

(1962) 12 MAD CK 0007

In the Madras High Court

Case No : Writ Petns. No's. 943 of 1959 and 135 etc. of 1960 and 119 etc. of 1961

Sri Vedaranyaswaraswami Devasthanam and Others

APPELLANT

Vs

State of Madras and Others

RESPONDENT

Date of Decision : 04-12-1962

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 31, 31A
Government (Crown) Grants Act, 1895 — Section 3
Madras Inams (Assessment) Act, 1956 — Section 3(2), 3(3)

Citation : AIR 1964 Mad 90 : (1964) ILR (Mad) 212 : (1963) 76 LW 548

Hon'ble Judges : S. Ramachandra Iyer, C.J.;Anantanarayanan, J

Bench : Division Bench

Advocate : V. Vedantachariar, T.M. Chinniah Pillai, K. Parasaran, N. appu Rao, K.S. Naidu, R. Vijayam, U. Somasundaram, G. Ramaswami, S.M. Subramaniam, S. Bhaskaran, T.S. Palanisivagurunathan, R.G. Rajan, A. Sundaram Iyer, P. Veeraraghavan, V. Ratnam, T.V. Balakrishnan, N. Vanchinathan, R.K. Tatachari, R. Gopalaswami Aiyangar and T.R. Ramchandran, for the Appellant; A.G. and A.G.P., for the Respondent

Judgement

S. Ramachandra Iyer, C.J.—This petition filed under Article 223 of the Constitution raises a question as to the validity of the Madras Inams

Assessment Act, 1956 (Act 40 of 1956), (hereinafter referred to as the Act) with a view to quash Notification made thereunder.

2. The petitioner, Sri Vedaranyaswaraswami Devasthanam is being maintained with the income from, and is we grantee of, several inams which are

spread over in about 23 villages in the Tanjore district. One such inam is an extent of 46 acres 43 cents in the village of Pannal in Thithuraipoondi

taluk. This is a minor inam where both the warams in the land are owned by the petitioner subject to an annual payment of Rs. 15-75 nP. by way

of jodi or cesses to the Government. The title deed issued in favour of the Manager of the devastanam confirms the inam for the support of the temple, "tax free to be held without interference so long as the conditions of the grant are duly fulfilled". The lands covered by the inam are in the possession of tenants, the rent paid by them being Rs 103-83 nP. per year. Out of this sum the petitioner claims that Rs. 17-50 has to be spent away as expenditure for collection, the net income from the inam being thus Rs. 70-58.

3. The Madras State legislature passed a law, the Madras Inams Assessment Act, 1956 for the stated purpose of levying full assessment on certain inam lands in the State. It has received the assent of the President on 19-2-1957, but its operation has been made to take effect by Section 1(2) thereof as and from the 1st day of July 1956. The Act authorises the Government to levy full assessment at the rate of the prevailing ryotwari assessment in the same village or in the nearest ryotwari village as the case may be, notwithstanding anything contained in the inam grant.

4. Proceeding to act under the provisions of the Act, the Assistant Collector of Nagapattinam issued a Preliminary Notification u/s 3 (2) proposing to levy on the petitioner an assessment of Rs. 58-66 nP. Not having received any objection from the Inamdar, he issued on 10-6-1958, the Final Notification u/s 3 (3) confirming the proposed levy. The result of it is, that the devastanam whose net annual income from the inam lands is only Rs.

70-58 is now obliged to pay a tax of Rs. 58-63. The petitioner states that it was not aware of the Notifications, referred to above at the time that

they were published. The petitioner wrote to the Revenue Divisional Officer in December 1958, for a copy of the Notification. No reply was

vouchsafed to that enquiry. On coming to know after further enquiry that there was a Final Notification levying the assessment on the inam lands in

question, the petitioner filed its objections before the Revenue Divisional Officer, Nagapattinam, in December 1959. But that authority declined to

consider the objections as it was filed long after the Final Notification. The petitioner thereupon filed the present petition for the issue of a writ of

certiorari to quash the Notification made by the Collector of Tanjore in respect of the inam lands covered by T. D. No. 755 in the village of Pannal

in Thiruthuraipoondi taluk, Tanjore district.

5. There can be little doubt, and indeed this point is conceded by the learned Advocate General appearing for the State, that there was no effective opportunity to the petitioner to put forward its case on the question of the quantum of assessment to be levied. There is nothing on the record to show that the Collector in fixing the assessment at Rs. 58-86 really took into account the annual demand of the landholder on the tenants and the vicissitudes which such income would ordinarily be subject to. Apart from any other consideration, we are of opinion that the final Notification in the present case will have to be quashed, with a direction to the respondent to prefix the assessment after giving an opportunity to the petitioner to put forward its case.

6. But the validity of the Notification is challenged on a much larger ground, namely, that the Act which authorised the Notification is itself invalid, the content on being that it is a colourable piece of legislation, and not a mere taxing measure, aimed at deprivation of the petitioner's property, without payment of any compensation. Secondly, the Act, it is argued, is enacted with the object of reducing the income of the landholder with a view to reduce the compensation payable to him when the question of acquisition of minor inams comes up.

7. Before proceeding to the consideration of the questions raised in the case it is necessary, in order to appreciate the very learned arguments addressed to us from the Bar, to set out briefly the context in which the impugned legislation came to be passed.

Lands in this country cultivated, cultivable or waste have been grouped from time immemorial with reference to a village which even now forms the unit of revenue administration. Turner, C. J. and Muthuswami Aiyar, J. laid down in *Secretary of State v. Vira Rayan*, ILR 9 Mad 175, that under the Hindu common law the right to possession of land was acquired by the first person who makes a beneficial use of the soil. According to that view, the beneficial interest in the cultivated lands consists of two parts, the melwaram or the Sovereign's share of the produce, and the kudiwaram, the interest of the occupant, otherwise known as the ryot. As pointed out in *Narayana Aiyangar v. R. G. Orr*, ILR 26 Mad 252, the kudiwaram right originated in priority of effective occupation and beneficial use of the soil and the claim, of the Government and the assignees of

the Government was always, in these parts, a share in the produce raised by the ryots. In *Periannan and Others Vs. Airabadeeswarar*

Soundaranayagi Amman Kovil of O'Siruvayal and Others, , Satyanarayana Rao J. referring to the status of the cultivating tenant in a village

observed :

Both under the Hindu Kings and later during the time of the Moghul administration, the status of a cultivating tenant in a village was defined by

usage. The cultivating tenant always tendered to the State a portion; of the produce of the land varying with nature of the crop, which is called

melwaram", while the share left to the cultivator was known as "Kudiwaram". The words "melwaram" and "kudiwaram" were in vogue in the Tamil

country. In the Circars the share payable to the Government was known as "Ambaram" or "Raja Bhogarn" and what was left to the cultivator was

known as Palu. In some of the dows or annual accounts by which settlement was made, reference was made in documents to Sirkar Hissab or the

share of the Government (sometimes the Zamindar also was referred to as Sirkar) and the ryot's hissab or the share of the ryot. Sometimes the

share of the ryot is $\frac{1}{2}$ or $\frac{9}{20}$ varying according to the nature of the crops raised on the lands. By common understanding and usage, the

cultivator was allowed to remain in the land without disturbance so long as he continued to pay the share due to the State. The cultivating tenant

was treated as a co-owner with the melwaramdars, whoever he may be, and not as a mere lessee.

8. That the distinctiveness of the cultivating tenant's interest was recognised from very early times can be seen from the following passage in *Diwan*

Bahadur Srinivasaraghava Aiyangar's Progress of Madras Presidency during the last forty years of British Administration :

Ancient Hindu law recognised only two beneficial interests in land, viz., (1) that of the Sovereign or his representative, and (2) that of the

cultivators holding the land either individually or as members of a joint family or joint village community. Neither the Sovereign nor the cultivators

had unlimited proprietary right or full ownership in the modern sense. The Sovereign's right consisted in his power to collect a share of the

produce of the cultivated lands, known by the name of melwaram in the southern districts of the Presidency; and this melwaram is not rent. In the

strict signification of the term the share of the ryots or cultivators is known by the name Kudiwaram; and by ryots is to be understood cultivators

who employ, superintend and assist the labourer, and who are everywhere the farmers of the country, the creators and payers of the land revenue.

The ryot's right to land arises from mere occupation, and is not derived from the Sovereign in the manner in which the right of the English tenant

under the modern English law, derived from his landlord. The relation between the Government and the ryot may perhaps be described as one of

co-ownership. But it is certainly not that of a landlord and tenant. The ancient Hindu law books clearly establish this position.

But it will be seen that this dichotomy in the concept (of) beneficial interest in land is, and can be, only with reference to cultivated lands in a village.

As we shall show later, the position in regard to uncultivated and uncultivable lands will be, that the Sovereign or the State alone has the entire

interest.

9. The collection of the melwaram or the Raja Bhogam by the State during the time of the Mohammadan suzerainty was entrusted to certain

intermediaries called Zamindars who were appointed under documents known as Sanads. They were also granted lands by way of remuneration

for their services. The East India Company who continued in a large measure that system of revenue collection, considered that the first step

towards a better system of Government, and the amelioration of the subjects would be to convert these intermediaries into land owners and to fix

on a permanent basis an assessment which the Zamindars had to pay the Government. Subject to the payment of the assessment, the benefit of all

income from the actual cultivating ryots and also the benefit of all subsequent improvements were declared to be the zamindars who had, in

addition, their own private lands. The permanent settlement with the zamindars which was effected first in Bengal, was under the Regulation of the

year 1793. Madras Regulation 25 of 1802 formulated the principles on which the permanent settlement in that province should be brought into

effect. The effect of the Regulations was however the same, with this difference, that in Madras the system did not progress very far. It must also

be noticed that although the permanent settlement was a boon to the zamindars, it effected no improvement in the position of the actual cultivator.

Rack renting of the tenants was the inevitable consequence when the intermediary was left with large powers.

10. The major portion of the lands in the Madras Presidency was however not covered by the permanent settlement. The Amani system of sharing

the produce between the State and the ryot, ultimately gave place to the ryotwari system under which the State was brought into direct contact

with the peasant, who was regarded as the proprietor of the soil. The assessment was made at a fixed rate with reference to the quality of the soil

and the area of the land in the occupation of the ryots, such assessment being liable to be altered periodically.

11. In Maclean's Manual of Administration, Vol. 1. Ch. II, the ryotwari system of holding, the principal tenure in this State, has been described

thus at page 121:

In a ryotwari tenure the Government deals with an individual who is technically assumed to be acting on his own account and not to be a

middleman. As he is usually a very small holder, this is often actually the case. The Government allow a ryot who has once acquired possession to

remain in possession as long as he pays the Government dues. Even when he becomes a defaulter, they merely sell such portion of the land as is

sufficient to cover the amount due, and under cover of special law for so doing, they did not dispossess him by any form of eviction other than that

provided by the legislature under Madras Act 2 of 1864.

Recently a Bench of this Court of which one of us was a member had to consider this system of land tenure in great detail - Vide S. Gopalan Vs.

State of Madras, .

12. There existed from ancient times grants of "and freed of revenue payment and also of mere assignment of the Government's share of produce

or revenue tailed Manyams, such grants having been made to individuals or institutions. The term inam means a gift or reward. Sir Madhavan Nair

delivering the judgment in Lakshmanan v. Venkateswarlu expressed its meaning thus:

Inam is a well known word of "arabic" origin which means reward and favour. The word came into use after the Muhammadan conquest, in ancient

days, grants of land, or revenue, were made by Hindu sovereigns to individuals, particular families, or communities for various purposes or to

religious institutions for their upkeep. These were known as ""manyams"". The practice was continued by the Muhammadan rulers, and later, by the

East India Company also, till it was discontinued in the earlier years of the 19th century, as a result of instructions received from the directors of the

Company. Thenceforward, gifts of land were granted only in special cases, the ordinary cases being provided for by the grant of money pensions.

13. The Permanent Settlement Regulation 25 of 1802 which gave permanency of tenure to the Zamindars did not deal with the inams. Section 4 of

the Regulation expressly exempted lakhings or revemie free lands from the computation, of assessment on the Zamindars. Although some

measures were passed dealing with the inams almost since the beginning of the 19th century, it was not till after the middle of that century that

investigation into the inamuars title was undertaken by the East India Company. It was then found that there existed a very large number of grants.

In most of them the grants were subject to the condition that they could not be alienated without the consent to Government, and further that they

would escheat to We Government on failure of heirs. There were also cases, where the grants were to be resumed after a dead of time.

In 1858 an Inam Commission was established to examine the title of the possessors of the inams and to enfranchise them for a quit rent in lieu of

the Government's right to resume. The imam Commission after elaborate consideration and investigation of titles, enfranchised and confirmed the

grants that were proved. Thereupon title deeds were issued to the holders of the inams. A number of enactments were passed during the years

1862, 1866 and 1869, with respect to the extent and nature of the inams granted or confirmed by the inam title deeds, the inam grants were of

varied extents. Sometimes they comprised of whole villages. Sometimes they were only of parts of villages. The inams themselves were of different

species. Some comprised both of kudiwaram as well as the melwaram interest in the land; others of the melwaram due to the State alone. But the

distinguishing feature of an inam is that it is always accompanied by the grant or remission of the whole or part of the revenue. Indeed there will be

no inam if there is no remission of revenue either in whole or in part, and a mere grant of land subject to payment of full assessment has never been

regarded as an inam. Thus, an inam grant may consist of one or me other of the following: (1) of the melwaram alone of an entire village; (2) of

both the melwaram and the kudiwaram in an entire village; (3) of the melwaram alone in a part of a village where such village is area of a zamindari

or a larger inam or ryotwari area; and (4) of the melwaram and kudiwaram in part of a village whether such village is part of a zamindari, larger

inam or of a ryotwari area. The last two categories of inams are known as minor inams.

14. In 1908 the Estates Land Act was passed to amend and declare the law as to holding of lands in estates In the Madras Presidency. The

estates Which came within the purview of the Act were permanently or temporarily settled Zamindaries or portions thereof, any unsettled palayam

or jagir, and any inam village of which . the land revenue alone had been granted in inam to a person net owning the kudiwaram thereof, provided

that the grant has been made, confirmed or recognised by the British Government. From this it will follow that the Estates Land Act which

regulated the relationship between the ryots and the landholder, applied only to Zamindaries, jagirs and major inams of the first type referred to

above, namely, where the melwaram alone of an entire village had been granted in inam. The inams granted subsequent to the permanent settlement

by a Zamindari known as Dharmila inams would also be estates.

In 1936 the definition of the term ""estate"" was amended by including within its ambit a whole village "which was later amended into a ""named

village"" where both the melwaram and the kudiwaram had been granted. The minor inams referred to above except Dharmila inams did not come

within the operation of the statute. In the year 1948 the Madras Legislature passed Act 26 of 1948, for the abolition of certain estates namely, the

inams, jagirs etc., and inams of whole villages of the first category referred to above, that is, where the meliraram alone was the subject-matter of

the grant. Under the provisions of that enactment the entire estate vested in the Government, the land-holder being paid compensation for the

estate. In respect of his private lands, no compensation was paid but he was given a ryotwari patta. The ryots in possession of the ryoti lands were

given ryotwari pattas. They are all liable to pay assessment as under the ryotvari system to the Government. The Abolition Act excluded from its

operation four classes of inams whether such consisted of the melwaram alone or both the melwaram and the kudiwaram; they are (1) who is inam

villages where the grant consisted of both the warams (2) pre-settlement minor inams, in inams and jagirs, (3) minor inams in whole inam villages;

and (4) inams to ryotwari villages.

15. The object of the impugned Act is to provide for full ryotwari assessment on the inam lands just mentioned.

16. The learned Advocate General has placed before us a copy of a Memorandum of the law Department dated 7-1-1957 which, referring to the

passage of the BMI in the Legislative Assembly, stated:

On the 19th December 1956, the Revenue Minister Sri M. A. Manickavelu introduced the Bill in the Legislative Assembly. Explaining the objects

of the Bill while moving for its consideration, the Minister said that there were special classes of lands called ""inam lands"", the holders of which paid

practically a nominal land revenue or land revenue at a concessional rate. As there was no special reason why they should enjoy the privilege" the

Government proposed to levy full assessment on all these inam lands.

The Minister then enumerated the classes of lands which were excluded from the purview of the Bill.

The motion for consideration of the Bill was accepted. The Bill was passed after the clauses were approved without discussion.

17. The Bill appears to have had an equally uneventful passage in the Second Chamber. It can be readily seen that the essential feature of an inam,

namely, that it always went with a grant of the whole or part of a revenue was missed when it was stated that there was no special reason why the

inamdars should enjoy the privilege of not paying revenue. But We have no reason to assume that the Legislature was not aware of the

characteristics of an inam.

18. It will be necessary to set out the provisions of the Act before considering the several points on which its validity has been challenged. The Act

applies to all lands, the grant of which has been made, confirmed or recognised by the Government and includes estates under the Madras Estates

Land Act except those to which the Abolition Act applies, it also applies to assignments of land revenue. But it does not apply to ryoti lands or

communal lands or certain service inams. u/s 3 of the Act it is provided that notwithstanding anything contained in any engagement, contract, grant

or any law for the time being in force, the State can levy (a) on any inam land in

a ryotwari village, the full assessment set out in the settlement notification for lands of a similar description and with similar advantages in the same village or in the nearest ryotwari village where such similar lands exist; and (b) on any other inam land, the full assessment at the rate of assessment set out in the settlement notification for lands of similar description with similar advantages in the nearest similarly situated ryotwari village. In the case of whole inam villages where both the warams had been granted $\frac{1}{2}$ s inams, that is, those that come under the provisions of the Estates Land Act by virtue of Madras Act 18 of 1930 the levy of full assessment was to be in addition to any quit rent, jodi etc., payable to the State by the land-holder. But in the case of other inams, the quit rent, jodi etc. will be deducted from the full assessment contemplated under the Act. Before making the assessment, the Collector is to publish in the District Gazette or other prescribed manner a draft notification specifying the inam lands, the assessment proposed to be levied inviting objections, and further enquiry he can confirm or modify the assessment. There is provision for an appeal to the District Collector by a person aggrieved by the decision of the. Collector, the order in appeal being final and not liable to be questioned in a Court of law. There is also a provision for publication of the assessment finally decided. The Act makes provision for resumption of service inams, for the survey of inams and for the preservation of the rights as between the inamdar and persons in occupation of the land. Section 10 confers on the State Government power to make rules, and Section 11 declares that any inam land held subject to restrictions will continue to be governed by the same restrictions after the coming into force of the enactment.

19. The contention of Mr. Vedantachari, who appeared for the petitioner, is that, an inam, in its essential concept, is an alienation by the State, in whole or in part, of the Rajabhogam or revenue for the land; and when an assessment is to be made on such an inam, it would amount to Interference with the inam itself, and that Were fore the Act operates so as to virtually enable the taking back or resuming the inam which is an interest in Immovable property. In other words, it is argued that the imposition of ryotwari assessment on an inam, amounts to the acquisition of the inam itself or of a substantial part thereof. Being thus an acquisition of

Immovable property it is contended that the Madras Stats Legislature will have no legislative power to enact the impugned legislation as it is not a mere case of land revenue coming within item 45 in list II of the Seventh

Schedule to the Constitution. That item reads:

Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

The learned counsel contends that having regard to the special significance and character of an inam, namely, that it is an alienation or assignment of revenue, an imposition of a tax in effect abrogates that property, the enactment therefore can be passed only subject to item 42 of List III of the Seventh Schedule, and in the light of Article 31 of the Constitution. The former provision runs:

Principles on which compensation for property acquired or acquisition for purposes of the Union or State or for any other public purpose is to be determined and the form and manner in which such compensation is to Be given.

It is argued that the impugned legislation is contrary to Article 31 of the Constitution.

20. On the other hand, the learned Advocate General, appearing for the State, adopted a somewhat extreme line of argument saying that the

melwaram and kudiwaram are mere concepts for the purpose of convenience and that a kudiwaramdar in an estate is a mere creature of the

lendholder not having direct relationship with the State, although he might, by usage and prescription or otherwise, acquire permanent rights of

occupancy in his holding, and that the grantee of an inam, whether it be of the melwaram alone or of the melwaram and kudiwaram, is the owner of

the land. Therefore, an inam being a grant of the land, imposition of assessment under the provisions of the impugned Act is nothing more than a

levy of 3 tax which will come within the legislative competence of the State Legislature.

21. It is, therefore, necessary to consider whether an inam in its true sense is a mere assignment ct the revenue alone or whether it is an interest in

land which forms the subject-matter of the grant. The underlying assumption in the argument advanced on behalf of the petition is that the State has

no ownership in the soil of the land and that its only right is to receive

Rajabhogam from the occupier, namely, the owner of the kudiwaram. When therefore the State grants an inam, it is argued, it would consist only its interest in the land either in whole or in part and not any right or interest in the soil. An inam, therefore, it is said, is an alienation of that right, or a mere remission of assessment, either in whole or in part. When re-assessment is made, it would be tantamount to a resumption of the inam either in whole or in part. In support of the contention that the inam is nothing more than a mere assignment of land revenue, reference is made to the following observations of Sir John Walls J. in AIR 1937 209 (Privy Council) .

.....it is necessary to bear in mind that every inam in the original sense of that term is an alienation or assignment by the State of the land revenue of the specified land and the right to realise it.

This view, it is argued, is consistent with the observation in Venkatanarasimha Nayudu v. D. Kotayya ILR 20 Mad 299, where it was said:

.....Sovereigns, ancient or modern, did not here set up more than a right to a share of the produce raised by the ryots in the lands cultivated by them, however much that share varied at different times.

The term inam as defined in the glossary to the Fifth report is ""present, gift, gratuity, favour"". inams are grants of land free of rent or assignments of

the Government's share of the produce of portion of the land for the support of the religious establishments and priests, and for charitable purposes

and also to revenue officers and public servants of a village. Mr. Vedantachariar who contends that an inam properly so called though

accompanied by grant of the land will consist only of assignment of revenue payable on the land, invites our attention to Regulation 31 of 18U2,

which enacted rules for the better ascertainment of titles of persons holding land exempted from payment of revenue. The preamble to the

Regulation referred to the principle that all alienations of land except by the consent and authority of the ruling power would be violations of the

proprietary right of the Government and proceeded to state-

But whereas considerable portions of land have been alienated by unauthorised encroachment of the present possessors by clandestine collusion

of local officers and other fraudulent means.

From this it was argued that the alienated land in the concept of the Government was only the alienation of the assessment. In Baden Powells"

Short Account of Land Revenue and its Administration in British India, the learned another states at page 52,

At all times rulers of Indian States have been accustomed to remit land revenue on certain lands or to make such grants or assignments. Lands that

were expressly granted in this way were in revenue language said to be Lekhiraj.....In Bombay and Madras such lands are now generally

called alienated lands and this term may be found in use in other places also but not generally. It really pointed back to a time when the

Government claimed to be (and was to some extent) owner or landlord of all land as well as of the land revenue. When therefore the Government

gave up its right to take anything from the land, in favour of a grantee, It was said to alienate the land as it had no further concern with the soil or its

revenue; and it came to pass that such grantees were always held to have a perfect title to the -land itself as well as to the revenue.

But in the preamble to Regulation 31 of 1802, the term present possessors"" can obviously refer to only inamdars. That Regulation was passed

almost contemporaneous with the Permanent Settlement Regulation 25 of 1802, which excluded inams or lakhiraj lands from the computation of

assessments on the basis of which the permanent settlement was based. The first portion of the preamble itself shows that the Government claimed

full proprietorship over all lands. The assumption that the State has no right to the soil of the land but can claim only the melwaram or the

assessment therein is not therefore correct. In Suryanarayana v. Patanna, ILR 41 Mad 1012, AIR 1918 PC 169, the Privy Council

discountenanced that theory observing :

That is an assumption which no Court is entitled to make, and in support of which there is, so far as their Lordships are aware, no reliable

evidence. That fact that rulers in India generally collected their land revenue by taking a share of the produce of the land is not by itself evidence

that the soil of lands in India are not owned by them could not be granted by them; indeed, that fact would support the contrary assumption, that

the soil was vested in the rulers who drew their land revenue from the soil, generally in the shape of a share in the produce of the soil, which was

not a fixed and invariable share, but depended on the will of the rulers.

In Muthu Goundan Vs. Perumal Iyen and Others, : air1921 Mad 145, Ramesam J. after referring to the above case said:

If the assumption on which any presumption is to be based should be, not that the rulers were owners of a share In the revenue, but that the soil

was vested in the rulers, it follows that the presumption as to Ins extent of the grant should correspondingly change, i.e. it is not merely the

melwaram but the whole right in the soil, for the ordinary rule in construing grants is that the grantor grants all that he has and which can therefore

be granted.

Although the actual decision in that case has not been accepted by the Privy Council in Chidambara Siyaprakasa Pandara Sannadhigal v. Veerama

Reddi, ILR 45 Mad 58 AIR 1922 PC 292, there is nothing in the latter decision to show that the analysis of the learned judge is in any way

incorrect. Indeed in Nainapillai Marakayar v. Ramanathan Chettiar, ILR 47 Mad 337 : AIR 1924 PC 65, the Privy Council observed:

A permanent right of occupancy in land in India is a right, subject to certain conditions, of a tenant to hold the land permanently which he

occupies. It is a heritable right, and in some places it possibly may be transferable by the tenant to a stranger. That permanent right of occupancy

can only be obtained by a tenant by custom, or By a grant from an owner of the land who happens to have power to grant such a right, or under

an Act of the Legislature.

22. The rule stated above suggests that the landholder or inamdar has right not merely to the melwaram but the land itself albeit that in particular

cases the ryot or tenant could show that he would be entitled to permanent rights of occupancy. But the language employed by the Privy Council to

describe the owner of the kudiwaram as a tenant under the landholder is likely to be mistaken. The accepted position as we have stated earlier, is

that the occupants of land in what were once estates did not owe their right to possession to any grant from land-holder in the case of zamindars.

The Zamindar was a mere intermediary to collect rent from the existing peasantry. In the case of inams where the inam was of the melwaram alone,

the ryots must have " been already in possession of the property.

23. Subsequent to the Madras Estates Land act, a tenant let in possession by a

land-holder into ryoti land would acquire a permanent right of occupancy on the land, but that is by virtue of the statute and not by reason of any grant or demise by the land-holder. The owner of the kudiwaram cannot therefore be regarded as a mere tenant, who obtains a right of occupancy either by virtue of a grant or prescription. The main point decided in ILR 47 Mad 337 : AIR 1924 PC 65 namely that, in this country when a tenant of a land in a suit by his landlord to eject him set up a defence that he had a right of occupancy In the lands, the onus of proving that he had such a right was upon him, has not been accepted by the Privy Council in ILR (1950) Mad 567 : (AIR 1949 FC 278) where it Was held that the burden would be on the plaintiff to make out a right to evict In the latter case the Privy Council pointed out that the rule stated in ILR 47 Mad 337 : AIR 1924 PC 65, would only apply to cases where the land-holder would have a right not merely to the melwaram but to the land itself. Two principles are therefore clear: (1) the theory that the Sovereign had no right in the soil is not correct - vide ILR 41 Mad 1012 : AIR 1918 PC 169. (2) Under the common law as laid down in the earlier cases a person who first occupies and cultivates a land acquires a right to the beneficial use of it subject to the payment of a share to the Sovereign. But the rest of the property, namely, uncultivated land and also mines and other interest in land will undoubtedly continue to vest with the sovereign.

24. In Secretary of State v. Srinivasachariar, ILR 44 Mad 421 : AIR 1921 PC 1, the Privy Council held that an inam grant may be no more than an assignment of revenue, and even where it included a grant of land, what interest in the land passed, must depend on the language of the instrument and the circumstances of the case, in that case although there was a grant of the entire village as shrotriem, their Lordships of the Privy Council held that the grant did not include quarries and minerals. The question therefore in each case will be what is the quantum of interest conveyed by the grant, whether it is of the entire village, or of the melwaram alone in the whole or part of the village.

25. In Lakshmanan v. Venkateswarlu Sir Madhavan Nair describing the inams existing in the Madras Presidency referred to two categories

thereof:

First, those where the proprietary right in the soil was and the right to the Government share of the revenue derivable from land coalesce in the

same individual, and secondly, those where the proprietary or occupancy right is vested in one or more individuals, whilst the Government share of

the revenue has been granted to another.

26. A reference to the legislation on the subject would show that the inams were never regarded as solely consisting of land revenue alone. In the

Madras Revenue Recovery Act, (Act 2 of 1864), the term "land-holder" from whom the Government was declared entitled to collect revenue due

to it is held to comprise shrotriendars and inamdars as well, which will obviously include the grantees of the melwaram alone. Section 3(2) (d) of

the Madras Estates Land Act prior to its amendment by Act 18 of 1936, defined an inam as any village of which the land revenue alone had been

granted in inam to the person not owning the kudiwaram thereof, this undoubtedly contemplates the possibility of a mere grant of the land revenue

by the Sovereign to a person. The learned Advocate General argues that Act I of 1908 was passed at a time when there was in existence a theory

that the State did not own the land but had a mere right to collect assessments and as that theory is no longer the accepted one [vide, ILR 41 Mad

1012 ; AIR 1918 PC 169, the definition referred to above cannot be indicative of the fact that land revenue alone could form the subject matter of

an inam grant. But we are unable to accept the inference sought to be drawn from that provision, namely, that there can be no inam simpliciter of

the land revenue alone. The scheme of the Madras Estates land Act as originally passed was to ameliorate the conditions of the ryots in occupation

of lands, as against mere intermediaries like Zamindars and grantees of the melwaram alone, who were holding a position analogous to that of

Zamindars. But this definition has been recast by Madras Act 18 of 1936, as a result of which an inam village, 1964 Mad. D. P.7.

whether it consisted of the melwaram alone or of the melwaram and kudiwaram, the grant in respect of which having been recognised and

confirmed by the Government, would come within the purview of the Act. It follows that an inam by Sovereign authority need not necessarily

consist merely of a transfer of its right to revenue, but it may also include the grant of the soil the extent of the grant depending in each case on the

construction of the terms thereof.

27. But the characteristic and distinguishing feature of every inam is that there is an assignment of the whole or part of the revenue on the land in

relation to which the grant is made. As we said there may be cases where having regard to the existence of the ryots on the land, and the extent of

the grant, the grant would be nothing more than of the assessment alone. This will be apparent in a rather acute form in the case of minor inams

consisting of the melwaram alone. What the grantee in such a case would get is only a right to obtain the revenue. If an assessment were to be

made on the inam on the basis of the full ryotwari assessment on the land which is in the occupation of the owner of the kudiwaram, the position

will be that a substantial, if not the whole, of the inam would be lost to its holder. To express the idea more clearly, we may refer again to the

various classes of inams and show how the incidence of an assessment like the one contemplated under the impugned Act would affect the

inamdar.

(1) Where the grant is of the entire village, whether such grant is of the melwaram alone or of the melwaram and kudiwaram; in such a case the

inamdar will, in addition to his right to collect the melwaram from the ryots, be the owner of all uncultivated and waste lands comprised within the

ambit of the grant. The levy of ryotwari assessment, while it may diminish his net income from the estate, might not affect his ownership of the

uncultivated areas in the village or of mines, rivers etc., if included in the grant.

(2) Where the grant is of both the warams in a part of a village: The provisions of the Madras Estates Land Act would not apply in such a case but

the right of the inamdar to collect rents from his tenant, will be subject to tenancy legislations existing for the time being, like the Cultivating Tenants

Protection Act 25 of 1955 and the Fair Rent Act 24 of 1956. It may be that in such a case the imposition of ryotwari assessment does not take

away all the income that the minor inamdar might get from the tenants but there can be no doubt that a substantial part of the income must be lost

to him by reason of the imposition of the assessment under the impugned legislation.

(3) Where the grant consists of land revenue alone over a part of a village: What the grant obtains is nothing more than his assignor's right to

collect the assessment; in such a case the incidence of the tax will practically take away all or most of what the inamdar gets from his ryots.

28. The learned Advocate-General contends that in strict theory the minor inamdar in such a case should be regarded as the owner of the land as

Act 2 of 1864 treats him as such and the levy of assessment could therefore be regarded as on the land. Even if that be so, the impact of the assessment on the inamdar in such a case is obvious.

29. It does not appear from the papers which the learned Advocate-General placed before us that the attention of the legislature had at all been

drawn to the hardship that will ensue to these small land-holders. The argument that in respect of ryotwari lands and abolished estates all lands are

assessed to tax on the basis of the ryotwari settlement and that there would be no injustice to a minor inamdar in the matter of imposition of a

similar tax upon him, misses the essential difference between the two cases. In regard to ryotwari lands and the lands in the abolished estates, the

assessee owns the land. This can also be said in the case of a minor inamdar who has got both the melwaram and the kudiwaram interest in the

land. But a minor inamdar who is only an assignee of the land revenue is not in possession of the land. His case cannot therefore be treated as

similar to that of the other owners of land; the imposition of full ryotwari assessment in his case would practically take away all that has been

granted to him. In their case there was need for a special and less harsh treatment at the hands of the Legislature. But unfortunately no provision

has been made in the statute to treat them differently from others. The same scale of taxation could be levied upon them in respect of the lands

actually possessed by somebody else (i.e., the ryot). It can perhaps be conceded that the ryot who pays the land-holder, the melwaram, should

not be made to pay the State the land revenue, but that is no reason why the land-holder should be made to pay the full ryotwari assessment.

30. Mr. Vedantachari contended that the distinguishing feature of every inam being the remission or assignment of revenue either in whole or in

part, the imposition of full ryotwari assessment will be tantamount to resumption of the inam itself as in the case of resumption nothing more than a

levy of assessment is done. Baden Powell in his Short Account of Land Revenue and its Administration in British India, took the word resume as a

technical phrase meaning "assessed to land revenue". In *Unide Rajaha Raje Bommarauze Bahadur v. Pemmasami Venkatadri*, 7 Moo I A 128 at

142 (PC), the Privy Council describing the features of a resumption of an inam said.

The resumption consists in putting an end to the grant under which the respondents held, remitting the services, and requiring them to pay the full assessment. It does not appear that an absolute dispossession was either attempted or intended, though means were taken to prevent the respondents reaping the crops.

What happens in a resumption of an inam has been described by Bhashyam Ayyangar J. in *Gunnaiyan v. Kamakchi Aiyar*, ILR 26 Mad 339 at p.

346 thus:

Even when the Government exercises its right of resumption it rarely, if ever, resumes the land even if the land itself had been granted as inam. It

simply resumes the full assessment and it does so by the position of full assessment upon the land..... and converts it into ordinary ryotwari

tenure. There is really no object served in resuming the land and making a fresh grant of it subject to full assessment, either to the holder or a

stranger.

31. In *Dundoobai Anandrao Deshmukh Vs. Vithalrao Anandrao Deshmukh*, , the Bombay High Court referring to the effect of resumption of

watan land said that it was nothing more than the Government levying the full assessment, the holder having thereby lost the right to hold the land

free of assessment or at reduced assessment, and all "Mm rights of the holder remained unaffected.

32. On the basis of these principles it is argued that even a retention of the inam with the inamdar subject to the imposition of full ryotwari

assessment would amount to a resumption of the land.

33. We are unable to regard the levy of assessment by the impugned Act as amounting to a resumption for the reason that resumption can only be

in regard to a conditional grant, where the condition has been broken or has failed. An inam which has been enfranchised is not a conditional grant,

though in the case of certain religious and charitable inams its duration is limited by phrase like "so long as the worship or charity exists." Secondly,

resumption implies vesting of the full ownership to the land with the Government

and a regrant of the same to that individual or to some other

individual. That the Government, in actual practice, does not dispossess the original grantee, but levies only an assessment, is a matter of its

pleasure and cannot mean that the prior holder of the resumed inam, has a right to hold the land Subject to payment" of full assessment. The words

resume the revenue of the land"" used in ILR 26 Mad 339 can only be regarded as a statement or characterisation of what the Government as a

matter of practice does in such cases. Essentially resumption results in the abrogation of the inam tenure. The case of imposition of assessment as in

the present case cannot abrogate the inam, for the very object of the enactment is to preserve the inam and get the assessment from the inamdar,

although the assessment might practically be the same as the subject matter of the inam, itself.

34. At the same time without being understood as repeating the same idea, it will be apparent that there are two significant characteristics in an

inam. First then is a gift of land whenever the grant comprises in addition to the melwaram, the kudiwaram also, whether it be of the whole village

or part of a village. Secondly, there is gift of the land revenue (or melwaram), which, is a distinct interest in land. The imposition of assessment at

the fully ryotwari rate which is fixed on the basis of half the net realisation from the land would mean that at least part of the grant, namely,

assignment of the land revenue has been indirectly taken away by the Legislature either wholly or to the extent of a substantial portion thereof. The

question then arises whether it will be within the competence of the State legislature to enact a legislation of the kind before as which though for all

appearances is one of taxation, also affects the enjoyment of property.

35. Before considering that question, it is necessary to advert to one argument of Mr. Vedantachariar namely, that the impugned legislation cannot

be regarded as a bona fide one, but as one conceived with a view to reduce and deprive the inamdar of just compensation when the question of

the abolition of the inam arises. Such an argument is premature. There is as yet no legislation abolishing minor inams. We cannot speculate what

form that legislation would take if it were to be passed. When the major inams were abolished under Madras Act 26 of 1948, the legislature

provided for compensation on certain basis. There is no reason to assume that

the legislature would apply a different standard to smaller inamdars, most of them being religious and charitable institutions whose very existence would sometimes depend on keeping intact what the unknown grantor gave. The mere fact that the legislature has the powers like that of a giant cannot necessarily mean that it will use them as one. But even so, the question before us is not so much as to whether the legislation is one which a person will accept as conforming to his standards of justice and morality, but whether the legislature acted within its powers in enacting it. Courts are not concerned with the wisdom of the legislative policy. The question whether a law is a colourable legislation and as such void does not, as pointed out in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, depend on the motive or bona fides of the Legislature passing the law, but on its competency to pass that particular law, and what the Courts have to determine in such cases is whether though the legislature has purported to act within the limits of its powers, it has in substance and reality transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. Mukherjee J observed at page 11 (of SCR): (at p. 379 of AIR):

The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are: really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power. A distinction, however, exists between a legislature, which is legally omnipotent like the British Parliament and the laws promulgated by which could not be challenged on the ground of incompetency, and a legislature which enjoys only a limited or a qualified Jurisdiction. If the constitution of a State distributes the legislative powers amongst different bodies which have to act within their respective sphere marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect of the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised,

covert and indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements.

That the doctrine of colourable legislation is relevant only in connection with the question of legislative competency has been further recognised in

Raja Bhairebendra Narayan Bhup Vs. The State of Assam, .

36. But as pointed out in the case cited above, the question of competency is not confined only with the distribution of powers under the

Constitution; it should also be seen whether the substance of the enactment is such that it transgresses the fundamental rights guaranteed under the

Constitution.

37. In *Maharana Shri Jayvantsinghji Ranmalsinghji etc. Vs. The State of Gujarat*, , the impugned legislation, namely, the Bombay Land Tenure

Abolition Laws (Amendment) Act, 1958, which deemed certain tenants in possession of taluqdari lands as permanent tenants, was held to be void

as the substance " of the enactment was to deprive the property of the Taluqdar.

The facts were: In 1949 the taluqdaries were abolished and the erstwhile taluqdar was converted into a mere j occupant of the land liable to pay

land revenue. An amendment was introduced to the Act which gave the pre-existing permanent tenant on the land, the right to purchase and

become an occupant if he paid six times the assessment for acquiring the rights of occupancy. So far as non-permanent tenants were concerned,

they were declared as to be entitled to obtain occupancy right by paying to the taluqdar compensation between 20 to 200 times the assessment. In

1958 the Bombay legislature enacted the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958, under which almost all the non-

permanent tenants were made permanent tenants. The consequence of the enactment was that the taluqdar was deprived of obtaining the higher

price which he was entitled to get from the non-permanent tenants and he was obliged to sell them his rights at six times the assessment. This

legislation was held to contravene the fundamental rights guaranteed under the Constitution. It was declared void.

38. The principle stated above that a legislation can be challenged not only on the ground of absence of legislative competence but also on the

ground that the impugned legislation violated the fundamental rights guaranteed

by the Constitution has been extended by the Supreme Court to taxing statutes as well. But in *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, it was pointed out that Article 31(2) of the Constitution would be inapplicable to taxing statutes because such a fiscal enactment cannot be said to purport to acquire or requisition any property albeit the imposition of the tax levied by the statute was so excessive that it might ultimately lead to the loss of the assessee's property.

Gajendragadkar, J. observed at page 182 (of ITR) : [at p. 1572 of AIR]:

Though the validity of a taxing statute cannot be challenged merely on the ground that it imposes an unreasonably high burden, it does not follow that a taxing statute cannot be challenged on the ground that it is a colourable piece of legislation and as such is a fraud on the legislative power conferred on the legislature in question. If, in effect, it is shown that the Act which purports to be a taxing Act is a colourable exercise of the legislative power of the legislature, then that would be an independent ground on which the Act can be struck down. Colourable exercise of legislative power is not a legitimate exercise of the said power and as such it may be open to challenge. But such a challenge can succeed not merely by showing that the tax levied is unreasonably high or excessive, but by proving other relevant circumstances which justify the conclusion that the statute is colourable and as such amounts to a fraud." What has therefore to be considered now therefore is whether though in form the enactment is a taxing statute, it is in substance one enabling acquisition of property. To ascertain whether that is so, it has to be seen what the subject-matter i.e., the pith and substance, of the enactment is. For that purposes it will be competent for the Court to examine the effect of the legislation and take into consideration its object, purpose and design. In *Attorney-General for Alberta v. Attorney-General for Canada*, 1939 AC 117, the Privy Council while considering the principles to be applied in interpreting distribution of powers and whether the impugned legislation in that case was within the authority of the legislature that enacted it, said:

It is therefore necessary to compare the two complete lists of categories with a view to ascertaining whether the legislation in question fairly considered falls prima facie within Section 91, rather than within Section 92. The result of the comparison will not by itself be conclusive but it will

go some way to supply an answer to the problem which has to be solved. The next step in a case of difficulty will be to examine the effect of the

legislation (*Union Colliery Co. of B. C. Ltd. v. Bryden*, 1899 AC 580). For that purpose the Court must take into account, any public general

knowledge of which the Court would take judicial notice, and may in a proper case require to be informed by evidence as to what the effect of the

legislation will be.....A closely similar matter may also call for consideration, namely, the object or purpose of the Act in question.....It is not

competent either for the Dominion or a Province under the guise or the pretence or in the form of an exercise of its own powers to carry out an

object which is beyond its powers and a trespass on the exclusive powers of the other (*Attorney General of Ontario v. Reciprocal Insurers*, 1924

AC 328; *In re, Insurance Act of Canada*, 1932 AC 41). Here again, matters of which the Court would take judicial notice must be borne in mind,

and other evidence in a case which calls for it. It must be remembered that the object or purpose of the Act, in so far as it does not plainly appear

from its terms and its probable effect, is that of an incorporeal entity, namely, the legislature, and generally speaking the speeches of individuals

would have little evidential weight.

It is argued on behalf of the petitioner that as the effect of the Act will be to deprive either in part or in whole the melwaram interest in the land

which is represented by the land revenue assigned by the original grantor in favour of the inamdar, the Government being enabled to take the same

under the guise of a tax, the legislation should be regarded as essentially one contravening the Article 31 inasmuch as no provision is made for

compensation asunder Entry 42 in list 111 of Seventh Schedule to the Constitution. It is further argued that the form of the enactment as a taxation

measure with respect to assessment of land, is merely an attempt to evade the provisions of the Constitution which requires that land can be

acquired only for a public purpose. Neither of the two elements, it is said, is present in the case.

39. The rule of interpretation of distributive entries of legislative powers in a Constitution has been stated in Halsbury's Laws of England, 3rd Edn.

Vol. 5, page 498 thus:

In determining the validity of legislation the general method of enquiry is to ask

first, whether the matter comes within the classes expressed by statute to be exclusively within the powers of the provinces; if it does not the power belongs exclusively to parliament, but even if it does appear to come within those classes, the exclusive power still belongs to Parliament if it also falls within an enumerated class within the legislative authority of Parliament. Subjects which in one aspect and for one purpose fall within the latter class may in another aspect and for another purpose fall within the competence of provincial legislatures. Hence Parliament and the provinces may both be competent to legislate in relation to 3 matter (such as liquor traffic) in different aspects and for different purposes; and provided that the Impugned legislation is truly in relation to a head of legislative power it is immaterial that it incidentally affects a matter assigned to the other authority. It will be necessary, therefore, to determine the true character, or pith and substance, of an enactment.

The pith and substance rule was applied by the federal Court of India in a case arising under the Madras Agriculturists Relief Act in AIR 1941 47

(Federal Court) where it was laid down that the impugned; enactment could not be said to be a legislation with reference to negotiable instruments,

legislation in respect of which was not within the competence of the Provincial legislature, but one coming under moneylending which was within the

competence of that legislature. It was pointed out that the legislation, though purporting to deal with a subject in one list, may also touch upon a

subject in another list and that the rule by which the competency of the concerned legislature to enact it would have to be determined was to

ascertain the pith and substance or the true nature and character, for the purpose of determining whether it was a legislation with respect to matters

in on list or the other. The same rule has been laid down by the Privy Council in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna

1947 FCR 28 : AIR 1947 PC 60 and in Bank of Commerce Ltd., Khulna v. Amulya Krishna, 1947 FCR 54 : AIR 1947 PC 66.

40. Along with it is necessary to consider what exactly is the scope and content of the legislative power of the particular legislature that enacted it.

We shall in this connection refer to an illuminating passage in ""Legislative, Executive and Judicial Powers in Australia"" by Wynes where the learned

author dealing with the subject of taxation observes (at page 249):

On these principles Commonwealth land tax legislation providing that persons, not actual owners of land, should be liable for land tax, have been

upheld. The provisions, for example, that land owned by a company shall be deemed to be held by the shareholders who shall be taxable

accordingly, does not as to the shareholders, impose a tax other than a land tax. Similarly, provision may be made in Income Tax legislation for the

assessment of shareholders in a company in respect of undistributed profits.....

In *Morgan v. Deputy Federal Commissioners of land tax*, 15 CLR 661, the impugned enactment levied tax on shareholders of a company in

respect of land owned by the company. Griffith C. J. observed:

In my opinion, the Federal Parliament in selecting subjects of taxation is entitled to take things as it finds them in rerum nature, irrespective of any

positive laws of the States prescribing rules to be observed with regard to the acquisition or devolution of formal title to property, or the institution

of judicial proceedings with respect to it.

I think, therefore, that when Parliament has determined upon a subject-matter of taxation it is entitled to enact that any person who has a beneficial

interest in that subject-matter using the term "beneficial" in its widest sense shall be liable to pay the tax.

This principle was explained in *Broken Hill South Ltd. v. Commissioner of Taxation*, N. S. W. 56 C.L.R. 337, where Evatt, J. observed at page

379:

In any investigation of the constitutional power of these great Dominion Legislatures, it is not proper that a Court should deny to such a legislature

the right of solving taxation problems unfettered by a priori legal categories which often derive from the exercise of legislative power in the same

constitutional unit. For instance, as was pointed out by Griffith C. J. in 15 CLR 661, a Court must accept the position that, in dealing with all

questions of constitutional validity, a legislature is entitled to regard shareholders in a company as being the beneficial owners of property, although

the company is usually treated as its sole legal owner.

But the rule laid down in the above case is a rule of interpretation of a head of legislative power conferred by a Constitution, namely, within the

ambit of the topic contained in a particular head, the power of the legislature is all comprehensive. It cannot mean that a legislature can do by a

colourable legislation what it can not do directly. But the difficulty in the present case is that an inam has a two-fold aspect. It consists of revenue alone or land coupled with an assignment of revenue. It will therefore be difficult to bring legislation of the kind before us into a fixed category in its aspect. As " a measure of imposing land revenue on the property owned by the inamdar, it will undoubtedly be a measure of taxation within the competence of the provincial legislature. In its other aspect, namely, property consisting only of assignment of land revenue, the assessment of the kind imposed under the Act will amount to a retaking of the property by the State. But even in that case, the subject-matter of the grant being land revenue, virtual annihilation of the same by the imposition of tax might still be held to relate to land revenue within the competence of State Legislature. It will be necessary therefore first to determine the true character of the legislation with reference to the legislative practice in the light of the general concept of the word ""inam"" in its essential character as comprising an interest in property.

But before doing so we would like to refer to the contention of the learned Advocate General that what is levied under the provisions of Section 3 of the impugned Act on the inamdar, whether he be one to whom both the kudiwaram and the melwaram interests in the land were granted or one to whom only the melwaram interest alone was granted, is the assessment on the land, the actual occupant, if there is one, being a mere creature of his. While it may not be correct to treat the owner of the kudiwaram as a creature of or tenant of the landholder, we are of opinion that the contention is in accord with the provision referred to above which brings to charge ""inam lands"" obviously referring to the land. Where the ownership of the melwaram and the kudiwaram in land are held by different persons there will undoubtedly be the anomaly that while that part of the land which is far more valuable, namely, the kudiwaram interest, which under popular concept is termed land, is with one person, the entire tax under the Act is levied on another person, namely, the holder of the melwaram, the legislature presumably accepting the position that it is the holder of the melwaram that is the inamdar. Such a levy on the owner of a part of an interest in the land is no doubt unjust, but, nevertheless, the character of the levy will be nothing more than that of a revenue on the land. The position will be analogous to the Australian case referred to by us earlier,

where the tax on the property of a company was levied on its shareholders. We are also familiar that under the Indian Income Tax Act, itself,

undistributed profits of a company are in certain circumstances treated as profits earned or received by the shareholders and brought to tax as their

income. But. we should note this.

In the case of an ordinary company, the beneficial interest in its property might be held to be with the shareholders, whereas it cannot be said that

the beneficial interest in the kndiwaram right is with the landholder. Indeed, there are even cases where & minor inamdar has not even a charge

over the kndiwaram right for the melwaram due to him.

41. Entry 45 of list II of the Seventh Schedule to the Constitution refers to land revenue. The term land revenue has been held in *Bageswari Prosad*

Singh v. Mahomed Gowhar Ali Khan, ILR 31 Cal 256 , to include every sum annually payable to Government by the proprietor of an estate or

tenure held directly under the Government. The proposed levy does satisfy this definition. Entries 46 and 49 of the State List of legislative subjects

comprise tax on agricultural income and tax on lands. All the three entries, namely, 45, 46 and 49 are sufficiently comprehensive to include a levy

of the kind now in question. Further the State Legislature has power to legislate in respect of acquisition of property for its own purposes. That

power however is made subject to the provisions of entry 42 in the Concurrent list, list III. These two entries should be read in the context of

Article 31, which prescribes that ordinarily acquisition of property can be made only for a public purpose and on payment of compensation, The

term ""acquisition"" in entry 36 should therefore be read in the light of Article 31. The fourth Amendment to the Constitution which introduced

modifications in Article 31 and Article 31-A declares that the acquisition by the State of any estate or any rights therein, or the extinguishing or

modification of any such rights, shall not be deemed to be void on the ground that it is Inconsistent with or takes away or abridged any of the rights

guaranteed by Arts. 14 19 and 31. The result of Article 31-A is that rules as to compensation and the necessity for legislation under Entry 42 to list

III of the Seventh Schedule will be unnecessary in so far as an inam is acquired by the State or any rights therein are either extinguished or

modified. As we said before the impugned enactment is in form a taxing

measure. In certain individual cases it may be that the effect, or even the aim of the legislation might be held to have been to subtract to a great extent the inam itself. Even so, the legislation will be within the competency of the State Legislature as primarily coming under Entry 45, of list II. Assuming that it amounts to acquisition of property, it can only come under entry 36 without there being a necessity to provide compensation. It will follow that it cannot be said that the Madras Inam Assessment Act, 1955 is colourable in the sense that the State Legislature abrogated to itself a power which it did not possess or camouflaged a process of acquisition where compensation was payable as a mere taxation measure.

42. Mr. Vedantachariar then contended that at any rate in regard to the minor inams which consist of the "melwaram alone, the" levy of full ryotwari assessment u/s 3 of the Act should be regarded as an unreasonable restriction on the inamdar's right to enjoy his property and that the legislation should be struck down as contravening Article 19(1)(f). We have already indicated our view that while it cannot be said that the assessment levied on inams which consist of whole villages or of both the warams in the land as unreasonable the same cannot be said with respect to an inam of the melwaram alone in part of a village. What is granted in such a case is the Government's share of the revenue, and what is sought to be levied u/s 3 is practically the same. There is therefore considerable force in the contention advanced by the learned counsel. The pith and substance rule referred to above may not apply in such a case as the substance itself will be acquisition of property. But having regard to the provisions of Article 31-A to which we shall refer again presently, this feature will not have the effect of rendering the enactment invalid.

43. The validity of the enactment was further challenged on behalf of the petitioner as contravening Article 14. We have earlier pointed out that Section 3 has failed to discriminate between persons who own lands and persons who are only in receipt of the melwaram alone and to provide statutorily for varying assessments commensurate with the income or benefits received by the inamdars. But the point now urged is the reverse of that position. It is pointed out that under the provisions of Section 3, the owner of a major inam who has got both the warranties in the village will be liable to pay not merely the full ryotwari assessment, but also any quit rent,

jodi, kattubadi, or other amounts of like nature payable to the State by the landholder before the commencement of the enactment. In the case of an ordinary ryotwari proprietor, the assessment is restricted only as per the ryotwari assessment. Even in the case of an abolished estate, the landholder who gets a patta for his private land is asked to pay only ryotwari assessment and nothing more than that. Secondly, it is contended that in regard to minor inams the landholder is treated differently from his counterpart in an abolished inam. In the latter type of cases, the levy of ryotwari assessment is made only on the person to whom the ryotwari patta is granted as proprietor of the land, while in the case of the minor inamdar, he is compelled to pay the full ryotwari assessment notwithstanding the fact that the kudiwaram interest vests in somebody else. There can be little doubt that the enactment is discriminatory, it has been held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause under Article 14, although Courts are not generally concerned with the policy underlying a taxing statute or its incidence on the subject (vide *Kunnathath Thathunni Moopil Nair Vs. The State of Kerala and Another*, . But this defect in the enactment will not entitle the petitioner to impugn its validity for the reason stated below.

44. The Madras Inams Assessment Act, 1956, was, prior to its enactment, reserved for consideration of the President, and has received his assent. But Mr. Vedantachariar contends that the assent of the President to a colourable legislation will not cure its inherent infirmity as what the President should be deemed to have assented to is in its apparent form, and not the real one behind it. In other words, what is contended is, that the inamdar did not have the protection afforded to him under the proviso to Article 31-A of the Constitution, as the President might not have been aware from the apparent tenor of the legislation, that it amounted to acquisition of the inam. Whether the contention is right or wrong need not be considered in the present case. The learned Advocate General has placed before us all relevant materials to show the circumstances attending the President's assent. While submitting the Madras Inam Assessment Bill, 1956, for consideration of the President, the State Government said this in its accompanying letter:

The Bill falls within the scope of the following entries of the State List in the

Seventh Schedule to the Constitution, namely -

Entry 18: Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant and the collection of rent;

Entry 45 : Land revenue including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights and alienation of revenues.

The Bill is intra vires the State Legislature.

Sub-clause (c) of clause; 2 of the Bill defines ""inam"" to mean an inam land as defined in sub-clause (d) and as including an assignment of land

revenue on such inam land. Sub-clause (d) defines ""inam land"" to mean any land the grant of which in inam has been made, confirmed or

recognised by the Government and as including any inam constituting an estate under the Madras Estate Land Act, 1908. The; term ""inam"" and,

inam land"" as defined above will be covered by the definition of ""estate"" and ""rights"" in Article 31-A(2): of the Constitution clause 3 empowers the

State Government to levy full assessment on liram lands. The Bill may therefore be said: to extinguish or modify rights in an estate as defined in

Article 31-A(2) of the Constitution. The Bill has therefore been reserved for the consideration of the President under the proviso to Article 31-

A(1) of the Constitution.

45. It will be seen from the above that the fullest disclosure had been made to the President of the effect of the Bill, if it were to be assented to and

enacted as law. Therefore even if the impugned legislation were to be regarded as amounting to acquisition of property contravening Arts. 14 and

19 of the Constitution, the provisions of Article 31-A will make it valid. Thus, if the Act Is regarded as providing for acquisition of the inams,

Article 31-A which provides that even if it were inconsistent with, or takes away, or abridges any of the rights conferred by Article 14 19 or 31, it

will be valid, will save it.

46. It is finally contended on behalf of the petitioners that the impugned enactment is contrary to Section 3 of the Crown (Government) Grants Act,

which provides -

All provisions, restrictions, conditions and limitations even contained in any such grant or transfer aforesaid shall be valid and take effect according

to their tenor, any rule of law, statute or enactment of the legislature to the contrary notwithstanding.

This provision is relied on to show that as the inam title 1 deed granted the land tax-free, the provisions contained in the title deed would prevail

over any subsequent enactment that the legislature might choose to pass. Reference was also made in this connection to the decision In Secy, of

the The Chief Commissioner of Income Tax Vs. Zamindar of Singampatti, where a Full Bench of this Court held that the income from permanently

settled estate was exempt from further taxation by the Government even by way of income tax. This decision has however been overruled by the

Privy Council in (1949) 17 ITR 445 (Privy Council) Apart from that circumstance, the provisions of the Crown Grants Act are intended to give

validity only to the conditions imposed by the Government under the grant, even though such conditions might not be in conformity with the law of

the land like the rule against perpetuity, accumulation etc. Section 3 referred to above cannot mean that the grants could not be altered or modified

by statute. It will always be open to the concerned legislature to alter the conditions of a Government grant so long as suoti alteration is within

Constitutional limits. In C.V. Rajagopalachariar Vs. State of Madras, , one of the members of the present Bench had to consider whether an

enactment levying s surcharge on the current ryotwari assessment was valid, the contention-raised in the case being that a ryotwari settlement in

force could not be increased and it would not be competent to the State to levy any additional sum by way of surcharge. It was pointed out that

engagements or arrangements binding on the executive, would not" pervade over the sovereign! powers of the legislature. We are therefore of

opinion that the provision contained In Section 3 of the Crown Grants Act will not invalidate the Act in; question.

47. It follows from what we have stated above that the Madras teams Assessment Act, 1956, cannot be said to be- outside the powers of the

State Legislature. Even If It were to be regarded as abridging in a way the rights of the inamdars, no Constitutional provision has been violated by

the enactment. We therefore declare the Madras inams Assessment Act, 1956, as valid.

48. But as we pointed out at the beginning, sufficient or effective opportunity was not given to the petitioner to straw cause against the proposed

levy of assessment A writ of certiorari will therefore issue to quash the final decision published under Rule 16 of the Madras Inams (Assessment)

Rules, 1957. The draft notification under Rate 6 will stand, but the Revenue Divisional Officer shall receive all objections presented to him under R.

7 within the extended time now granted, namely, on or before the 31st January 1963, and dispose of the matter under R. M. The succeeding rules shall apply.

49. There will be no order as to costs in this writ petition.

50. W. P. Nos. 135 etc. of 1960 and 119 etc. of 1961: For the reasons stated in our judgment in W. P. No. 943 of 1959, the substantial ground

on which these petitions are filed, viz., the validity of the Madras Inams (Assessment) Act, 1356 fails. But the actual assessment imposed has to be

set aside on grounds similar to the one noticed in that case. A direction will issue as on the terms contained in the last paragraph of our judgment.

51. Writs absolute will follow.