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October 21.

THE STATE OF MADRAS AND ANOTHER

v.

V. SRINIVASA AYYANGAR.

[N. H. BHAGWATI, VENKATARAMA AYYAR and B. P. SINHA JJ.]

Madras Estates (Abolition and Conversion into Ryotwari) Act, (Madras Act XXVI of 1948), s. 1(3)(4), s. 3(b)—Madras Estates Land Act I of 1908, *s.* 3(2)—*Notification under s.* 1(4) *of Madras Act XXVI of 1948—Comprising a part of village—Darmila or post-settlement inam in respect of portion of village—Whether the part vests in the State under s. 3(b) of the Madras Act XXVI of 1948—Estate within the meaning of s. 1(3) of the Madras Act XXVI of 1948 read with s. 3(2) of Madras Act I of 1908—Whether includes part of the estate—Compensation to Darmila Inamdar—Darmila minor inam—Whether protected by s. 20 of the Act XXVI of 1948.*

At the time of passing of the Madras Estates (Abolition and Conversion into Ryotwari) Act (Madras Act XXVI of 1948), a 15/16th portion of village Karuppur situated within the Zamindari of Ramanathapuram was held by the inamdars under a pre-settlement grant confirmed by the British Government, the estate being permanently settled in 1802. The remaining one-sixteenth portion was held by the holders of darmila or post-settlement inams made by the proprietor of the estate. In exercise of the powers conferred by s. 1(4) of the Madras Act XXVI of 1948 the State of Madras issued a notification dated 22nd August 1949 bringing the Act into force as regards the Ramanathapuram estate from 7th September 1949, the latter Zamindari including one-sixteenth part of Karuppur village. The respondent—the holder of the one-sixteenth inam—contended that under s. 1(3) of the Madras Act XXVI of 1948 the State of Madras had power to notify only what would be estates as defined in s. 3(2) of the Madras Estates Land Act I of 1908 and that one-sixteenth part of the village of Karuppur included in the notification was not an estate as defined in that section and the notification was therefore *ultra vires.*

Held (repelling the contention) that when the darmila inam does not relate to the entire village but only to a fraction of it, it must be held to retain its character as part of the estate in the hands of the inamdar and when the estate is notified under s. 1(4) of the Madras Act XXVI of 1948 the inam will vest in the State under s. 3(b) of the Madras Act XXVI of 1948 and therefore one-sixteenth portion of the village of Karuppur forming a darmila inam will vest in the State.

Under the provisions of the Madras Act XXVI of 1948 the darmila minor inamdar is entitled to claim compensation for the transfer of his portion of the estate to the Government.

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Darmila minor inam is not protected by s. 20 of the Act.

Brahmayya v. *Achiraju* ([1922] I.L.R. 45 Mad. 716) and *Narayanaraju* v. *Suryanarayudu* ([1939] 66 I.A. 278), referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 219 of 1954.

On appeal from the Judgment and Order dated the 4th day of April 1952 of the Madras High Court in Civil Miscellaneous Petition No. 8302 of 1950.

V. K. T. Chari, Advocate-General of Madras (*R. Ganapathy Iyer* and *P. G. Gokhale,* with him) for the appellant.

R. Kesava Iyengar, (*M. S. K. Iyengar,* with him) for the respondent.

1955. October 21. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—This appeal raises a question of considerable importance as to the rights of holders of darmila or post-settlement inams of portions of a village under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948), hereinafter referred to as the Act. The subject-matter of this appeal is an one-sixteenth share in the village of Karuppur situated within the ambit of the Zamindari of Ramanatha puram. The holders of this ancient Zamindari were, during the 18th Century, the virtual rulers of that part of South India, and were known as *Sethupathis* or the Lords of Rameswaram and the adjacent isles and seas. In 1757 Muthu Bijaya Ragunatha, the then Rajah of Ramanathapuram, made a grant of the whole of the village of Karuppur to a number of persons for various charitable purposes. In 1802, the estate was permanently settled and an istimrari sanad was issued in favour of the Rajah. Before that date, the donees under the grant of 1757 representing an one-sixteenth share had abandoned the village, and in consequence, the inam had *eo extanti* been resumed. At the permanent settlement, this one-sixteenth part was included in the assets of the

Zamindari, and taken into the account in fixing the peishkush thereon. Subsequent to the permanent settlement, on some date which does not appear on the record, Rani Mangaleswari, the then holder of the Zamindari, made a fresh grant of the one-sixteenth part which had been resumed, to the inamdars who held the remaining 15/16th portion of the village under the grant of 1757. On 31-12-1863 the Inam Commissioner confirmed the grant of 1757, and issued an inam certificate in respect of the 15/16th portion of the village. The position, therefore, when the Act was passed was that while a 15/16th portion was held by the inamdars under a pre-settlement grant confirmed by the British Government, the remaining one-sixteenth portion was held under post-settlement grant made by the proprietor of the estate.

The Act came into force on 19-4-1949. Under section 1(4) of the Act, certain sections thereof were to come into force at once and the other sections on such date as the Government might by notification appoint in respect of any zamindari; under-tenure, or inam estate. In exercise of the powers conferred by this section, the appellant issued a notification on 22-8-1949 bringing the Act into force as regards the Ramanathapuram estate from 7-9-1949. Among the villages mentioned as comprised in the Zamindari was "Karuppur (part)" described as an under-tenure. It is common ground that the part referred to in this notification is the one-sixteenth part, which forms the subject-matter of this appeal.

The respondent who represents the holders of this inam filed the application out of which the present appeal arises, under article 226 of the Constitution for a writ of *certiorari* quashing the notification dated 22-8-1949 as *ultra vires*. The ground of attack was that under section 1(3) of the Act, the State had power to notify only what would be estates as defined in section 3(2) of the Madras Estates Land Act, 1908 (Madras Act I of 1908), and that the part of the village of Karuppur included in the notification was not an estate as defined in that section. Section 3(2) of Act I of 1908, so far as is material, is as follows:

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"Estate" means—.

(a) any permanently settled estate or temporarily settled zamindari ;

(b) any portion of such permanently settled estate or temporarily settled zamindari which is separately registered in the office of the Collector ;

(c) any unsettled palaiyam or jagir ;

(d) any inam village of which the grant has been made, confirmed or recognised by the British Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.

* * * *

(e) any portion consisting of one or more villages of any of the estates specified above in clauses (a), (b) and (c) which is held on a permanent under-tenure".

The contention of the respondent was that as the grant in question related only to a fraction of a village, it could not be notified as an under-tenure, as under section 3(2)(e) an under-tenure would be an estate only if it related to a whole village or villages. The appellant conceded that the inam in question was not an under-tenure as defined in section 3(2)(e), as it comprised only part of a village, but contended that even though it was not in itself an estate, it was, nevertheless, part of the Zamindari of Ramanathapuram, being a post-settlement grant of portion of a village comprised therein, and that when that estate was notified, the entirety of it including the inam in question must vest in the Government under section 3(b) of the Act. The respondent demurred to this contention. In addition, he raised the further contention that even if post-settlement minor inams were within the operation of the Act, they would be protected by section 20 of the Act, which runs as follows :

"20(1) In cases not governed by sections 18 and 19, where, before the notified date, a landholder has created any right in any land (whether by way of lease or otherwise) including rights in any forest,

mines or minerals, quarries, fisheries or ferries, the transaction shall be deemed to be valid ; and all rights and obligations arising thereunder, on or after the notified date, shall be enforceable by or against the Government :

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

Provided further that any such right created on or after the 1st day of July 1945 shall not be enforceable against the Government, unless it was created for a period not exceeding one year :

Provided also that where such right was created for a period exceeding one year, unless it relates to the private land of the landholder within the meaning of section 3, clause (10), of the Estates Land Act, the Government may, if, in their opinion, it is in the public interest to do so, by notice given to the person concerned, terminate the right with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof".

The argument of the respondent was that a post-settlement minor inam would be a right in land created by a landholder falling within section 20, that the notification of the estate under section 1(3) would not *ipso facto* divest the inamdar of his title to the lands, and that he would be entitled to hold them subject to any action that might properly be taken by the State under section 20.

The learned Judges of the Madras High Court agreed with the appellant that post-settlement minor inams fell within the operation of the Act ; but they accepted the contention of the respondent that they were governed by section 20 of the Act. As it was common ground that the State had not proceeded under that section, they held that the notification was *ultra vires,* and accordingly quashed the same in so far as it related to the inam forming part of Karuppur village. The appellant applied to the High Court for leave to appeal to this Court against this decision, and though the value of the subject-matter was far below the appealable limit, the learned Judges granted a certificate under article 133(1)(c) on the

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ground that the question involved was one of great public importance. That is how the appeal comes before us.

Two questions arise for decision in this appeal: (1) Are post-settlement minor inams within the operation of Madras Act XXVI of 1948? (2) If they are, are they governed by section 20 of the Act?

On the first question, the appellant does not contend that the inam in question is in itself an estate as defined in section 3(2) of the Madras Estates Land Act and liable as such to be notified under the Act. His contention is that when the Zamindari of Ramanathapuram was notified—and there is no dispute that it was validly notified, as it was a permanently settled estate falling within section 3(2)(a) of the Madras Estates Land Act—minor post-settlement inams of lands within the Zamindari would vest in the State as part of the Zamindari under section 3(b) of the Act. Section 3(b) is, omitting what is not material, as follows:

"With effect on and from the notified date and save as otherwise expressly provided in this Act,..... .....the *entire estate*....shall stand transferred to the Government and vest in them, free of all encumbrances".

The point for decision is whether post-settlement minor inams are parts of the estate out of which they were granted. If they are, then they will vest in the Government under section 3(b). If they are not, they will remain unaffected by the notification of the parent estate.

The status of holders of these inams had been the subject of considerable divergence of judicial opinion in the Madras High Court. To appreciate this, reference must be made to the following definition of 'landholder' in section 3(5) of the Madras Estates Land Act:

"Landholder" means a person owning an estate or *part thereof* and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor-in-title or of any order of a competent

Court or of any provision of law".

Leaving out the inclusive portion of the definition as not relevant to the present question, it will be seen that owners of parts of an estate would also be landholders. The question then arose for decision whether darmila minor inamdars were landholders as defined in section 3(5) of the Estates Land Act. If they were, the tenants would acquire occupancy rights under section 6, and proceedings against them could be taken only in the revenue courts and not in the civil courts, and in general, the rights and obligations of the inamdar and the tenants would be governed by the provisions of the Madras Estates Land Act. One view was that as the inamdars had to pay quit rent or jodi to the grantors, their, status could not be that of owners and therefore they could not be said to own parts of an estate. The contrary view was that the inamdars were in substance owners of the lands granted to them, and that the liability to make a fixed annual payment did not detract from their character as owners, and they would be landholders owning parts of an estate. In view of this conflict of opinion, the question was referred to the decision of a Full Bench in *Brahmayya* v. *Achiraju*(1), which held by a majority that minor darmila inamdars were landholders as defined in section 3(5) of the Estates Land Act. This decision was based both on the ground that the inamdars were in the position of owners of parts of an estate and that they were also persons entitled to collect rent, within the inclusive portion of the definition.

In *Narayanaraju* v. *Suryanarayudu*(2), the question whether the grantee of a portion of a village subsequent to the settlement was a landholder as defined in section 3(5) came up for decision before the Privy Council. After reviewing the authorities and the conflicting views expressed therein, the Board agreed with the opinion expressed by the majority of the learned Judges in *Brahmayya* v. *Achiraju*(1), and held that the grantee of a post-settlement minor inam would be a landholder on both the grounds mentioned in their

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judgments. They discarded "the doctrine that so long as the zamindar reserves any interest, however insignificant, the permanent grantee from him cannot be the owner", and observed that the words "part of the estate" occurring in the definition must be given their *prima facie* meaning. The Board felt greater difficulty in accepting the view that the inamdar was a landholder entitled to collect rent within the inclusive portion of the definition. But they expressed themselves satisfied on either ground that "the Full Bench decision of 1922 represents a careful and reasonable solution of a stubborn ambiguity in the Act, and that it ought not now to be overruled having regard to the time which has elapsed and to the character of the interests affected thereby". Thus, it was settled law in Madras at the time when Act XXVI of 1948 was passed that minor darmila inamdars were owners of parts of an estate. Construing section 3(b) in the light of the law as then accepted, when a notified estate vests in its entirety in the State under that provision, a minor darmila inam which forms part of it must also vest in it.

Sri R. Kesava Iyengar learned counsel for the respondent, argued that decisions on section 3(5) of the Madras Estates Land Act on the meaning of the word 'landholder' as defined therein, could not be usefully referred to for construing the true scope of section 3(b) of Act XXVI of 1948, as the definition in the Madras Estates Land Act was only for purposes of settling the rights of landlords and tenants, and would be irrelevant for determining the rights of the inamdar as against the State. But the ground of the decision in *Brahmayya* v. *Achiraju*(1) and *Narayanaraju* v. *Suryanarayudu*(2) is that the grantee of the inam is in the position of an owner of the part of the estate granted to him, and that would be relevant when the controversy is as to his true status, whether the dispute is between the landlord and the tenant or between the inamdar and the State. If the inamdar is owner in relation to his tenants, it would be illogical to hold that he is not that, in relation to

(1) [1922] I.L.R. 45 Mad. 716. (2) [1939] 66 I.A. 278.

the State. The question is, in our opinion, concluded by section 2(8) of Act XXVI of 1948 which defines a landholder as including a darmila inamdar, and that is a statutory recognition of the doctrine laid down in *Brahmayya* v. *Achiraju* (1) and *Narayanaraju* v. *Suryanarayudu* (2) that darmila inamdars are owners of parts of an estate. The result then is that when the darmila inam does not relate to the entire village but only to a fraction of it, it must be held to retain its character as part of the estate in the hands of the inamdar, and when the estate is notified under section 1(4) of the Act, the inam will vest in the State under section 3(b).

It is next argued for the respondent that the Act makes no provision for award of compensation to minor darmila inamdars, and that as a statute is not to be construed as taking away the property of any person unless there is a provision for payment of compensation therefor, these inams should be held to be outside the operation of the Act. Reference was made in this connection to section 45 of the Act under which the compensation payable in respect of an impartible estate—and Ramanathapuram is one—is to be apportioned after payment of debts among the members of the family. It is said that under this section the respondent would have no right to share in it. This contention is clearly erroneous. The material provisions relating to the award of compensation are sections 25, 27, 37 and 44. Under section 25, the compensation is to be determined for the estate as a whole and not separately for each of the interests therein. Section 27 lays down how the basic income in the case of zamindaris is to be fixed. Under section 27(i), it has to include one-third of the gross annual ryotwari demand in respect of *all lands in the estate,* and under section 27(iv) "one-third of the average net annual miscellaneous revenue derived from all other sources in the estate specified in section 3(b)". Thus, the income from the lands comprised in the minor inam which is a part of the estate is included in the total income of the zamindari. Under section

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37, the compensation payable in respect of an estate is calculated in terms of the basic income on the scale prescribed therein. Section 44 enacts that the Tribunal is to "apportion this compensation among the principal landholder and any other persons whose rights or interests in the estate stand transferred to the Government under section 3(b)". There cannot be any doubt on these provisions that the darmila minor inamdar is a person who is entitled to claim compensation for the transfer of his portion of the estate to the Government. Then comes section 45 on which the respondent bases his contention. That applies only to the distribution of the compensation determined under section 44 as payable to the principal landholder, when he is the holder of an impartible estate. It leaves untouched the rights of minor darmila inamdars to claim compensation under section 44. The contention of the respondent that the Act provides no compensation to them, and that they should therefore be held to fall outside the Act must accordingly be rejected.

(2) That brings us on to the second question whether a post-settlement minor inam is a right in land created by a landholder within the intendment of section 20 of the Act. At the very outset, it seems somewhat inconsistent to hold that a darmila minor inam is part of an estate, and also that it is governed by section 20. If it is part of an estate, it must automatically vest in the Government under section 3(b). But if it falls within section 20, the title to it will continue to stand in the inamdar with a right in the Government to take action under the third proviso, subject to the conditions laid down therein. It was argued for the respondent that section 3 operates on its own terms only "save as otherwise expressly provided herein", and that section 20 was such a provision. It is somewhat difficult to follow this argument, because if section 20 applied to darmila minor inams, then they could never fall within the operation of section 3(b). And how is this result to be reconciled with the conclusion that they are parts of

the estate, and that the inamdar is a landholder for purposes of the Act ?

But it is argued for the respondent that the words "rights in land created by landlord" are of the widest import and would take in darmila minor inams. The point for decision is whether this contention is correct. We start with this that a darmila minor inamdar is a landholder as defined in section 2(8) of the Act, and he is that, by reason of his being the owner of a part of the estate. Can such a person be held to be one who has obtained a right in the land from the landholder within section 20 ? The Act makes a clear distinction between estates held by landholders and rights and interests held by other persons in or over estates. Section 3(b) enacts that when there is a notification under section 1(4), the entire estate shall stand transferred to the Government and vest in it. We have held that the part of the estate belonging to a darmila inamdar would vest in the Government. Section 3(c) provides that on notification all rights in or over the estate shall cease and terminate. Section 3(b) and section 3(c) deal with two distinct matters which may respectively be described in broad terms as ownership of the estate and rights in or over estate not amounting to ownership, and these two categories are mutually exclusive. Now, turning to section 20, it protects rights in land by way of lease or otherwise created by the landholder before the notified date. In this context, and having regard to the distinction between estates under section 3(b) and rights over estates under section 3(c), the rights mentioned in section 20 can only refer to the rights dealt with in section 3(c), and not to ownership which is within section 3(b). When, therefore, the transaction for which protection is claimed under section 20 is one which vests ownership of the estate or a portion thereof in the transferee, it will fall outside the section. In other words, section 20 has no application to transactions by which a person becomes a landholder by reason of ownership of even a part of the estate being transferred to him, and that being the character of a darmila minor inam it is not pro-

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tected by section 20.

There are also indications in the language of section 20 pointing to the same conclusion. Section 20(2) provides that the persons whose rights are terminated under the proviso to section 20(1) shall be entitled to compensation having regard to the value of the right which is terminated and the unexpired portion of the period for which the right is created. These words are more appropriate to connote rights which are to be exercised for specified periods, such as lease or contract for the exploitation of mines or forests for a term than "ownership of the estate".

There is one other consideration, which lends support to this conclusion. The object of the Act was to establish direct relationship between the State and the tillers of the soil, and to abolish all intermediate tenures. In Madras, the rights and obligations of intermediate tenure holders were regulated by the Madras Estates Land Act, and under that Act the intermediaries consisted not merely of the holders of the estates as defined in section 3(2) of that Act but also holders of post-settlement minor inams as settled by decisions of the highest authority. If the purpose of the Act is to be fully achieved, it would be necessary to abolish not merely estates as defined in section 3(2) of the Madras Estates Land Act but also darmila minor inams. But if the contention of the respondent is to be accepted, it is only the estates mentioned in section 3(2) that will, on notification, vest in the Government and not the minor inams. These will continue to be held by the inamdars under section 20 until they are terminated in accordance with the proviso therein, and survive as islets in the landscape even after the parent estates have disappeared from the scene. The legislation must to this extent be held to have failed to achieve its purpose. And this is not all. If the contention of the respondent is correct, then the minor inamdars will not merely be unaffected by the Act but will actually be better off for it. Under section 3(a) of the Act, the Madras Estates Land Act stands repealed on and from the notified date, and as it is by virtue of this

Act that the tenants became entitled to occupancy rights, the inamdars would, on notification, be free to eject tenants, and settle their own terms with them. We cannot accede to a contention which results not merely in the frustration of the object of the Act but further produces consequences, the reverse of what were intended. On the other hand, the contention of the appellant that minor inams fall outside section 20 and would vest straightaway in the State under section 3(b) will have the effect of extinguishing the rights of the inamdars, and enabling the State to issue ryotwari pattas to the tenants in occupation. We prefer to accept this contention, as it fully effectuates the intention of the legislature. In the result, we must hold that the one-sixteenth portion of the village of Karuppur forming a darmila inam will vest in the Government under section 3(b) of the Act, and that the only right of the inamdars is to share in the compensation under the terms of the Act. The petition of the respondent in so far as it relates to this inam must be dismissed.

This appeal is accordingly allowed, and in accordance with the terms of the certificate granting leave, the appellant will pay the costs of the respondent in this Court. The parties will bear their own costs in the court below.

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v.

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[S. R. DAS, ACTING C. J., VIVIAN BOSE, JAGANNADHADAS, JAFER IMAM and CHANDRASEKHARA AIYAR JJ.]

Fundamental Rights, Enforcement of—Oral sale of fishery rights for future years by owner of estate before it vested in the State by legislation—Nature of such rights—Profit a prendre, if immovable property requiring registered instrument for transfer—Such sale, if creates any right to property—Non-recognition by the State, if transgresses any fundamental rights—Constitution of India, Arts. 19(1)(f), 31(1)—Orissa Estates Abolition Act, 1951 (Orissa Act I of 1952)—Transfer of Property Act (IV of 1882), s. 54.