

(1958) 07 MAD CK 0016
In the Madras High Court
Case No : Writ Appeal No. 108 of 1956

Varadarajaswamivari Temple

APPELLANT

Vs

Sri Krishnappa Govinda and Others

RESPONDENT

Date of Decision : 04-07-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Estates Land Act, 1908 — Section 3(2)
Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 2(7),
3, 9, 9(1), 9(4)

Citation : AIR 1959 Mad 40 : (1958) ILR (Mad) 1023 : (1958) 71 LW 711 :
(1958) 2 MLJ 463

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J;Ganapatia Pillai, J

Bench : Full Bench

Advocate : V. Vedantachari and T. Rangaswami Aiyangar, for the Appellant; M.S. Venkatarama Aiyar, for T.V. Balakrishnan, General and Addl. Govt. Pleader, for the Respondent

Judgement

Rajagopalan, J.—After Hosakotta in Salem District had been notified by the Government under the provisions of the Madras Estates

(Abolition and Conversion into Ryotwari) Act, 26 of 1948 hereinafter referred to as the Abolition Act -- the Settlement Officer initiated

proceedings suo motu u/s 9 to determine whether Hosakota was an inam estate within the meaning of Section 2(7) of the Abolition Act. Sri

Varada-rajawami Devastanam contended that what had been granted in inam to the Devastanam did not constitute an estate at all as defined by

Section 3(2)(d) of the Madras Estates Land Act, and that it could not be and was not an inam estate within the meaning of Section 2(7) of the

Abolition Act.

The tenants contended that it was an estate and an inam estate. Virtually the

only evidence on which the question at issue had to be decided was that afforded by the entries in the Inam Fair Register, to the scope of which I shall advert later. It is enough to note at present that the village included besides the inam granted to the devastanam three other inams, which could be conveniently referred to as minor inams, the total extent of which was 22.23 acres.

2. The Settlement Officer held that Hosakotta was an estate within the scope of Section 3(2)(d) of the Estates Land Act, and relying on the presumption permitted by Section 9(7) of the Abolition Act he held Further that it was an inam estate. The devastanam appealed to the Tribunal against the decision of the Settlement Officer. The Tribunal upheld the contention of tho Devastanam that what had been confirmed as an inam grant in its favour was not the whole village of Hosakotta but only an extent of 163.53 acres in that village. Since tho grant was not of a village, the Tribunal came to the conclusion that what had been granted in inarn to the devastanam did not constitute an estate within the meaning of Section 3(2)(d) of the Estates Land Act. The Tribunal also found that there was no proof that the grant of the three minor inams was anterior in point of time to that in favour of the devastanam. The Tribunal held that Hosakotta was not an inam estate and allowed the appeal.

3. One of the tenants of the Devastanam, tho first respondent in the appeal before us, applied under Article 226 of the Constitution for the issue of a writ of certiorari to set aside the order of the Tribunal. In disposing of that application Rajagopala Aiyangar J. held that the evidence on record satisfied the requirements of Section 3(2)(d) of the Estates Land Act read with Explanation (1) thereto, and that the grant to the devastanam had been of the whole village. He further held that the minor inams which stood excluded from that grant had been granted earlier than the grant to the devastanam. The learned Judge was of the view, that the Tribunal was in error when it held that the inam granted to the devastanam did not constitute an inam estate. The learned Judge directed the issue of a writ of certiorari to set aside the order of the Tribunal.

4. The Devastanam appealed against the decision of Rajagopala Ayyangar J. The Division Bench, before which the appeal came on for hearing, referred it for disposal by a Full Bench, to determine among other things the

question whether in proceedings u/s 9 of the Abolition, Act, any burden of proof rested on any of the parties who participated in those proceedings.

5. I shall first set out the relevant statutory provisions, familiar though they are. Section 2(7) of the Abolition Act declares :

inam estates"" means an estate within the meaning of Section 3, Clause (2)(d) of the Estates Land Act, but does not include an inam village which

became an estate by virtue of the Madras Estates Land (Third Amendment) Act, 1936.

Section 3(2)(d) of the Estates Land Act as it stood before it was amended in 1936 ran :

Estate"" means any village of which the land revenue without the kudiwaram 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.

Section 3(2)(d) of the Estates Land Act after its amendment in 1936 was :

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

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

To that an explanation was added by the Amending Act 2 of 1945 :

Explanation (1)....Where a grant as an inam is expressed to be of a named village, the area which forms the subject matter of the grant shall be

deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which had already been granted on service or

other tenure or been reserved for communal purposes.

Section 9(7) of the Abolition Act directed,

In the absence of evidence to the contrary, the Settlement Officer and the Tribunal may presume that an inam village is an inam estate.

Taking Section 2(7) and Section 9(7) of the Abolition Act together the position is that an inam village has to be proved to be an estate as defined

by Section 3(2)(d) of the Estates Land Act without any initial presumption either way. Once an inam village is proved to be an estate, and the

further question arises whether it is an inam estate as defined by Section 2(7) of the Abolition Act, the presumption allowed by Section 9(7) of the

Abolition Act comes into play. The real question to decide which that presumption can be invoked is whether the inam village is an estate as

defined by Section 3(2)(d) of the Estates Land Act as it stood before it was amended in 1936, or whether it satisfied only the definition of an

estate in Section 3(2)(d) of the Estates Land Act as it stood amended in 1936.

6. The relevant portions of Section 9 of the Abolition Act, besides Section 9(7) which I have already set out, are :

Section 9 : ""(1) As soon as may be after the passing of this Act, the Settlement Officer may suo motu and shall, on application, inquire and

determine whether any inam village in his jurisdiction is an inam estate or not.

(2) Before holding the inquiry, the Settlement Officer shall cause to be published in the village in the prescribed manner, a notice requiring all

persons claiming an interest in any land in the village to file before him statements hearing on the question whether the village is an inam estate or

not.

(3) The Settlement Officer shall then hear the parties and afford to them a reasonable opportunity of adducing all such evidence either oral or

documentary as they may desire to examine all such documents as he has reason to believe are in the possession of the Government and have a

bearing on the question before him and give his decision in writing,

(4) (a) Any person deeming himself aggrieved by a decision of the Settlement Officer under sub-s. (3) may, within two months from the date of the

decision or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal.....

(c) the decision of the Tribunal under this sub-section shall be final and not be liable to be questioned in any Court of law.....

(6) Every decision of the Tribunal and subject to such decision, every decision of the Settlement Officer under tin's section shall be binding on all

persons claiming an interest in any land in the village, notwithstanding that any such person has not preferred any application or filed any statement

or adduced any evidence or appeared or participated in the proceedings before the Settlement Officer or the Tribunal, as the case may be.

7. Thus, while the Settlement Officer and the Tribunal, if an appeal is preferred against the decision of the Settlement Officer, have exclusive

jurisdiction to decide whether an inam village is an inam estate, neither has been

invested with a similar exclusive jurisdiction to decide whether a given village is an estate as defined by Section 3(2)(d) of the Estates Land Act. That decision is on what could be conveniently termed a jurisdictional issue. If the village in question is not an estate at all, the statutory authority, the Settlement Officer -- it may not be necessary to specify at each stage the other statutory authority also the Tribunal -- cannot give himself jurisdiction to decide whether it is an inam estate within the meaning of Section 2(7) of the Abolition Act.

It should be obvious that in such a case the Settlement Officer cannot give himself jurisdiction to decide whether the inam village is an inam estate by a wrong decision on the jurisdictional issue, whether it is an estate at all. The correctness of the decision of the Settlement Officer on the jurisdictional issue, whether the village is an estate at all, is open to challenge in other proceedings, for example, in a suit in a civil court, as well as in proceedings under Article 226 of the Constitution. The finality accorded by Section 9 (4) (c) of the Abolition Act will not apply to a decision of the Tribunal on the jurisdictional issue.

Similarly Section 9 (6) of the Abolition Act will not cover a decision of the Settlement Officer or that of the Tribunal on the jurisdictional issue, whether the inam village was an estate within the meaning of Section 3 (2) (d) of the Estates Land Act. So, if what was not an estate at all is wrongly held to be an estate and is therefore held to be an inam estate as defined by Section 2 (7) of the Abolition Act, neither Section 9 (4) (c) nor Section 9 (6) of that Act can bar an investigation afresh in other proceedings of the question, whether the village was an estate within the scope of Section 3 (2) (d) of the Estates Land Act. To put it in other words, determination of the jurisdictional issue whether an inam village was an estate, is incidental to the exercise of the jurisdiction u/s 9 of the Abolition Act vested in the statutory authorities. The Act itself did not provide any machinery for a "final" determination of that question.

8. That was rectified when the legislature enacted Madras Estates (Supplementary) Act, 1956 (Act 30 of 1956). Section 3 (1) of Act 30 of 1956 runs :

Notwithstanding anything contained in the Estates Land Act or in any other law for the time being in force, any person interested may make an

application to the Tribunal for a declaration that the area specified in the application is or is not an estate or part of an estate as defined in Sec. 3

Clause (2) of the Estates Land Act, or that it is or is not an inam estate as defined in Section 2 Clause (7) of the Abolition Act.

Section 3 provided the forum for the determination of the question, for example, whether an inam village was an estate as defined by Section 3 (2)

(d) of the Estates Land Act. Section 4 provided for the reopening of decisions rendered by the Settlement Officer or by the Tribunal u/s 9 of the

Abolition Act before Madras Act 30 of 1956 came into force. As I have pointed out, the Abolition Act, itself did not accord any statutory finality

to the decision of the statutory authorities, that an inam village was an estate as defined by Section 3(2) (d) of the Estates Land Act, but the

determination of that question was incidental to the determination of the question, whether an inam village was an inam estate within the meaning of

Section 2 (7) of the Abolition Act. Section 4 of Act 30 of 1956 was really complementary to Section 3, as I said, designed to reopen proceedings

under the Abolition Act, which had come to an end before Act 30 of 1956 came into force. Section 6 of Act 30 of 1956 prescribed the procedure

to be followed on receipt of an application preferred either u/s 3 or u/s 4 of the Act.

9. Section 8 of Act 30 of 1956 ran : ""In deciding the question whether any inam village or a separated part of an inam village was or was not an

estate within the meaning of the Estates Land Act, as it stood before the commencement of the Madras Estates Land (Third Amendment) Act,

1936 (Madras Act XVIII of 1836), it shall be presumed, until the contrary is proved, that such area or part was such an estate."" Thereafter, of

course, there was no need for the limited presumption permitted by S; 9 (7) of the Abolition Act. By Section 13 of the Act 30 of 1956, the whole

of Section 9 including Section 9 (7) of the Abolition Act stood repealed.

10. While Section 8 of Act 30 of 1956 provides for an initial but rebuttable presumption that an inam village is an estate within the meaning of

Section 3 (2) (d) of the Estates Land Act, neither Section 9 nor any other provisions of the Abolition Act provided for such a presumption. If that

question arose for determination in proceedings u/s 9 of the Abolition Act, it had to be decided on the evidence on record. Can the doctrine of

burden of proof be invoked in such proceedings u/s 9 of the Abolition Act was one of the main questions argued before us.

11. Mr. Vedantachari, learned Counsel for the Inamdar, the Devasthanam, contended that, if the initial burden rested on any one in the proceedings

u/s 9 of the Abolition Act, however, those proceedings had been initiated, to establish that a given inam village was an estate within the meaning of

Section 3 (2) (d) of the Estates Land Act, as it stood before the 1936 amendment, that burden lay on the tenants who claimed it was an estate. If it

was an estate, the tenants in possession of what would then be ryoti lands in the village could claim permanent rights of occupancy.

Mr. M. S. Venkatarama Aiyar, who appeared for the first respondent, one of the tenants, urged that in such circumstances, the initial burden lay on

the person who was in the position of landholder, the holder of the inam village, to establish that the inam village was not an estate; because it was

he who wanted to avoid the application of the statutory definition in Section 3 (2) (d) and Explanation (1) thereto of the Estates Land Act, it was

for him to prove that the grants of the minor inams in the inam village were anterior to the grant of the rest of the inam village. The learned

Advocate General who appeared for the State, submitted that no initial burden rested on any of the parties who could participate in the

proceedings u/s 9 of the Abolition Act, the Inamdar, the tenants or the Government.

12. The question of burden of proof may assume real importance where what has to be decided is, at what point of time were the minor inams in

an inam village granted. Explanation (1) to Section 3(2)(d) of the Estates Land Act, it should be remembered, is to the effect that where the grant

in inam was of a named village, what was granted would constitute an estate even though the grantee did not have the benefit of the minor inams

that lay within the geographical limits of that village, provided it was proved that the grant of the minor inams preceded in point of time the grant of

the rest of the village as a named village. In reality what was granted in inam in such cases could not have been the whole village, as the minor

inams already granted would stand excluded from the scope of that grant. But the fiction enacted by explanation (1) to Section 3 (2)(d) of the

Estates Land Act directed that the grant be treated as a grant of the whole village, to constitute that an estate.

13. I shall leave out of account for my present purposes cases of reservations of lands for communal purposes to which also explanation (1) to

Section 3(2)(d) of the Estates Land Act refers. I shall also exclude from further consideration the question, does the evidence disclose whether the

grant was of a named village or whether the grant was only of a specified area in that village. The real question to which I shall address myself is,

what arises for consideration in this appeal, whether an initial burden lies on any one to prove in proceedings u/s 9 of the Abolition Act whether,

where there are minor inams in an inam village, those minor inams were granted before the grant in inam of that village as a named village, which

however was in reality a grant of the rest of the village, excluding the minor inams already in existence on the date of that grant.

14. When a similar question arose in *Rama-nathan Chettiar v. State of Madras*, 1957 1 MLJ 348: AIR 1958 Mad 104 (A), the learned Chief

Justice, who delivered the judgment of the Division Bench said :

The original grant of the village in question is not available. The only evidence available is the extract from the Inam Fair Register relating to this

village. That clearly shows that at the time of the inam settlement, there was an extent of 10 acres 52 cents in the village which constituted a

separate Devadayam service grant. It is common ground that there is no evidence whatever to show when the grant was made and by whom. The

question is whether at the time when the rest of the village was granted to the appellant's predecessor, the Devadayam grant had already been

made. If that be so, then undoubtedly, under explanation 1 to Section 3(2)(d) of the Estates Land Act, the Village should be deemed to be an

estate notwithstanding that it did not include the lands which had already been granted. It is equally clear that if there is evidence that the original

grant was of the whole village and that at a subsequent date the Devadayam minor inam was carved out of the whole village by the original grantee,

then the village would be an "estate" within the meaning of the Estates Abolition Act But the fact is that we have had no evidence in the matter.

In such a state of paucity of evidence the case must be decided on the basis of onus of proof. The Supreme Court has in the clearest terms laid

down that the onus would be on the party, putting forward the case that the village is an estate; that is to say, in this case, the onus would be on the

Government and the tenants. Undoubtedly, neither the Governor nor the tenants have adduced evidence to help them discharge the burden of proof which lay on them.

The decision of the Supreme Court to which the learned Chief Justice referred was that in the The District Board, Tanjore represented by its

President Vs. M.K. Noor Mohamed Rowther and Others, . It should be convenient to refer to that decision in the rest of this judgment as the Tanjore case (B).

15. In his order referring this appeal to the Full Bench, the learned Chief Justice himself recorded :

I think there should be a further consideration as to the burden of proof in cases arising, under the Madras Estates (Abolition and Conversion into

Ryotwari) Act, for the following reasons. The Supreme Court decision was given in a case which arose out of an ordinary suit filed in a civil court

by the landlord for an injunction restraining the tenant from disturbing his possession. In that suit, the tenant pleaded occupancy rights on the ground

that the suit lands were comprised in an estate." In a case like that, it is not difficult to follow the rule that it is for the party who pleads that the civil

court had no jurisdiction to establish that fact. So it would be incumbent on such party to prove that the lands lay within an estate.

16. If I may say so with respect, I find myself in complete agreement with this exposition of the principle that underlay the decision in the Tanjore case (B). The learned Chief Justice proceeded :

It is very arguable that different considerations should apply to a case falling u/s 9 of the Madras Estates (Abolition and Conversion into Ryotwari)

Act, especially when the Settlement Officer suo motu starts an inquiry, as in the case before us. Before holding the enquiry, no doubt, the

Settlement Officer invites all persons claiming an interest to file before him statements bearing on the question whether the village is an inam estate

or not. The parties are afforded a reasonable opportunity of adducing all such evidence as the parties may desire to adduce.

The Settlement Officer has himself to examine all documents which he has reason to believe are in the possession of the Government which have a

bearing on the question before him. When the Settlement Officer has to decide on the question after a consideration of all the evidence that may be

placed before him and that he may be able to gather himself, can it be said that the onus lies on any particular party, or the Government to establish

that a particular inam grant is of a whole village, and whenever there are minor inams found to exist at a later date, to establish that these inams

were anterior, or subsequent, to the major grant?

The principle that it is for the party pleading on ouster of a civil court's jurisdiction to establish his case, has obviously no application. An enquiry

by a Settlement Officer, whether suo motu or on application, cannot be likened to a suit in a civil court. It appears to be reasonable to hold that the

Settlement Officer has to decide the question on a consideration of all the available evidence, irrespective of any onus of proof."''

17. Again, if I may say so with respect, I find myself in complete agreement with the learned Chief Justice, even after hearing the elaborate

arguments addressed to us on the question of burden of proof.

18. The general principle of onus or burden of proof in proceedings in the ordinary civil courts of the land was thus explained in 15 Halsbury's

Laws of England, 3rd Edn. at p. 267,

In legal proceedings the general rule is that he who asserts must prove. This proposition is sometimes more technically expressed by saying that

the burden of proof rests on the Party who substantially asserts the affirmative of the issue. The rule is derived from the Roman law, and is support-

able not only upon the ground of fairness but also upon that of the greater practical difficulty which is involved in proving a negative than in proving

an affirmative.

To similar effect are the passage in Taylor on Evidence, 12th Edn. (see P. 252), and Phipson on Evidence, 7th Edn. (see p. 30). Sections 101 and

102 of the Indian Evidence Act gave statutory sanction to that basic principle.

19. Where the question at issue was, whether a given village was an estate as defined by Section 3(2)(d) of the Estates Land Act, cases have had

to be decided in civil courts by recourse to the principle of burden of proof.

20. That the burden lay on the tenant, who asserted the village was an estate, was rested in the The District Board, Tanjore represented by its

President Vs. M.K. Noor Mohamed Rowther and Others, on the principle, that it was the tenant, who pleaded ouster of jurisdiction of the civil

courts to sustain that plea. In the words of Lord Thankerton "the burden of proof is on the party, who maintains an exception to the general rule.

That had all along been accepted by the courts as a well settled proposition. See also the observations of AIR 1934 84 (Privy Council) I shall

examine later some of the cases in which the principle reiterated in the Tanjore case (B) was applied or extended.

What I should like to record at this stage is that, in my opinion, the decision in the Tanjore caso (B) is not authority for the proposition, that in all

circumstances, whenever the question arises whether a village is an estate as defined by Section 3 (2) (d) of the Estates Land Act, and in

whichever forum it arises, a civil court or a statutory tribunal, the burden always rests on the tenant to Prove that the village was an estate or to

prove as ancillary to that, that the grant of minor inanis in an inam village was antecedent to the grant of the rest of the village as a village.

21. Even in proceedings in a civil court the burden of establishing that a village is an estate does not always lie on the tenant. For example, the

principle based on ouster of the jurisdiction of the civil court can have no application to a suit filed u/s 163-A of the Estates Land Act, which

maintains the jurisdiction of the civil courts for that class of cases. The claim of the plaintiff in Lakshmanan v. Venkateswarlu was to eject the

defendants in possession of the lands. Those lands did not lie in an estate. They were minor inams; but the tenants in possession claimed rights of

permanent occupancy.

After an elaborate review of the case law, including that which related to lands in an estate, and after pointing out the true scope of the earlier

decision in Nainapillai Marakayar v. Ramanathan Chettiar, 51 Ind App 83 : AIR 1924 PC 65 (E), their Lordships of the Privy Council held that, in

a suit by a holder of a minor inam to eject the tenants from the holding, the burden was on the plaintiff to make out a right to evict by proving that

the grant included both the melwaram and the kudiwaram interests, or that the tenants or their predecessors were let into possession by the

inamdhar under a terminable lease. At pp. 222 to 224 (of Ind App) : fat p. 286 of AIR), the scope of the rule laid down in the earlier decision, 51

Ind App 83 : AIR 1924 PC 65 (K) was examined, and the use of the expression "tenant of the lands" was understood to mean "tenant of the lands

belonging to the landlord; that is, where the landlord has a right not merely to the melwaram but to the land itself. At p. 226 (of Ind App) : (at P.

287 of AIR) was the observation :

The principle of the burden of proof laid down in 51 Ind App 83 : AIR 1924 PC 65 (E), when read in the light of the facts of the case also, does

not appear to contravene the rule, that in a suit for ejectment the initial burden lies on the plaintiff to prove that he has the title to immediate

possession.

The claim of the plaintiff in Satti Suri Reddi and Others Vs. Kolachina Agnihotrudu and Another, , was also for ejectment of the tenants in

possession after the expiry of the lease in their favour. Despite the observation at p. 529 (of Mad LJ) : (at p. 754 of AIR), that the burden was on

the defendants to show that the grant was a grant of the whole village (that is to prove that it was an estate), the final decision, that what had been

granted in inam, described as ""kandrika,"" was not a village and did not therefore constitute an estate, turned on the evaluation of the evidence on

record. (22) In Neelakantappa v. Raghavendraswami Matam, 1956 2 Audh WR 746 (G); Viswanatha Sastri, J., extended the principle laid down

by the Supreme Court in The District Board, Tanjore represented by its President Vs. M.K. Noor Mohamed Rowther and Others, , that the

burden of proving that the lands granted in inam were comprised in an estate as defined by Section 3(2)(d) of the Madras Estates Land Act, was

upon the person Betting up the plea, that is the tenants, to a case which was referred for adjudication to the civil court under the provisions of the

Land Acquisition Act. The learned Judge observed at p. 749,

Whether the question arises in a suit for ejectment of a tenant or for recovery of rent from him in a civil court or in a proceeding like the present

where the court has to adjudicate upon and declare the respective rights of landlord and tenant to a fund placed in the custody of the court, the

burden of proving, in a disputed case, that the lands in question are comprised in an "estate" as defined in Section 3 (2) (d) of the Act (The

Madras Estates Land Act) is on the person setting up that plea. This is clear from the observations of Maha-jan, C. J., based on the admission of

counsel and of Chandrasekhara Ayyar, J., irrespective of such admission in The District Board, Tanjore represented by its President Vs. M.K.

Noor Mohamed Rowther and Others,

23. The decision reported in Venkatarao v. State of Madras, 1956 2 Andh WR 28 (H) arose out of a suit instituted in a civil court for a

declaration that Rollavaka was not an estate, and that the provisions of the Rent Reduction Act (Madras Act 30 of 1947) did not apply, and that

the notification issued thereunder was without jurisdiction. Umama-heswaram, J., held that in such a case the burden to show that the grant of

Rollavaka in inam satisfied the statutory definition of an estate lay upon the tenants, who asserted that it was an estate. Among the authorities on

which the learned Judge relied was the decision of the Supreme Court in The District Board, Tanjore represented by its President Vs. M.K. Noor

Mohamed Rowther and Others, .

24. Ramarao v. Linga Reddi, 1956 2 Andh WR 89 : AIR 1957 AP 632 (I) was the third of the cases decided by the Andhra High Court to which

we were referred during the arguments before us. Delivering the judgment of the Division Bench, Satyanarayana Rao, J., elaborately reviewed the-

case-law and examined the scope of the decision in 1952 2 MLJ 586 : AIR 1953 SO 448 (B). It should be remembered that this decision was in

appeals preferred to the High Court against the decisions in suits instituted in the civil courts, virtually for deciding the question whether the tenants

had permanent rights of occupancy and whether the shrotriem village in which those lands lay was an estate within the meaning of section 3(2)(d)

of the Madras Estates Land Act.

Satyanarayana Rao, J., referred among other things to the conflict between Narayan as warm Naiju v. Subrahmanyam, ILR (1916) Mad 683 :

AIR 1916 Mad 263 (J); and Tulabandu Ademma Vs. Sreemath Satyadhyana Thirtha Swamivaru represented by the general power of attorney

agent, Markapuram Srinivasacharlu and Others, , and the need for the legislature to intervene by adding explanation (1) to Section 3(2)(d) of the

Madras Estates Land Act. At page 98 (of Andh WR) : (at p. 638 of AIR), the learned Judge observed :

The decision of the Supreme Court in The District Board, Tanjore represented by its President Vs. M.K. Noor Mohamed Rowther and Others, ,

in our opinion sets the matter at rest by throwing the burden on the tenant who relies upon the act to establish that the requirements of the section

are satisfied. The tenants in this particular case have not been able to exclude the possibility of the minor inams having come into existence at a later date under grants which might have emanated from the original grantor.

Whether a tenant raises the plea that the lands were in an estate and therefore ryoti and the civil court has no jurisdiction or the tenant relies upon

the statute in answer to a suit by the landlord either for an injunction, as in the case before the Supreme Court, or even for a declaration as in the

present case, the burden of proof would undoubtedly be on the tenant to establish the case which he put forward either to exclude the jurisdiction

or to negative the right of the plaintiff. The burden will be on him to show that the grant was either a grant of a whole village or a grant of a named

village.

25. Whether the burden of proof was correctly cast and whether the principle recognised by the Supreme Court in *The District Board, Tanjore*

represented by its President *Vs. M.K. Noor Mohamed Rowther and Others*, was correctly applied or extended in each of the three cases decided

by the Andhra High Court, to which I have referred above, does not really arise for consideration in this case. What I should like to emphasise is

that in each of those cases the necessity to appeal to the doctrine of burden of proof arose in proceedings in a civil court instituted in the normal

course, in which the parties to the litigation joined issue on the question, whether a given inam village was an estate as defined by Section 3(2)(d) of

the Madras Estates Land Act read with explanation (1) thereto. The question, whether the principle applied by the Supreme Court in *The District*

Board, Tanjore represented by its President *Vs. M.K. Noor Mohamed Rowther and Others*, should be extended to proceedings before the

Settlement Officer u/s 9 of the Abolition Act, has, in my opinion, to be answered in the negative.

As the learned Chief Justice pointed out in his order of reference, an inquiry by a Settlement Officer, whether suo motu or on an application,

cannot be likened to a suit in a civil court. The very nature of the proceedings before the Settlement Officer u/s 9 of the Abolition Act should suffice

to decline to extend to them a principle applicable to the determination of a lis in a civil court, whether it is based upon the rule that it is for the

party who seeks to oust the jurisdiction of a civil court to establish the necessary

facts or on the rule that he who asserts a positive fact must prove it.

26. No doubt what Section 9(1) of the Abolition Act authorises -- in fact directs -- the Settlement Officer to do is ""to enquire and determine whether an inam village is an inam estate. Nonetheless, those proceedings, which involve enquiry and determination, the normal incidents of the disposal of a lis in a civil court, cannot be equated to proceedings in the ordinary civil courts of the land, where the rights of the parties to those proceedings --lis -- are finally determined. The determination Section 9(1) postulates is not a final determination of the rights of even those persons who participated in the enquiry before the Settlement Officer.

The learned Advocate General was, in my opinion, well founded in his submission, that the de-termination u/s 9 of the Abolition Act by the

Settlement Officer is at best an ad hoc decision, the main if not the sole purpose of which is to enable the Government to decide whether or not it

should issue the notification for which Section 3 of the Abolition Act provides. I have already pointed out that the decision on the question, whether

an inam village is an estate as defined by Section 3(2)(d) of the Madras Estates Land Act is incidental to the exercise of the statutory jurisdiction

u/s 9(1) of the Abolition Act to decide whether an inam village is an inam estate.

The determination or decision u/s 9(1) of the Abolition Act leaves intact the rights and liabilities inter se the holder of the inam village and the

tenants in possession, of the lands in that village. That such a determination is not final even to restrict the rights of the Government under the Rent

Reduction Act was what was pointed out by a Division Bench of this court in State of Madras v. Kasi Mohamed, 1957 1 Mad LJ 1 : AIR 1958

Mad 107 (L) though it was laid down that ""it would be most anomalous that State which had allowed the order of Appellate Tribunal holding that

the grant was not of the whole village, and, therefore, it would not be an estate, to become final, should be allowed to make a notification under the

Rent Reduction Act on the footing that the grant was of a whole inam village.

27. The purpose of the enquiry and determination for which Section 9(1) of the Abolition Act provided is thus limited in its scope. So is its legal

effect. The nature of the enquiry is yet another bar to any attempt to equate the proceedings u/s 9(1) of the Abolition Act to a lis in a civil court. No

doubt Section 9(1) of the Abolition Act enables any one with an interest in any land in an inam village to apply to a Settlement Officer "to inquire

and determine." Then a statutory obligation is laid on the Settlement Officer to enquire and determine. The statutory mandate is to determine.

How it should be determined in each case should obviously depend on the material gathered during the enquiry, either material furnished by the

parties that participated in the inquiry or material the Settlement Officer was able to gather from the Government records to which he had access. It

should be further remembered that in those proceedings the Settlement Officer is not bound by the strict rules governing the admissibility of evidence

which apply to the determination of a lis in a civil court. Despite the statutory jurisdiction "to enquire and determine," the role of the Settlement

Officer is really that of an investigator, who has to get at all the available material to determine whether an inam village is an inam estate and to

decide as incidental thereto whether the inam village is an estate at all.

The right to commence proceedings suo motu -- in fact it would be an obligation, even if there were no application -- and the obligation u/s 9(3) to

gather and examine even the evidence which the parties do not produce stress the investigation aspect of the proceedings in marked contrast to a

judicial determination in a civil court, subject to the limitations which the procedure law and the law of evidence impose on such courts. The

investigation of the Settlement Officer does lead to a final conclusion, a "determination." It is certainly not a purposeless investigation.

But the purpose of the investigation is not so much the determination of the rights of the parties that participate in the enquiry but to enable the

Government to exercise its statutory right u/s 3 of the Abolition Act. Again, it is really an obligation, the Government are really bound to notify all

inam villages, which are inani estates. The Settlement Officer was thus constituted an administrative tribunal designed for a purpose, no doubt

statutory but nonetheless administrative. That the determination by the Settlement Officer was subject to an appeal to a Tribunal quasi judicial in its

composition, and that the determination of the appeal itself was quasi judicial in its scope, did not affect the real nature of the proceedings before

the Settlement Officer, which as I did, were really designed for an administrative purpose.

28. That the inamdar, the tenants in possession of the lands, and the Government have a statutory right to participate in the inquiry u/s 9 of the Abolition Act may not be enough to treat the proceedings as a lis, or to treat those entitled to participate in the enquiry as parties to such a lis. The Settlement Officer also participates in the enquiry; he can gather and place on record material evidence, but that does not make him a party in the sense of a party to a lis. A right to participate in the enquiry u/s 9 is not quite the same thing as an obligation to do so. There is no statutory obligation to plead -- to file statements within the meaning of Section 9(2) -- or to prove -- to adduce evidence, oral or documentary, as permitted by Section 9(3) of the Abolition Act. If the doctrine of burden of proof were to apply the position should be the same, whether or not the person likely to be affected by the decision participated in the Preceding enquiry.

29. What the doctrine of burden of proof implies is that the party to the lis on whom the burden lies fails, if he does not discharge that burden. That test cannot really apply to any of the persons entitled to participate in the enquiry before the Settlement Officer u/s 9 of the Abolition Act. Let me take an illustrative example. In an enquiry commenced suo motu by the Settlement Officer notices are issued u/s 9(2) of the Abolition Act. But neither the inamdar nor any one claiming to be a tenant in possession of lands in that village appeals to plead or to offer any evidence.

The default does not entail any penal consequences. The Settlement Officer has still to enquire and determine, to exercise the jurisdiction vested in him. That cannot be done by placing any burden of proof on the inamdar or on the tenants or even on the Government, all of whom are no doubt entitled to participate & offer evidence. If there is no evidence at all to show that the inam village is an estate, the Settlement Officer is bound to decide that it is not an estate and therefore not an inam estate. It is the evidence -- or the lack of it -- that decides the question, and not any burden of proof.

30. In proceedings u/s 9 of the Abolition Act the Settlement Officer may have to decide whether a given inam village was an estate u/s 3(2)(d) of the Madras Estates Land Act. When that investigation commenced, whether it was undertaken suo motu or on the application of any person, there was no initial presumption either way before the amending Act of 1956. The law

did not impose any burden to plead or to prove such a fact on any of those the Abolition Act authorised to participate in the enquiry.

The jurisdiction of the Settlement Officer was to enquire and determine, and to determine with reference to all the materials on record -- whether

the village was an estate, before going into the further question, whether it was an inam estate as defined by the Abolition Act. He could give

himself jurisdiction to decide the further question only by deciding correctly jurisdictional issue, whether the village was an estate as defined by

Section 3(2)(d) of the Madras Estates Land Act.

31. It should really be needless to emphasise the difference between inferences drawn from the material on record and presumptions permitted by

law in the absence of evidence. Either or both help the court or the tribunal to reach a conclusion, which is a process different from that where the

conclusion is forced by onus. Lord Dunedin pointed out in *Robins v. National Trust Co. Ltd.* 1927 AC 515 (M),

.....But onus as a determining factor of the whole case can only arise if the tribunal finds the evidence pro and con so evenly balanced that it can

come to no such conclusion. Then the onus will determine the matter. But the tribunal, after hearing and weighing the evidence, comes to a

determinate conclusion, the onus has nothing to do with it, and need not be further considered.

How it was put in *Lakshmanan v. Venkateswarlu* was,

When after the entire evidence is adduced, the tribunal feels it cannot make up its mind as to which of the versions is true, it will hold that the party

on whom the burden lies has not discharged the burden; but if it has on the evidence no difficulty in arriving at a definite conclusion, then the burden

of proof on the pleadings recedes into the background.

I have said that neither presumptions nor onus can be the determining factor in deciding in proceedings u/s 9 of the Abolition Act the question,

whether an inam village was an estate, or in determining as incidental thereto whether the minor inam in an inam village were granted in point of

time before or after the grant of the rest of the village but as a village. The Settlement Officer is therefore limited to the material on record, on which

alone he has to base his inferences and his ultimate conclusions.

32. In answering in the negative the question to which I have had to address myself, whether law imposes any onus on any of the persons entitled to participate in the proceedings before the Settlement Officer u/s 9 of the Abolition Act to establish, for instance, the point of time at which the minor inams in an inam village and the rest of the village were granted in inam, what is the quantum of material or evidence that will justify a positive conclusion, that the minor inams were granted anterior to the grant of the rest of the village, cannot arise for consideration at all. That is a matter for the statutory authority to decide, the Settlement Officer and the Tribunal as an appellate authority, to be corrected, if necessary, in proceedings under Article 226 of the Constitution.

But at no stage will onus be the determining factor in deciding at what point of time the respective grants were made. I may however permit myself to indicate that what the statutory authority, which has to determine the question has to satisfy itself is, whether there was any acceptable evidence or reservation of any further interest for the benefit of the grantor in the inam village after it had been granted in inam as a village. See *Kadagalla Venkanna Vs. Indukuri Lakshmipathi Raju and Others, and Kakarlapudi Janikiramaramaju and Others Vs. Gedala Appalaswami and Others*, . Such a question has to be decided with reference also to the nature of both sets of inam grants, what can be termed the major and the minor grants, and it has to be decided with reference to the material on record viewed as a whole, including the probabilities for or against any reservation of interest in the grantor when the major grant was made.

It is not proof beyond all possible doubt that is needed, but a balance of probabilities may well serve as the basis for the ultimate decision, but that balance of probabilities must be correlated to the material or evidence on record. For an instructive discussion on the scope of balance of probabilities as contrasted with proof beyond reasonable doubt see *Normal v. Neuberger Products Ltd.*, 1957 1 QB 247 (P). The observations are at pages 257, 261 and 266.

33. I have also refrained from examining in detail the scope of the explanation (1) to Section 3(2)(d) of the Madras Estates Land Act, because it does not strictly bear on the question of burden of proof. It is true, as Mr. Venkatarama Aiyar pointed out, that in *The District Board, Tanjore*

represented by its President Vs. M.K. Noor Mohamed Rowther and Others, the Supreme Court found that the major grant was not of a village as

such; but that did not support his further contention, that the explanation did not control the scope of the main portion of Section 3(2)(d) of the

Madras Estates Land Act. Such an argument was repelled by a Division Bench of this Court in Kakarlapudi Janikirammaraju and Others Vs. Gedala

Appalaswami and Others, . At p. 778 (of Mad LJ): (at p. 776 of AIR) Subba Rao J. pointed out that the decision of the Supreme Court in The

District Board, Tanjore represented by its President Vs. M.K. Noor Mohamed Rowther and Others, left unaffected the settled law on the subject

of the interpretation of the word "village" in Section 3(2)(d) of the Madras Estates Land Act. I find myself in respectful agreement with these

observations.

34. To sum up this portion of the case, I am of the view, that in proceedings u/s 9 of the Abolition Act before the Settlement Officer, whether they

were initiated suo motu or on an application by any person interested, the question whether a given inam village was an estate as defined in Section

3(2)(d) of the Madras Estates Land Act read with explanation (1) thereto, and the question, should it arise, whether the minor inams in the said

village were granted before or after the grant of the major inam, where the major grant was of the village as such, have to be decided by the

Settlement Officer on the material gathered at the enquiry--whether such material was placed before him by any of the parties entitled to participate

in the enquiry or whether it was collected by himself -- and not with reference to any question of onus, whether the burden be of pleading or of

proof.

I must make myself clear at this stage that I am concerned only with the enquiry before the Settlement Officer which preceded the determination by

the Settlement Officer for which Section 9(1) of the Abolition Act provided; no question of onus arises at that stage. I am not concerned with

questions, on whom does the burden, if any, lie at the stage of the appeal to the Tribunal to establish that the decision of the Settlement Officer is

erroneous, independent of the onus of establishing that a given inam village was or was not an estate. Nor need I concern myself now with the

question, on whom does the burden lie in proceedings under Article 226 of the

Constitution to show that the statutory authorities exercising the statutory jurisdiction vested in them by Section 9 of the Abolition Act acted within or in excess of that jurisdiction.

35. On the basis of what I have recorded above, I am compelled to state, with all respect to the learned Judges, that the view propounded in 1957

I MLJ 348 : AIR 1958 Mad 104 (A) ""In such a state of paucity of evidence, the cases must be decided on the basis of onus of proof"" is not correct, and must be overruled.

36. The question of burden of proof had to be considered at some length because that was specifically referred to the Full Bench for decision. It

should, however, be remembered that the question at issue, whether Hosakotta was an inam estate was finally determined by Rajagopala

Ayyangar J. without any reference to onus, but on the basis of the evidence on record, primarily the entries in the inam fair register.

37. The Tribunal which reversed the decision of the Settlement Officer held that the grant to the Devasthanam was not of the village as such, It held

further the burden lay on the tenant to establish that the grant of the minor inams had been antecedent to the inam grant in favour of the

Devasthanam, and that they had failed to discharge that burden. The Tribunal had thus come to the conclusion, that Hosakotta was not an estate

within the meaning of Section 3(2)(d) of the Madras Estates Land Act and explanation (1) thereto, and was therefore not an inam estate. It was

the correctness of that decision that was challenged in proceedings under Article 226 of the Constitution before Rajagopala Ayyangar J.

38. I have already pointed out that the question, whether Hosakotta was an estate, raised a jurisdictional issue, on the correct decision of which

depended the statutory jurisdiction vested in the Tribunal to decide whether Hosakotta was an inam estate as defined by Section 2(7) of the

Abolition Act. If Hosakotta was in fact an estate, and the Tribunal came to the wrong conclusion that it was not, it would really be a case of a

failure to exercise the jurisdiction vested in the Tribunal. The correctness of the decision of the Tribunal on the jurisdictional issue is open to

examination in proceedings under Article 226 of the Constitution.

Nonetheless the position is, that in proceedings under Article 226 of the Constitution for the issue of a writ of certiorari this court does not act as a

court of appeal, nor does it really substitute its findings on disputed questions of fact for those which the Tribunal is bound to record and to record

correctly. If the Tribunal failed to exercise the jurisdiction vested in it, this court should set aside the order by the issue of a writ of certiorari and

should in effect at least leave it to the tribunal to dispose of the appeal afresh after arriving at a correct decision on the jurisdictional issues.

39. Rajagopala Ayyangar J. held that the Tribunal went wrong in holding that the grant to the Devastanam was not of the village but was only of a

specified extent of lands in the village of Hosakotta. No serious attempt appears to have been made before the learned Judge to establish the

correctness of the view taken by the tribunal. I see no reason to differ from Rajagopala Ayyangar J. who held that the entries in the inam fair

register were sufficient to establish that the grant to the Devastanam was of the village as such.

40. Whether the minor inams in that village had been granted earlier than the inam granted to the Devastanam was decided by the Tribunal on the

basis of burden of proof. The Tribunal was clearly in error in arriving at its decision on such a basis. The Tribunal was bound to examine the

evidence, evaluate it, taking into account also the probabilities of the case, and arrive at a correct conclusion, freed of any incubus of burden of

proof. It is on that basis the order of the tribunal should have been set aside by the issue of a writ of certiorari, the effect of which would be that the

tribunal would have to dispose of the appeal afresh.

What were the relevant considerations to be taken into account and what were the reasonable inferences that could possibly be drawn from the

entries in the inam fair register were pointed out by Rajagopala Ayyangar J. in his judgment. It was thus a case of the tribunal failing to take into

account the relevant considerations and taking into account the irrelevant consideration of burden of proof in deciding whether or not the minor

inams had been granted anterior to the grant to the devas-tanam.

Though these aspects this court was bound to point out, still it is primarily for the tribunal to decide afresh the disputed questions of fact. As I said,

in proceedings for the issue of a writ of certiorari, this court does not substitute its findings for those of the tribunal, even if they are shown to be

erroneous. I shall therefore refrain from examining the correctness of the

inferences drawn by Rajagopala Ayyangar J. from the entries in the inam fair register. Whether those are the inferences that should in the circumstances of the case be drawn and what conclusion those inferences should lead to are, as I said, still for the Tribunal to decide.

41. The order of Rajagopala Ayyangar J. which has been appealed against should, in my opinion, be modified. While the order directing the issue of a writ of certiorari setting aside the order of the Tribunal should stand, there should be a further direction to the Tribunal to hear and determine the appeal afresh on the material on record, and also, of course, in the light of the subsequent legislative changes to which I have adverted earlier.

42. In the circumstances of the case there will be no order as to costs either in the proceedings before Rajagopala Ayyangar J. or in the appeal before us.

Ramachandra Iyer, J.

43. I entirely agree.

Ganapatia Pillai, J.

44. I have already perused the judgment just now pronounced by my learned brother, Rajagopala Jan J. but with all respect to him, I am unable to agree with his conclusions.

45. This appeal has been referred to this Pull Bench by Raia Mannar C. T. and Panchapakesa Ayyangar J. as in their opinion the decision of the

appeal involves reconsideration of the ruling of a Division Bench of this Court in 70 MLW 82: AIR 1958 Mad 104 (A). That Bench decision

followed the Supreme Court decision in *The District Board, Tanjore represented by its President Vs. M.K. Noor Mohamed Rowther and Others*,

on the question of burden of proof applicable to enquiries held by tribunals constituted u/s 9 of the Madras Estates (Abolition and Conversion into

Ryotwari) Act, 1948, in regard to inam estates. This Act will be hereinafter referred to as the Abolition Act. The policy underlying this Act is the

abolition of the zamindari and certain inam estates for eliminating all intermediaries between the State and the tenant on the land for the purpose of

rehabilitating the industry of agriculture and indirectly bettering the lot of a large body of persons who depend upon agriculture for their living. The

device adopted is the introduction of the ryotwari settlement in the permanently

settled areas.

46. The inam village concerned in his appeal is called Hasakotta. It is situated in Hosur taluk of Salem Dt. This village was granted as asarva inam

for the support of Varadaraj"aswami temple; but neither the date of the grant is known, nor is the grant available. This inam village was notified by

the Government under the Abolition Act on the result of an enquiry commenced suo motu by the Settlement Officer, Tiruchirapalli, to determine

whether this village was an inam estate or not, as defined in Section 2(7) of the Abolition Act. The trustee of the temple contended before the

Settlement Officer that the village was not an inam estate, while the tenants of that village supported the opposite contention, viz., that the village

was an inam estate.

The Settlement Officer declared the village to be an inam estate, as defined in Section 2(7) of the Abolition Act, Against this decision, the trustee of

the temple preferred an appeal to the Estates Abolition Tribunal, Vellore, which reversed the decision of the Settlement Officer, and upheld the

contention of the trustee. Against this decision of the tribunal, a tenant of the village, the first respondent in the appeal before us preferred W. P.

No. 774 of 1954 for the issue of a writ of certiorari to quash the order of the Tribunal. Rajagopala Ayyangar J. who heard this writ petition held

that the view of the Tribunal that the village was not an inam estate was clearly erroneous and came to the conclusion that the decision of the

Settlement Officer was correct.

Thereupon, he quashed the order of the Tribunal. When the appeal against this order of Rajagopala Ayyangar J. came up for hearing before the

Bench mentioned above, one of the contentions raised was that the decision in 70 MLW 82: AIR 1958 Mad 104 (A) on the point of incidence of

the rule of onus of proof in enquiries u/s 9 of the Abolition Act required reconsideration. The Bench accepted this contention in view of the

importance of the question of onus of proof in such enquiries which affect the rights of landlords and tenants as well as of Government.

47. Section 2(7) of the Abolition, Act defines an inam estate thus:

"Inam estate" means an estate within the meaning of Section 3, clause (2)(d) of the Estates Land Act, but does not include an inam village which

became an estate by virtue of the Madras Estates Land (Third Amendment) Act

of 1936.

It will be necessary for our present purposes to refer to the definition of an estate in respect of inam villages contained in the Estates Land Act as it

stood before 1936. The definition with which we are now concerned occurring in Section 3(2)(d) of the Estates Land Act as amended runs thus:

Any inam village of which the grant has been made, confirmed or recognised by the 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.

Explanation (1): Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be

deemed to be an estate, notwithstanding that it did not include certain lands in the village of that name which have already been granted on service

or other tenure or been reserved for communal purposes.""

48. It was conceded before Rajagopala Ayyan-gar J. and also before us that the grant of Hosakotta was of a named village. The difficulty in this

case really turns upon the existence of three minor inams within the boundaries of Hosakotta. The Inam Fair Register of the village shows that out

of the total ayacut of 255.76 acres, two extents of 69.95 acres and 22.28 acres were deducted under the heads ""poromboke"" and ""minor inams

respectively.

The remaining extent of 163.53 acres was confirmed in favour of Varadarajaswami temple by the Inam Commissioner. The minor inams were

three in number: (1) confirmed by title deed No. 1291,--13.65 acres in extent--in favour of Varadarajaswami temple itself; (2) confirmed by title

deed No. 1292 in favour of Timmarayaswami temple in Hosakotta of an extent of 4.17 acres, and (3) Dhannadaya inam in favour of one

Krishnappa covering: an extent of 4.45 acres. Neither the grants nor the dates of these grants of minor inams are available.

49. Before discussing what should be the rule of onus of proof applicable for determination of the question whether the inam village of Hosakotta is

an inam estate as defined in the Abolition Act, I should notice the submission of the learned Advocate General that, in an enquiry u/s 9 of the

Abolition Act, there was no scope for application of the rule of burden of proof.

50. The first argument of the learned Advocate General was that the decision of

the Tribunals constituted u/s 9 of the Abolition Act was an ad hoc decision to enable the Government to notify the village, and this decision would not affect any rights inter se between the tenant and the landlord of the concerned village or in other words it was not a judicial decision. It is true that a number of decisions of this Court have laid down that the only question for decision in an enquiry u/s 9 within the exclusive jurisdiction of the Settlement Officer and the Tribunal is whether the grant constituted both warams or only the malwaram.

The other question, whether the grant comprised the whole village or not is admittedly not within the exclusive jurisdiction of such tribunals. On this latter point, notwithstanding the decision of the Settlement Officer or the tribunal, the civil courts will still have jurisdiction to decide it. It is unnecessary to cite all the authorities which have laid down this proposition except *Gosukonda Venkatanarasayya and Others Vs. The State of Madras*, . In view of this, the learned Advocate General designated the decision of the tribunals u/s 9 of the Abolition Act as a tentative decision which had none of the attributes of a judicial decision. For our present purposes I need not notice the provisions of Madras Act 30 of 1956 on the presumption relating to inam estates because this case falls to be decided entirely on the provisions of the Abolition Act.

Merely because on one of the two points arising for decision the Tribunals u/s 9 of the Abolition Act are not competent to pronounce a conclusion which is either final or binding upon all parties one cannot conclude that the enquiry before the Settlement Officer is not akin to a judicial one, but resembles an investigation for administrative purposes. In this connection the language of Section 9(1) of the Abolition Act is pertinent: "The Settlement officer may "suo motu" and shall, on application inquire and determine whether any inam village is an inam estate or not." (Italics (here into "" "") are mine).

51. It is common ground that the tribunals set up u/s 9 of the Abolition Act are statutory tribunals falling under the first category of the tribunals enunciated in the judgment of Lord Esher M. R. in *Regina v. Commissioners for Special Purposes of Income Tax*, 1888 21 QB 313 (R). In describing the powers of such tribunals Lord Esher M. R. says:

When an inferior court or tribunal or body which has to exercise the power of

deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that if a certain state of facts exists and is shown to such Tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists and if they exercise the jurisdiction without its existence what they do may be questioned and it will be held that they have acted without jurisdiction.

Accordingly, even though it is not for the Settlement Officer or the Tribunal to decide finally whether a certain land is an inam village, it cannot be doubted on the language of Section 9 of the Abolition Act that their decision on the question whether the grant comprised both the warams or the melwaram alone is a binding decision and they have jurisdiction to decide it. That in my opinion would be the true test to find out if the decision rendered u/s 9 is a judicial decision. Indeed, Clause 7 of Section 9 of the Abolition Act lays-down the presumption applicable to the question whether the grant comprised both the warams or the melwaram alone. This clause enacts that, in the absence of evidence to the contrary, the tribunals shall presume an inam village to be an inam estate.

Nor can the obligation cast upon the Settlement Officer by Section 9(3) to examine all such documents in the possession of the Government and having a bearing on the question for his decision detract from the judicial character of his functions. Indeed under our CPC Courts also have the power to call for relevant evidence suo motu. The fact that this power is made obligatory in the case of the Settlement Officer is sufficiently explained by the nature of the inquiry he has to make and should not in my opinion obliterate the essentially judicial character of it.

I am therefore unable to agree with the learned Advocate General in his submission that the decision u/s 9 is an ad hoc decision and consequently the inquiry under the provisions of the Abolition Act lies outside the purview of the application of the rule of onus of proof.

52. The next contention of the learned Advocate General was that the rule of burden of proof could apply only to proceedings in the nature of a lis and he maintained that an enquiry before the tribunals constituted u/s 9 would not amount to a lis. The essence of a lis is that there is a proposal on

a question to be decided by a Tribunal and an opposition to that proposal put forward by another party. Bearing this in mind, I agree that the

jurisdictional part of the enquiry u/s 9 may not possibly amount to a lis; but I fail to see how the remaining part of the enquiry resulting in a decision

which is binding upon all parties would not resemble a lis.

Indeed, Section 64(A) of the Abolition Act introduced by a subsequent amendment specifically lays down that the decision of a Tribunal or a

Special Tribunal or of a Judge of a High Court in any proceeding under the Abolition Act on any matter falling within its or his jurisdiction shall be

binding on the parties thereto and any persons claiming under them in any suit or proceeding in a civil court in so far as such matter was an issue

between the parties to such proceeding. This enactment clarifies the position as regards the nature of a decision given under S. 9 of the Abolition

Act on a matter which lay exclusively within the jurisdiction of such Tribunal and shows that the Settlement Officer has jurisdiction to decide and he

has to exercise his powers in a judicial manner.

53. Of course, there are no pleadings and no parties to the proceeding u/s 9 in the sense of anyone being called a plaintiff or a defendant. This,

however, would not, in my opinion, make any difference. Section 9 imposes upon the Settlement Officer the duty of giving notice of the enquiry to

all interested parties and calling upon them to file statements of their claims. If it were necessary, these statements could be equated to pleadings,

The Settlement Officer is further bound to give reasonable opportunity to all parties appearing before him to adduce evidence in proof of their

respective contentions. There is no difference in this procedure even when the enquiry is started suo motu by him.

Although the issue which the Settlement Officer has to decide relates to the tenure of the village, his decision nevertheless determines the properly

rights of the ryots and the landlord concerned. The procedure prescribed, the applicability of the rule as to presumption provided in Clause 7 of

Section 9 and the nature of the decision rendered by the Settlement Officer all point to the conclusion that the proceeding before that officer,

though it may not amount to, in the technical language of the law, a lis, is nonetheless a proceeding which is essentially judicial in character. It

follows a fortiori that an appeal from such a proceeding should also partake of

the same character,

54. Another argument of the learned Advocate General was that the incidence of the burden of proof is usually settled both under our Evidence Act

and other systems of jurisprudence upon the answer to the question "Who would fail if no evidence were let in?" and on the principle that the party

who asserts a positive fact must prove it (See Taylor on Evidence, 12th Edn, p. 252, Phipson on Evidence 7th Edn. p. 30, and 15 Halsbury's

Laws of England, 3rd Edn. P. 267). Section 102 of the Evidence Act enacts that the burden of proof in a suit or proceeding lies on that person

who would fail if no evidence at all were given on either side. The argument then proceeded thus : the rule as to onus of proof might possibly apply

to a proceeding started u/s 9 either at the instance of the landlord or the ryot, but it can never apply to a case where the proceeding is started suo

motu by the Settlement Officer.

In the last-mentioned case, it was argued, there was no question of any one failing or succeeding as the result of the finding in the enquiry. These

criteria for settling the rule of onus of proof have been applied with reference to actions brought in regular courts wherein one party always starts

the action either as a prosecutor or as a plaintiff and the other party is arrayed as an accused or as a defendant and when a relevant positive fact is

asserted by one party and denied by the other. The absence of any such parties to a proceeding u/s 9 does not indicate that the Settlement Officer

is not called upon to decide in a judicial manner questions which impinge upon the rights of parties.

55. The learned Advocate General lastly contended that it was not incumbent upon the Settlement Officer to give a positive decision on the

evidence available before him, because he argued, that it would be open to the Settlement Officer to hold on the ground of want of evidence that

he should drop the proceedings in which event no onus of proof would come in. What a Settlement Officer is called upon in the first instance to

decide is whether the land in question is or is not a minor inam, i.e., whether it constitutes an inam village. As already mentioned by me, the

Settlement Officer must be satisfied on two points before he could hold that an inam village is an inam estate.

The first is that the grant of the village was either by name or as a whole village

and therefore the land was not a minor inam. The second is whether the grant comprised both the warams or the mel-waram alone. If the Settlement Officer is satisfied that the land is not a minor inam, but is an inain village, a duty is cast upon him by the language of Section 9 (1) of the Abolition Act to give a judicial finding upon the other question whether the grant comprised both warams or not. It follows that the rule of onus of proof should then come into play.

56. It is not enough to state that part of the duties of the Settlement Officer is to gather evidence which is analogous to investigation and therefore the enquiry before him would not be a judicial enquiry. A statutory tribunal which has jurisdiction as distinguished from mere power or authority, to give a decision affecting the rights of parties, is clothed with a judicial power. Of course, the duty of giving a decision should also be exercised in a judicial manner before the resulting decision can be called a judicial one.

I am satisfied, having regard to the procedure prescribed in Section 9 (1) and other provisions of the Abolition Act already adverted to that the Settlement Officer is not entitled to give a decision in any arbitrary manner, but is bound to decide only after inviting parties to file statements of their case, after giving opportunity to them to adduce evidence, and after evaluating the evidence let in by the parties and also the evidence secured by himself by looking up documents in the custody of the Government. Where the evidence available to the Settlement Officer is conclusive one way or the other, he would have no need to have recourse to the rule of onus of proof. But I cannot agree that the Settlement Officer is not in any eventuality called upon to decide which of the opposing contentions should be accepted by him as made out by the available evidence.

57. In proceedings of a civil nature, the standard of proof necessary for a tribunal to hold a fact to be established is not the absolute standard required in a criminal proceeding. Where the evidence on both sides is evenly balanced, the balance of probabilities must be taken note of. If the balance of probabilities does not tilt the scales in favour of one contention, the Tribunal must have recourse necessarily to the rule of burden of proof to decide the issue. The argument, therefore, that the Settlement Officer may excuse himself from giving a decision if there is no evidence to

show that the land in question is an inam village really begs the question.

It is only in cases where he is satisfied that the land in question is an inam village that a necessity for giving a decision which will be binding upon the

parties arises. In that contingency, despite the absence of parties and pleadings as are known in civil proceedings, the Settlement Officer is under a

duty to find for one or the other of the two opposing contentions urged before him and it follows that in discharging this duty he should have the aid

of onus of proof. I am of opinion, therefore, that the tribunals established u/s 9 of the Abolition Act fall under the first category of tribunals

described by Lord Esher M. R. in 1888 21 QB 313 (R), and that the Settlement Officer has got jurisdiction to decide whether an inam village is an

inam estate, and that such a decision must be arrived at in a judicial manner. I therefore hold that, in a proceeding before the Settlement Officer u/s

9 of the Abolition Act, there is both need and scope for application of the rule of onus of proof.

58. The next question for our decision is, what should be this rule of onus of proof? Mr. Vedanta-chari, the learned counsel for the trustee of the

temple, maintained that the burden would wholly lie upon the tenant to show that an inam village was an inam estate as defined in Section 2 (7) of

the Abolition Act, viz., it was not enough for him merely to show that the grant was of a whole village or of a named village, but that he must further

show that a minor inam existing within the boundaries of the village was granted anterior to the date of the grant of the village.

The contention of Mr. M. S. Venkatarama Aiyar, learned counsel for the petitioner in the writ petition (one of the tenants of the village) was that

once the Settlement Officer found that the grant was of a whole village either by name or by boundaries without excluding any portion thereof, the

mere existence of minor inams within the ambit of the village without any proof of their exclusion from the grant of the village would not detract

from the village being held to be an inam estate. He further maintained that if the Settlement Officer was satisfied that the inam village had been

granted either by name or by boundaries which included the whole village, the onus of showing that by reason of the existence of minor inams the

village fell outside the scope of the definition "of an inam estate in the Abolition Act would be upon the person contending that the grant of the

village excluded the minor inam.

59. Before deciding which of these two should be accepted as the correct rule, I would briefly refer to the controversy in the judicial decisions

upon the conditions necessary for entitling an inam village to be called an inam estate to indicate the existing law on this point from which alone the

correct rule of onus has to be deduced. It would be unnecessary for this purpose to refer to the wealth of case-law available on the subject except

a few leading cases. Nor need I refer to the cases bearing upon the controversy relating to definition of inam village as it existed before 1936.

60. It is common ground that the inam village in this case Hosakotta did not become an inam estate by reason of the amendment of the Madras

Estates Land Act made in 1936. The controversy in the judicial decisions centred round the question, what would constitute a whole village? This

expression found in Section 3 (2) (d) of the Madras Estates Land Act first came up for judicial interpretation in ILR (1916) Mad 683 : AIR 1916

Mad 263 (J). There, the Zamindar of Nuzvid made a rent-free grant of Venkatapuram Agraharam to one Bala-venkateswaraswami. Within the

ambit of this village there were situated archaka inams, village service inams and Dharmadaya inams. It was not clear whether the grant to the

temple of the village was made first, or the minor inams were granted first. The argument addressed to the Bench was that inasmuch there were

minor inams in the village, Ven-katapuram Agraharam was not a village. In dealing with this contention, Wallis C. J. and Srinivasa Ayyangar J.

made the following observations :

The definition in sub-s. 2 Clause (d) was obviously intended to exclude from the definition of "estate" what are known as minor inams, namely,

particular extents of land in a particular village as contrasted with the grant of the whole village by its boundaries. The latter are known as "whole

inam villages". The existence of "minor inams" in whole inam villages is very common and if these inam villages do not come within the definition of

estate"" almost all the egraharam, shrotriem and Mokhasa villages will be excluded. This certainly cannot have been the intention of the legislature.

These minor inams are generally granted for services to be rendered to the village or to the owner and that seems to be the nature of the minor

inarns in this case. In all the documents, the temple is described as the owner of

the whole village and in these circumstances the burden is upon the plaintiff to show that the grant was only or the revenue of a portion of the lands in the village and he has not put in evidence the inam register which would have supported his case, if true.

61. This view held the field till 1943 when Tulabandu Ademma Vs. Sreemath Satyadhyana Thirtha Swamivaru represented by the general power

of attorney agent, Markapuram Srinivasacharlu and Others, took a different view. This Bench decision held that unless every bit of land in the

village was included in the grant the grant could not be of the whole village and the land granted could not have formed an estate. Satti Suri Reddi

and Others Vs. Kolachina Agnihotrudu and Another, , followed this view. Thereupon, the Madras legislature intervened and added explanation (1)

to Section 3 (2) (d) by the Madras Estates Land (Amendment) Act II of 1945. The stated purpose of the amending Act was to restore the well-

settled view upheld in ILR (1916) Mad 683 : AIR 1916 Mad 263 (J), which was disturbed by the decision in Tulabandu Ademma Vs. Sreemath

Satyadhyana Thirtha Swamivaru represented by the general power of attorney agent, Markapuram Srinivasacharlu and Others, .

Under the explanation introduced in 1945 when the grant of an inam was expressed to be of a named village, it would be an estate,

notwithstanding that it did not include certain lands in the village which had already been granted on scr-vice or other tenure or had been reserved

for communal purposes. Thus, under the definition of an inam village as explained by the amendment, a named village would be an inam village

notwithstanding the pre-existence of certain minor inams within its ambit. After the explanation, the legal position on this matter was thus summed

up by Subba Rao J. in Kakarlapudi Janikiramaraju and Others Vs. Gedala Appalaswami and Others, , with which I am in respectful agreement :

Therefore, after the explanation, the legal position was this: the whole village could be granted either by name or by including the entire extent

within the boundaries of a village. In case a named village was granted, the existence of minor inams in the village before such grant would not

make it any the less the grant of the whole village. This result would flow not by reading Explanation 1 separately from the main part of clause (3)

(2) (d), but by reason of the fact that Explanation 1 declared the correctness of

the pre-existing law.

An argument was advanced to the Bench in *Kakarlapudi Janikiramaraju and Others Vs. Gedala Appalaswami and Others*, , that this view had

been upset by the judgment of the Supreme Court in *Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel*, . The Bench did not accept that

argument, which was based upon the supposed difference between the content of the grant of a whole village referred in Section 3 (2)(d) and that

referred to in explanation 1 to Section 3(2)(d). In view of the fact that; this argument was not pressed before us, though advanced before

Rajagopala Ayyangar J. it need not detain me any longer.

Regard being had to this state of the law as to what constitutes a grant of a whole inam village and there being no dispute in this case that the grant

of Hosakotta was that of a named inam village, the only remaining question for our consideration is, what is the effect of the existence of the minor

inams? Is it to be concluded in the light of the evidence in this case and the onus of proof, that the three minor inams were granted subsequent to

the major grant of that village to Varadarajaswami temple or the minor grants were simultaneous with or anterior to the major grant?

62. Mr. Vedantachari strongly relied on the Supreme Court decision in *The District Board, Tanjore represented by its President Vs. M.K. Noor*

Mohamed Rowther and Others, , and some decisions of this court and the Andhra High Court following it, as laying down that the onus was upon

the tenant to show that the minor inams were granted anterior to the date of the major grant of the village. In the Supreme Court case, the suit was

filed in a civil court by a landlord for an injunction restraining the tenant, the defendant, from disturbing the plaintiff's possession of a certain land.

The tenant pleaded occupancy rights on the ground that the suit lands were comprised in an estate and therefore the civil court had no jurisdiction

to entertain the claim for eviction. On these facts, the Supreme Court ruled that the principle that it was for the party pleading ouster of a civil

court's jurisdiction to establish his case, governed the onus of proof and consequently the onus of showing that the village was an estate lay upon

the defendant. Indeed Section 9 C. P. C. is the basis for this principle. In my opinion, the decision of the Supreme Court really proceeds on the

application of this principle. As the learned Chief Justice pointed out in his order

of reference there is no reason to conclude that this principle can have any application to a proceeding u/s 9 of the Abolition Act.

63. Venkatarama Ayyar J. (as he then was) had to consider this question in W. P. No. 833 of 1951 (Mad) (S) (unreported), after the decision of

the Supreme Court in The District Board, Tanjore represented by its President Vs. M.K. Noor Mohamed Rowther and Others, was rendered.

The case before Venkatarama Aiyar J. related to the village of Kak-kakottai Settiyendal. The Settlement Officer acting u/s 9 of the Abolition Act,

on a construction of the Inam Fair Register in that case, held that the village was an inam estate, because the grant was of a named whole village.

This decision was affirmed on appeal by the majority of the Tribunal.

The writ petition was filed to quash the decision of the Tribunal. The grant in question there was made by a Raja to one Tirumala Chari for his

subsistence. The Inam fair register referred to a takid of 1760 which was produced before the Inam Commissioner. The deed by which the village

was granted was not available. In the takid of 1760, the inam village was referred to as a hamlet of Molumbur. In certain revenue accounts of

1802 and 1804 also, the village granted was referred to as Dharmasanam Kakkakottai, hamlet of Molumbur. Notwithstanding this description of

the village in the takid and the revenue accounts, the Tribunal by a majority held that there was no proof that, prior to Fasli 1211, the Kakkakottai

was a hamlet of Molumbur.

On this line of reasoning, the Tribunal concluded that it had not been shown that the village of Kakakottai constituted a hamlet of Molumbur or had

been carved out of the village of Molumbur at the time of the grant. The learned Judge (Venkatarama Aiyar J.) disagreed with this view. He

referred to the Supreme Court decision in The District Board, Tanjore represented by its President Vs. M.K. Noor Mohamed Rowther and

Others, , on the question of onus of proof According to the definition of an "inam estate" in the Estates Land Act prior to the amending Act of

1936, three conditions should be satisfied before an inam village could become an inam estate; (1) the grant must be of a whole village, (2) the

grant must have been of land revenue alone to a person not owning the kudiwaram, and (3) that it should have been made, confirmed or

recognised by the British Government.

After noticing these conditions and referring to the conflict of judicial opinion on the question of the grant comprising both warams or only the mel-

waram, the learned Judge observed that Section 9 (7) of the Abolition Act was enacted to put an end to this conflict. But, on the other question,

the learned Judge observed thus :

But, where the question is whether the grant is of a whole village or a part of it, Section 9 (7) has no application. The burden is therefore in the first

instance on the tenant to prove that the grant was of the entire village.

He concluded by observing that the onus of proof was wrongly thrown on the Inamdar when the majority of the Tribunal held that he had failed to

show that Kakkakottai did not constitute a whole village at the time of the grant. Though in the case before the learned Judge (Venkatarama Aiyar

J.) there were no minor inams to complicate the issue, the observation of the learned Judge quoted above in my opinion indicates that the onus of

showing that an inam village, is a grant of a named village or of a whole village is a shifting onus and that there is scope for the operation of the rule

of onus of proof in proceedings u/s 9 of the Abolition Act.

64. The argument of Mr. Vedanranchari based upon the Supreme Court judgment in *The District Board, Tanjore* represented by its President Vs.

M.K. Noor Mohamed Rowther and Others, , which was followed, if I may say so with respect, without noticing the principle upon which that

decision was based in 1957 1 MLJ 348 : AIR 1958 Mad 104 (A), that the burden should lie only upon the party who contends that the inam

village is an inam estate could not therefore be a correct statement of the rule of onus applicable to proceedings u/s 9 of the Abolition Act.

65. The next argument of Mr. Vedantachari was that, in any event, the party who desires the application of the Abolition Act to a particular village

should undertake the burden of establishing facts justifying such application. As a sub-head under this argument he contends that the benefit of the

statute (Act XXVI of 1948) goes to the ryots alone and therefore the ryots should shoulder the burden of showing that the Act applied to a

particular village.

66. Underlying these arguments is the assumption of the existence of full similarity between a claim in a civil proceeding and a proceeding u/s 9 of

the Abolition Act. This basis would be incorrect if one remembers that a

Settlement Officer is empowered to start an enquiry suo motu. That the tenants also can invite the Settlement Officer to start an enquiry should, in my opinion, make no difference on this matter. This test for determining the burden of proof can therefore have no application to proceedings u/s 9. The test based upon benefit is equally untenable. The proceeding u/s 9 is only devised to give effect to the policy underlying the statute, i.e., the Abolition Act.

It would be wholly beside the point to contend that since the benefit of the Abolition Act goes to ryots alone of which I do not express any opinion they should shoulder the burden of establishing that an inam village was an inam estate and that such burden would never shift under any circumstances. In a given case, neither the landlord nor the tenant may desire an enquiry u/s 9, and the Government alone may be interested in holding an inquiry. As already pointed out, even when none of the parties desires an enquiry, the Settlement Officer himself can start an enquiry on his own initiative.

It follows this ground also cannot be relied on as a decisive test to formulate the rule. I am of opinion that the correct rule of onus of proof

applicable to a proceeding u/s 9 would be the following. To start with there is no presumption either way that a particular extent of land is an inam

village. It is for the tenant to show in the first instance that an inam village was granted as a whole village or as a named village as laid down in

Kakralapudi Janikiramarama and Others Vs. Gedala Appalaswami and Others, . If the tenant discharges that burden, it would then be for the

opposite party or for the party contending contra to establish that the village in question falls outside the definition contained in Section 3 (2) (d) of

the Madras Estates Land Act either by showing that minor inams not comprised in the grant were granted contemporaneously with or subsequent

to the grant of the village or by reason of any other cause. The existence of poramboke land in the village is of no account on the question of onus

of proof, having regard to the decision of the Full Bench of this court in Mantravadi Bhavanarayana and Another Vs. Merugu Venkatadu and

Others, .

67. Applying the rule of onus of proof indicated above, I shall now examine the facts of the case before us. While the Settlement Officer held on

the evidence available, namely, the entries in the Inam Fair Register and the Register of inams in the village, that the village was an inam estate as

defined in Section 2 (7) of the Abolition Act, the tribunal differed from this view on the ground that, having regard to the rule of onus of proof laid

down in The District Board, Tanjore represented by its President Vs. M.K. Noor Mohamed Rowther and Others, , the evidence did not establish

either that the grant or the village was of whole village or that the area excluded under the minor inams had already been granted for service or

other tenure. Neither the title deeds granted by the Inam Commissioner for the whole village and the minor inams nor the deed under which the

village was originally granted to Varadarajaswami temple are available. Thus, the entries in the Inam Fair Register and Register of Inams in the

village constitute the sole evidence in the case.

68. Across columns 9 to 15 in the Fair Inam Register is found the statement: ""This is a sarva inam village for the support of Devadayam"". Under

column 12, after setting out the fact that no sanad for the grant of the village was forthcoming, three takids which mention the grant are noted. The

first is a takid dated fasli 1209 showing that the village was granted for the performance of service to Varadarajaswami in the name of one Stanika

Varadappa. The second is a takid of January 1822 issued in conformity with the order of the Collector of Salem, confirming the grant of the village

for the service of Varadarajaswami. The third is A takid of the Tahsildar dated 5-9-1822 which purported to follow the takid of the Collector of

Salem dated January 1822.

I respectfully agree with Rajagopala Aiyangar J. that these entries by themselves are sufficient to show that the grant was of a named village so as

to satisfy the terms of Section 3 (2) (d) as they stood before the amendment of 1936. Against this view, the entries in columns 4 to 6 purporting to

show that the grant to the temple was of a specified extent of 163.53 acres, wet and dry lands, taken along with the deductions for the three minor

inams, were relied upon before Rajagopala Aiyangar J. Columns 4 to 6 indicate that the total ayacut was 255.76 acres. From this, an extent of

69.95 acres is deducted as poromboke. From the resulting balance, another extent of 22.28 acres is deducted as minor inams. The remaining land

is described as 163.53 acres in extent ""circar"" and, under column 6, the

assessment thereon is shown. The grant to Varadarajaswami temple was free of assessment.

69. There, being no dispute before us that the grant of Hosakotta was the grant of a named inam village, the only remaining question is, "What is the effect of the existence of the minor inams?" It is to be concluded in the light of the evidence in the case that these minor inams were granted subsequent to the major grant of the village to Varadarajaswami temple or that these minor grants were simultaneous with or anterior to the major grant?

70. The first of these minor grants is covered by title deed No. 1291 in favour of Varadaraja-swami temple itself. The area granted under this title deed is 13-65 acres. It was not seriously pressed before us that this minor inam could have been granted subsequent to or simultaneously with the major grant or the village. Such a contingency is so remote that we could reject it as almost impossible. There can be no doubt, therefore, that this minor inam was granted anterior to the grant of the village to the temple under the major grant. We do not know for certain who was the grantor of this minor inam, but we can certainly presume that this minor inam did not originate from the temple or Varadarajaswami.

71. The second minor inam covered by title deed No. 1292 is in favour of Thimmarajaswami temple in the same village of Hosakotta. The extent granted is 4.17 acres. This and the other minor grant could be considered together. The third was a Dharmadayam grant in favour of one Krishnappa and the extent granted is 4.45 acres. There could be three possibilities in respect of these two minor inams : (1) they were granted anterior to the major grant of the village to Varadarajaswami temple, (2) these grants might have been contemporaneous with the major grant; and (3) these could have been granted subsequent to the major grant.

Rajagopala Ayyangar J. differing from the tribunal held that these two minor inams should have been granted anterior to the major grant, because it could not be postulated in respect of the minor inam in favour of the Varadarajaswami temple that it could have been granted either subsequently or contemporaneously. This reason appears to me to be conclusive and I am in respectful agreement with Rajagopala Ayyangar J. in holding that the two other minor inams also should have been granted anterior to the major

grant of the village. Of course, this conclusion can be supported only on the application of the rule as to balance of probabilities.

The learned Advocate General contended that such a decision based on probabilities would not be permissible if there was no rule of burden of proof applicable to the case. True, but there being no evidence on the question of date of grant of three minor inams, if the rule of onus of proof which on this point which I have indicated supra applies the decision must necessarily go in favour of the contention of the tenants. I cannot therefore accept the contention of the learned Advocate General that Rajagopala Ayyangar J. should have set aside the order of the Tribunal and sent back the case to the tribunal for reconsideration.

With respect, I agree with Rajagopala Aiyangar J. that the evidence and findings available on record justify a conclusion being reached on the question of the age of the minor inams without the case being sent back to the Tribunal for reconsideration. If it is established that the tribunal was clearly in error in arriving at its decision and the Settlement Officer was right in his conclusion I respectfully differ from Rajagopalan J. when he describes the effect of the order of Rajagopala Ayyangar J. as substituting his findings on disputed questions of fact in place of the findings of the tribunal. The facts themselves were not in dispute. The difference arose only on the inferences to be drawn from the facts. When the tribunal failed to exercise jurisdiction on an erroneous view of the rule of onus of proof applicable, this court has power under Article 226 of the Constitution to quash such an order of the Tribunal. I would therefore dismiss the appeal.

ORDER

Rajagopalan, J.

72. In view of the opinion of the majority, the order of the court will be that the order of Raja-gopala Ayyangar J. be modified as follows : The order directing the issue of a writ of certiorari will stand, but, there will be a further direction to the tribunal to hear and determine the appeal afresh on the material on record, and, also, in the light of the subsequent legislative changes.

73. There will be no order as to costs in the proceedings before Rajagopala Ayyangar J. or in the appeal before us.