STATE OF TAMIL NADU

v.

HIS HOLINESS SRILLA SRI AMBALAVANA PANDARA SANNADHI ADHEENAKARTHA AND ORS.

NOVEMBER 22, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963/ Estate Land Act 1908 :

Ss. 3(7), 3(13) 9 and 65/ ss. 3(1)(b), 3(15) and 185—"Inam estate"—Tenants in cultivating possession of—Religious Institution claiming ownership thereof—Both the religious institution and the tenants claiming for ryoti patta—Held, the suit land was an existing estate—Religious institution has converted the land by its conduct as a ryoti land and has given the land on lease to the tenants and was collecting rent from them—Tenants became ryots who ever since remained in possession as ryots and, therefore, are entitled to ryotwari patta—However, they are liable to maintain the Institution and the temple—Every tenant shall deliver to Adheenam every year three quintals of paddy per acre.

Constitution of India, 1950 :

Article 39(b)—Material resources of community—Distribution of—Tenants in cultivating possession of Inam land—Held tenants are tillers of the soil and have fundamental right to economic empowerment under Article 39(b) which enjoins distribution of material resources to accord socio economic justice and means for development for social status and dignity of person.

Article 136—Appeal—Held, Supreme Court has power even to entertain an appeal against order of Tribunal which stood confirmed in the judgment of Special Tribunal.

T.S.Pl.P. Chidambaram Chettiar **v.** *T.K.B. Santhanaramaswami Odayar & Ors.,* **[1968] 2 SCR 754 and** *Pollisetti Pullamma & Ors.* **v.** *Kalluri Rameswaramma & Ors.,* **[1990] Supp. 2 SCR 393, relied on.**

Periannan & Ors. **v.** *Airabadeeswarar Soundaranayagi Amman Kovil*

A *of O'Siruvayal by its trustees M.A.R. Periannan Chettiar & Ors.,* **AIR (1952) Madras 323, held no longer a good law.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15523 of 1996 Etc.

B From the Judgment and Order dated 15.11.88 of the Madras High Court in S.T.A. No. 8 of 1982.

V. Krishnamurthy, (V. Ramasubramaniam) for Arputham, Aruna & Co. For the Appellant.

C R. Sundervardan, S. Balakrishnan and Ms. Lily Thomas for the Respondents.

The following Order of the Court was delivered :

Leave granted.

D

This appeal by special leave arises from the judgment of the Special Tribunal of Madras in S.T. Appeal No. 8 of 1982, dated November 15, 1988, by two learned Judges of the Madras high Court under the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Act 26 of 1963) (for short, the 'Act'). The admitted facts are that respondents 3 E to 438 are the cultivating tenants of the lands in Kodarangulam village, which is an estate under the Act. It was admittedly notified and taken over under the Act; as a result, the respondents as well as the first respondent came to file application under Section 9 of the Act for issuance of ryotwari patta. The Tribunal granted patta to the first respondent and on special F appeal, the High Court had confirmed the same. It would appear that some of the tenants had filed special leave petitions on earlier occasion also, but the same came to be summarily dismissed. The State has come up by special leave with permission against the judgment of the Special Tribunal. Thus, this appeal by special leave.

G Shri R. Sunderavardan, learned senior counsel appearing for the first respondent, has raised a preliminary objection to the maintainability of the appeal on the ground that the State did not file any appeal against the order of the Tribunal and that, therefore, it cannot file appeal against the Special Tribunal's judgment. Though technically he is right, but this Court H has power under Article 136 of the Constitution, even to entertain an

appeal against the original order of the Tribunal, which stood confirmed in the judgment of the Special Tribunal in the impugned judgment. Permission was granted to file the special leave. Under these circumstances, we do not see any force in the contention on the maintainability of the appeal.

It is contended for the appeallant-State that by operation of the definition of "private land" under Section 3(13) of the Act read with Section 3(1)(b) of the Estates Land Act, 1908 and in view of the presumptions drawn under Section 185 of the Estates Land Act and Section 65 of the Act, the land is presumed to be ryoti land and the tenant in occupation is a ryot unless the first respondent proves that it is a private land, the cultivation test is one of the important criteria, apart from other consideration, since the tenants have been in continuous possession for a long period. It must be presumed that the land is a ryoti land. As a consequence, the tenants are ryots. Accordingly, they are entitled to ryotwari patta under Section 9 of the Act. On the other hand, it is the contention of Shri Sunderavardan, learned senior counsel that both Melwaram and Kudivaram rights have been retained by the first respondent. It has been asserting its own right as a full owner. It is a freehold land as confirmed in the Inams Fair Register maintained by the Inams Commissioner as early as in 1864. Consequently, it is a private land. It is not necessary that the first respondent, being a religious institution, should personally cultivate the land. By operation of the Amendment Act 27 of 1966, the cultivation test, as regards religious institutions, has been dispensed with. Consequently, the ryotwari patta granted under Section 9 to the first respondent is valid in law. In view of the diverse contentions, the question that arises for consideration is : whether the respondent-tenants are entitled to ryotwari patta or the ryotwari patta granted to the first respondent is in accordance with law? With a view to appreciate the contentions, it is necessary to look into certain definitions under the Act. Section 3(7) defines "inam estate" to mean "an existing inam estate or a new inam estate".

"Section 3(13) defines "private land" thus :

"(i) in relation to an existing inam estate shall have the same meaning as in sub-clause (b) of clause (10) of Section 3 of the Estates Land Act and

(ii) in relation to a new inam estate shall mean the domain or

A home-farm land of the landholder, by whatever designation known, such as kambattam, khas, sir or pannai; or ....."

Section 2(16) defines "ryot" thus :

"(i) in relation to an existing inam estate shall have the same
B meaning as in clause (15) of Section 3 of the Estate land Act, and

(ii) in relation to a new inam estate shall mean a person who holds for the purpose of agriculture ryoti land in such estate on condition of paying to the landholder the rent which is legally due upon it.
C

Explanation is not necessary for the purpose of this case.

Section 9 deals with grant of ryotwari patta. Sub-section (1) of Section 9 envisages thus :

D "9. (1) In the case of an existing inam estate, the landholder shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of -

(a) all lands which immediately before the notified date -

E (i) belonged to him as private land within the meaning of sub-clause (b) of clause (10) of Section 3 of the Estates Land Act, or

(ii) stood recorded as private land in a record prepared under the provisions of Chapter XI or Chapter XII of the said Act :

F Provided that the private land referred to in sub-clause (i) and (ii) -

(1) has not been subsequently converted into ryoti land or has not been finally held to be ryoti land under Section 3-A of the Madras
G Estate Land (Reduction of Rent) Act, 1947 (Madras Act XXX of 1947; and

(2) is proved to have been cultivated by the landholder himself, by his own servants or by hired labour with his own or hired stock, in the ordinary course of husbandry, for a continuous period of
H three years within a period of twelve year immediately before the

1st day of April, 1960; and

(b)(i) all lands which were properly included or which ought to have been properly included in the holding of the ryot and which have been acquired by the landholder by the inheritance or succession under a will, provided that the landholder has cultivated such lands himself by his own servants or by hired labour with his own or hired stock, in the ordinary course of husbandry, from the date of such acquisition or the 1st day of July 1950, whichever is later and has been in direct continuous possession of such lands from such later date;

(ii) all lands which were properly included, or which ought to have been properly included, in the holding of a ryot and which have been acquired by the landlord by purchase, exchange or gift, including purchase and sale for arrears of rent, provided that the landholder has cultivated such lands himself, by his own servants or by hired labour, with his own or hired stock, in the ordinary course of husbandry, from the 1st day of July, 1950, and has been in direct and continuous possession of such lands from that date;

(iii) all lands (not being (i) lands of the description specified in sub-clause (a), (b) and (c) of clause (16) of Section 3 of the Estates Land Act, or (ii) forest lands) which have been voluntarily abandoned or relinquished by a ryot, or which have never been in the occupation of a ryot, provided that the landlord has cultivated such lands himself, by his own servants or by hired labour, with his own or hired stock, in the ordinary course of husbandry, from the 1st day of July, 1950 and has been in direct and continuous possession of such lands from that date.

Sub-section (2) of Section 9 reads as under :

"(2). In the case of a new inam estate the landholder shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of -

(a) all lands which immediately before the notified date belonged to him as private land :

Provided that in the case of private land specified in clause

A (13)(ii)(a) of Section 2, such land is proved to have been cultivated by the landholder himself, by his own servants or by hired labour, with his or hired stock, in the ordinary course of husbandry, for a continuous period of three years within a period of twelve years immediately before the 1st day of April 1960; and

B (b)(i) all lands in the holding of a ryot and which have been acquired by the landholder by inheritance or succession under a will, provided that the landholder has cultivated such lands himself, by his own servants or by hired labour with his own or hired stock, in the ordinary course or husbandry, from the date of such acquisition or the 1st day of April, 1960, whichever is later and has been in direct and continuous possession of such lands from such later date;

(ii) all lands in the holding or ryot and which have been acquired by the landholder by purchase, exchange or gift, including purchase at a sale for arrears of rent, provided that the landholder has cultivated such lands himself, by his own servants or by hired labour, with his own or hired stock, in the ordinary course of husbandry, from the 27th day of September, or from the date of such acquisition whichever is later and has been in direct and continuous possession of such lands from such later date :

Provided that nothing in this sub-clause shall apply to any acquisition by purchase, exchange or gift including purchase at a sale for arrears of rent by the landholder on or after the 1st day of April, 1960.

F (iii) all lands (not being (i) lands of the description specified in items (a), (b) and (c) of the sub-clause (ii) of clause (17) of Section 2, or (ii) forest lands) which have been voluntarily abandoned or relinquished by a ryot, or which have never been in the occupation of ryot, provided that the landholder has cultivated such lands himself, by his own servants or by hired labour, with his own or hired stock, in the ordinary course of husbandry, from the 27th day of September, 1955, and has been in direct and continuous possession of such lands from that date."

It would, thus, be seen that a ryot in an estate defined under clause H (15) of Section 3 of the Estates Land Act and if he is new ryot, it is defined

under sub-clause (b) of clause (16) of sub- section (2) of the Act. Though there is a dispute as to whether it is a new estate or an existing estate, in view of the clinching evidence on record, we have no hesitation to conclude that it is an existing estate. In the judgment under appeal, the learned Judges have referred to the confirmation of title deed by Inams Commissioner on September 10, 1864 wherein it was recorded that the title deed relates to the "whole village of Kodarangulam and its hamlets as whole village" and its annual quit rent was Rs. 2,810 inclusive of the jodi already charged on the land. Thus, it is clear that it was an existing estate, but not a new estate as presumed by the learned Judges in the High Court. The question then is : whether the tenants are ryots within the meaning of Section 3(15) of the Estates Land Act? The said section reads as under :

> "3(15). "Ryot" means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it."
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> Section 3(16) defines ryot land means cultivable land in an estate other than private land, but does not include -
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> (a) beds and bunds of tanks and of supply, drainage, surplus or irrigation channels;)
>
> (b) threshing-floor, cattle-stands, village sites, and other lands situated in any estate which are set apart for the common use of the villagers;
>
> (c) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists."

Ryoti land means *entirable* lands in an estate by a ryot who holds it for agriculture on condition of paying rent to the land-holder which is legally due other than private land.

Section 185 draws a presumption that the land in an Inam village is not private land. Similarly, Section 65 of the Act draws a presumption that it is a ryoti land unless it is proved that it is a private land.

The question therefore, is : whether it is a private land? "Private land"

A has been defined under Section 3(1) of the Estates Land Act, which reads as under :

> "(a) in the case of an estate within the meaning of (sub-clause (a), (b), (c) or (e) of clause (2) means the domain or home-farm land or the landholder by whatever designation known, such as, kambattam, khas, sir or pannai, and includes all land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the commencement of this Act; and
>
> (b) in the case of an estate within the meaning of sub- clause (d) of clause (2), means -
>
> (i) the domain or home-farm land or the landholder, by whatever designation known, such as kambattam, khas, sir or pannai; or
>
> (ii) land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years, immediately before the first day of July 1908, provided that the landholder has retained the kudivaram ever since and has not converted the land into ryoti land; and
>
> (iii) land which is proved to have been cultivated by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the first day of November, 1933, provided that the landholder has retained the kudivaram ever since and has not converted the land into ryoti land; or

A reading of it would clearly indicate that in the case of an estate within the meaning of clause (b) of Section 2 "private land" means the domain or home-farm land of the landholder of whatever designation known, such as kambattam, khas, sir or pannai or the land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years, immediately before the first day of July, 1908, provided that the landholder has retained the kudivaram ever since

and has not converted the land into ryoti land. The question, therefore, is : whether the first respondent, though it was declared as a freehold land, had converted it into a ryoti land? It is seen that there is overwhelming evidence on record to establish that the tenants have been in possession of the land for a long period and ever since they have been cultivating the land.

In *T.S. Pl. P. Chidambaram Chettiar* v. *T.K.B. Santhanaramaswami Ordayar & Ors.*, [1968] 2 SCR 754 at 765, this Court had held thus :

> "It seems to us that the definition reads as a whole indicates clearly that the ordinary test for 'private land' is the test of retention by the landholder for his personal use and cultivation, by him or under his personal supervision. No doubt, such lands may be let on short leases for the convenience of the landholder without losing their distinctive character; but it is not the intention or the scheme of the Act to treat as private those lands with reference to which the only peculiarity is the fact that the landlord owns both the warms in the lands and has been letting them out on short term leases. There must, in our opinion, be something in the evidence either by way of proof of direct cultivation or by some clear indication of an intent to regard these lands as retained for the personal use of the landholder as his establishment in order to place those lands in the special category of private lands in which a tenant under the Act cannot acquire occupacy rights. In the present case, there is no proof that the lands were ever directly cultivated by the landholder. Admittedly, soon after the grant of 1862, the estate came under the administration of Receivers, who always let out the lands to the tenants to be cultivated."

In *Pollisetti Pullamma & Ors.* v. *Kalluri Rameswaramma & Ors.*, [1990] Supp. 2 SCR 393, this Court had held that the ratio of the Full Bench of the Madras High Court in *Periannan & Ors.* v. *Airabadeeswarar Soundaranayagi Amman Kovil of O'Siruvayal by its truestees M.A.R. Periannan Chettiar & Ors.*, AIR (1952) Madras 323 was held no longer good law in the light of the ratio in *Chidambaram Chettiar's* case (supra). The same was also reiterated in later decisions.

It is seen from the evidence on record that there is overwhelming evidence that the tenants have been cultivating the land and ever since they are in possession, though the first respondent had filed a suit against them

A for eviction and other reliefs. In those suits, it was admitted that they were cultivating the land as tenants and committed default in paying rent. On that admission, the necessary conclusion is that the first respondent has converted the lands by its conduct as a ryoti land and the tenants have kudivaram rights and given the land on leasehold to the tenants and was collecting the rent from them. The tenants are the tillers of the soil and have fundamental right to economic empowerment under Article 39(b) which enjoins distribution of material resources to accord socio-economic justice and means for development for social status and dignity of persons. Land is a source of livelihood. There is a strong linkage between the land and social status. The strip of the land on which the till and live assures them social justice and dignity of person providing near decent means of livelihood. So, economic empowerment is their fundamental right. They became the ryots and, ever since, remained in possession as ryots. Therefore, they are entitled to ryotwari patta.

It is seen that the first respondent had purchased the land for the maintenance of the Math as well as the temple. Under these circumstances, it is necessary that the Institution and the temple are required to be maintained. Though the tenant/respondents are entitled to the ryotwari patta, they should be burdened with the liability to maintain the institution and the temple. As a consequence, we direct that every tenant shall deliver, regularly, to the Adheenam, the first respondent, every year, three quintals of paddy per acre within fifteen days after the harvest. In the event of their committing default in delivery of the three quintals of paddy per acre, they are liable to and shall pay interest at the rate of 21% from the date of default till date of payment. In the event of their committing further default in making the payment with interest, if the Institution is driven to lay the suit for recovery of the same, they should also be liable to pay, apart from the costs to be incurred for the recovery of the said amount, exemplary costs for the institution of the suit for recovery of the amount. With these conditions, the respondent-tenants are entitled to grant of ryotwari patta under Section 9 of the Act.

The appeal is accordingly allowed, but in the circumstance, without costs.

R.P. Appeal allowed.