred to and Vest, except as thereafter provided, in the State free from all encumbrances. Section 6 declares the consequences of such Vesting. It says that, when the notification u/s 4 has been published, in the Gazette, and save as otherwise provided in that Act, the consequences mentioned in that section shall ensue in the area to which the notification related. One of such consequences is that all rights, titles and interest of all the intermediaries in every estate in such area including cultivatable or barren land, grove-land, forests, trees, fisheries, wells tanks ponds, water-channels, ferries, pathways, abadi sites, hats, bazaars and melas with certain savings, should cease and be Vested in the State free from all encumbrances. Another consequence is provided by Section 6 (h), namely no claim or liability enforceable or incurred- before the date of vesting by or against such intermediary for any money, which is charged on or secured by a mortgage of such estate or part thereof shall, except as provided in Section 73 of the Transfer of Property Act, 1882 be enforceable against his interest in the estate. Section 9 provides for certain exceptions from the consequences of the notification u/s 4. Under that section, all private wells in holdings grove or abadi trees and all buildings, situate within the limits of an estate, belonging to or held by an intermediary should continue to belong to such intermediary, and the site of the Wells or the buildings with the area appurtenant thereto should be deemed to be settled with the intermediary by the State Government on such terms and conditions as might be prescribed. Section 18 provides that subject to the provisions of Sections 10, 15, 16 and 17, all lands in possession of or held or deemed to be held by an intermediary as sir, khudasht or an intermediary's

grove, among other things, held as such by an occupancy tenant on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary who shall, subject to the provisions of that Act, be entitled to take or retain possession as a bhumidar thereof. In the light of these provisions, the question the Supreme Court had to decide was whether the mortgagee of an estate which included the bhumidari land within the meaning of Section 18, which formed part of the mortgage could be proceeded against in execution by the mortgagee-decree-holder after the notification and taking over of the estate of which the bhumidari lands were a part. Before the Allahabad High Court, the two points urged were that the bhumidari rights created by Section 18 could not be sold in execution of the decree and that the application for execution was barred by limitation. We are not concerned with the second point. The first point was decided by that High Court in favour of the mortgagee-decree-holder. In the Supreme Court, the contention for : the appellant was that as the bhumidari right in the estate Vested in the State under the Act, the mortgagee who was only entitled to get the proprietary rights sold under the mortgage could only fall back on the compensation payable to the appellant under the Act. Strong reliance was placed in support of this contention on Section 6 (h). The contention for the respondent (mortgagee-decree-holder) was that bhumidari rights arising u/s 18 were liable to be sold, as they represented the proprietary rights, and in any case they could be sold as substituted security in place of the property mortgaged. The Supreme Court after referring to Section 4, contrasted the language of Section 9 with that of Section 18, and held that, while Section 9 excepted certain specified lands from the effect of the notification and vesting in the State, Section 18 did not make any exception but proceeded on the basis that the lands comprehended by Section 18 had vested in the State and that they would on and from the notified date be deemed to be settled by the State on the quondam proprietor. The Supreme Court observed in page 1793:

Section 9 itself Shows in what manner the Legislature was making an exception when it did not intend that a particular property should vest in the State. If the intention were that sir and khudkashat land and grove land should not vest in the State, Section 18 would have been worded in the same way as Section 9. Further the way in which Section 18 is worded. shows that these three kinds of property vested in the State u/s 6 (a) (1) and were then resettled with the intermediary on a new tenure and not in the same right, which he had in them before the Vesting. The Legislature was therefore creating a new right u/s 18 and the old proprietary right in sir and khudkashat land and any intermediary's grove land had already vested u/s 6 in the State. Therefore, it cannot be said that Section 18 is an exception to the consequences provided in Section 6.

13. The Supreme Court also noticed the fact that the Uttar Pradesh Act did not provide for compensation for the bhumidari lands forming part of the estate taken over. It was of the view that that would not make any difference, as to the legal effect of the notification u/s 4. Having taken the view that the bhumidari lands

was a new right conferred on the bhumidari or proprietor, the Supreme Court considered the other question as to whether such bhumidari land as substituted security could be proceeded against. On that question, the Supreme Court noticed Section 6 (h) and expressed the opinion that it had a two-fold effect, at page 1794:

In the first place, it makes it impossible for the mortgagee to follow the proprietary right after it vests in the State. Secondly it provides that the only Way in which the mortgagee can recover his money advanced on the security of the property which Vested in the State by Virtue of the notification u/s 4 and the consequences thereof u/s 6 is to follow the procedure u/s 73 of the Transfer of Property Act.

14. On that view, it was held that the doctrine of substituted security could not be availed of by the mortgagee.

15. Mr. Vedanthachari for the appellant has strongly relied on the decision of the Supreme Court and urged before us that the provisions of the Madras Act are substantially in part materiel with those of the Uttar Pradesh Act. On that ground it is pressed upon us that the view in *Seethalakshmi v. Krishnaswami* ILR (1961) Mad. 265, is no longer good. But on a careful consideration of the question, we are unable to accept that contention. In one sense, practically, all the Acts directed to abolish the estates and introduce ryotwari settlement after removing the intermediaries are designed on more or, less a common pattern. But the Analogy cannot be pressed into service where particular provisions which have a bearing on a matter in dispute, are not identically worded the Acts taken for comparison. In the Madras Act, though Section 3 (b) and the opening words of Section 3, substantially, bear comparison with Section 4 (1) of the Uttar Pradesh Act, the Madras Act does not contain anything like Section 9 of the Uttar Pradesh Act, nor like Section 18 of that Act. It is because, as we think, section .9 was especially in contrast with Section 18 of the Uttar Pradesh Act, the Supreme Court, was led to think that, when the Uttar Pradesh Act intended to except certain items of property included in the estate from vesting in the State, it used express language, while u/s 18 it proceeded on the basis that the lands covered by that section had vested in the State, and on that view sought to resettle them on the bhumidar, while, of course, provision providing that the bhumidars on whom such resettlement was made would retain and continue in possession. In the Madras Act, as we have already pointed out, Section 3 (b)and (d) and Section 12 to 14 read together show that the intention of the Legislature is not merely not to disturb the persons in possession of which they are prima facie entitled to ryotwar patta, but also they shall, as a matter of right, be entitled to patta on and from the date of the notification and taking over of the estate, though, of course, it is subject to determination of the character of the land as pannai or private, as the case may be. Sections 12 to 14 are not comparable to Section 18 of the Uttar Pradesh Act, for those sections do not say that, while the persons prima fade entitled to patta may not be disturbed from possession, the

properties, for which ryotwari patta is granted shall be deemed to be settled on the pattadars as on and from the date of the notification. In fact, Section 3 (d) and Sections 12 to 14 recognise the title of the proprietor or landholder to these lands and in view of it, the Act says that they shall not be disturbed in possession and shall be granted ryotwari patta. The position under the Madras Act appears to be Very akin to that of the Bihar Act, which was under consideration in *Sidheshwar Prasad Singh v. Ram Saroop Singh and Ors.* I.L.R.(1963) Pat. 192 . There also, as in this Court *Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, ,* was relied on. But the Patna High Court distinguished the Supreme Court decision in the following manner:

Section 6 (of the Bihar Act) no doubt corresponds to Section 18 of the U.P. Act, but what is of importance is that under the U.P. Act the vesting takes place without any reservation, and then certain properties are excepted, such as are enumerated in Section 9 of that Act, and then some lands are deemed to be settled with the intermediaries as their bhumidari lands. In fact, the provisions of Section 9 afforded the clue to the interpretation of the U.P. Act. There is no such provision in the Bihar Act. The interpretation, put by the Supreme Court on the U.P. Act cannot, in my opinion govern the Bihar Act. The decision of the Supreme Court in this case cannot, therefore, be regarded as an authority for overruling the decision of the Full Bench in *Mahanth Sukhdeo Das v. Kashi Prasad Tewari* I.L.R.(1058) Pat. 918 .

16. We are of the same view, as to the applicability of *Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, ,* to this case. As in the Bihar Act, so in the Madras Act, as already mentioned, there is no such provision like Section 9 or even Section 18 of the Uttar Pradesh Act. Far from Sections 12 to 14 of the Madras Act saying that the properties for which ryotwari patta was issued shall be resettled or shall be deemed to be resettled from the date of the notification, they merely direct that, when once the character of the land is determined to be pannai or private, ryotwari patta shall be granted. We think that the issue of patta is in recognition of the title that inhered before the notified date and continued to inhere in the landholder thereafter to the private lands but only with this difference that after the notification the tenure of the land is no longer pannai or private but, on grant of ryotwari patta, becomes ryotwari land subject to payment of assessment.

17. Even assuming that the mortgagors ownership of the private land was extinguished as a result of the notification, we are of the view that, in any case, they can be proceeded against as substituted security. It was because of the clear and definite provision contained in Section 6 (h) of the Uttar Pradesh Act, the Supreme Court in *Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, ,* held that the mortgagee could not proceed against the substituted security, and that his only remedy was against the compensation. We do not think that Section 59 of the Madras Act, which is differently worded can be given the same effect as Section 6 (h) of the Uttar Pradesh Act. We have, in an earlier

part of this judgment, noticed the terms of Section 59 (I) and (2). The second part of Sub-section (1) expressly provides that the claims and liabilities of the landholder, after the deposit made pursuant to Section 54-A be enforceable against the interim payments of compensation and against the landholders other property, if any, to the same extent to which such claims and liabilities, were enforceable against such property immediately before the notified date. Private land for which patta has been granted but on a ryotwari tenure is undoubtedly other property within the meaning of the section. The word offer has been used with reference to the items enumerated in the preceding clause, namely, interim payments or compensation or other sums paid or payable to the land holder under the Act. The only question is what is the effect to be given to sack property in Clause (b) of Section 59 (1). We are not persuaded that by other property is meant such property as in its present form should have existed prior to the notified date. There is no reason "why the Act, having regard to its purpose and intentions, should bar the charge holders from proceeding with the properties which do not belong to the State. Clause (6) of Section 59 (1) in our opinion, is comprehensive enough to include the plaint B Schedule properties, namely, the pannai lands for which the mortgagor was granted ryotwari patta. It follows, therefore, that Section 59 (1) does not act as a bar, unlike Section 6 (h) of the Uttar Pradesh Act, to the first respondent proceeding against the erstwhile private lands in execution of the mortgage decree.

18. There remains for consideration the claim relating to interest. The Court below has allowed interest at six per cent, per annum from the date of the plaint and at the contract rate as claimed in the plaint for the earlier period. Mr. Vedantachari for the appellant argues that, in view of Section 59 (3), no interest will be chargeable after the date of deposit. We are unable to accept this contention. The liability which Sub-section (3) visualises is one that is enforceable against the principal or any other landholder or any other person, and such liability may be enforced either against interim payment or compensation or other sum paid or payable under the Act, or other property of the landholder. Sub-section(3) is not confined to any particular item of liquid asset or immovable property. The whole object of Sub-section (3) would appear to be that, when Section 54-A allowed six months for the Government to deposit the advance compensation, the Legislature thought that it would be very hard to the landholder to bear simple interest in excess of six per cent, during that period. That seems to be the policy behind the subsection. There is no reason why the Act, having regard to its declared policy and Intention, should deprive a creditor of interest as stipulated in the contract. The vesting u/s 3 (b) free of all encumbrances does not have the effect of destroying the debt itself, but leaves the liabilities as between the creditor and the debtor in tact, and the Act touches the debt only in so far as it affects the Government both in relation to the vesting pursuant to the notification and to the payment of compensation. That being the case, we do not accept the contention that interest comes to a stop in toto from the date of deposit of compensation under-section 54-A. We, therefore, slightly

modify the decree of the Court below in regard to interest and direct that the mortgagor will pay simple interest at six per cent, per annum for a period of six months from September, 1949 to the date of deposit u/s 54-A. In other respects, the decree of the Court below will stand. Except to the limited extent of modification allowed by us, the appeal fails and is dismissed with costs.