

**(1962) 11 KL CK 0019**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 2723 of 1961**

Sukapuram Sabhayogam

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

**Date of Decision :** 05-11-1962

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 31, 31A, 31A(1)

**Citation :** AIR 1963 Ker 101

**Hon'ble Judges :** M.S. Menon, C.J;T.K. Joseph, J;C.A. Vaidialingam, J

**Bench :** Full Bench

**Advocate :** K.V. Surianarayana Iyer, A.K. Pisharodi and C.M. Devan, for the Appellant; A.G., for the Respondent

**Final Decision :** Allowed

## Judgement

Vaidialingam, J.—In this writ petition, on behalf of the petitioner, his learned counsel, Mr. K. V. Surianara-yana Iyer, seeks a declaration that the Kerala Agrarian Relations Act, 1960, Kerala Act 4 of 1961, is ultra vires, unconstitutional and void and is not binding on the petitioner and his lands situated in the area commonly known as the Maiabar area, which once formed part of the State of Madras, and is now part of the Kerala State, after the States' Reorganisation in 1950.

2. The petitioner also prays for the issue of a writ of certiorari to quash the notification, G. O. (P) No. 147 dated 15-2-1961 issued by the first respondent, the State, appointing the 15th day of February, 1961, as the date on which Sections 1 to 40, 57, 58, 70, 74 to 79 and 81 to 95 of Kerala Act 4 of 1961 are to come into force, as that notification is unconstitutional and illegal. There is a further prayer for the issue of a writ of mandamus forbearing the respondents, which include the Land Tribunals at Palghat, Ottappalam, Trichur and Tirur, from enforcing the provisions of Kerala Act 4 of 1961 and also from proceeding further with certain applications, stated to have been filed by the tenants of the petitioner, claiming relief under Kerala Act 4 of 1961.

3. In the Original affidavit filed by the petitioner on 23rd September, 1961, the petitioner avers that the Sabha Yogam owns properties in Alathur, Ottappalam, Tirur and Talappilly and most of the lands are either held by kanomdars under kanom demises or by verupattom tenants under lease deeds or otherwise. According to the petitioner Ambalappadam Srmbichira Nilam lands in Kuthannur Amsom, Alathur, were outstanding in the possession of one Paramannil Mohammed Rowther and the contract rent was 554 paras of paddy. After the death of the original tenant, his sons Kabir Rowther and Jabar Rowther, have filed applications before the 2nd respondent, the Land Tribunal, Ottappalam, for fixation of fair rent under Kerala Act 4 of 1961, and the petitioner has been served with notice of the said application which is application No. 596 of 1961 on the file of the Land Tribunal, Ottapalam.

4. The petitioner further states that certain other items of properties, namely, Edamannu Pada-thu Mela Chira Nilam etc., again in Kuthanur amsom and desom, Alathur Taluk, were in the possession of one Murugan Ezhuthassan on a contract rent of 300 paras of paddy. A part of the tenancy rights appears to have been assigned to one Moha-med Haneefa and the latter after such assignment, was paying a rent of 140 paras of paddy for the land purchased by him. The said Mohammed Haneefa has again filed an application before the second respondent as O. A. No. 594 of 1961 for fixation of fair rent under Kerala Act 4 of 1961, and the petitioner has been served with notice of "he said application.

5. According to the petitioner, the applications filed by the parties referred to above, and the notices issued on that basis, are illegal and void because the Kerala Agrarian Relations Act, 4 of 1961, itself is unconstitutional and no relief could be claimed on the basis of that statute.

6. The grounds of attacks raised as against the statute in the said original affidavit are broadly two: (i) that the Kerala Agrarian Relations Bill, 1957 which was passed by the Legislative Assembly and which was pending assent before the President under Article 200 of the Constitution has lapsed, consequent on the dissolution of the State Legislative Assembly on 31st July 1959; and (2) the Act violates the fundamental rights guaranteed under Articles 14, 19(1) (f) and (g) and 31 of the Constitution. The various aspects as to how the Act is violative of the fundamental rights are also detailed in the affidavit.

7. The petitioner has filed an additional affidavit dated 22nd February, 1962, raising certain other additional grounds of attack as against Kerala Act 4 of 1961.

8. The petitioner in this affidavit adverts to the lands, which are the subject of O. A. Nos. 594 and 596 of 1961 on the file of the 2nd respondent, as being situated in the erstwhile Maiabar District, which originally formed part of the Madras State and which, on reorganisation of the States in 1956 have been transferred to the State of Kerala. According to the petitioner, these lands are registered as Ryotwari lands in the revenue records and the petitioner Sabhayogam is registered as a Ryotwari pattadar in respect of these lands. Therefore, the

petitioner claims that the Kerala Agrarian Relations Act is not applicable to these lands. The petitioner further avers that these lands were subjected to settlement and resettlement as Ryotwari lands and as such are outside the scope of Kerala Act 4 of 1961, as laid down by the Supreme Court under similar circumstances, in their decision reported in Karimbil Kunhikoman Vs. State of Kerala, . It is also averred that the operative portions of the statute are violative of the fundamental rights guaranteed under the Constitution and they are not saved by Article 31A of the Constitution, inasmuch as the lands are Ryotwari lands transferred from the Madras State to the Kerala State.

9. The petitioner has again filed another supplementary affidavit, dated 5th June 1962. The petitioner claims that the Sabhayogam is a religious institution with certain distinct religious objects connected with Hindu religion; and he elaborates this aspect by referring to the objects of the Sabhayogam, the income that accrues from the lands and as to how the income is being utilised and ultimately states that the performances of the various rituals, ceremonies, and modes of worship referred to in the affidavit form part of the religion and religious faith and tenets of those who constitute the members of the Sabhayogam from time to time. The petitioner also emphasises that if the provisions of the Act are applied, the income of the sabhayogam will be reduced to a very low figure and it will become impossible to perform the rituals, ceremonies, etc.

10. According to the petitioner, the Sabhayogam has got a right under the Constitution, freely to practise religion and to maintain the institution and to manage its affairs in the matter of religion without being interfered with by any law or authority whatsoever and, therefore, sections 14, 16, 19 (2) and 34 in particular and the provisions in Chapter III of Kerala Act of 1961 are violative of the rights guaranteed to the petitioner institution and its members under Articles 19(1)(f), 25 and 26 of the Constitution.

11. The petitioner further avers that except some lands fetching about 2500 paras of paddy annually in the old Cochin State, the rest of the lands held by the petitioner are all in Malabar area and held by the petitioner under Ryotwari tenure, which have also been dealt with as lands under Ryotwari tenure in the settlement records and the A Register, etc.

12. The petitioner then refers to the re-settlement operations conducted under the orders of the Madras Government in the Malabar area in the years 1930-1933 under which the lands in the Malabar area were settled as lands held under the Ryot-wari tenure and to such record being made in the Settlement Registers and the A Register. The petitioner also refers to the settlement that took place during the years 1894 to 1905 in the Malabar area wherein also the lands in Malabar have been treated as being held on Ryotwari tenure and in particular the lands held by the petitioner institution were dealt with even in the settlement of 1894 to 1905 as Ryotwari holdings. Therefore the petitioner claims that the lands held under Ryotwari tenure are not "estates" within the meaning of Article 31A of the Constitution.

According to the petitioner, every bit of land is assessed to revenue and given a survey number and the assessment remains in force for a period of years, which is usually thirty, and each occupant of such land holds it subject to his paying land revenue due to the Government which has been fixed on the land. Inasmuch as the petitioner is a Ryotwari Pattadar, it is further averred that the Sabhayogam is entitled to all the rights and is also subject to all the obligations of Ryotwari Pattadar under the Board Standing Orders, the Madras Revenue Recovery Act and other similar enactments, including the right to relinquish or abandon the lands in favour of the Government.

Inasmuch as the expression "Estate" has not been defined or given any meaning in any of the existing laws relating to land tenures in the Malabar area, the petitioner urges that Kerala Act 4 of 1961, in so far as it purports to affect the lands held by the petitioner, is not saved by Article 31A of the Constitution and the petitioner is entitled to ask this Court to consider the challenge made to the said statute on the basis of Articles 14, 19 and 31 of the Constitution.

13. Then again, there are various matters mentioned, explaining as to how, according to the petitioner, the several provisions of the Act are violative of the fundamental rights.

14. It must be stated at this stage that the attack as against Kerala Act 4 of 1961 on the ground that the petitioner's lands held by him in the Malabar area are under Ryotwari tenure has been really elaborated and amplified in the additional supplementary affidavits filed by the petitioner in view of the decision of the Supreme Court reported in Karimbil Kunhikoman Vs. State of Kerala, , wherein their Lordships have held that lands held by Ryotwari Pattadars are not "estates" within the meaning of Article 31A(2)(a) of the Constitution, and in consequence the Act is not protected under Article 31A(1) from attack under Articles 14, 19 and 31 of the Constitution.

15. The State Government has not filed any counter-affidavit, as such in this writ petition; but they have filed a counter-affidavit in O. P. No. 1067 of 1961, wherein more or less similar contentions have been raised by the petitioner therein. The learned Advocate General, appearing for the State, has requested this Court to treat the said counter-affidavit as relating not only to this writ petition but also to all other writ petitions where similar contentions are raised. We may also indicate at this stage, that the question of Kerala Act 4 of 1961 not being saved from attack under Articles 14, 19 and 31 of the Constitution, on the basis that the lands held by the parties are Ryotwari has been raised in a number of writ petitions pending in this court. In fact, we have heard full arguments in this writ petition, and have permitted various counsel appearing in several other writ petitions raising the same ground of attack to intervene in this proceeding so that we can have the benefit of their arguments also.

16. In the affidavit filed, on behalf of the State, it has averred that Kerala Act 4 of 1961 is a perfectly valid piece of legislation and that it is protected by Article

31A of the Constitution and as such saved from any challenge based upon Articles 14, 19 and 31. The State Government, quite naturally controverts the stand taken by the petitioner that the Kerala Agrarian Relations Bill passed by the Kerala Legislature has lapsed with the dissolution of the Assembly on 3rd July 1959, and in this connection they rely on the decision of their Lordships of the Supreme Court reported in *Purushothaman Nambudiri Vs. The State of Kerala*, .

The State claims that the Agrarian Relations Act, 1960 has been enacted as a comprehensive measure of legislation relating to Agrarian Reforms in the State, and the lands situated in the erstwhile Malabar District constitute an "estate" within the meaning of Article 31A(2)(a) of the Constitution and as such is protected by Article 31A(1)(a). In consequence, the State urges that the petitionee is not entitled to challenge the various provisions of the Act on the ground that they offend Articles 14, 19 and 31 of the Constitution.

17. The State further avers that all lands in Malabar, with the exception of a few properties forfeited to Government by rebellion or obtained by it by purchase or escheat are owned in jenmam right by private proprietors and the jenmam right vests in the holder full and absolute propriety in the soil. The State quite naturally relies upon the fact that the expression "in jenmam right" has been included in the definition of the term "estate" in Article 31A(2)(a).

18. The State controverts the stand taken by the petitioner that his lands are Ryotwari lands and, therefore, they do not come within the definition of "Estate" in Article 31A. According to the State, the Ryotwari tenure does not obtain in Malabar, where individual proprietorship of the soil was recognised by the British Government from very early times, unlike in the other parts of the Madras Presidency, where Government claim ownership of all soil and where the holder of Ryotwari pattas used to hold lands under lease from Government.

19. The State then refers to the nature of the British administration in Malabar and it avers that inasmuch as great inequalities were found to exist in the system of revenue assessment prevailing in Malabar, the Government issued orders to the Collector of Malabar to frame, by survey and assessment, a new Jamabandi founded on a liberal consideration of the relative rights of the S'rkar and the proprietor and the cultivator. They refer to a Proclamation of 1805. But the State also avers that no such general settlement as indicated by them in 1805 was introduced for nearly another century.

20. The State then refers to the practice of the British Government registering lands in Malabar in the names of the actual occupants and enforcing their right to sell the interests of the jenmi also in default of payment of revenue by the occupants. But that claim was negated by the Madras High Court and according to that decision, unless the pattadar was also the Jenmi, the Government is not entitled to sell his rights under the Madras Revenue Recovery Act.

21. It is further stated that in view of this decision of the Madras High Court

rendered in *Secretary of State v. Ashtamurthi* ILR Mad 89, the Government resolved to carry out a new settlement in Malabar having due regard to the principles laid down by the High Court. Therefore, the practice of settling with the occupants, who were not jenmies, was given up and the Government decided to ascertain the jenmies for a proper registration of such persons as required under Madras Regulation 26 of 1802, so that persona who have been registered in that manner may be made primarily responsible for the payment of the revenue. In consequence, according to the State, the Malabar Land Registration Act, namely, Madras Act III of 1898, was enacted, making provision for enquiry and registration by the Collector of the proprietors of all lands and also making provision for registration of occupants jointly with the proprietor under certain circumstances. This settlement was introduced, according to the State, between September, 1900 and June, 1904 and "the revenue system of Malabar District was brought into line with that of the rest of the Madras Presidency due allowance being made for special local conditions".

In this connection, the State emphasises that the settlement was, however, made in Malabar with the "proprietor", namely, the jenmi, and that pattas were issued only under the provisions of the Malabar Land Registration Act, Madras Act III of 1896. The State further claims that "notwithstanding the fact that the Ryotwari tenure does not obtain in Malabar and the lands are owned in absolute free-hold by private jenmi, by the settlement of 1900 for the limited purposes of revenue administration, some of the principles of Ryotwari settlement were made applicable to the Malabar District to the extent and in the manner indicated above".

22. The State further reiterates that even after the introduction of the settlement in Malabar area, such settlement has not in any manner affect-ed the absolute character of the jenmis" rights and the latter still continued to hold the lands as full proprietors in jenmam right.

23. The State also avers that after the introduction into Malabar of the principles of Ryotwari settlement, the lands which were subjected to revenue assessment were described in the revenue Registers as Ryotwari to distinguish them from lands specifically exempted from revenue and which were described as Inam, and therefore, the mere fact that the lands of the petitioner are described as Ryotwari in the Revenue Registers, does not imply that the lands are held under Ryotwari tenure from the Government. Quite naturally, the State categorically avers that the contention of the petitioner that the lands have become Ryotwari holdings by reason of the introduction of the settlement in Malabar in 1900 is absolutely incorrect, and unsustainable.

24. The State further avers that so far as the District of Malabar is concerned, the "existing law" relating to land tenures in force in that area and which contains a definition of the word "estate" is the Malabar Land Registration Act, Madras Act III of 1896, wherein the expression "estate" has been defined under Sec. 2 and the petitioner's land will fall within the definition of that expression.

On this basis, the State takes up the position that inasmuch as the petitioner's lands are "estates" they are saved under Article 31A of the Constitution from any attack based upon Articles 14, 19 and 31 of the Constitution.

25. The State winds up its counter-affidavit by stating that the expression "estate" in Article 31A specifically includes "any jenmam right", and that the petitioner's lands in Malabar District fully satisfy the basic concept of the word "estate" in Article 31A of the Constitution in that the person holding the lands is the proprietor of the soil and is in direct relationship with the State paying land revenue to it.

26. On this ground, the State urges that the impugned legislation, in so far as it relates to the lands in the erstwhile Malabar District, is protected by Article 31A, and therefore immune from any attack based on Articles 14, and 19, 31 of the Constitution.

27. Though, as mentioned earlier, the petitioner has taken up the position that the Kerala Agrarian Relations Bill, 1957 which was pending the assent of the President has lapsed on the dissolution of the State Legislative Assembly on 31st July 1959, that contention is no longer available to the petitioner in view of the decision of their Lordships of the Supreme Court reported in *Purushothaman Nambudiri Vs. The State of Kerala*, . It has become unnecessary for us to go into that aspect, because it has now been held by the Supreme Court in the decision referred to above, that such a contention cannot be accepted.

28. It may also be stated that here and there there are certain averments in the affidavits filed by the petitioner to the effect that Kerala Act 4 of 1961 is a piece of colourable legislation beyond the legislative competence of the State legislature. This contention again, in our view, is concluded as against the petitioner by the decision of their Lordships of the Supreme Court reported in *Karimbil Kunhikoman Vs. State of Kerala*, . Their Lord-ships have categorically laid down in the said decision that Kerala Act 4 of 1961 cannot be struck down as a colourable piece of legislation which in beyond the competence of the State Legislature.

29. From the various matters mentioned in the pleadings and referred to above, two questions arise for consideration by us, namely, (i) whether the lands of the petitioner situated in what is commonly known as the Malabar area are as "estate" under Article 31A(2)(a) of the Constitution or whether they are lands held under Ryotwari tenure; and (2) if the lands are held under Ryotwari tenure, whether Kerala Act 4 of 1961 is violative of the fundamental rights guaranteed to the petitioner under Articles 14, 19 and 31.

30. We are at present not taking up for consideration the contention raised, no doubt, in the supplementary affidavit that some of the provisions of the statute are violative of Articles 25 and 26 of the Constitution. That aspect will have to be dealt with separately.

31. According to the State, Malabar Land Registration Act, Madras Act III of 1896, is an "existing law" defining an "estate" and the petitioner's lands will come under that definition in which case the Act is saved by Article 31A(1) and no attack can be made under Articles 14, 19 and 31. Even otherwise, according to the State, "any jenmam right" is included in the definition of the expression "estate" and even on that basis the petitioner's lands will be an estate. According to the petitioner, Malabar Land Registration Act Madras Act III of 1896, notwithstanding the fact that it contains a definition of the expression "estate", is not "an existing law" relating to land tenures. Even so far as jenmam rights are concerned, it is the contention of the petitioner that the said expression must receive the same connotation, that it has received at the hands of the statutes dealing with the matter as well as the decisions bearing upon the point, namely, full proprietorship of the soil. Whatever may have been the position of a jenmi during the very early times and no doubt recognised by the courts and the statute, according to the petitioner, the entire position has been changed by the introduction of the Ryotwari system in the Malabar area and the issue of Ryotwari Pattas.

32. Once this court accepts, the contention of the petitioner, that the lands in the Malabar area are held under Ryotwari tenure, the learned Advocate General has not controverted the position, that Kerala Act 4 of 1961 will have to satisfy the requirements of Articles 14, 19 and 31.

33. Though ordinarily we may have traced the background which necessitated the introduction of Article 31A in the Constitution, it has now become unnecessary because, if we may say so with great respect, the Supreme Court has very elaborately considered these aspects. It has also equally become unnecessary for us to consider the exact connotation of the term "estate" occurring in Article 31A with special reference to the definition of that expression in Article 31A(2)(a). Mr. Justice Wanchoo, speaking for the Court, in the decision reported in Karimbil Kunhikoman Vs. State of Kerala, deals with the history of Article 31A. The learned Judge refers to the fact that Article 31A was inserted in the Constitution by the Constitution (First Amendment) Act, 1951 with retrospective effect and, therefore, it must be deemed to have been in the Constitution from the very beginning, namely, 26th January 1950. The learned Judge also traces the further amendment to the said Article by the Constitution (Fourth Amendment) Act, 1955, which also was made retrospective. By the Constitution (Fourth Amendment) Act, 1955, the expressions "in the States of Madras and Travancore-Cochin, any jenmam right" were introduced in Article 31A clause (2) (a). By the Constitution (Seventh Amendment) Act, 1956, in sub-clause (a) of clause (2) of Article 31A, the word "Kerala" was substituted for Travancore-Cochin. Therefore, Article 31A(2)(a), as it stands at present, is as follows :

"(2) In this Article--

(a) the expression "estate" shall, in relation to any local area have the same

meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any jenmam right".

In the two decisions of their Lordships of the Supreme Court, namely *Purushothaman Nambudiri Vs. The State of Kerala*, and *Karimbil Kunhikoman Vs. State of Kerala*, their Lordships have emphasised that the word "estate" in sub-clause (a) of Article 31A(2) is the same as it might be in the existing law relating to land tenure in force in a particular area. According to the learned Judges, if there is an existing law in a particular area, in which the word "estate" as such is defined, then that word will have that meaning for that area and there is no further necessity for looking for its local equivalent. Their Lordships also are of the view that if in the existing law of a particular area the word "estate" as such is not defined, but there is a definition of some other term which in that area may be considered to be the local equivalent of the word "estate", then the word "estate" would have the meaning assigned to that expression in the existing law for that area. Their Lordships emphasise that the basic idea underlying the connotation of the word "estate" is that the person holding the estate should be a proprietor of the soil and should be in direct relationship with the State, paying land revenue to it, when it is not remitted in whole or in part.

The learned Judge also states that as the definition of the word "estate" came into the Constitution from 26th January, 1950, and is based on existing law, the courts have to look into the law existing on January, 26, 1950, for the purpose of finding out the meaning of the word "estate" in Article 31A.

34. We have to bear in mind the above principles laid down by their Lordships of the Supreme Court in considering the question as to whether the petitioner's lands are or are not an "estate" under Article 31A(2)(a) of the Constitution.

35. The position also is now well settled that if the petitioner is not able to satisfy us that his lands are not an "estate" it will not be open to him to base any attack as against Kerala Act 4 of 1961 as violating the fundamental rights guaranteed to him under the Constitution. Therefore that question assumes considerable importance in this case.

36. A perusal of Article 31A(2)(a) will show that before a property can be considered to have been defined in a statute as an estate, that statute must be an existing law and that statute must be one relating to land tenures.

37. According to the learned Advocate General, Malabar Land Registration Act, Madras Act III of 1896, satisfies both these requirements, namely, that the said Act defining the expression "estate" is an existing law and that it is a law relating to land tenures.

38. Though Mr. K. V. Surianarayana Iyer was prepared to accept the position that the said Act can be considered to be an existing law where the expression

"estate" has been defined, it is his contention that the said statute cannot satisfy the second essential requirement of being a law relating to land tenures.

39. In this connection, Mr. Surianarayana Iyer, learned counsel urged that Malabar Land Registration Act, provides for making a better provision for the registration of proprietors of estates, subject to the payment of revenue direct to Government, in the Malabar and Wynad area. The learned counsel also pointed out that there was a previous regulation relating to land registration obtaining in the Madras Presidency, namely, Land Registration Regulation, XXVI of 1802. That Regulation made provision for the Collectors keeping public registers prescribed by the Board of Revenue for the purpose of registering the landed property paying revenue to Government and a duty was cast upon the Collectors to enter all transfers of land from one proprietor to another.

There was also provision in the said Regulation to the effect that transfers of land made by individual persons without being so registered in the registers of the Collectors will not be valid in the Court of Adalat. The said Regulation also provided that transfers of land, if they are not registered, will not exempt the person in whose name the estates were originally registered from paying revenue due to Government.

40. The learned counsel pointed out that the whole object of the Malabar Land Registration Act is clear from the provisions made in Sec. 13 thereof wherein it is specifically provided that every person registered as proprietor of an estate shall be deemed to be the landholder in respect of such estate within the meaning and purposes of the Madras Revenue Recovery Act, Madras Act II of 1864, and that no proceedings taken under the Act against such person, namely, the registered proprietor, or against any land registered in his name shall be deemed invalid or ineffectual by reason of any error in such registration or on the ground that such person was not the real or sole proprietor.

41. No doubt, there is a definition of the expression "estate" in Sec. 2 of this Act as meaning "any land which is subject either now or prospectively to separate assessment to land revenue payable direct to Government". The learned counsel referred us to the provisions of the Madras Revenue Recovery Act, II of 1864, dealing with the procedure for realisation of public revenue.

42. In this connection, the learned counsel referred us to the circumstances under which Malabar Land Registration Act, III of 1896, came to be passed.

43. The Government at about that time, appears to have been leasing waste lands in Malabar belonging to Jenmies without their consent or knowledge to third parties and when default was committed by those third parties in paying land revenue took proceedings under Madras Revenue Recovery Act, ignoring the jenmi and brought the properties to sale.

44. The legality of this procedure came up for consideration before the Madras High Court in their decision reported in ILR 13 Mad 89 and the view of the

learned Judges is that the Government have no power to bring the properties of the jenmi to sale for realisation of arrears of revenue and under the said revenue sale the said jenmi's interest had not passed because he was not a party to those proceedings. In fact, the preamble to Malabar Land Registration Act, III of 1896, after referring to Regulation XXVI of 1802, proceeds to say that the landed property in Malabar and Wynad has not, in many cases been registered in the names of the proprietors thereof and, therefore, it has become necessary to have a registration of the proprietors for the purpose of securing public revenue. Mr. Surianarayana Iyer also urged that the expression "tenure" clearly denotes that the legislation must have something to do with regulating the rights inter se of a landlord and tenant. He referred us to the definition of the expression "tenure" occurring in Chambers 20th Century Dictionary as "conditions on which property is held; a tenant's rights, duties etc." He also referred us to the definition of the said expression "tenure" occurring in Black's Law Dictionary, 4th edition, as

"The mode or system of holding lands or tenements in subordination to some superior, which, in the feudal ages, was the leading characteristic or real property".

The learned counsel also referred us to the passage occurring in Sham Chand Koondoo v. Brojonath Pal 21 Suth WR 94 :

"By "tenure" is meant, not the right or interest of any person in the land, but the holding or the interest which has been created by the lease....."

45. Mr. K. V. Surianarayana Iyer also referred us in this connection to the approach made by their Lordships of the Supreme Court in the decision reported in Karimbil Kunhikoman Vs. State of Kerala, in considering the question as to whether the Madras Estates Land Act, Act I of 1908, is a law relating to land tenures. Ultimately, Mr. Surianarayana Iyer urged that Madras Act III of 1896 cannot be considered to be a law relating to land tenures.

46. On the other hand, the learned Advocate General, urged that this Act is an Act relating to land tenures. The learned Advocate General also referred us to the provisions contained in Sec. 14 whereby power is given to the Collector to register an occupant, jointly with the proprietor of the estate in the revenue records. The learned Advocate General also urged that the collection of revenue is part of the scheme of legislation relating to land tenures.

47. The learned Advocate General referred us to three decisions of the Supreme Court, where, according to him their Lordships have adverted to the Land Revenue Acts of certain States and held that they are laws relating to land tenures. Therefore, on the analogy of those statutes which have been held to relate to land tenures, the learned Advocate General urged that the Malabar Land Registration Act is also a law relating to land tenures.

48. The three decisions of the Supreme Court referred to by the learned Advocate General are Atma Ram Vs. The State of Punjab and Others, , Shri

Mahadeo Paikaji Kolhe Yavatmal Vs. The State of Bombay, and Sonapur Tea Co., Ltd. Vs. Must. Mazirunnessa, .

49. In the first decision, their Lordships had to consider the definition of "estate" occurring in the Punjab Land Revenue Act, Act 17 of 1887. In fact, it will be seen that it appears to have been almost agreed to by all the parties that the definition of the expression "estate" for the purpose of Article 31A is to be found in the definition occurring in the said Punjab Act. Similarly, in the second decision it also appears to have been accepted as common ground that for the purpose of considering whether a property is an estate under Art. 31-A (2) (a), reference is to be made to the definition of the term "estate" occurring in the Madhya Pradesh Land Revenue Code, 1954, Act 8 of 1955. Again in the third decision referred to above, their Lordships came to the conclusion that the existing law relating to land tenures is to be found in the provisions of the Assam Land and Revenue Regulation, 1886, Regulation I of 1886.

50. After giving our consideration to this aspect of the matter, we are not inclined to accept the contention of the learned Advocate General that Malabar Land Registration Act, Madras Act III of 1896, is a law "relating to land tenures". No doubt, the learned Advocate General is perfectly well founded in his contention that the said statute does define the expression "estate" in Sec. 2 and that definition appears to be a very wide one. Therefore, if otherwise the learned Advocate General is able to satisfy us that this Act is one relating to land tenures, there may not be such difficulty in our coming to the conclusion that for the purpose of Article 31A(2)(a), the petitioner's properties must be considered to be an "estate" as defined in that law.

51. We have very carefully gone through the provisions of the Land Registration Regulation, XXVI of 1802, of Madras Act 2 of 1864, as well as the various provisions made in the Malabar Land Registration Act, 3 of 1896 and we are satisfied that it is not possible to hold that Madras Act 3 of 1896 is a legislation relating to land tenures. In fact, it does not purport to deal with any tenure as such and the preamble also has made it very clear that the whole object of the statute is only to have a proper registration effected of the names of the proprietors so that the State may take appropriate action on the basis of such registration when default is committed in the payment of land revenue, especially when the State takes action under the Madras Revenue Recovery Act. There is nothing in it dealing with either the rights of the landlord, as such or the rights of any tenant or the rights inter se of a landlord and tenant.

52. Apart from the various sections referred to by their Lordships of the Supreme Court, in the particular enactments considered by them, we have also gone through those enactments themselves in extenso. In these statutes, we find, that apart from provisions being made for collection of revenue, very many other provisions have been made regulating the rights of the landlords and tenants inter se. That is not the position as far as Madras Act III of 1896 is concerned.

53. Therefore, on this aspect we have to accept the contention of Mr. Surianarayana Iyer, learned counsel for the petitioner, that the Malabar Land Registration Act, III of 1896, cannot be considered to be a law relating to land tenures. If that is so, the fact that the expression "estate" has been defined in that statute is not of any consequence whatsoever.

54. Then the question arises as to whether the lands of the petitioner can be brought in by the inclusive definition contained in Art. 31A(2)(a). As will be seen from clause (2) (a) of Article 31A, extracted above, it is specifically provided that the expression "estate" shall also include in the States of Madras and Kerala any jenmam rights.

55. We are not called upon in this case to deal with jenmam as it may exist in the former Travancore-Cochin area. We are now concerned with the lands in the Malabar area and we have to consider whether the petitioner's lands can be considered to be an "estate" inasmuch as, according to the State, the right owned by the petitioner is a jenmam right.

56. Here again, Mr. Surianarayana Iyer, learned counsel, urged that according to the theory obtaining in Malabar from very ancient times, the jenmi is considered to be the absolute proprietor of the soil. This position has been stated in the various text books bearing on the subject and also laid down by the decisions of the Madras High Court. In particular, the learned counsel also urged that it may not be necessary to go into the ancient history regarding this matter because the expression "jenmi" has been defined in Sec. 3 (12) of the Malabar Tenancy Act, 1929, Madras Act 14 of 1930, as follows :

" "Jenmi" means a person entitled to the absolute proprietorship of land and includes a trustee in respect thereof".

The definition will clearly show that even the Legislature has proceeded on the basis that the jenmi is a person entitled to the absolute proprietorship of land. The learned counsel also referred us to the following passage occurring in Sundara Aiyar's Malabar and Aliyasanthana Law, at page 282:

"The first thing that struck these early observers was the extent to which private right of property was recognised in Malabar. There is this for instance in Walker's Report after noting that the Jenmakaram possesses the entire right in the soil:

This much is certain that in no country of the world is the nature of this species of property better understood than in Malabar nor its rights more tenaciously maintained" and again in the Fifth Report, "The lands in general appear to have constituted a clear private property more ancient and probably more perfect than that of England (here the reference is to lands both in Canara and Malabar)" .....

This interest is known in Malabar as jenm. In Canara it was known as muli. The former word means origin, the latter root. They signify the same thing, namely, the hereditary proprietary interest in land".

The learned counsel referred us also to similar passages occurring in the Malabar District Gazette, as well as Lagan's Malabar Manual and various other reports regarding land tenures in Malabar.

57. Based upon all these passages, the learned counsel urges that the expression "jenmam right" occurring in Article 31A(2)(a) must be correlated to the absolute proprietorship of land of a jenmi recognised by decisions of Courts as well as the statutes bearing on the matter. According to the learned counsel, after the Ryotwari system was introduced, first between 1900 and 1904, and later when there was again a re-settlement in 1930-1932 the owners of lands in Malabar cannot be considered to be the absolute proprietors of the soil. The learned counsel also urged that even the Supreme Court in the decisions referred to above, has held that the basic idea underlying an estate is that the person holding the estate should be the proprietor of the soil and should be in direct relationship with the State paying the land revenue to it. Applying that test it cannot certainly be stated that the petitioner fulfils the requirements of jenmi having an absolute proprietorship in the soil.

Quite naturally, the learned counsel referred us to the incidents of Ryotwari tenure as noted by their Lordships of the Supreme Court in *Karimbil Kunhikoman Vs. State of Kerala*, . Mr. Justice Wanchoo, speaking for the Court in that decision, has adverted to the fact that holders of Ryotwari Pattas hold lands on lease from Government and the basic idea of Ryotwari settlement is that every bit of land is assessed to a certain revenue and assigned a survey number for a period of years, which is usually 30, and each occupant holds it subject to his paying the land revenue fixed on that land. The learned Judge has also, after referring to the land system of British India by Baden Powell, Nacelan's Revenue Settlement and the Manual of Administration, has ultimately observed that the Ryotwari Pattadar is virtually like a proprietor and has many of the advantages of such a proprietor, but nevertheless he could still relinquish or abandon his land in favour of the Government. The learned Judge has also observed that in view of the fact that a Ryotwari Pattadar can still relinquish or abandon his land he is never considered a proprietor of the land under his Patta though he has many of the advantages of a proprietor.

58. Mr. Surianarayana Iyer placed considerable reliance upon these observations of the Supreme Court to support his contention that after the Ryotwari settlement was introduced between 1900 and 1904 and in any event after the resettlement which took place between 1930 and 1932, lands in Malabar have been treated as Ryotwari and persons like the petitioner, have been issued Ryotwari Pattas.

59. Mr. Surianarayana Iyer also urged that even according to the State the principles of the Ryotwari settlement were introduced into Malabar. But according to them, the jenmis continued to be the full proprietors of the soil. That position, Mr. Surianarayana Iyer urges, is absolutely inconsistent because there cannot be a Ryotwari settlement and Ryotwari Patta issued and at the same time the holder of the Ryotwari Patta being considered to be the absolute proprietor of the soil,

when he is only a lessee, even according to the Supreme Court.

60. Mr. Surianarayana Iyer, urged that whatever may have been the views expressed regarding the position occupied by a jenmi in relation to his tenants or other persons, his exact relationship with the State, after the introduction of the Ryotwari settlement has not so far come up for consideration. Mr. Surianarayana Iyer also urged that in view of the authoritative pronouncement of the Supreme Court that, notwithstanding the fact that the counterpart of a jenmi in South Canara, namely, a Mulavaragada, was recognised originally by various decisions of the Bombay High Court and also of the Madras High Court as having absolute proprietorship, the latter has "become only a Ryotwari Pattadar, it must be held in this case also that whatever may have been the position of a jenmi otherwise, on the date of the coming into force of the Constitution, he has become a Ryotwari Pattadar by virtue of the introduction of the Ryotwari Settlement in Malabar area. Mr. Surianarayana Iyer also referred us to the passage occurring in Sundaraja Iyengar's Land Tenures in the Madras Presidency, 2nd Edition, at page 46, dealing with Wargs in South Canara District. The particular passage relied upon runs as follows:-

"The Wargs are of two kinds, muli wargs and geni or Sirkar-geni wargs. The word muli is a contraction of mulawarga which means original proprietary right in land, and mulawargadar means the proprietor of an ancestral hereditary estate. Mula is derived from the Sanskrit, mul, signifying literally a root, and figuratively (inter alia) the root of a tree or origin of a family and hence arises the character of permanency or perpetuity which we find in it when used in combinations, as in mula-wargs and mulawargadar".

Mr. Surianarayana Iyer placed reliance upon the above passage to show that a mulawargadar in South Canara was originally considered to be having absolute proprietary right in the land but nevertheless after the introduction of the Ryotwari settlement of South Canara, in the early part of this century, the Supreme Court has held him to be only a Ryotwari Pattadar.

61. Though Mr. Surianarayana Iyer has referred to several Bombay decisions regarding the nature of a mulawargadar, we do not think it necessary to refer to all these decisions, excepting the decisions of Mr. Justice Gajendragadkar, as he then was, reported in Laxman Gopal Vs. Vishnu Raghoba, . The learned Judge refers with approval to the terms occurring in Wilson's Glossary, especially "mulagar" or "mulga" as meaning an owner or original proprietor and that he is sometimes described as mulawargadar. This, if we may say so with respect, will clearly show that the view of the learned Judge was that a mulawargadar in South Canara District was considered the owner or proprietor of land. It may be stated that the decisions of the Bombay High Court were placed before us, because originally South Canara was within the jurisdiction of the Bombay High Court.

But the point to be noted is that in the decision of the Bombay High Court,

referred to above, a mulawargadar has always been understood in South Canara to be an owner or original proprietor; but nevertheless the Supreme Court in the decision reported in Karimbil Kunhikoman Vs. State of Kerala, has specifically referred to the mulawargadar as having become a Ryotwari Pattadar after the introduction of the Ryotwari System in South Canara in the early part of this century.

62. The learned Advocate General rather strenuously pressed before us that the revenue settlement introduced in Malabar during 1900-1904 was only with a view to put the collection of revenue on a scientific basis and the position of the jenmi was never sought to be disturbed. The learned Advocate General, in this connection, has referred us to the notifications issued by the Government, at the material time to show that the settlement was to be made with the jenmi. Notwithstanding the introduction of the settlement for the first time during 1900-1904 in the Malabar area, the Madras High Court has nevertheless consistently taken the view that the jenmi occupies the same position that he occupied originally, namely, of being the absolute proprietor of the soil. The learned Advocate General also urged that if that was not the position, the legislature, when it passed the Malabar Tenancy Act, 1929, nearly 25 years after the first settlement, would not have defined the expression "jenmi" as a person entitled to the absolute proprietorship of the land.

In this connection, the learned Advocate General also stressed that in the Pattas issued after the first settlement the entries in the various columns will show that the lands of the jenmis were shown as private jenmam. The learned Advocate General also urged that there was nothing to show that the then Government was in any manner extinguishing the rights of the jenmi at the time when the settlement was introduced or when Pattas were being issued on the basis of the settlement. The learned Advocate General further stressed that in the original pattas issued for the first settlement, a distinction was made in respect of the lands of the private jenmis and after the second settlement which took place during 1929-1930 and 1932-1933, there was only a broad distinction made between lands paying revenue and lands which are given on favourable assessment or, which are not liable for revenue, namely, Inams. Under these circumstances, the expression "Ryotwari" was used to denote lands which are liable for assessment, as distinct from Inams which are not liable for assessment or under favourable assessment.

Therefore, the fact that in the Pattas issued, the lands of persons like the petitioner, have been shown as Ryotwari lands and the owners have been shown as Ryotwari Pattadars does not mean that the original jenmi's rights were in any manner sought to be interfered with. The learned Advocate General also urged that when the Constitution has used the expression "jenmam rights" as late as 1955 making the Second Amendment retrospective Parliament must have been aware that there were still jenmam rights which could be dealt with by legislation. If jenmi's rights had ceased to exist, it would be quite unreasonable

to hold that Parliament would have still considered it necessary to legislate upon the same. In this connection, the learned Advocate General also urged that the object of the introduction of Article 31A itself was with a view to save agrarian legislation from attacks being made on the basis of Articles 14, 19 and 31.

63. After having given the entire matter very due consideration, we are of the opinion that after the introduction of the Ryotwari settlement in the Malabar area, whatever may have been the position of the jenmis otherwise, they can be considered to be only Ryotwari Pattadars, and the lands in their possession as lands under Ryotwari tenure, in which case, the principle laid down by the Supreme Court in *Karimbil Kunhikoman Vs. State of Kerala*, will apply on all fours. We have already referred to the various incidents of Ryotwari tenure noted by their Lordships in the said decision. One of the essential characteristics emphasised by their Lordships is that a Ryotwari Pattadar, though virtually is like a proprietor, could still relinquish or abandon land in favour of the Government. On the other hand, their Lordships have also emphasised that the basic idea underlying an estate is that the person holding the estate should be the proprietor of the soil and should be in direct relationship with the State, paying land revenue to it.

64. That means that, according to the Supreme Court, when once it is established that there is a right or even an obligation to relinquish or abandon the land under certain circumstances, he will cease to be a proprietor of the soil and his status stands completely altered vis-a-vis the State.

65. It is under these circumstances that considerable significance is to be given to the fact that notwithstanding the fact that a mulawargadar, who was considered to be an absolute proprietor of the soil, has been nevertheless held by the Supreme Court, to be a Ryotwari Pattadar, after the introduction of the Ryotwari settlement in South Canara in the early part of this century. If that is so, in our view, after the introduction of the Ryotwari settlement in the Malabar area, which took place, even according to the State, between 1900 and 1904, whatever may be their legal status and position, otherwise, they must be considered to be only Ryotwari Pattadars and the lands in their possession as lands held under a Ryotwari tenure. The expression "jenmam right" occurring in Article 31A(2)(a), in our view, must be correlated to a right which has been recognised as such by the decisions of Courts or by statutes.

In this case it is not even necessary for us to go into the case law on that matter because the Malabar Tenancy Act, 1929, clearly defines a jenmi as a person entitled to the absolute proprietorship of land. If a person does not or could not satisfy that requirement, in our view, Article 31A(2)(a) cannot apply either to him or to the properties in his possession. In fact, it is not even necessary for us to go more elaborately into the question as to what is the exact connotation of the expression "jenmam right" occurring in Article 31A(2)(a), because that has been the subject-matter of a discussion by the Supreme Court in their decision reported in *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras*

and Others, . Mr. Justice Subba Rao, expressing the majority view, observes at page 1087:

"Under the definition, any jenmam right in Kerala is an "estate". A jenmam right is the freehold interest in a property situated in Kerala. Moor in his "Malabar Law and Custom" describes it as a hereditary proprietorship. A jcnmam interest may, therefore, be described as "proprietary interest of a landlord in lands", and, such a jenmam right is described as "estate" in the Constitution".

In view of this authoritative pronouncement of the Supreme Court itself regarding the exact connotation of the term "jenmam right" occurring in Articles 31A(2)(a), we do not think it necessary to go into the case law on this point. It will be seen according to the Supreme Court, that in order to attract the provisions of Article 31A(2)(a), the jenmam right mentioned therein, must be a freehold interest in property. Therefore, if the right owned by the petitioner, does not satisfy that requirement, it cannot be brought under a jenmam right as envisaged under Article 31A(2)(a).

66. Regarding the introduction of the settlement between 1900 and 1904 in the Malabar area, we have also been referred by Mr. Snrianarayana Iyer to various extracts in the Fifth Report and the District Gazette as well as the Manual relating to Malabar. In fact, in the counter affidavit filed by the State itself, they have accepted the position that by the settlement introduced between 1900 and 1904 the revenue system of the Malabar District was brought into line with the rest of Madras Presidency, due allowance being made for special local conditions. But, no doubt, they are taking up the position that by the introduction of the Ryotwari tenure in Malabar, the absolute rights of the private jenmi have not been in any manner interfered with.

67. In the Madras District Gazetteer, Malabar, by Inis, 1951 Edition, at page 344, it is" stated that the settlement was introduced into the eight plain Taluks of Malabar between 1900 and 1904 and the Revenue system of the District has been brought into line with that of the rest of the Presidency, due allowance being made for special local conditions.

68. Dealing with the re-settlement, it is stated in the same Gazetteer, at page 848, that it took place between 1931 and 1934, and that the re-settlement was done because the term of 30 years for which the then existing rates of land assessment were sanctioned had expired between 1929-30 and z932-33- A list of the taluks giving particulars as to when the last settlement expired and the new settlement came into operation, is also given at the same page.

69. At page 349 of the same book, among the special features of the re-settlement, it is mentioned that the terms "janmabhogam" or "private janmam" were replaced by new holdings and old holdings respectively. That is, in the Adangal Registers etc., maintained after the settlement was introduced for the first time in 1900 and 1904, the lands of all the jenmis appear to have been shown as private janmam but in the re-settlement the register shows them as

old holdings.

70. As we will be referring immediately to the Adangal Register bearing on this matter regarding the first settlement and the re-settlement as also to certain entries in the Pattas that have been produced before us, we do not think it necessary to refer to the notifications that appear to have been issued by the Government containing instructions as to how the first settlement is to take place. But so far as the second settlement is concerned, no notification or any other order of the Government has been referred to us by the learned Advocate General.

71. A descriptive memoir of Kannur Besom, No. 211, in the Ponuani Taluk in the Malabar area, has been produced before us. That refers to the settlement introduced in Fasli 1313, i. e., the first settlement. On the first page, the area of land under each description is given under various headings and under column 1 there is a heading "Private janmam (Ryotwari)" and the extent of the lands is shown and there is another heading in column 1 "Government Janmam (Hytwari)". We are referring to this because the learned Advocate General placed some reliance on such entries in support of his contention that, notwithstanding the introduction of the Ryotwari settlement in Malabar area between 1900 and 1904, nevertheless the lands of persons, like the petitioner, were shown as private janmam as distinguished from Government Janmam. The learned Advocate General also urged that there is nothing to show that there was any condition regarding surrender or relinquishment of the property which is an essential feature of the Ryotwari settlement. No doubt, prima facie there appears to be some force in this contention.

But the matter is placed beyond all doubt when we come to the Adangal Registers maintained by the Government after the re-survey and re-settlement, between 1931 and 1934. Here again, a copy of the descriptive memoir of Nediyruppu Amsom of Ernad Taluk of Malabar District has been produced before us and on page 1 there are various matters mentioned in different columns. Column 4 relates to "Ryotwari (R)" or "Inam (I)" and the same thing is written in Malayalam also (Original in Malayalam omitted here -- Ed.) and under that heading the entry is "R". That clearly shows that the practice of treating the properties of persons like the petitioner as private janmam has been completely given the go-by, at any rate, after the resettlement during 1931-1934.

72. Again, a copy of a rough patta issued to Parameswara Iyer, son of. Vengu Pattar, Treasurer, Vadakkumthara Grama Devaswom, Palghat, for Fasli 1340 has also been produced before us. That relates to a patta issued after the re-settlement, In the footnote there are various matters mentioned therein, namely, that the party concerned can file objections and point out any mistake contained therein. But there is a significant note, namely. Note 5, to the effect that if the party does not want any of the survey numbers mentioned therein, he should file an application surrendering or relinquishing those items within the date mentioned therein. Another copy of a patta produced in a connected Original

Petition, O. P. No. 1594 of 1961, issued in 1932, has also been referred to us, wherein column 4, the heading is (Ryotwari or Inam -- Original in Malayalam omitted here -- Ed.) and the party's lands concerned therein are shown as Ryotwari.

73. There is no controversy that the various matters to be dealt with in Ryotwari settlement are mentioned in the Board's Standing Orders. In particular, Standing Order 33 relating to land revenue settlement and miscellaneous, deals with relinquish-ment of Ryohwari-holdings. The relinquishment of Ryotwari Land must be by written document and must take place, sufficiently early in the season to enable another ryot to commence cultivation upon it. Column 2 is to the effect:

"The time within which land should be relinquished must vary in different Districts, inasmuch as the period of the first rains differs. If it is fixed very early, it may bear hardly on ryots who are unwilling to part with their land and are yet doubtful whether the season has set in sufficiently to ensure them from loss if they abstain from relinquishment. The dates for relinquishing lands in different districts have been fixed by Government according to the scheme given in Appendix XXXVII".

74. Appendix XXXVI gives the last date for relinquishing Ryotwari land in the various Districts of Madras. So far as Nilgiris, South Canara and Mjtlabar are concerned, they are treated as Districts coming under the first Circle and the date for relinquishing land is 30th April of each year. There are other conditions attached to the relinquishment of the land. These, in our opinion, assume considerable significance when we have reference to the various matters mentioned in the Patta and adverted to above. We have already mentioned that Note 5 in one of the pattas clearly says that if the party does not want the lands mentioned therein he should file an application relinquishing or surrendering the land within a particular time. That requirement is quite in accord with Board's Standing Order No. 38 dealing with land revenue settlement and Appendix XXXVI also says that in respect of Malabar, the lands will have to be surrendered on or before 20th April of each year.

75. The Supreme Court, we have already pointed out, in its decision in Karimbil Kunhikoman Vs. State of Kerala, has stated that though a Ryotwari Pattadar is virtually like a proprietor, he could still relinquish or abandon his land in favour of the Government. The manner in which the pattas are issued and the various entries referred to above clearly show, that after the introduction of the Ryotwari settlement in Malabar, persons like the petitioner are holding lands only as Ryotwari Pattadars and the lands in their possession are lands held on a Ryotwari tenure.

76. Once we come to the conclusion that the lands held by the petitioner are under Ryotwari tenure, as pointed out by the Supreme Court in the decision referred to above, it follows that these are not "estates" within the meaning of Article 31A(2)(a) of the Constitution and, therefore, Kerala Act 4 of 1961 is not

protected under Article 31A(1) from attack under Articles 14, 19 and 31 of the Constitution.

77. This decision will relate to the lands of the petitioner only in the Malabar area, which now forms part of the Kerala State.

78. From this it follows that it is open to the petitioner to raise attacks as against Kerala Act 4 of 1961 based upon Articles 14, 19 and 31 of the Constitution. We have already mentioned that there are various grounds of attack raised under this head. But it is not necessary for us to go into those matters in any great detail because the learned Advocate General was prepared to accept the position that when once the Act is not saved under Article 31A(1) the various grounds given by their Lordships of the Supreme Court in the decision reported in Karimbil Kunhikoman Vs. State of Kerala, for striking down Kerala Act 4 of 1961 as violative of Articles 14, 19 and 31 will have application to this matter also. If that is so, the petitioner being a Ryotwari Pattadar and his lands being held under Ryotwari tenure, the whole Act will have to be struck down, so far as the properties of the petitioner, in the Malabar area are concerned.

79. We have already indicated that the petitioner has raised a ground of attack that the Act is violative of the rights guaranteed under Articles 25 and 26 of the Constitution.

80. So far as the lands situated in the Malabar area are concerned, that question becomes more or less academic because the entire Act itself has been struck down. But it is pointed out that the petitioner has got some lands in the Cochin area regarding which this question will have to be considered, and so far as that is concerned, Mr. K. V. Surianarayana Iyer has stated before us that he proposes to raise the same in other appropriate proceeding. We give him the necessary leave, if so advised, to raise it in other proceeding.

81. So far as the lands situated in the Malabar area are concerned, the writ petition is allowed and the petitioner will get his costs from the respondent State, Advocate's fee fixed in the sum of Rs. 150/-.

M.S. Menon, C. J.

82. I agree.

83. The petitioner challenges the validity of the Kerala Agrarian Relations Act, 1960. The lands in respect of which the challenge is delivered are in that portion of this State which was in the Malabar District of the Madras State prior to the States Reorganisation Act, 1956.

84. The petitioner attacks the Agrarian Relations Act under Articles 14, 19 and 31 of the Constitution. The sole question for consideration is whether that Act is immune from such an attack because of the provisions of Article 31A of the Constitution. It is common ground that if the immunity is available, the petition has to be dismissed as was done by the Supreme Court in Purushothaman

Nambudiri Vs. The State of Kerala, and that if it is not, the petition has to be allowed as was done by the Supreme Court in Karimbil Kunhikoman Vs. State of Kerala, .

85. The immunity from attack under Articles 14, 19 and 31 conferred by Article 31A of the Constitution is only in respect of legislation dealing with estates as defined in that Article. The definition says:

"the expression "estate" shall, in relation to any local area, have the same meaning as that expression of its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant and in the States of Madras and Ke-rala, any janmam right".

86. The contention of the State is that both the parts of the definition are attracted; the first because of the availability of a definition of the expression in an existing law relating to land tenures, and the second on the ground that it is a janmam right that is involved. The basic idea embodied in the expression "estate" has been explained by the Supreme Court in both the cases mentioned in paragraph 84 above. In Purushothaman Nambudiri Vs. The State of Kerala, the Supreme Court said:

"It seems to us that the basic concept of the word "estate" is that the person holding the estate should be proprietor of the soil and should be in direct relationship with the State paying land revenue to it except where it is remitted in whole or in part".

To the same effect is the statement in Karimbil Kunhikoman Vs. State of Kerala, .

87. As pointed out by the Supreme Court if the word "estate" as such is defined in an existing law relating to land tenures in force in a particular area, no difficulty will arise as that definition will prevail. In such a case there will be no need to look for a local equivalent or its definition. It is only when the word "estate" as such is not defined in an existing law relating to land tenures that it will be necessary to see whether a definition is available of a local equivalent of the word "estate".

88. The contention of the State is that a definition of the expression "estate" is available in the Malabar Land Registration Act, 1895 (Madras Act II of 1896). That definition reads as follows:-

" "estate" means any land which is subject either now or prospectively to separate assessment to land-revenue payable direct to Government". If this definition can be invoked, the lands with which we are concerned can definitely be considered as estates and the Agrarian Relations Act will be immune from attack under Articles 14, 19 and 31 of the Constitution.

89. The difficulty in the way of the State is the impossibility of considering the Malabar Land Registration Act, 1895, as an Act relating to land tenures. The

Objects and Reasons appended to the Bill which became that Act refer to ILR Mad 89 wherein it was held that in the case of private Janmam lands in Malabar the janmi is legally entitled to be registered under Regulation XXVI of 1802 as proprietor, that he is the person to be treated as the land-holder under the Madras Revenue Recovery Act, 1864, and that the Government should deal with him both in settling the revenue payable on his lands and in taking steps for its realisation, and say:

"This decision had rendered it advisable for the security of the Government land revenue, that the practice of settling with the occupants who were not proprietors should be discontinued and that the janmies themselves should be ascertained and registered in the public registers maintained under the Regulation and be held primarily responsible for the revenue. The Government had accordingly resolved to carry out the new settlement of Malabar in conformity with the requirements of land enunciated by the High Court and as regards the Wynad which had already been settled, to revise the settlement registers in a similar manner."

A reading of the Act also makes it clear that it is nothing else or other than an Act to make better provision for the registration of proprietors of estates subject to the payment of revenue direct to Government in Malabar and the Wynad. The preamble to the Act is:

"Whereas Regulation XXVI of 1802 provides that landed property paying revenue to Government shall be registered by the Collector; and whereas such landed property in Malabar and the Wynad has in many cases not been registered in the names of the proprietors thereof; and whereas it is desirable for the security of the public revenue to provide a summary means whereby the Collector may ascertain such proprietor; it is hereby enacted as follows:"

90. Counsel for the petitioner drew our attention to the definition of the expression "estate" in the Madras Proprietary Estates" Village-Service Act, 1894. The definition reads as follows :--

" "estate" means --

- (a) any permanently-settled estate, whether a zamindari, jaghir, mita or palaiyam;
- (b) any portion of such permanently-settled estate which has been separately registered in the office of the Collector;
- (c) any unsettled palaiyam or jaghir;
- (d) any inam village of which the grant was made or confirmed by the British Government;
- (e) any portion, consisting of one or more villages, of any of the estates specified above in clauses (a), (b) and (c) which is held on a permanent under-tenure".

The trouble in the way of invoking this definition, is that this Act also is not an Act relating to land tenures. It is only an Act to amend the law relating to Village Officers in certain estates. The preamble to the Act is:

"Whereas it is expedient to amend the law relating to Village-officers in permanently-settled estates, in unsettled palaiyams, and in inam villages, and to make better provision for their appointment and remuneration, and for the prevention and summary punishment of misconduct or neglect of duty on their part, and generally for securing their efficiency; it is hereby enacted as follows" ;

91. The definition in the Madras Proprietary Estates" Village-Service Act, 1894, occurs in the Madras Survey and Boundaries Act, 1823, as well. But that also is not an Act relating to land tenures. It is only an Act to amend the law relating to the survey of lands and the settlement of boundary disputes.

92. As no applicable definition of the word "estate" as such is available, it is necessary to investigate whether there is a local equivalent of the expression, and a definition thereof, in an existing law relating to land tenures. There can be no doubt that the local equivalent of the word "estate" embodying the basic idea of the expression as explained by the Supreme Court is the word "janmam". The owner of a janmam is a janmi. The expression "jenmi" is defined in section 3 of the Malabar Tenancy Act, 1929 (Madras Act XIV of 1930). The definition is :

" "Janmi" means a person entitled to the absolute proprietorship of land and includes a trustee in respect thereof."

93. It is not disputed that the Malabar Tenancy Act, 1929, is a piece of existing law relating to land tenures in force in the area with which we are concerned. And if this definition is applied the only further investigation necessary in this case is to find out whether the petitioner is the absolute proprietor of the land with which we are concerned.

94. The second part of the definition of the expression "estate" in Article 31A of the Constitution directs that that expression "shall also include" in the States of Madras and Kerala any janmam right. The question that arises on the Second part of the definition also is: Is the petitioner the owner of a janmam right in respect of the lands with which we are concerned or, in other words, is he the proprietor of the soil thereof?

95. It is not disputed that the mulwargdars of South Canara like the janmies of Malabar were absolute owners of the soil and that such ownership will attract the definition of the expression "estate" in Article 31A of the Constitution. The controversy is as regards the result of the ryotwari settlement in the areas concerned. According to the State the settlement left the position of the janmies untouched, they continued to be the owners of the soil; and according to the petitioner it reduced their position to that of lessees under the Government, a position which cannot possibly be characterised as an "estate" under Article 31A of the Constitution.

96. The result of the introduction of the ryotwari settlement into South Canara on the rights of a mulwargdar has been discussed and decided in Kunhikoman's case. According to that decision he became, as a result of the settlement, an ordinary ryotwari pattadar. The Supreme Court dealt with the basic idea of a ryotwari settlement and the rights of a ryotwari pattadar as follows: -

"The basic idea of ryotwari settlement is that every bit of land is assessed to a certain revenue and assigned a survey number for a period of years which is usually thirty and each occupant of such land holds it subject to his paying the land revenue fixed on that land. But it is open to the occupant to relinquish his land";

"Though therefore the ryotwari pattadar is virtually like a proprietor and has many of the advantages of such a proprietor, he could still relinquish or abandon his land in favour of the Government. It is because of this position that the ryotwari pattadar was never considered a proprietor of the land under his patta, though he had many of the advantages of a proprietor."

97. It is agreed that there are large tracts in Malabar which are still unsurveyed and in respect of which no ryotwari settlement has been effected. What we are concerned with in this case are not janmam lands of that type; but janmam lands which have been subjected to a ryotwari settlement like the lands of the mulwargdars in South Canara. The ryotwari Ipattas issued in Malabar after the settlement clearly provide for a surrender of the holding by the pattadar and this in the light of the Supreme Court decision in Karimbil Kunhikoman Vs. State of Kerala, is crucial and against the contention of the State.

98. It is not contended by the State that the definition of "estate" in Article 31A of the Constitution is attracted even if the petitioner is not the proprietor of the soil. The only contention is that he was and is the proprietor of the soil, and that the ryotwari settlement did not reduce his rights to that of a lessee under the Government. This is a contention which we cannot accept in view of the decision in Karimbil Kunhikoman Vs. State of Kerala, .

99. All that I have been saying can be summed up" in the form of five questions and answers: -

Question.

Answer.

(1).

Can the petitioner deliver a successful attack on the validity of the Agrarian Relations Act?

Yes; provided he is not precluded by the immunity conferred by Article 31A of the Constitution.

(2).

Will the immunity conferred by Article 31A stand in the way of the petitioner, if he is not the owner of a janmam right?

No.

(3).

What is the essence of a Janmam right?

The proprietorship of the soil.

(4).

Was the the petitioner the proprietor of the soil?

Yes, prior to the ryot-wan settlement.

(5).

Is the petitioner the proprietor of the soil?

No; In view of the ryot-wan settlement and the reasoning in Karimbil Kunhikoman Vs. State of Kerala, .

100. It follows that I must hold that though the petitioner was a full proprietor of the soil, his position was reduced to that of a lessee of the Government by the ryotwari settlement; that in view of the transformation his holding cannot be considered to be an estate within the meaning of that expression as defined in Article 31A of the Constitution; that the Agrarian Relations Act as a result is not immune from his attack under the Constitution; and that such an attack should succeed as it did in Karimbil Kunhikoman Vs. State of Kerala, .