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here also. He then says that this rule restricts the powers of a managing officer or a managing corporation in the matter of cancellation of allotment in the sense that it permits cancellation only on certain specified grounds and, therefore, it cannot be said that s. 19(1) of the Act is completely in conflict with s. 10 of the Administration of Evacuee Property Act in so far as the question of cancellation of allotment is concerned. We cannot accept the argument because, apart from the fact that the acquired properties have ceased to be evacuee properties, cl. (d) of r. 102 permits the managing officer or managing corporation to cancel allotment "for any other sufficient reason to be recorded in writing". The only effect of r. 102 is to permit cancellation of an allotment for reasons stated. That is all. In our opinion, therefore, this rule does not help the appellants.

Mr. Khanna had raised three other points but upon the view which we have taken as to the effect of ss. 12 and 19 of the Act, it is not necessary to consider them.

The appeal is accordingly dismissed. We, however, make no order as to costs because had there been no delay on the part of the Custodian General in dealing with the revision application the present situation would not have arisen.

Appeal dismissed.

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March 16.

P. V. BHEEMSENA RAO

v.

SIRIGIRI PEDDA YELLA REDDI AND OTHERS

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Inam grant—Personal, burdened with service—Alienation by grantee and service discontinued—If resumable by revenue authorities—Madras Hindu Religious Endowments Act, No. II of 1927, ss. 44-B(1), 44-B(2)(a)(I) and (II), Board's Standing Order 54.

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The property in dispute was granted in inam to the ancestors of the predecessors-in-interest of the plaintiff-respondents for the performance of *parak* service in certain temples but the grantees alienated considerable portion of the property and ceased to perform the *parak* service. On being moved by the trustees under s. 44-B(2)(a)(i) and (ii) of the Madras Hindu Religious Endowments Act, 1927, the revenue authorities after holding an enquiry ordered resumption of the inam lands and regranted them to the temple. The alienees thereupon filed a suit in which their main contention was that the revenue authorities had no jurisdiction to order the resumption of the inam under s. 44-B of the Act which is in these terms:—

"Any exchange, gift, sale or mortgage and any lease for a term exceeding five years, of the whole or any portion of any inam granted for the performance of a charity or service connected with a math or temple and made, confirmed or recognised by the British Government, shall be null and void."

Both the trial court and the High Court on appeal held that the inam was a personal inam burdened with service to the temple and the case did not fall under s. 44-B of the Act. On appeal by the trustees with a certificate of the High Court,

Held, that the distinction between a grant for an office to be remunerated by the use of land and a grant of land burdened with service is that the former is a case of service grant and is resumable when the service is not performed; the latter is not a service grant as such but a grant in favour of a person though burdened with service and its resumption will depend upon whether the circumstances in which the grant was made establish a condition that it was resumable if the service was not performed.

Shrimant Lakhamgouda v. *Raosaheb Baswantrao*, (1931) LXI M.L.J. 449, referred to.

Though on a wide interpretation s. 44-B(1) might also include personal inams burdened with service it is really confined to inams directly granted to the temple or service inams for the purpose of a temple or math or inams the whole income of which is meant for charity and does not include personal inams burdened with service. Such inams would continue to be dealt with under Board's Standing Order 54 class (b) as introduced by the amendment to that order.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 752 of 1957.

Appeal from the judgment and decree dated January 8, 1954, of the Madras High Court in Second Appeal No. 312 of 1949.

A. V. Viswanatha Sastri and *T. V. R. Tatachari*, for the appellant.

P. Somasundaram and *T. Satyanarayana*, for the respondents.

1961. March 16. The Judgment of the Court was delivered by

WANCHOO, J.—This appeal on a certificate granted by the Andhra Pradesh High Court raises the question of the interpretation of s. 44-B(1) of the Madras Hindu Religious Endowments Act, No. II of 1927 (hereinafter called the Act). The point arises in this way. The property in dispute was originally granted in inam to the ancestors of the predecessors-in-interest of the plaintiffs-respondents for the performance of *parak* service in the pagodas (temples) of village Panyam in Nandyal Taluk of the Kurnool District. The grantees of the land in this inam alienated a considerable portion of it and also ceased to perform the *parak* service. In consequence, the trustees of the temples at Panyam applied to the Sub-Collector under s. 44-B (2) (a) (i) and (ii) of the Act for the resumption of the lands and their re-grant to the temples on the ground that the holders of the inam had alienated the property and had failed to perform the service required of them. An inquiry was conducted into these allegations, and it was held by the Revenue Divisional Officer, Nandyal, that the inam had been granted on the condition of *parak* service being rendered and that there had been breach of the condition on failure to perform the service and also that the lands comprised in the inam had been alienated in a manner falling within s. 44-B (2) (a) (i) of the Act. On these findings the resumption of the inam lands was ordered and the inam was re-granted to the temples in Panyam village. The alienees took the matter in appeal to the Collector but failed. Thereupon they filed the suit out of which the present appeal has arisen; and their main contention was that the revenue authorities had no jurisdiction to order the resumption of the inam under s. 44-B. The suit was resisted by the trustees who were defendants to it and their case was that the inam was a religious service inam in the sense of being emoluments for the performance of service and

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alternatively that even if the grant was a personal inam, burdened with the performance of *parak* service, the grant was conditional on the performance of the service and as there was breach of this obligation, the resumption and re-grant were justified under s. 44-B.

Certain preliminary facts are not in dispute now. It has been found by all the courts that the inam grant comprised both the warams. It has also been found that the grant to the inamdar was personal to him though burdened with *parak* service and not a service inam in the sense of the inam constituting emoluments of any office. On the finding that the inam was a personal inam burdened with service to the temple the trial court held that the case did not fall within s. 44-B of the Act. On appeal the district court confirmed the decree of the trial court. In the High Court on second appeal the finding as to the inam being of both warams was not contested and it was conceded that it was a personal inam burdened with service. The only question that was agitated there was whether the case would fall within the four corners of s. 44-B even if the inam which was granted in the present case was a personal inam of both warams burdened with service to the temple. The High Court held against the trustees and dismissed the appeal. Thereupon the trustees who are the appellants before us applied for a certificate which was granted to them; and that is how the matter has come up before us.

Section 44-B (1) is in these terms:—

> "Any exchange, gift, sale or mortgage, and any lease for a term exceeding five years, of the whole or any portion of any inam granted for the performance of a charity or service connected with a math or temple and made, confirmed or recognised by the British Government, shall be null and void."

The question for consideration is whether a personal inam burdened with service to a temple can be said to come within the meaning of the words "any inam granted for the performance of a service connected with a temple". It is urged that the words used in s. 44-B (1) are of very wide import and any personal

grant of land howsoever large, if it is burdened with some service to a temple howsoever small, would be within the meaning of these words and would therefore come within the terms of s. 44-B (1). The High Court has repelled this wide construction of the words used in s. 44-B (1), and we think rightly. The distinction between a grant for an office to be remunerated by the use of land and a grant of land burdened with service is well known in Hindu law. The former is a case of a service grant and is resumable when the service is not performed. The latter is not a service grant as such but a grant in favour of a person though burdened with service and its resumption will depend upon whether the circumstances in which the grant was made establish a condition that it was resumable if the service was not performed: (see *Shrimant Lakhamgouda Basavprabhu Sardesai* v. *Raosaheb Baswantrao alias Annasaheb Subedar and Others* (1)). The question therefore is whether s. 44-B covers only the first type of grant, (namely, a service grant) and not a personal grant burdened with service.

Prior to the introduction of s. 44-B in the Act, the enforcement of a condition of a grant in favour of charitable and religious institutions in Madras was by taking recourse to Board's Standing Order 54. Under para. 1 of this Order, a duty was laid on the revenue officers to see that inams confirmed by the Inam Commissioner for the benefit of or for services to be rendered to any religious and charitable institution are not enjoyed without the terms of the grant being fulfilled. Under para. 2 thereof, religious and charitable inams were liable to be resumed on the ground that the whole or a portion of the land had been alienated or lost to the institution or service to which it once belonged or that the terms of the grant were not observed. Provision was also made in the Order for the authorities which would exercise the power to resume. Further provisions in that Order show that the intention normally was not to dispossess the inamdar even in the event of failure to perform the conditions of the grant but the land was subjected to

(1) (1931) LXI M.L.J. 449.

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full assessment and the assessment was made available to the institution in lieu of the service lost. In the case of personal inams burdened with service in particular what was usually resumed in the event of non-performance of service with or without alienation was that portion of the grant which represented the value of the service burdened and not that which was personal and there was no injustice in this course for as we have already said a personal inam burdened with service was granted to an individual for himself though he was required to perform certain services to the temple. Therefore, in case he failed to do so there might be resumption of such portion of the inam as would represent the burden of the service leaving the rest to him.

It is in this background that we have to examine s. 44-B (1) introduced in the Act in 1934 and see whether personal inams burdened with service are included within its ambit. It may be mentioned that on the introduction of s. 44-B (1) in the Act, B.S.O. 54 was amended and religious and charitable inams which were all governed till then by it were divided into two classes, namely—

(a) inams granted for the performance of a charity or service connected with a Hindu math or temple; and

(b) inams not falling under class (a).

Inams falling under class (a) were to be governed by the provisions of the Act while inams falling under class (b) were to be governed by B.S.O. 54 as heretofore. This amendment would also show that all religious inams, *i.e.*, inams which had some connection howsoever slight with a temple or other religious institution were not to be governed by s. 44-B and only those inams which were granted for the performance of a charity or service connected with a Hindu math or temple were to be dealt with under s. 44-B while others would still be governed by B.S.O. 54. We therefore agree with the High Court that this history affords a clue to the interpretation of s. 44-B (1) and suggests that though the words used in s. 44-B are open to a wide interpretation, the intention was to

bring within its purview only those inams which were granted directly to the temple and also those inams which were granted for the performance of a charity or service connected with a math or temple, *i.e.*, service inams or such inams the whole income of which was for charity and not those inams which were personal inams though burdened with some service to a temple or math. As we have already said the land granted under a personal inam burdened with service may be very large and the service expected may be very slight, and it could not be the intention of the legislature when it enacted s. 44-B (1) that large personal inams with slight service attached to them should be resumed and re-granted to the temple under s. 44-B (1) for failure to perform the service with which the grant was burdened. It would make no difference to the validity of this argument even if the service attached absorbed a larger portion of the inam leaving only a smaller portion to the grantee.

This conclusion is in our opinion enforced if we look at cl. (iii) of s. 44-B (2)(a) which permits resumption of an inam on the ground that either the math or temple has ceased to exist or the service in question has in any way become impossible of performance. Now it could not be the intention of the legislature, where an inam was granted as a personal inam though burdened with some service to a temple or math, that such inam should be resumed simply because the math or temple has ceased to exist or for some other reason the service has become impossible of performance. The nature of a personal inam burdened with service is that it is meant for the individual to whom it is granted though the individual is required to perform some service to the temple also. The legislature could not have intended when it enacted s. 44-B (2)(a)(iii) that even such an inam should be resumed when the math or temple ceases to exist. But this would be the result if the wide interpretation contended for by the appellants is accepted. In such a case obviously the personal portion of the grant has to be separated from the service portion

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and if the service is not performed it is only the service portion that is liable to resumption. Further if we look at s. 44-B (2)(f)(i), it provides that where an inam is resumed under s. 44-B (1) it shall be re-granted as an endowment to the temple or math concerned. In the case of a personal inam burdened with service it will mean that if the service is not performed the whole inam would be liable to resumption and would be re-granted to the temple, though the inam was granted to an individual and the service with which it was burdened might have been slight, the remaining income of the inam being intended as a personal grant to the individual. Therefore when s. 44-B(2)(f)(i) provides for re-grant of the resumed inam to the temple it presumes that the whole of the inam resumed was meant for service of the temple and there was no element of personal grant in it. It is on that basis that we can understand the re-grant of the resumed inam to the temple, the idea behind the word "re-grant" being that originally also it was granted for the temple though as a service inam. Similarly, s. 44-B(2)(f)(ii) provides that where the math or temple has ceased to exist and an inam is resumed on that ground it shall be re-granted as an endowment to the Board for appropriation to such religious, educational or charitable purposes not inconsistent with the objects of such math or temple, as the Board may direct. Here again it seems to us that the legislature could not have intended that a personal inam granted to an individual though burdened with service should be resumed when the temple has ceased to exist and the service could not be performed and should be taken over by the Board as an endowment for such purposes as the Board may direct. Such a provision would completely overlook the personal part of a personal inam burdened with service. Therefore, the view taken by the High Court that s. 44-B(1), though on a wide interpretation it might also include personal inams burdened with service, is really confined to inams directly granted to the temple or service inams for the purpose of a temple or math or inams the whole of the income of which

is meant for charity and does not include personal inams burdened with service, is correct. Such inams would continue to be dealt with under B.S.O. 54, class (b) as introduced by the amendment to that Order. In this view, there is no force in this appeal and it is hereby dismissed with costs.

Appeal dismissed.

SINGHAI AJIT KUMAR & ANOTHER

v.

UJAYARSINGH AND OTHERS

(K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Hindu Law—Sudras—Inheritence—Self-acquired property of father—Illegitimate son and widow inheriting half share each—Widow dying—Illegitimate son, if entitled to succeed to widow's half.

A Sudra Hindu died leaving two widows and an illegitimate son by a continuously and exclusively kept concubine. The son succeeded to a moiety of the estate and the widows succeeded to the other moiety. The widows died without leaving any daughter or daughter's son. The reversioners filed a suit for recovery of possession of the estate. The illegitimate son contended that on the death of his father he was entitled to succeed to half the estate the other going to the widows and that on the death of the widows he was entitled to the half share held by them.

Held, that the illegitimate son succeeded to half the estate upon the death of the father and succeeded to the other half on the death of the widows. An illegitimate son has the status of a son under the Hindu Law; but he has no rights by birth and cannot claim partition during his father's lifetime. On the father's death he takes his father's self-acquired property along with the legitimate son and in case the legitimate son dies, he takes the entire property by survivorship. If there is no legitimate son, he would be entitled only to a half share when there is a widow, daughter or daughter's son of the last male holder. In the absence of any one of these three heirs, he succeeds to the entire state. If the widow succeeds to half the estate, upon her death succession again opens to half the estate of the last male