
(1957) 11 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 629 of 1953

Sri Karutha Kritya Rameswaraswami Varu

APPELLANT

Vs

R. Ramalinga Raju and Others

RESPONDENT

Date of Decision : 22-11-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1(1)
Constitution of India, 1950 — Article 226

Citation : AIR 1960 AP 17

Hon'ble Judges : Bhimasankaram, J

Bench : Single Bench

Advocate : K. Rajah Iyer and S.V. Kondapi, for the Appellant; E. Venkatesam and R. Kothandaramayya and A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bhimasankaram, J.—This is a petition under Article 226 of the Constitution seeking the issue of a Writ of Certiorari for removing to this Court the records in I. A. No. 117 of 1952 in A. S. No. 456 of 1950 on the file of the Estates Abolition Tribunal, Vijayanagaram and quashing the same.

2. The petitioner is the Executive Officer of the temple of Sri Krutha Kritya Rameswaraswami Vanu situate in Gudimoola Rameswaram, a village in Rajole Taluk in East Godavari District. The temple owns an inam known as Gudimoola Khandrika. After the Madras Estates Abolition and Conversion into Ryotwari Act, 1948 (Madras Act XXVI of 1948) was passed, the Settlement Officer, Vijayawada initiated proceedings suo motu u/s 9 of the Act to determine whether the Khandrika aforesaid is an inam estate as defined in Section 2 (7) of the Act.

It was contended on behalf of the Devasthanam that the grant was neither of a whole village, nor of a named village, that it consisted only of part of the village of Rameswaram and that therefore it was not an estate u/s 3(2) (d) of the Madras Estates Land Act (I of 1908). The 1st respondent congested the position taken up by the Devasthanam and contended that Gudimoola Khandrika when it

was granted was by itself a village, and that in any case the matter was concluded by a decision of the Privy Council and two decisions of the High Court of Madras; that further the grant to the temple consisted only of melwaram and that the grant therefore constituted an inam estate within the meaning of the Abolition Act.

The Settlement Officer recorded a finding basing himself on the decision of the Privy Council that Gudimool Khandrika was a whole village inam and that it was also an inam estate. The Devasthanam filed an appeal before the Estates Abolition Tribunal, Vijayanagaram against the finding of the Settlement Officer, and it was numbered as A. S. 456 of 1950 on its file. The Tribunal considered the whole material placed before it by the learned counsel on both sides and finally rendered a decision on 13-5-52 upholding the contention of the appellant before them that the Khandrika in question was not an inam estate. The "1st respondent, however, presented to the Tribunal a few days later a petition, purporting to be one made under Order 47 Rules 1 and 3 of the CPC and also under the rules framed under the Madras Act XXVI of 1948, for review of its judgment.

By its order dated 16th October, 1952, the Tribunal set aside its earlier judgment and passed an order dismissing A. S. No. 456 of 1950. It is necessary to mention, in order to appreciate one of the contentions raised on behalf of the petitioner that at the time when the first judgment¹ was delivered, the Tribunal consisted of Sri T. Srirangam Nayudu, Sri W. V. V. Sundara Rao and Sri R. Ramakrishnayya, while at the time the second judgment was delivered, Sri W. V. V. Sundara Rao was no longer a member of the Tribunal and his place was occupied by Janab M.D. Mohiuddin.

3. On these facts Mr. Raja Aiyar learned counsel for the Devasthanam has raised the following contentions: In the first place, he submits that the tribunal has no power of review. Secondly, he argues that even assuming that the Tribunal could review its own judgment, having regard to the change of personnel, the review could not be entertained under Order 47 Rule 2 C.P.C. Thirdly he contends that in any case there were no sufficient grounds for review. Lastly he urges that the decision on review is vitiated by an error apparent on the face of the record and is thus amenable to a writ of certiorari.

4. Each of these contentions has been met by the learned Advocate General of Andhra Pradesh who appears for the 3rd respondent, 2nd respondent being the Estates Abolition Tribunal, and I shall deal with each of the contentions and the arguments contra in the order in which they have been presented to me.

5. In addition to what he said by way of reply to the propositions submitted on behalf of the petitioner, the learned Advocate-General raised the contention that the original order of the Tribunal allowing the appeal is itself vitiated by an error apparent on the face of the record and in case I should quash the judgment on review on the ground of defect of jurisdiction or exercise of jurisdiction with

material irregularity, this Court might be called upon to quash the original judgment as so vitiated by a Writ of certiorari and that this consideration also should weigh with me in deciding upon the facts of the present petition.

6. I shall take up the contention that under the Act and the rules Framed thereunder, the Tribunal cannot invoke the provisions of Order 47 C.P.C. In order to appreciate this contention, the following provisions of the Act and the Rules made thereunder should be borne in mind.

7. Section 8(4) of the Madras Act XXVI of 1948 provides that every Tribunal shall have all the powers of a Civil Court to compel the attendance of witnesses and the production of documents. Section 67 of the Act while conferring upon the Government generally by its first sub-section the "power " to make rules to carry out the purposes of this Act" confers on it by Sub-section (2) the following special powers;

"67 (2). In particular and without prejudice to the generality of the foregoing provision, such rules may provide for--

- (a) all matters expressly required or allowed by this Act to be prescribed;
- (b) the procedure to be followed by the Tribunals, Special Tribunal, authorities and officers appointed or having jurisdiction, under this Act;
- (c) xx xx xx
- (d) xx xx xx xx
- (e) the application of the provisions of the CPC 1908 and the Indian Limitation Act, 1908, to applications, appeals and proceedings under this Act."

Of the rules framed by the Government, it is necessary to quote only the first two, contained in the notification dated 17-1-1950 as amended by notifications dated 5-12-1950 and 2-5-1952, which read as follows:

"(1) Every Tribunal constituted u/s 8(1) and every Special Tribunal constituted u/s 51(1) of the Act shall have all the powers exercisable by a Civil Court in the trial of suits and in appeals.

(2) The proceedings of a Tribunal shall be summary and shall be governed as far as practicable by the provisions of the Code of Civil Procedure, 1908, particularly in regard to --

- (a) the issue and service of summons;
- (b) the examination of parties and witnesses;
- (c) the production of documents;
- (cc) the payment of compensation or any other money to one person on behalf of another under disability and in particular to the guardian on behalf of a minor;

(d) the passing of orders".

The argument of Mr. Raja Aiyar may be summarised as follows;-- A Court or Tribunal has no inherent power of review except where the original order was passed without jurisdiction -- Vide *Anantharaju Shetty v. Appu Hegade* 37 MLJ 162: AIR 1919 Mad 244. The power can only be granted by statute. This position which is well established has been enunciated by the Madras High Court in a recent decision in *S.J.S. Fernandes Vs. V. Ranganayakulu Chetty*, wherein it was held that under the Madras Buildings (Lease and Rent Control) Act, 1949, no application for review could be entertained.

The question, therefore, is whether the Act or the Rules made thereunder confer the power upon the Tribunal. The Act does not make the CPC expressly applicable, The Government is empowered however to do so. So far as Rule 1 quoted above is concerned, it confers only "powers exercisable by a Civil Court in the trial of suits and in appeals". Now a trial ends, however wide be the meaning that may be given to the word, with the judgment pronounced by the Court or a Tribunal.

It is the same whether in the case of a suit or of an appeal. A review results in a re-trial or a rehearing as is apparent from the language in Order 47 itself -- vide Rule 8 which speaks of a case being "re-heard" when an application for review is granted, So far as Rule 2 of the rules under the Act is concerned it deals in particular with the rules relating to process and does not relate to powers.

8. This argument is countered from the Government as follows:-- The words "all the powers exercisable by a Civil Court in the trial of suit and in appeals" in Rule 1 of the rules made u/s 67 of the Act, are comprehensive enough to cover all the powers exercisable by a Court under the CPC including the power of review. Secondly, if Rule 2 is read omitting certain words unnecessary for the present purpose it says:

"The proceedings of a Tribunal shall be governed as far as practicable by the provisions of the Code of Civil Procedure, 1908".

This language is surely of sufficient amplitude to comprehend all the provisions of the Civil Procedure Code. The only limitations imposed by this rule are (by the words that have been omitted above) that the proceedings are to be summary and that the CPC shall govern them only, as far as practicable.

9. I am inclined to agree with this argument, Of course, Mr. Raja Aiyar points out, nothing could have been simpler than to have said by only one rule that the provisions of the Civil Procedure Code shall apply as far as practicable to the proceedings of the Tribunal which shall be summary and to have left it there. Both Rule 1 as well as the several clauses in Rule 2 might well have been omitted. But it would be in my opinion, an unjustifiable mode of construction of a statute or a statutory rule to refuse to give effect to the plain and natural meaning of the words used, merely because the meaning that would so follow could have

been much better expressed in simpler language. In my judgment, the language of Rules 1 and 2, particularly of Rule 2, carries with it the grant of the power of review.

It is true that if Rule 2 alone could be said to confer that power and not Rule 1, the result it might be argued, would be that the Special Tribunal (the two judges of the High Court acting as such a Tribunal) appointed u/s 51 of the Act will not have the power to review while the- Tribunal may have it. But it is unnecessary for me to decide whether the power is granted under one rule or the other, I hold that the language of Rule 2 is clearly wide enough to confer the power even if I may not be j right in holding that the language of Rule 1 is com- I prehensive to cover it.

10. I shall now turn to the second point of Mr. Raja Aiyar. In order to consider it, it is necessary to quote Order 47 Rules 1 and 2 C, P. C.

"47. (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but iron) which no appeal has been preferred;

(b) by a decree or order from which no appeal is allowed; or

(c) by a decision on a reference from a Court of small causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on, the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order;

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when,-being respondent, he can present to the Appellate Court the case on which he applies for the review.

"2. An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new arid important matter or evidence as is referred to in Rule 1 Or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed His decree or made the order has ordered notice to issue under Rule 4 Sub-rule (2), proviso (a), be disposed of by his successor".

From a reading of these two rules together, it would be seen that where the Court to which an application for review is made is not a High Court and the

application for review is made upon a ground of error than the discovery of new and important matter or evidence or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree then it shall be made only to the Judge who passed the decree or made the order. That is to say, where review is sought on the ground of a mistake or error apparent, on the face of the record (excluding the decree) or "for any other sufficient reason", the application should be made only to the Judge who originally dealt with the matter. Mr. Raja Aiyar's argument on this point may be put thus :

In the present case, the review is not on the ground of discovery of some new and important matter or evidence. Nor is it on the ground of a clerical or arithmetical mistake or error apparent on the face of the decree; It is made either on the ground of error apparent on the face of the record (but not merely on the face of the decree) or "for any other sufficient reason". In either case, it is not made to the original Court. It is made to a different Court. Therefore the judgment passed in review by the Tribunal which was differently constituted is contrary to the provisions of Order 47 Rule 2, C. P. C. and therefore without jurisdiction. Provisions of this nature should not be extended beyond the limit strictly necessitated by the language.

11. To this two answers are attempted on behalf of the respondents. The first is that this objection was not taken before the Tribunal and is not mentioned in the grounds urged by the petitioner in his affidavit in support of his present petition. My attention has been, drawn in this connection to the decision of a Divisional Bench of the Madras High Court in S.J.S. Fernandes Vs. V. Ranganayakulu Chetty,).

12. It was ruled in that case that although Order 47 Rule 2, C, P. C., prescribed that an application for review on certain grounds should be made only to the Judge who passed the decree, where however an application is entertained by a successor-in-office without any objection being raised by the opposite party and the case is dealt with on the merits, it is not open to that party in appeal to contest the validity of the order passed on review on the ground that the application should not have been entertained at all. In the course of their judgment, the learned Judges observed as follows;

"No doubt the section is clear and no doubt the application should have been made only to the very Subordinate Judge who passed the order but as stated this point was not taken in the Court below and the advocate who appeared there for the appellant contested the case fully & at length on its merits and merits alone. We are of opinion that this question of law cannot now be raised for the first time in this Court. Had the question been raised in the lower court the plaintiff would have been in a position to seek relief in the High Court and could have pleaded all the grounds available to him for restoration of his. suit. It is apparent from the dates mentioned above that an injustice would be done to the plaintiff if this point were allowed to be taken now".

It is argued that, by parity of reasoning, if the objection to the jurisdiction of the Tribunal had been taken earlier and upheld the respondents might have approached the Court for a Writ of certiorari. Mr. Raja Aiyar frankly concedes that this point was not taken at any time earlier but would insist that it is a question of jurisdiction and as such one that would be raised at any time. But even as a question of jurisdiction it ought to have been raised in the present petition. I am not therefore prepared to allow this to be raised for the first time in the argument before me.

13. The second answer is that if the power of review is to be considered as having been conferred by Rule 2 then the provisions of the CPC are applicable only "as far as practicable" and that in any case the word "Judge" in the rule is not to be interpreted as meaning all the original members of the Tribunal. The limitations imposed by Rule 2 of Order 47 upon the ordinary Courts are based upon a policy which does not necessarily apply when a Court or a Tribunal consists of several members, all of them acting together. It seems to me that this argument is not also without force, although I should much prefer to put it on the ground that it is an objection that should not be allowed to be raised for the first time at this stage. This submission of Mr. Raja Aiyar also must, in my opinion, fail

14. Coming then to the third point, Mr. Raja Aiyar's submission is that there is no error apparent on the face of the record; nor is there any sufficient reason within the meaning of Rule 1 of Order 47, C. P. C., to justify the Tribunal's reversal of its earlier judgment. In order to appreciate this contention, it is necessary to set forth the reasoning upon which the first and second judgments of the Tribunal proceeded.

15. I have already stated that in their first judgment the Tribunal held that the inam Gudimula Khandrika did not at the time of the grant consist of a whole village which it must have been in order that it may constitute an inam estate. An inam estate is defined in Section 2(7) of the Act as "an estate within the meaning of Section 3, Clause (2) (d) of the Estates Land Act but does not include an inam village which became an estate by virtue of the Madras Estates Land (Third Amendment) Act, 1956". Before the amendment above referred to, u/s 3(2)(d) of the Madras Estates Land Act, any village of which the land revenue alone has been granted in inam to a person not entitled to the kudiwaram provided that the grant has been made, confirmed or recognised by the British Government, would be an estate.

The definition therefore did not bring within its ambit anything less than a village. So a grant of less than a village would not be an inam estate within the meaning of the Madras Act XXVI of 1948. The Tribunal therefore thought that it was necessary in the first instance to determine the extent of the grant. They observed that the word "khandrika" which means a portion was significant in itself as re-marked in *Sishtla Janakirama Sastri and Another Vs. Jagani Gopalam and Others*, . They referred to the Bhuband lists pertaining to Rameswaram

village of the years A. D. 1819, 1823 and 1842 as well as the statement filed before the Inam Commissioner. The inference that they drew from all these documents was that Gudimula Khandrika was a hamlet of the village of Rameswaram, that the entries in the Inam Fair Register supported that inference unequivocally and that there was not a single document to show that at the time of the grant Gudimula Khandrika constituted a village by itself.

They also noticed certain proceedings of the Board of Revenue of the year 1876 whereby the Board had directed that the Khandrika should be treated as an entire village. But this, they pointed, out was subsequently cancelled by the Board in the year 1917. These proceedings gave rise to civil litigation between the Archaka and the trustees on the one hand and the Secretary of State for India on the other viz.. Order Section Nos. 72 and 73 of 1919 on the file of the Subordinate Judge's Court Rajahmundry. The issues which arose in those suits were primarily two:

(1) Whether the plaintiffs' inam consisted of the whole village of Gudimula Khandrika or only of Ac. 560.79 cents in it? and

(2) What is the extent of the mamul wet to which plaintiffs are entitled to get water free of tax?

The trial Court held that the subject-matter of the grant was only Ac. 560-79 cents and that was the extent which the plaintiffs were entitled to cultivate as mamul wet lands. The unsuccessful plaintiffs took the matter up in appeal to the Madras High Court. The learned Judges of the High Court held that the whole of the land in the Gudimula Khandrika was comprised in the grant and that the plaintiffs were entitled to treat 1408 acres as mamul wet.

This decision of the High Court was confirmed on further appeal to the Privy Council. When reliance was placed by the respondents upon the observations in the judgments of the High Court and the Privy Council in support of his contention that Gudimula Khandirka was dealt with as a whole village grant, the Tribunal pointed out that though it was true that the words "whole village" were used in those judgments with reference to Gudimula Khan-drika that was because by the time that litigation had started, it was treated as a separate village in the revenue accounts and that their Lordships were not concerned with the question as to whether Gudimula Khandrika constituted the whole village at the time of the grant.

16. In regard to the judgment in S. A. No. 1254 of 1948 of the Madras High Court which confirmed the decision of the District Court Rajahmundry, in A. S. No. 16 of 1947 (which was an appeal from the decision of the Deputy Collector in a rent suit) upon which also reliance was placed by the respondents, the Tribunal observed that those proceedings do not operate as res judicata "as the parties in those and in the present proceedings are not the same". The Tribunal also said that several documents supporting the conclusion that the Khandrika was a hamlet were not filed in the former litigation. A third judgment also of the High

Court of Madras upon which too the respondents relied was considered by the Tribunal to be of no value because it did not decide any issue as to the nature of the original grant and that there was therefore no question of *res judicata*. Rejecting thus the arguments urged by the respondent as to the effect of the prior litigation upon the question before them they observed as follows:

"Taking the whole evidence into consideration, we are very much inclined to hold that Gudimula Khandrika was only a hamlet or a portion of Rames-waram at the time of the grant and that as such it was not a whole inam village on the date of the grant".

Then they addressed themselves to the question as to whether the grant was in favour of a grantee entitled to the Kudivaram and held that as there was evidence that even by the date of the inam settlement the land was not rendered fit for cultivation the grant must be deemed to have conveyed both the warams. In the result they allowed the appeal and set aside both the findings of the Settlement Officer against the Devasthanam.

17. I shall now summarise the effect of the judgment of the Tribunal on review. The main point made before the Tribunal on the application for review was that their view on the former occasion that the decision of the Privy Council to be found reported in AIR 1932 238 (Privy Council) the decision of the Madras High Court in S. A. No. 1254 of 1945 and the decision of the same High Court in A. S. No. 325 of 1947 did not operate as *res judicata* was an error apparent on the face of the record. It was urged that the error was occasioned by the failure of the advocate to bring to the notice of the Tribunal the pleadings and the findings in those cases as also the rule enacted in Section 64-A of the Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948). The Tribunal agreed with this contention.

They analysed the facts of the Privy Council case first and upon an examination of the language of the judgment, they reached the conclusion that

"it is manifest that both the High Court and the Privy Council have held that the grant of Gudimula Khandrika was a grant of a whole inam village and that the confirmation by the British Government was also in respect of the entire village of Gudimula Khandrika".

They were further of the opinion that the judgment of the High Court in S. A. No. 1254 of 1948 had the effect of deciding

"that the village (Gudimula Khandrika) in which the lands in suit are situate is an estate and that the plaintiff is entitled to occupancy rights."

With reference to the judgment of the High Court in A.S. No. 325 of 1947, they pointed out that the learned Judges had observed that it was

"common ground that Gudimula Khandrika is an inam village coming within the definition of an estate u/s 3(2)(d) of the Madras Estates Land Act."

Then the Tribunal considered the question as to whether the findings in the aforesaid decisions constituted res judicata. They referred to Section 64-A (2) of the Madras Act XXVI of 1948 and observing that it was in some respects different from the doctrine of res judicata in Section 11, C. P. C., expressed the view that the decision of the Privy Council in AIR 1933 PC 238 and the decision of the High Court in S. A. No. 1254 of 1948 constituted res judicata while the decision of the High Court in A. S. No. 325 of 1947. though it would not operate as res judicata, was still admissible in evidence,

Upon the view so expressed, it naturally followed that their earlier decision that the grant did not consist of a whole village was wrong. Then they considered the question as to whether the grant was of the melwaram alone to a person not owing the Kudivaram, and reached the conclusion that the finding in S. A. No. 1254 of 1948 was res judicata on that point and that it must be held that the grant consisted of land revenue alone to a grantee not owning the kudiwaram. They also referred to the presumption laid down in Section 9(7) of the Madras Act XXVI of 1948 "that until the contrary is proved, an inam village may be presumed to be an inam estate and remarked that there being no evidence placed before them to the contrary it must be held that the village was an inam estate. The result was that they went back upon their old decision in regard to both the issues.

18. Mr. Raja Aiyar contends that upon the two judgments of the Tribunal above summarised, it is clear "that the review could not be sustained upon the ground of error apparent on the face of the record or even upon the ground of any other sufficient reason, The Tribunal itself purported to act upon the ground of error apparent on the face of the record and their reasoning is best put in their own words:--

"The Tribunal's observation in its previous judgment that the findings given in the prior suits do not operate as res judicata was due to the fact that it overlooked the pleadings and the findings in the prior suits. Again the Tribunal's observations that the parties in the previous proceedings and in the present proceedings are not the same is incorrect on the face of the record. As there are errors or mistakes apparent on the face of the record we allow the review application."

It is conceded that an error justifying a review may either be an error of fact or error of law. But it is urged that a review is inadmissible merely on the ground that upon fuller arguments and a fresh consideration of "the issues involved, a judge changes his mind. The respondents would maintain however (1) that the question as to whether there is an error apparent on the face of "the record is one primary for the Court or Tribunal called upon to review its decision and (2) that in the present case there was a failure by the Tribunal on the former occasion to consider the decisions of the highest courts as authorities binding upon it if not as judgments constituting judicata.

If failure to notice and give effect to binding authority because of failure of counsel to draw the attention of a Judge to such an authority can be said to constitute an error apparent on the face of the record, vide *Mudlapur Murari Rao and Others Vs. Balavanth Dikshit and Another*, and *Natesa Naicker Vs. Sambanda Chettiar*, it seems to me to be difficult to sustain the proposition that a failure to give proper effect to decisions cited, because the Court had over-looked (it may be for the "reason that counsel did not draw its attention to it) certain material passages in the authorities cited is net such an error. In any case, it would be difficult to contend that it is not a ground at least analogous to such an error.

I must also remember that I am not sitting in appeal over that judgment. If they have the necessary jurisdiction and if in the exercise of that jurisdiction "they have to decide for themselves whether there is such an error as would call for its exercise I should think that it is not for me in the exercise of my own jurisdiction under Article 226 of the Constitution to decide whether there was such an error or not. The third contention of Mr. Raja Aiyar cannot also in my opinion be accepted.

19. This brings me to the last of the contentions urged on behalf of the petitioner. The argument involves an examination of the decision of the Tribunal on the merits, for, if that decision is vitiated by an error apparent on the face of the record it would be amenable to a writ of certiorari. The question thus arising may be stated in the following terms:-- Was the Tribunal in error in holding that the decisions of the High Court and the Privy Council arising out of O. S. Nos. 72 and 73 of 1919 on the (sic) of the Sub-Court, Rajabrnundry and the decision (sic) High Court in S. A. No. 1254 of 1948 were binding upon the parties as being *res judicata* or at least as pronouncements of great force upon the (sic) now raised before the Tribunal?

It is true that in the decision in the litigation which went up to the Privy Council I here was no conflict between the Devasthanam and the persons claiming occupancy rights in the inam. That was a litigation between the Devasthanam on the one hand and the Government on the other. The decision in such a litigation is clearly not *res judicata* between the present parties, who must be deemed to be the Devasthanam on the one hand and the ryots on the other. Again, S. A. No. 1254 of 1948 arose out of a suit between the Devasthanam and an individual tenant who could not be said to have represented all "the ryots of the village. In that view it cannot be said to be binding upon anybody other than that particular party even u/s 64-A of the Act. But still the judgments in both the cases are pronouncements made by civil courts of highest authority upon questions that fall to be decided by the Tribunal. It may be noticed that in his judgment in A. S. No. 6 of 1947 (against which S. A. 1254 of 1948 was taken) the learned District Judge treated the decision in AIR 1932 P. C. 238 as "finally deciding that Gudimula Khandrika is an estate within the meaning of Section 3(2) (d) of the Madras Estates Land Act and that decision was upheld in second appeal.

It is also worthy of notice "that when A. S. 325 of 1947 came to be decided counsel on neither side contested the position that it was an inam village of "that description. Having regard to the weight to which these pronouncements are entitled as authorities, I should certainly have considerable hesitation in upholding a contention "that the Tribunal should have brushed them aside on the ground that they do not embody decisions inter parties.

At all events, I cannot say that the Tribunal was guilty of an error of law in reaching a conclusion consistent with the decisions contained therein. This disposes of the last of Mr. Raja Aiyar's submissions.

20. I may also notice another argument of the learned Advocate-General in this connection. He pointed out, that Section 9(1) of "the Act vests in the Settlement Officer only power to decide whether ail inam village is an inam estate or not and that the officer is not concerned with the question whether the grant comprised a village or less. He therefore argues that the Tribunal's earlier decision on appeal from the Officer, by which they held that the grant did not consist of a whole village was beyond its jurisdiction and therefore clearly bad.

He has referred me in this connection to the decisions in Gosukonda Venkatanarasayya and Others Vs. The State of Madras, and Gosukonda Venkatanarasayya and Others Vs. The State of Madras, . In the former of these cases, the learned Chief Justice and Venkata-rama Ayyar J. of the Madras High Court held that

"where it is contended by a party that a grant in his favour comprised less than a village and therefore is not an "estate" still less an "under-tenure" within the meaning of the Madras Estates Land Act. proceedings u/s 9 of Madras Act XXVI of 1948 would not be strictly open to the aggrieved party,"

and that the proper and adequate remedy in such a case by an aggrieved party would be by way of suit. In the lat.er case, a Divisional Bench of the Andhra High Court consisting of Viswanatha Sastri and Krishna Rao JJ. applied that decision and remarked that it follows

"that the opinion of the Settlement Officer or the Tribunal given in a proceeding u/ s 9 that an inam grant is of less than a village and therefore outside, "the ambit of Madras Act XXVI of 1948, would not be binding on the parties or the State in proceedings under Madras Act XXX of 1947."

It seems to me, however, that it cannot be argued that the Settlement Officer, though authorised to decide only whether an Inam village is an inam estate or not, cannot also decide as a preliminary point whether an inam with which he is dealing consisted of a village" or not. It seems to me that such an issue involves a jurisdictional fact which he is competent to decide and which therefore the appellate Tribunal also may decide. It may be that the finding so arrived at may be questioned in a Civil Court which is all that the two decisions cited seem to me to say.

21. Having regard to the fact that I have rejected all the contentions on behalf of the petitioner, it is unnecessary for me to deal with the submission of the learned Advocate General that the original order of the Tribunal allowing the appeal being one vitiated by an error apparent on the face of the record, I should not set aside the judgment on review even if I hold that the second judgment was rendered irregularly or without jurisdiction.

22. The result, therefore, is that this Writ Petition fails and must be dismissed with costs one set. Advocate's fee Rs. 200/-