

(1952) 04 MAD CK 0013

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 8302 of 1950

V. Srinivasa Ayyangar

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 04-04-1952

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(2)

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 20

Citation : AIR 1953 Mad 190 : (1953) ILR (Mad) 375 : (1952) 65 LW 735 : (1952) 2 MLJ 314

Hon'ble Judges : Subba Rao, J; Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : R. Kesava Aiyangar and K. Parasaran, for the Appellant; Government Pleader, for the Respondent

Judgement

1. This is an application for issuing a writ of certiorari, and for quashing the proceedings taken by the respondents under the Madras Acts 30 of

1947 and 26 of 1943 with regard to the petitioner's village, Karuppur.

2. The said village is situated in Rajasinga-mangalam Zamin taluk, Ramnad gamindari. It is an ancient pre-settlement Dharasanam granted in A. p.

1757 by the then ruler of the country, Muthuvijaya Raghunatha Sethupathi, to the original grantees. 1/10th part of the village was resumed by the

Raja before the permanent settlement and added to the zamindari. At the time of the permanent settlement this 1/16th part was included in the

assets of the zamindari. At the time of the Inam Commission enquiry, the Inam Commissioner confirmed only 15/16th portion of the village on 31st

December 1863 subject to a payment of jodi of Rs. 142-14-4 and a quit rent of Rs. 24, and title deed No. 404-was issued for the said portion.

The State of Madras issued a notification G. O. Ms. 2169 Revenue, dated 22nd August 1949 under Madras Act 26 of 1948 notifying part of

the village included in the assets of the zamindari as an under-tenure estate. On 20th June 1950, they had also issued a notification in Fort St.

George Gazette fixing rates of rent under "Madras Act 30 of 1947 in regard to the two parts of the-village.

The petitioner says that the notifications are ultra vires and void. In regard to the 15/16th portion of the village confirmed by the Government, it

was argued that that part would not be an estate, as the Government did not confirm the entire village originally granted. Alternatively it was argued

that though the original grant was of the entire village, the grantor himself resumed 1/16th part of the village, and therefore the effective grant was

only of a part of the village.

3. The governing provision is Sections 3(2)(d) of the Madras Estates Land Act. It reads: " "Estate" means-

(d) any inam village of which the grant has been made, confirmed, or recognised by the British Government, notwithstanding that subsequent to the

grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.

An inam village would come under the definition of an "estate" if it was granted, confirmed or recognised by the British Government.. The previous

rulers made grants of villages and parts of villages. After the British Government became the ruling power, they recognised or confirmed some of

those inams. The definition of "estate" apparently was intended to take, in those villages, whether granted by the British Government, or though

granted by some other ruling power were continued or recognised by the British Government. If so construed, the confirmation by the British

Government must be in respect of the whole village. Explanation (2) provides for an exception where a portion of the inam village is resumed by

the Government. It says:

Where a portion of an inam village is resumed by the Government, such portion shall cease to be part of the estate, but the rest of the village shall

be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently re-granted by the

Government as an inam, such portion or part shall, from the date of such re-

grant, be regarded as forming part of the inam village for the purposes of this sub-clause.

This Explanation also shows that the Legislature was dealing with the grant or confirmation of whole inam villages. Otherwise there was no need to provide for the exception.

4. Under Sub-clause (d) minor inams or grants of parts of a village are excluded from the definition of an "estate". The whole inam villages granted

by the British Government or subsequently confirmed by them are estates. Though a whole inam village was granted by some ruling power, after

the British Government became the ruling power, that grant would not bind the British Government unless confirmed or recognised by them. The

grantees would not have any legal title, till it was conferred on them by the British Government. The validity of the grant would necessarily depend

upon the confirmation. If so, if the sub-, clause is read as the Government Pleader asks us to read, it will mean that if the entire village was

granted originally by a grantor other than the British Government, confirmation by the British Government of any part thereof would amount to

validating grants of whole village, though the entire grant was not recognised by the Government; if the entire village is not "confirmed or recognised

by the British Government, there cannot legally be an entire inam village, the existence of which is a necessary condition for bringing the grant within

the definition.

5. The law relating to the effect of the cession of a territory to a new ruling power on the pre-existing grants is found in -- "Secretary of State for

India v. Bai Rajbai", 39 Bom 625, their Lordships of the Judicial Committee observed:

The relation in which they stood to their native sovereigns before this cession, and the legal rights they enjoyed under them, are, save in one

respect. entirely irrelevant matters: They could not carry in under the new regime the legal rights, if any, which they might have enjoyed under the

old. The only legal enforceable rights they could have as against their new sovereign were those, and only those, which that new sovereign by

agreement expressed or implied or by legislation, chose to confer upon them.

Similar observations were made by the Judicial Committee in -- "Vajesingji v. Secretary of State for India", 48 Bom 613. Their Lordships

observed:

After a sovereign state has acquired territory, either by conquest, or by cession under treaty. or by the occupation of such as has theretofore been

unoccupied by a recognised ruler, or otherwise, an inhabitant of the territory can enforce in the municipal courts only such proprietary rights as the

Sovereign has conferred or recognised.

It is therefore clear from the aforesaid two decisions that a confirmation or recognition by the British Government of the inam village will only

confer a right to the inam village on the recipient. It follows that the confirmation or recognition by the British Government must necessarily be of

the entire village.

6. The scope of the sub-clause was laid down by Kuppuswami Aiyar J. in -- Burugu Viswanadham Brothers Vs. Yarru Subbaiya, . There an

entire village was granted to a person by way of bhattavritti shrotriam inam. After the original grant, there was a grant by the grantee of some

portion of it which was treated as a minor inam. At the time of the inam settlement the minor inam granted by the aghaharamdar was confirmed as

inam and a title deed was issued. The question in that case was whether a lessee of a piece of land which formed part of the minor inam could

claim that it was land in an estate within the meaning of Sections 3 (2) (d) of the Madras Estates Land Act. The learned Judge held that merely

because the land in question formed part of the original grant of an entire village it could not be said that, at the time when it was recognised, it was

part of the whole inam which was recognised or confirmed, by the British Government, and that therefore the land in question could not be deemed

to be part of an estate.

At page 444, the learned Judge made the following relevant remarks:

The only provision of law under which the lessee could claim that this is part of an estate is Sections 3 (2) (d) of the Estates Land Act. Under that

section "Estate" means any inam village of which the grant has been made, confirmed or recognised by the British Government, notwithstanding

that subsequent to the grant, the village has been partitioned among the grantees or the successors-in-title of the grantee or grantees. The answer

to the question as to whether the confirmation or recognition by the British Government was in respect of the entire inam village or of only a

portion is the basis for the decision as to whether the land was an estate or not..... Admittedly the land in dispute forms part of the land to which

title deed No. 1004 relates and that title deed does not relate to the entire village but only to a portion of it. So merely because it formed part of

the original grant of an entire village or aghaharam, it cannot be said that at the time when it was recognised this was part of the inam in favour of

the aghaharam which was recognised or confirmed by the British Government.

We respectfully agree with these observations. Shahabuddin J. followed the principles laid down in the aforesaid judgment in the case in --

Yamujala Mangamma and Another Vs. Kalyanapu Appadu and Another, . In that case, two parcels of land comprised in an inam village were

treated even before the inam settlement as separate grants. and at the time of the settlement the lands were confirmed under two title deeds. The

learned Judge held that the lands comprised under one of the title deeds did not form part of an estate. and that the tenant thereof could not claim

occupancy rights. At page 250 the learned. Judge pointed out the principle underlying the sub-clause. He said:

According to the definition of an estate mentioned above what has to be seen is whether the confirmation or recognition by the British Government

was in respect of the entire inam village or of only a portion.

But the learned Government Pleader relied upon a judgment of the Judicial Committee in "Krishnaswami Aiyangar v. Perumal Goundan", in

support of his contention that the confirmation or recognition of the entire village by the British Government was not necessary to bring the village

within the definition of estate, if at the time of the grant, though not made by the British Government, the entire village was granted.

The facts in that case were: An entire village was granted in pre-British times. In 1795, a small part of the village was resumed by the Government

and granted in ryotwari tenure, but the rest of the village, by far the larger part continued to be treated as an inam village. The Government resumed

the rest of the village also in 1894. In 1895, the Government granted on inam tenure the whole village, i.e., the whole village which for the past 100

years had been recognised as an in am village. Their Lordships held that the grant was of the whole inam village. We are not able to appreciate the

relevancy of the citation. In that case though the village at some remote time

formed part of a larger village for over 100 years it was treated as a separate village. At the time of the grant by the Government it was treated as a whole village, and was granted as such. As the grant was of the whole inam village by the British Government it certainly came within the definition of estate under Sections 3 (2) (d) of the Act. We therefore hold that as the Government did not confirm the entire village but only 15/16th part of the village, it would not be an estate within the meaning of Sections 3 (2) (d) of the Madras Estates Land Act. It follows that the notification issued by the Government fixing the rate of rent in respect of the 15/16th part of the village and other proceedings taken under Act 30 of 1947 in respect of that part are invalid. The notification and the said proceedings are hereby quashed. But we should not be understood to have expressed an opinion on the question whether if a grant was of an entire village and though the entire village was confirmed either in one proceeding or in different proceedings and separate title deeds were issued that the village covered by the separate deeds ceases to be an estate, for in this case though the entire village was granted, a part of the village was resumed and included in the village, and what was confirmed was only that part of the village which continued to be an inam.

7. The next question is whether the notification of the Government of Madras under Madras Act 26 of 1948 notifying the one-sixteenth part of the village as an undertenure estate and also the notification dated 20-6-1950. fixing the rates of rent under Madras Act 30 of 1947. are valid.

Learned counsel for the petitioner contended that both the notifications are invalid as undertenure minor inams are not governed by either of the two Acts. We shall deal with the argument in regard to the application of the aforesaid two Acts to the inam in Question separately. The first question there-fore is whether an undertenure" minor inam is abolished under Act 26 of 1948. Learned Govt. Pleader argued that the undertenure minor inams are parts of the zamindari estate and therefore along with the zamindari estate they are also abolished under the Act.

Learned counsel for the petitioner on the other hand pressed on us to hold that the Legislature did not intend to abolish minor inams, whether they are pre-settlement inams excluded from the assets of the zamindari or included in the assets of the zamindari or whether they are post settlement

inams. He emphasised upon the fact that there cannot be any logical distinction on principle between the different classes of minor inams which

could have compelled the legislature to make a distinction in the application of the Act. He also strongly relied upon the circumstance that a minor

inamdar is a owner of the minor inam and as the Act does not expressly abolish the minor inams we should hold that the minor inams were not

touched by the Act.

To appreciate the contentions of the learned counsel it is necessary to notice some of the relevant provisions of Madras Act 26 of 1948, which we

extract below:

Section 1(3): It applies to all estates as defined in Sections 3, Clause 2 of the Madras Estates Land Act, 1008, except inam villages which

became estates by virtue of the Madras Estates Land Third Amendment) Act, 1936. Sections 2(3): ""Estate"" means a zamindari or an undertenure

or an inam estate; Sections 2(7): ""Inam estate"" means an estate within the meaning of Sections 3, Clause (2) (d), of the Estates Land Act, but does

not include an inam village which became an estate by virtue of the Madras Estates Land (Third Amendment) Act, 1936;

Sections 2(15): ""Under-tenure estate"" means an estate within -the meaning of Sections S, Clause 2 (e) of the Estates Land Act. Sections 2(16):

Zamindari estate"" means: (i) an estate within the meaning of Section 3 Clause 2 (a) of the Estates Land Act, after excluding therefrom every

portion Which is itself an estate under Sections 3, Clause (2) (b) or (2) (e) of that Act; or (ii) an estate within the meaning of Sections 3, Clause (2)

(b) or (2) (c) of the Estates. Land Act, after excluding therefrom every portion which is itself an estate under Sections 3, Clause (2) (e) of that Act.

Sections 3: With effect on and from the notified date and save as otherwise expressly provided in this Act:

(a) the Madras Permanent Settlement Regulation. 1802, the Estates Land Act, and all other enactments applicable to the estate as such except the

Madras Estates Land (Reduction of Rent) Act, 1947 shall be deemed to have been repealed in their application to the estate;

(b) the entire estate (including all communal lands and porombokes; other non-ryoti "ands; waste lands; pasture lands; lanka lands; forests; mines;

and minerals; quarries; rivers, and streams; tanks and irrigation works:

fisheries; and ferries). shall stand transferred to the Government and vest in them, free of all encumbrances; and the Madras Revenue Recovery Act, 1864. the Madras Irrigation Cess Act, 1865, and all other enactments

applicable to ryotwari areas shall apply to the estate;

(c) all rights and interests created in or over the estate before the notified date by the principal or any other landholder, shall as against the

Government cease and determine;

(f) the relationship of landholder and ryot shall, as between them, be extinguished. S- 20(1): In cases not governed by Sections 18 and 19, where,

before the notified date, a landholder has created any right in any land (whether by way of lease or otherwise) including rights in any forest, mines

or minerals, quarries, fisheries or ferries, the transaction shall be deemed to be valid; and all rights and obligations arising there under, on or after

the notified date, shall be enforceable by or against the Government.

Provided that the transaction was not void or illegal under any law in force at the time.

It is clear from the aforesaid provisions that all estates denned under Madras Estates Land Act, 1908 except inam villages which became estates

by virtue of Madras Estates Land (Third Amendment) Act, 1936, vest in the Government. The estates under that definition comprise of five

classes; (a) a permanently settled estate or temporarily settled zamindari; (b) any portion of such permanently settled estate or temporarily settled

zamindari which is separately registered in the office of the collector; (c) any unsettled palayam or Jagir; (d) any village of which the land revenue

alone has been granted in inam to a person not owning the kudiwaram thereof, provided that the grant has been made, confirmed or recognised by

the British Government, or any separated part of such village; (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 undertenure.

A minor inam therefore whether it is a post-settlement or pre-settlement grant is not separately designated as an estate under the said Act- Pre-

settlement minor inams obviously do not come under any of the 5 aforesaid categories of estates. But it is said that a post-settlement minor inam or

though a pre-settlement minor inam but included in the assets of the zamindari at the time of the permanent settlement, will come under the first

category, namely, any permanently settled estate, or a temporarily settled zamindari. Strong reliance was placed on the definition of zamindari

estate under Sections 2 (16) of Act 26 of 1948. Zamindari estate is denned under that sub-section as:

an estate within the meaning of Sections 3. Clause"(2) (a) of the Estates Land Act, after excluding therefrom every portion which is itself an estate

under Sections 3, Clause (2) (b) or "(2) (e) of the Act.

The definition indicates that the estates under 3. 3 (2) (b) or (2). (e) of the Act would be part of the zamindari estate but for the exclu- sion, As the

section does not exclude the minor Inams held under the zamindar, the argument was advanced that the minor inams are parts of- the zamindari.

This contention based upon the definition was sought to be supported by the principles evolved ""by legal decisions in regard to minor inams prior

to the enactment of Act 26 of 1948. We would at this stage proceed to consider the citations made by the learned counsel which would afford a

historic basis for the definition introduced in the new Act. -- "Virabhadrayya v. Sonti Venkanna", 24 M L J 659 affords an example for the

converse proposition. Therein it was held that an inam though situate within the limits of a zamindari, if it had been excluded from the zamindari

assets at the time of the permanent settlement as lekhiraj is no longer part of the zamindari and consequently not an estate within the meaning of

Sections 3 of the Estates Land Act. When it was contended that the pre-settlement agraaharam was a village in a portion of the Nuzwid zamindari

separately registered in the office of the Collector, the learned Judges pointed out that as it was excluded from the assets of the zamindari any

ownership on the part of the Nuzwid zamindar over the village ceased at the settlement, and his interest in it was confined only to the right to

receive 1000 pagodas a year as that was alone included in the assets.

In -- "Brundavanachandra Horischandra Raja v. Ramayya¹, 26 M L J 600, it was held that portions of estates which are granted away but which

do not come under Sections 3 (2) (e) of the Act continue to be part of the estates notwithstanding such grants. In -- "Gadhadhara Das Bavaji v.

Suryanarayana Patnaik", 44 Mad 677 the question was whether a holder of a post-settlement inam grant of a portion of a village with both the

warams on a permanent Kattu-badi was a landholder within the meaning of

Sections 3 (2) (e) of the Madras Estates Land Act and the tenants had permanent occupancy rights therein. Ayling and Coutts-Trotter JJ. held that such a minor inamdar was a landholder within the meaning of Sections

3, Clause (5) whereas Kumaraswami Sastri J. recorded a dissenting note. In dealing with the question at page 685 Ayling J. observed:

The suit lands admittedly, but for the grant in inam, would fall within Clause (a) of Sections 3 (2) of the Act. As regards the definition of

"landholder" it may be conceded at once that so long as the zamindar reserves to himself a quit rent the inamdar cannot be regarded as the owner

of the lands in the ordinary legal meaning of the term. But the definition of "landholder" includes "every person entitled to collect the rents of the

whole or any portion of the estate by virtue of any transfer" from the owner", and I think the grant in inam must be regarded as such a transfer.

A detailed and exhaustive treatment of the scope of Sections 3 (5) of the Madras Estates Land Act in its application to a minor inamdar is found in

the Full Bench judgment in -- "Brahmayya v. Achiraju", 45 Mad 716. The court by a majority, the Chief Justice and Devadoss J. dissenting, held

that when a zamindar makes a post-settlement inam grant of portion of a village with both warams and permanent kat-tubadi, the grantee is a

landholder within the meaning of Sections 3 (5) of the Madras Estates Land Act. At page 732 Old field J. observed:

It is, however, unnecessary to pursue these considerations; because I have come to the conclusion that an inamdar with both warams of a part

of a village is in any case a land holder under Sections 3 (5), because he is a person entitled at least to collect the rent by virtue of a transfer from

the owner or his predecessor in title.

Phillips J. poses the question at page 739 as follows:

The question really, in my opinion, is whether the word "owning" under Clause 5, must necessarily mean owner of every conceivable right in the

estate, or whether the present inamdar to whom a grant of the land was made subject to a payment of quit rent to the zamindar can be deemed to

be owner.

At page 741 the basis for the learned Judge's conclusion is disclosed. He says:

In construing the word "owning", therefore, I do not think that we can say that it means the ultimate owner who has reserved even the smallest

right for himself. What, I take it, must be reserved is not a mere payment but some actual interest in the land itself. In the present case, quit rent

cannot be recovered by the zamindar under the summary provisions of Act 1 of 1908, and although it may be called a charge upon the land, it

does not, in my opinion, amount to an interest in the land.

The learned Judge therefore held that a minor inamdar was owner of part of an estate within the meaning of Sections 3 (5). Venkatasubba Rao J.

stated that the minor inamdar would come under the two parts of the definition in Sections 3(5). At page 761 the learned Judge observed as

follows:

It is said that the land of which the inam consists is not a part of the estate under Sections 3 (5). The terms of the Reference assume that the land

in question is within a zamindari. If physically the land is within a zamindari, I fail to see how the land is not part of an estate. Would it be argued

that a purchaser of a part of the estate does not come within the definition on the ground that though the part he purchased is geographically within

the limits of the estate it is still not a part thereof? I am unable to accept this contention.

The Full Bench therefore held that a minor inamdar is a landholder under Sections 3 (5) of the Madras Estates Land Act. Under Sections 3 (5)

landholder"" means:

a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue

of any transfer from the owner or his predecessor in title or of any order of a competent court or of any provision of law.

To come under the first part of the definition the minor inamdar must own an estate or part of an estate. The reasoning of some of the learned

Judges in the FuU Bench clearly shows that they treated him as owner of part of an estate. Relying upon this decision, it was argued that a minor

inamdar is a owner of the minor inam and therefore, it ceased to be part of the zamindari. But the Full Bench does not say that if it ceased to be

part of an estate he could not be a owner of part of an estate. Under Sections 3 (2). a part of an estate unless separately registered is not an estate

within the definition; but though it is not an estate within the definition, it is still a part of an estate and as the minor inamdar owns that part, he is a

landholder within the meaning of Sections 3 (5). The Full Bench judgment therefore though it is an authority for the position that a minor inamdar is a owner, it also supports the contention that the minor inam is still part, of the zamindari.

The conflict between the various views of the learned Judges of this court in regard to the rights of the minor inamdars and the tenants holding

under them has finally been settled by the Judicial Committee in -- "Narayanaraju v. Suryanarayudu", ILR 1940 Mad 1. There a zamindar made

a post-settlement grant of a portion of a moknasa village as manyam. Their Lordships held that the grantee was a landholder within the meaning of

Sections 3 (5) of, the Madras Estates Land Act. They noticed the conflicting views expressed, by different Judges and also the difficulty in

construing the section but in the end they accepted the majority view expressed in -- "Brahmayya v. Achiraju", 45 Mad 716.

8. At page 15 they made the following observations :

But they cannot agree that "part of the estate or "portion of the estate" does not refer to the land itself by the word "estate".. nor do they feel any

confidence in the doctrine that so long as the zamindar reserves any interest however insignificant a permanent grantee from him cannot be the

owners It may be that the words ""or part thereof"" were given a place in the definition of landholder without full appreciation of their effect in

connection with the definition of "estate"; but there is no presumption to that effect; the words cannot be ignored; and good reason must be

found in the Act itself for restricting their prima- facie meaning.

This judgment also shows that a minor inam is part of an estate and the holder thereof is a owner of that part.

In a case arising under the Madras Agriculturists' Relief Act, -- Sree Raja Velugoti Navaneetha Krishna Yachendra Bahadur Varu Vs. Sirigiri

Ramanujulu Chetty by next friend Irla Pullaiah Chetty, Wadsworth J. and Patanjali Sastri J., as he then was, held that the jodi payable by an agra-

haramdar to the Kalahasti zamindar was rent within the meaning of Sections 15 (4) of the Act. In the course of the judgment when it was

contended that a zamindar cannot be a landholder as the inamdar was the landholder, the learned Judges stated thus:

The position therefore is that the aghaharant here in question which is in

Kalahasti zamindari continued as before the Permanent Settlement to be held on an undertenure under the zamindar whose right has now become vested in the petitioner. In such circumstances, we can see no reason why the petitioner should not still be regarded as the owner, and therefore, the "landholder of the village. The fact that by virtue of the amending Act 18 of 1936 the respondent has also to be regarded as a "landholder" does not affect the position of the petitioner as a landholder in respect of that village. The definition of a landholder clearly contemplates a plurality of landholders by making express provision for settlement of disputes that may arise in such cases. The relation between the petitioner and the respondent is thus one of owner and an undertenure holder, just as it would be if the zamindar had made a post-settlement grant of the village-as an agharam. This judgment supports the view that for certain purposes the inamdar may be a owner, but the zamindar does not cease to be the owner. A "brief statement of the pre-existing- state of law prior to the enactment of Act 26 of 1948 as disclosed in the aforesaid decisions may be stated thus: The Madras Estates Land Act recognises five categories of estates. Neither a pre-settlement minor inam nor a post-settlement minor inam is an estate under any one of these categories. A pre-settlement minor inam cannot even be part of an estate, whereas a post-settlement minor inam or though a pre-settlement inam but included in the assets at the time of the Permanent Settlement, could be a part of an estate. It may be a part of a permanently settled estate or a temporarily settled zamindari or any part of any portion of permanently settled estate or temporarily settled zamindari which is separately registered in the office of the Collector. Though the said inam cannot be an estate within the meaning of Sections 3 (2), Madras Estates Land Act, the inamdar is a landholder within the meaning of Sections 3 (5) of the Act. It is because he is either a person owning a part of the estate or a person entitled to collect the rents for the whole or any portion of the estate by virtue of the transfer from the owner.

For the purpose of the definition of landholder under Sections 3 (5) he is the owner of the part of the estate though the proprietor of the estate did not completely part with his entire rights in the estate. The reversion still vests in him. He will be entitled to recover jodi from the inamdar. The

proprietor therefore does not cease to be the owner. If that is the legal position, it follows that minor inam is part of the zamindari. The definition of zamindari estate" in Act 26 of 1948 accepted and adopted the view by judicial decisions. The Act purports to abolish the estates defined under the Madras Estates Land Act except inam villages which became estates by virtue of Madras Estates Land (Third Amendment) Act, 1936. The definition of "zamindari estate" also shows that it takes in even the minor inams which did not come under any one or other of the other categories of the estates. It follows that though a minor inam cannot be treated as a separate estate, it vests in the Government along with the parent estate subject to the other provisions of the Act.

9. The argument advanced by learned counsel for the petitioner on the basis that no logical principle can be discovered in the Legislature making a distinction between pre-settlement minor inams and post-settlement minor inams does not appeal to us. It may not be possible to predicate the legislative policy underlying the enactment. If the minor inams can be abolished only as part of a zamindari, it will lead to another anomaly, namely, that the inamdar of a whole inam village which is an undertenure estate within the meaning of the Act will get a higher rate of compensation than a minor inamdar whose property will be taken as part of the zamindari for the sliding scale provided in the Act for calculating compensation may affect him adversely. But the legislature in our view steered clear of those difficulties by enacting Sections 20 in the Act. In our view Sections 20 of Madras Act 28 of 1948 saves such minor inams. Section 20 says:

In cases not governed by Sections, 18 and 19, where before the notified date, a landholder has created any right in any land whether by way of lease or otherwise) including rights in any forest, mines or, minerals, quarries, fisheries or ferries, the transaction shall be deemed to be valid; and all rights and obligations arising thereunder, on or after the notified date, shall be enforceable by or against the Government." It was argued by the learned Government Pleader that Section 20 does not apply to minor inams for according to him the said section applies only to leases and that under Section 3(c) of the Act the estate would vest in the Government free from the interests created by the landholder. Under Section 3 (c), "all rights and interests created in or over the estate before the notified date by the

principal or any other landholder, shall as against the Government cease and determine".

But the said section itself starts by saying "with effect on and from the notified date and save as otherwise expressly provided in this Act", and

Sections 20 is the saving clause. We cannot also accept the argument that Sections 20 should be confined only to leases. Sections 20 expressly

saves all interests created by the landholder in any land whether by way of lease or otherwise before the notified date. If Sections 20 takes in a

permanent lease on a fixed rent, we do not see why minor inams subject to jodi which are similar to permanent leases on fixed rent should be treated differently.

The argument that Sections 20 should be confined to leases only is obviously untenable as the section itself says that the creation of interests by the

landholder may be "by way of lease or otherwise". The section also confers upon the Government the power to terminate the rights so conferred in

public interests after paying full compensation. But it is not suggested that the Govt. invoked that power in public interests. We therefore hold that

the post-settlement minor inams or the minor inams included in the assets of the zamindari at the time of the permanent settlement would be

protected under Sections 20 of the Act and the rights, thereunder, can be enforced against the Government. The notification of Government under

Madras Act 26 of 1948 notifying the 1/16th part of the village included in the assets of the zamindari as an undertenure estate is; clearly wrong.

Even so it was argued by learned Government Pleader that the notification under Act 30 of 1947 fixing the rates of rent would be valid as in the

view expressed the 1/16th part of the village is part of the zamindari and therefore is part of an estate under Sections 3 (2) (a) of the Madras

Estates Land Act. As the Government did not purport to issue the notification on the basis of the entire zamindari it is not necessary to express our

opinion on the question whether the Government can fix rents in respect of the minor inam treating it as part of the zsmindari along with the other

parts of the zamindari. That question will have to be decided in aonroDriate proceedings when it is specifically raised. It follows that the notification

under Sections 3 (2) is also bad. In the result, the two notifications are quashed. The petitioner" will have his costs.

10. (This petition having been posted for being spoken to this day the Court made the following order.):

(Delivered by Subba Rao J.) This appeal is posted for being spoken to as Borne observations made by us appeared to be wider than we

intended. We thought it would be in the interests of all the parties concerned to clarify that part of the judgment at this stage than to leave it for

future elucidation and argument. The learned counsel appearing for the parties also agree in regard to the advisability of the course adopted by us.

11. In the course of the judgment we said though the grant was of an entire village, if a part of the same was confirmed it would not be an estate

within the meaning of the Act. We should not be understood to have expressed our opinion on the question whether if a grant was of an entire

village and though the entire village was confirmed either in one proceeding or in different proceedings and separate title deeds were issued that the

village covered by the separate deeds ceases to be an estate; for, in the case we decided though the entire village was granted, a part of the village

was resumed and included in the assets of the zamindari; and what was confirmed was only that part of the village which continued to be an inam.

12. We held that the estate in question is not an undertenure and therefore the provisions of Act 30 of 1947 do not apply. But it was contended by

the Government Pleader that though it is not an undertenure it is part of the zamindari and therefore the Act would apply. As the Government did

not purport to issue the notification on the basis of the entire zamindari, it is not necessary to express our opinion on the question whether the

Government can fix rents in respect of the minor inam treating it as part of the zamindari along with the other parts of the zamindari. That question

will have to be decided in appropriate proceedings when it is specifically raised.