SUPREME COURT OF INDIA

Addanki Tiruvenkata Thata Desika Charyulu

Vs.

State of A.P.

C.A.No.375 of 1961

(P. B. Gajendragadkar, K. Subba Rao, K. N. Wanchoo, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.)

07.11.1963

JUDGEMENT

AYYANGAR, J.:

1. This is an appeal from the judgment of the High Court of Andhra Pradesh filed by virtue of a certificate of fitness under Art. 133(1) of the Constitution, on the ground that substantial questions of law are involved in the case.

2. The appellants are the heirs and legal representatives of one Addanki Desikacharyulu -now deceased. Desikacharyulu whom for convenience we shall hereafter refer to as the appellant, was the proprietor or inamdar of the Shrotriem village of East Thakkellapadu. While so, the Madras Legislature enacted two Acts- the Madras Estates (Reduction of Rent) Act 1947 (Act XXX of 1947) and the Madras Estates (Abolition and Conversion into Ryotwari) Act (Act XXVI of 1948) having application to particular types of estates. The earlier enactment which we shall call the Rent Reduction Act was, as the name itself indicates, inter alia for reducing the rent payable by ryots in the "estates" to which it applied, while the later which for shortness may be referred to as the Abolition Act, was for abolishing the "estates" of intermediaries who were proprietors of the type of estates defined in the Act and for the creation of direct relationship between the ryots in these estates and the Government.

3. The Government of Madras purporting to act under the powers conferred by the Rent Reduction Act appointed a Special Officer to conduct an enquiry as to the precise reduction to be effected in the rent payable to the appellant by persons in cultivation of the lands in the Appellant's Shrotriem and after considering his report directed a reduction of rents by notification dated May 2, 1950. Almost simultaneously proceedings were taken by the Settlement Officer appointed under the Abolition Act for determining whether or not the Shrotriem should be taken over by Government and the officer gave his decision against the appellant. The appellant filed an appeal to the Tribunal constituted under the Abolition Act and the appeal was dismissed.

4. In this situation the appellant invoked the jurisdiction of the High Court of Madras under Art. 226 of the Constitution to set aside these two proceedings. Broadly stated, his principal contention was that the Shrotriem which he owned did not fall within the class of 'estates' to which either of the two enactments applied and that consequently the notification of Government under the Rent Reduction Act and the decision of the Settlement Officer and the Tribunal under the Abolition Act were wholly

without jurisdiction. The writ petition was, however, withdrawn by the appellant for the reason that a suit in a civil court for adjudicating upon the several issues of fact and law was more appropriate and the Advocate-General who appeared for the State to oppose the writ petition, expressed his consent to waive notice under S. 80, Civil Procedure Code.

5. The appellant thereafter filed a suit in the court of the Subordinate Judge, Ongole in Guntur District for a declaration that the Shrotriem of East Thakkellapadu was not an "estate" within the Rent Reduction Act which was the basis on which the impugned notification of Government dated May 2, 1950 had been issued, nor an "inam estate" within the Abolition Act, which was the decision of the Settlement Officer and of the Tribunal whose legality was challenged, and for an injunction restraining the State from taking action in pursuance of these two enactments as regards the lands of the appellant in the said Shrotriem. The suit was dismissed by the learned Subordinate Judge and the High Court, on appeal, affirmed the dismissal but granted the Certificate of fitness which has enabled the appellants to file the present appeal.

6. As would be seen from this short narration, the two principal questions that would arise for consideration in the appeal would be, first, whether the Shrotriem village is not an "estate" within the Rent reduction Act, second, whether it is not an "inam estate" under the Abolition Act. Bot the Subordinate Judge as well as the High Court have answered the first question in the affirmative and in regard to the second, though the learned Subordinate Judge answered that also in the affirmative, the learned Judges of the High Court declined to investigate that matter on the ground that the same could not be agitated in a Civil Court . This would be the third question which we have to deal with.

7. It would be convenient to take up first the question whether the Shrotriem is an 'estate' within the scope of the Rent reduction Act and this would turn upon the provisions of that enactment. The preamble to the Rent Reduction Act specifies, inter alia, that it was an Act to provide for the reduction of rents payable by ryots in estates governed by the Madras Estates Land Act, 1908, approximately to the level of the assessments levied on lands in ryotwari areas in the neighbourhood and for the collection of such rents exclusively by the State Government. In line with it S. 1 (2) of the Act makes provision for the application on the enactment to all "estates" as defined in S. 3, cl. (2), of the Madras Estates Land Act, 1908. Its second Section empowers the State Government to appoint a special officer for any estate or estates for the purpose of recommending fair and equitable rates of rent for the ryoti lands in such estate or "estates". After the Special Officer completes the enquiry he determines in accordance with the prescribed procedure the fair and equitable 'rates of rent payable by the ryot and fixes the amount of reduction which the rates theretofore prevailing in the estate should undergo. The Government thereafter considers the report of the officer and publishes in the official Gazette a notification determining the rates of rent which should prevail in particular estates and S. 3(2) of the Rent Reduction Act renders the rates so notified final and binding on the parties.

8. In the case before us, the above procedure was followed and the State Government published a notification on May 2, 1950 under S. 3(2) of the Rent Reduction Act determining the rates of rent payable by ryots in the Shrotriem of East Thakkellapadu treating it as an 'estate'.

9. The Rent Reduction Act, as it stood at the date relevant to these proceedings, contained no provision or procedure for the purpose of conducting an inquiry as to whether any village or villages or other property for which the rates of rent were to be determined by the special officer appointed by government was or was not an 'estate'. It is therefore manifest that the jurisdiction of the Government to issue the notification appointing a special officer, as well as the validity of the

further proceedings of such officer in the matter of determining the fair and equitable rent payable by the ryots in those villages and the issue by Government of the notification under S. 3 of the Rent Reduction Act would depend on whether the property in respect of which these proceedings were taken was an 'estate' as defined in S. 3(2) of the Madras Estates Land Act. If it was not, obviously the Government would have had no power to apply the provisions of the Act to such property and the orders consequent on the inquiry by the special officer would also be without jurisdiction. That was precisely the contention that was urged by the appellant when he impugned the validity of the proceedings by Government and the notification issued thereunder in respect of the Shrotriem under this enactment. The question then arises whether the Shrotrien was an "estate" within the meaning of S. 3(2) of the Madras Estates Land Act. 1908 for it was only such "estates" that were brought within the scope of the Rent Reduction Act. Section 3(2) of the Estates Land Act, 1908 refers substantially to 4 types of tenures under which land might be held. What we are now concerned with is cl. (d) of that definition dealing with 'inams' which runs:-

"3. In this Act, unless there is something repugnant in the subject or context-.....

(2). 'Estate' means-

....

(d) 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".

This sub-section is followed by 3 Explanations of which only the first is relevant for the purposes of the present appeal and that runs:

"Explanation (1) -Where a grant as 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 purpose."

The contention urged by the appellant in the Courts below and before us was that the Shrotriem did not fall within this definition for the following reasons which are not wholly separate but some of which run into one another:

(1) That the grant was not of a named village and so the opening words of the first explanation were not attracted to the case.

(2) That the grant was not of the entirety of the village of East Thakkellapadu but only of a certain area of lands in the village and that for this reason the grant in question did not satisfy the requirements of the main part of S. 3(2) (d).

(3) That there was no proof that some of the leads forming part of the village which were the subject grants in inam to others, had been granted at a date earlier than the Shrotriem grant to the appellant's ancestors and that in consequence the terms of the second limb of the explanation were not attracted, and

(4) Lastly, that the lands not granted to the inamdar were reserved by the grantor but that the reservation was not for communal purposes and that therefore the concluding portion of the

explanation became inapplicable.

10. Before considering these points it is first necessary to set out the effect of the documents that have been placed on record as regards the nature and quantum of the grant. From the definition of an "estate" in S. 3(2)(d) of the Estates Land Act read with the Explanation it would be apparent that it would be the terms of the grant, both as regards its form as well as the quantum of the interest granted, that would be crucial for determining whether an inam grant was or was not an "estate". That grant is not available but in the absence of the grant the material from which the terms of the grant are usually gathered are the entries in the several columns of the Inam Fair Register, and the Inam Fair Register for the suit village is available. The submissions of learned Counsel for the appellant in relation to the points we have set out earlier have been based on the entries in the Inam Fair Register.

11. The certified copy of the extract of the Inam Fair Register of the village has been marked as Ex. A-2, and even here we might mention that there were two minor inams in the village and it was on this that the third contention we have mentioned was based, but to these minor inams we shall advert later. In column No. 2 the Shrotriem in question is described as personal. Column 3 which is headed 'Survey No. etc. of the fields comprised in the grant' specifies both the dry lands and the Poramboke whose extents are given in Columns 4 and 5. The total extent of the lands in the village comprised of dry lands and Poramboke which in English measure are of the extent respectively of 585.62 and 101.35 making a total of 686.97 acres. Having regard to the heading of Column 5, this entire extent of 686.97 acres must be taken to be the subject of grant. We shall now set out the details of the Poramboke of 32-7-0 in local measure (corresponding to 101.35) acres on which reliance is placed by learned Counsel for the appellant both for his submission that it was not the entire village that was granted but only certain lands in the village, as also that there was a reservation of certain lands by the grantor. At the bottom of Column 4 the particulars of the Poramboke are given and this is made up of the extents stated of the village site, ponds, vagus, paths and tsavudu (i.e., saline land unfit for cultivation) making a total of 32-7-0 in local measure (101.35 in acres). In this connection reliance is also placed on the entry in column No. 13 where there is a reference to two minor inams covered by separate title deeds, certified copies of the relative Inam Fair Registers being Exs. A-3 and A-4 and these are claimed to have been excluded from the property of the Shrotriemdar. A-3 is in respect of a personal grant of an extent of 13.13 acres while the other covered by Ex. A-4 was of an extent of 26.34 acres for which a jodi of Rs. 12/- was payable. In column No. 9 of Ex. A-2 the jodi payable by the Shrotriemdar was computed after deduction of Rs. 12/- being the amount payable by the two minor inamdars. We shall consider the significance and legal effect of the existence of these minor inams later when dealing with the third point of learned Counsel.

12. The remarks of the Deputy Collector with reference to the Shrotriem also throw light on the point now in controversy. In that the Deputy collector states:

"In the present accounts, this Shrotriem and the shrotriem of Chekrayapalem are entered as one shrotriem. But they are quite distinct villages; and they are situated at 10 miles distance from each other. In the Inam Book of Fasli 1211, they are entered as one, and the jodi of both the villages is amalgamated together, but the karnams of both the villages are different, and all the sharers that enjoy the shrotriem of Thakkellapadu, do not enjoy Chekrayapalem. Therefore it is desirable that both the shrotriems should be confirmed separately. The value of Chekrayapalem is generally supposed to be half of the value of this shrotriem. The jodi of each village is distinctly entered in the karnam's accounts, and according to those accounts the jodi of the shrotriem is Rs. 269-8-0.

In the accounts of Fasli 1212, 29-15-0 are entered as the then existing inam. All of which is said to be older than the shrotriem. Some of the inamdars, who are Desamadams pay a jodi of Rs. 12/- to the shrotriemdars. The Desamadams Inams are generally of immemorial origin and the shrotriemdars admit that they are older than the shrotriem; perhaps the jodi might have been imposed by the shrotriemdars. The village of Chekrayapalem which is said to be equal to half of the village is rented according to which the value of that village amounts to Rs. 213/-. According to this, the value of this village must be supposed to be Rs. 426/-, which is nearly the average of the 10 years, income previous to Fasli 1221".

13. We shall now take up the points urged by learned Counsel:

1. Was the grant one of a named village?

13a. The remarks of the Deputy Collector extracted earlier tend strongly in favour of the view that the grant was of a named village of Thakkellapadu. Learned Counsel drew our attention to the heading in the Register of Inams in the village (Ex. A2) and pointed out that it purported to be a Register of Inams in the village, but obviously no assistance can be derived from the use of the preposition "in" as it is a well-known form of heading which is equally used even where an entire village is the subject of the grant (Vide e. g. the observations in District Board, Tanjore v. Noor Md., 1952-2 Mad LJ 586 at p. 592 : (AIR 1953 SC 446 at p. 450).

2. Were the entirety of the lands in the village granted, and if not, the nature of the reservation?

14. Closely related to the first point dealt with, and possibly merely another aspect of the same question is whether the entire land of the village was not the subject of inam, under the original grant. We have already pointed out that in Column 3 of Ex. A2 both the dry as well as the Poramboke of a total extent of 686,97 acres-as set out in Columns 4 and 5-is shown as the extent of the inam. That the entirety of the dry lands in the village was granted was not disputed, but the argument was that the Poramboke was not. However, in the face of these entries in Columns 3 and 4 of the Inam Fair Register, it appears to us idle to contend that the Poramboke was not granted to the shrotriemdar but was reserved by the grantor. Even in cases where the words 'deduct poramboke' were used, it has been held that these words were used not for the purpose of excluding Poramboke from the grant but merely for indicating that it was being deducted for ascertaining the assessment, since waste land is not assessed (vide Krishnaswami v. Perumal Goundan, AIR 1950 PC 105 at p. 108). The case before us is a fortiori because Column 3 shows that the Poramboke is comprised in the grant.

3. The effect of the existence of the 2 minor inams.

15. Learned Counsel next referred us to the deduction of the two minor inams of an extent of 29.1 in local measure (about 90 acres) covered by Exs. A-3 and B 4 in Column 13 of Ex. A-2. In regard to these two minor inams it would be seen from the remarks of the Deputy Collector we have extracted, that the two inams which are called Desamadam were of immemorial origin and that the Shrotriemdars admitted in 1862 that they were older than the shrotriem. It is also stated that jodi was payable by them to the Shrotriemdars, and it goes on to say that this might have been imposed by the shrotriemdars themselves. These recitals would indicate that either these minor inams came into existence at a time anterior to the grant of the shrotriem but that the shrotriemdars extracted payment of jodi from them, or that they were the creations of the shrotriemdars themselves. In either event their existence would not detract from the shrotriem being an "estate" within S. 3(2)(d)

read with Explanation (1). On the facts therefore it is clear that there has been no reservation of any land in the village at the time of the grant of the named village to the shrotriemdars but the entire village, subject to the small extent of the two minor inams which had already been created was granted as shrotriem. Therefore, the existence of these minor inams which are of an earlier date than the shrotriem grant does not indicate any reservation of lands by the grantor and does not therefore militate against the shrotriem grant constituting an inam within S. 3(2)(d) of the Estates Land Act.

4. Reservation of lands in the village for other than communal purposes:

16. Learned Counsel contended that of the categories of land which were listed under the head "Poramboke" under Column 4 were not merely the extent of the village site, ponds, vagus, and paths which were put to communal use but also 'tsavadu' or saline land unfit for cultivation of the extent of over 50 acres, and that since this land was reserved, the case was not covered by the last part of the first explanation to S. 3(2)(d) of the Estates Land Act. What we have stated already, viz., that the entirety of the poramboke of 101.35 acres was the subject of grant, along with the dry land of the extent of 585.62 acres would be sufficient to dispose of this contention. Apart however from the entry in Column 3 read with Columns 4 and 5 on which we have based our conclusion, we might point out that it is unthinkable that the grantor while granting the dry lands in the village, reserved for himself for his enjoyment or for a grant on a future occasion the saline land wholly unfit for cultivation. We consider therefore that there is no substance in this last contention either.

17. It would therefore follow that the learned Judges of the High Court were right in holding that the notification by Government under the Rent Reduction Act was valid.

18. The next question to be considered is whether the shrotriem is an "inam estate" within the Abolition Act. We shall repeat the short facts in relation to this part of the case. On the publication by Government of a notification in the Official Gazette directing the reduction of rents in the suit-village under the Rent Reduction Act and while proceedings for effecting the reduction were going on, the Settlement Officer acting under the provisions of S. 9 of the Abolition Act started proceedings suo motu to inquire and determine whether or not the shrotriem was an'inam estate' and at the conclusion of the inquiry he held, in his order dated February 20. 1950, the shrotriem to be an 'inam estate'. The plaintiff(the appellants' predecessor) filed an appeal to the Tribunal constituted under S. 8 of the Abolition Act on whom appellate powers were conferred by the Act and the appeal was dismissed on June 25, 1951. Thereupon the plaintiff filed a writ petition in the High Court of Madras asserting that the shrotriem was not an inam estate and that the orders of the Settlement Officer and the Tribunal holding that it was so, were vitiated by error and were even otherwise illegal. The High Court of Madras did not pronounce upon the merits of these contentions but, considering that disputed questions of fact were involved, referred the plaintiff to a civil suit for obtaining such relief as he was entitled to and that was how the suit out of which this appeal arises came to be instituted.

19. In the suit itself the plaintiff raised, in relation to this matter, two contentions. The first was on what might be termed the merits of the case that the shrotriem was not an 'inam estate' within the definition of that term in the Abolition Act, for the reason that the original grant in inam was of both the warams and that consequently it was not an 'estate' within the meaning of S. 3(2)(d) of the Estates Land Act as it stood before its amendment in 1936.Second, he asserted that the decision of the Tribunal dismissing his appeal from the order of the Settlement Officer was not a valid dismissal, since that order was passed by only two members whereas the appellate Tribunal constituted by the Abolition Act was one consisting of 3 members.

20. Notwithstanding that the learned trial Judge upheld the second contention he proceeded also to deal with the question on the merits, and so doing decided against the plaintiff affirming the conclusion reached by the Settlement Officer in the enquiry under S. 9 of the Abolition Act.

21. When the matter was taken up on appeal to the High Court, the learned Judge arrived at the same conclusion as the trial Judge on the 2nd point viz., the validity of the dismissal of the appeal by the Tribunal. They, however, held that the result of the dismissal being invalid was that the appeal should be considered as still pending before the Tribunal, not having been properly disposed of. Besides, they held that on a construction of the provisions of the Abolition Act the jurisdiction to decide the question as to whether or not the shrotriem was an 'inam estate' was exclusively that of the Settlement Officer and of the Tribunal on appeal and that the Civil Courts had no jurisdiction to determine it. On this finding they dismissed the appeal.

22. It was submitted to us on behalf of the appellant that the learned Judges of the High Court were in error in holding that the jurisdiction of the Civil Courts to determine his complaint that the shrotriem was not an inam estate was barred by the provisions of the Abolition Act. Besides, it was pointed out that the judgment of the trial Judge who held on the merits on a consideration of the evidence adduced by the appellant, that the shrotriem was an 'inam estate' was extremely unsatisfactory and that the learned Judges hearing the appeal should have set aside that judgment and either decided the matter themselves or remanded it for further investigation by the trial Court. We agree that the judgment of the learned trial Judge on this point about the shrotriem being an 'inam estate' is not very satisfactory and that if the Civil Court had jurisdiction to decide the matter, one of the two courses suggested by learned counsel should have been followed by the High Court. We are, however, of the opinion that the learned Judges were right in their view that the jurisdiction of the Civil Courts was barred by reason of the provisions of the Abolition Act to which we shall make reference.

23. Section 9 of the Civil Procedure Code enacts, omitting the explanation which is not material:

"The Courts shall, subject to the provisions herein contained, have jurisdiction to try all suits of the civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

There is no doubt that a suit to declare that the shrotriem of which the plaintiff is the owner or proprietor does not fall within a particular tenure which would bring it within the operation of laws which greatly curtail his rights therein or thereto, is "a suit of a civil nature". That the exclusion of the jurisdiction of a civil court is not to be readily assumed or lightly inferred is also not in doubt. The question therefore is whether this jurisdiction is clearly barred, whether expressly or by necessary implication. It is true there is no provision in the Abolition Act in terms debarring the civil Courts from entertaining suits of this nature or trying them. But as the bar may arise by necessary implication it is necessary to read the relevant provisions of the Act for ascertaining whether the existence of the jurisdiction of civil courts to decide the matter now in controversy is consistent with them. Section 2 contains the definition of the expressions used in the Act and of these we need refer only to the definition of 'estate"- the main term used in the Act-to indicate the tenure of holding that is being 'abolished' and converted into 'Ryotwari'. 'Estate' is defined to mean 'a zamindari or an under-tenure or an inam estate.' In this case we are not concerned with the first two types of land holding but with the last, with 'inam estates' and that term is defined in S. 2(7) of the Abolition Act as meaning "an estate within the meaning of S. 3, cl. (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 5 provides for the appointment and functions of Settlement

Officers and S. 8 for the constitution of Tribunals. Section 9 which is the important provision in the present context has a heading which reads: 'Determination of inam estate.' Section 9 provides:

"9. (1) As soon as may be after the passing of the Act, the Settlement Officer may suo motu and shall, on application, enquire 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 bearing 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-sec. (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.

(b) Where any such appeal is preferred, the Tribunal shall cause to be published in the village in the prescribed manner, a notice requiring all persons who have applied to the Settlement Officer under sub-sec. (1) or filed before him statements under sub-sec. (2) to appear before it, and after giving them a reasonable opportunity of being heard, give its decision.

(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.

(5) No decision of the Settlement Officer under sub-sec. (3) or of the Tribunal under sub-sec. (4) shall be invalid by reason of any defect in the form of the notice referred to in sub-s. (2) or sub-sec. (4) as the case may be, or the manner of its publication.

(6) Every decision of the Tribunal and subject to such decision, every decision of the Settlement Officer under this 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) In the absence of evidence to the contrary, the Settlement Officer and the Tribunal may presume that an inam village is an inam estate"

The other provisions of the Act are not very material.

24. No doubt, having regard to the terms of S. 9 of the Civil Procedure Code we start with a presumption against the ouster of the jurisdiction of the ordinary courts, but this presumption could be over-borne, and what is relied on by the respondents in this connection is the combined effect of the several provisions in S. 9. In the first place, sub-sec. (1) authorities the Settlement Officer to "enquire and determine" whether any "inam village" is an "inam estate." Sub-sections (2) and (3) prescribe the procedure to be followed in this enquiry and determination which includes the giving of an opportunity to every one interested in the result of the enquiry for participating in it by leading

evidence in support of his contention. It does not stop there but by sub-sec. (4)(a) provides for an appeal from the decision of the Settlement Officer to a Tribunal. In this connection the nature of the Tribunal set up to hear the appeals is also not without significance. Section 8 (2) enacts:

"8. (2) Each Tribunal shall consist of three members; one of them (who shall be its Chairman) shall be a District Judge or an officer eligible to be appointed as a District Judge, another shall be a Subordinate Judge or an officer eligible to be appointed as a Subordinate Judge, and the third shall be a Revenue Divisional Officer or an officer eligible to be appointed as a Revenue Divisional Officer."

25. Next we have cl. (c) of sub-sec. (4) imparting finality to the decision of the Tribunal and immunising it from being questioned in a Court of law. Lastly, as a corollary to these provisions, sub-sec. (6) renders the decisions of the Tribunal and the Settlement Officer binding on all persons who either participated or were entitled so to participate in the proceedings before these two. Let us take a case where from the determination or decision of a Settlement Officer an aggrieved party invokes the appellate jurisdiction of the Tribunal and the latter renders a decision.

26. Section 9(4) (c) in terms the jurisdiction of the Civil Court from questioning the correctness of the appellate decision. In such a situation there is an express bar to the jurisdiction of the Civil Court to adjudicate upon the question whether "any inam village" "is an inam estate or not". The next question, and that is what was urged before us, is whether the jurisdiction of the Civil Court is not barred when the Settlement officer has as a result of his enquiry determined that question and nothing more has happened. It was urged that there was no bar where the matter rested merely with the decision of a Settlement Officer and support was sought for this contention from the circumstance that S. 9(4) (c) in terms imparted finality solely to the orders of the Tribunal, and this could not be read so as to make the same provision applicable to the orders of the Settlement Officer. This argument entirely lacks substance. Clause (c) has to be read in conjunction with the positive provision in sub-sec. (6) with which it is closely related and under this the decision of the Tribunal is declared to be binding on all persons interested, and a precisely similar effect is predicated as regards the decisions of the Settlement Officer where no appeal has been filed from his decision. The act thus never meant to draw any distinction between orders of Settlement Officers which were affirmed by Tribunals and other orders which by reason of their not being appealed against within the time prescribed, attained finality. This apart, if the submission of the appellant were correct, it would mean that when a Settlement Officer rendered his decision on the matter set out in S. 9(1), the aggrieved party had a right either to appeal to the Tribunal within the time prescribed or challenge it by a suit in Civil Court within the period of limitation which might be applicable to such suits under the provisions of the Indian Limitation Act. If this were so, as there might conceivably be more than one party having a similar interest and raising a similar contention who might all feel aggrieved by the decision of a Settlement Officer, it would mean that one party might file a suit, while another resorted to the Tribunal by way of appeal. This result would be sufficient to demonstrate the impossibility of accepting the construction for which the appellant contends. The very provision setting up an hierarchy of judicial tribunals for the determination of the question on which the applicability of the Act depends, is sufficient in most cases for inferring that the jurisdiction of the Civil Courts to try the same matter is barred. "In addition we have the provision in S. 9(4)(c) read with S. 9(6) to which we have adverted. In these circumstances, we have no hesitation in holding that to the extent of the question stated in Section 9(1), the jurisdiction of the Settlement Officer and of the Tribunal are exclusive and that the Civil Courts are barred from trying or retrying the same question. We should, however, hasten to add that this exclusion of jurisdiction would be subject to two limitations. First is the reservation made by the Lord

Thankerton in Secretary of State v. Mask and Co., 67 Ind App 222 at p. 236 : (AIR 1940 PC 105 at p. 110) where, after holding that the provisions of the Sea Customs Act setting up a special machinery for the adjudication of the correct duty leviable under the Act barred recourse to the Civil Courts to question the correctness of the decisions of the Authorities acting under that enactment added:

"It is also well settled that even if jurisdiction is excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

The scope of the exception here made was the subject of examination by this Court in the case of Firm of Illuri Subbayya Chetty v. State of Andhra Pradesh, C. A. No. 315 of 1962 D/- 25-1-1963: (AIR 1964 SC 322) where Gajendragadkar, J. speaking for the Court said:

"Non-compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles or judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute."

It is only necessary to add that no question envisaged by Lord Thankerton or referred to by Gajendragadkar, J. is raised in the appeal before us and it is therefore unnecessary for us to examine, in the present appeal either, the precise limits of this exception.

27. The second is as regards the exact extent to which the powers of statutory tribunals are exclusive, Lord Esher formulated the point thus in The Queen v. The Commissioner for Special purposes of the Income Tax, (1888) 21 QBD 313 at pp. 319-320:

"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. But there is another state of things which may exist. The legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends, and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from

such exercise of their jurisdiction."

It is manifest that the answer to the question as to whether any particular case falls under the first or the second of the above categories would depend on the purpose of the statute and its general scheme, taken in conjunction with the scope of the enquiry entrusted to the tribunal set up and other relevant factors. In the present case, this is determined by the terms of S. 9(1) which prescribes and delimits the functions of the Settlement Officer and thus in effect, of the appellate forum. This sub-section enjoins on or empowers the Settlement Officer to determine whether "any inam village" is "an inam estate or not" and the object of the Act is to "abolish" only "inam estates". This determination involves two distinct matters in view of the circumstances that every "inam village" is not necessarily "and inam estate" viz., (1) whether a particular property is or is not an "inam village" and (2) whether such a village is "an inam estate" within the definition in S. 2(7). The first of these questions whether the grant is of an "inam village" is referred to in S. 9(1) itself as some extrinsic fact which must pre-exist before the Settlement Officer can embark on the enquiry contemplated by that provision and the Abolition Act as it stood at the date relevant to this appeal, makes no provision for this being the subject of enquiry by the Settlement Officer.

28. Where therefore persons appearing in opposition to the proceedings initiated before the Settlement Officer under S. 9 question the character of the property as not falling within the description of an "inam village", he has of necessity to decide the issue, for until he holds that this condition is satisfied, he cannot enter on the further enquiry which is the one which by S. 9(1) of the Act he is directed to conduct. On the terms of S. 9(1) the property in question being an "inam village" is assumed as a fact on the existence of which the competency of the Settlement Officer to determine the matter within his jurisdiction rests and as there are no words in the statute empowering him to decide finally the former, he cannot confer jurisdiction on himself by a wrong decision on this preliminary condition to his jurisdiction. Any determination by him of this question, therefore, is (subject to the result of an appeal to the Tribunal) binding on the parties only for the purposes of the proceedings under the Act, but no further. The correctness of that finding may be questioned in any subsequent legal proceeding in the ordinary courts of the land where the question might arise for decision. The determination by him of the second question whether the "inam village" is an inam estate is, however, within his exclusive jurisdiction and in regard to it the jurisdiction of the Civil Courts is clearly barred. In this connection we might refer to the decision of the Madras High Court in Venkatanarasayya v. State of Madras, ILR (1952) Mad 680 at p. 681 : (AIR 1953 Mad 60 at p. 61) where Rajamannar, C. J. said:

"If the grant is less than a village then obviously Madras Act XXVI of 1948 can have no application whatever. Section 9 of that Act provides for the determination after inquiry of the question whether any inam village is an inam estate or not. Presumably, when the contention is that the grant does not comprise a village, the proceedings under S. 9 would not be strictly open to the aggrieved party ..... The aggrieved party will have a right of suit as he would have a good cause of action when proceedings are taken under colour of an Act which does not apply to the facts of the case."

This correctly expresses the distinction between the two related questions and the effect of the decision on the preliminary condition.

29. In the case before us, it has been found in dealing with the applicability of the Rent Reduction Act, that the shrotriem was an "inam village". The result therefore would be that the preliminary condition would have been satisfied and the Settlement Officer was therefore competent to record a finding that the "inam village" of East Thakkellapadu was an "inam estate" i.e., that "it was a village

of which the land revenue without the Kudivaram had been granted in inam to a person not owning the Kudivaram thereof."

30. As we have pointed out earlier, the Settlement Officer held an inquiry and by an order dated February 20, 1950 he held the shrotriem to be an "inam estate" within the meaning of the Abolition Act. Thereafter the plaintiff-the appellant's predecessor filed the appeal to the Tribunal and that appeal was dismissed on June 25, 1951. It was one of the orders that was challenged before the High Court in the writ petition and, as already seen, the appellant was referred to a civil suit for the adjudication of his rights. In the civil suit that he filed the appellant challenged the proceedings before the Settlement Officer and the Tribunal and the dismissal of his appeal by the latter on two grounds : (1) that even if the original grant of the shrotriem comprised the entire village, still the same was not an "inam estate" within the Abolition Act, because the same was not an "estate" prior to the amendment effected in 1936 to the Madras Estates Land Act 1 of 1908. In the definition, as it then stood,-as already seen-a grant was brought within the terms of the definition of an estate only where the grant was of the land revenue or of the melvarma alone "to a person not owning the Kudivaram thereof." It was this definition that was altered by an amendment effected in 1936. It was submitted by the appellant that the grant in the present case was of the entire interest in the land and not of the melvaram alone and that such an inam, even though it be of an entire village, was not brought within the provisions of the Abolition Act. (2) The decision of the Tribunal dismissing the appeal was impugned as incompetent for the reason that whereas S. 8 provided for a tribunal consisting of three members, in the present case the appeal was heard and disposed of only by two. The Madras High Court had held in Kama Umi Isa Ammal v. Ramakadamban, 1952-2 Mad LJ 667 : (AIR 1953 Mad 129) that such a decision of the tribunal was null and void and therefore would not amount to a dismissal of the appeal by the tribunal. So far as the second point was concerned, the learned Judges accepted as correct the view of the Madras High Court in the decision referred to and held that the order of the tribunal dismissing the appellant's appeal was a nullity, but the learned Judges further held that this would not automatically nullify or vacate the determination and decision of the Settlement Officer under S. 9 and his finding that the village in suit was an "inam estate" but that it had the effect merely of leaving the appeal where it stood at the time it was purported to be dismissed by the two members who could not function as the Tribunal. In other words, the result of applying the rule enunciated by the Madras High Court was that there were a valid order of the Settlement Officer followed by an appeal which had been filed to the Tribunal but which had not yet been disposed of validly by the Tribunal. Thus the effect in law of the void order of the Tribunal was held to be that the appeal was still pending before the tribunal. On this conclusion which is obviously correct the appellant could get no benefit, so far as the present suit was concerned, by the invalid dismissal of his appeal, for invoking the jurisdiction of the civil Court to determine the question whether the "inam village" was an "inam estate" though it would be competent to him to further prosecute the appeal, if he considered that that would serve his interests.

31. As regards the first point that is the case of the appellant on the merits, the learned Judges held that the jurisdiction of the civil court was impliedly excluded by the provision in the Abolition Act constituting the Settlement Officer and the Tribunal as the authorities to decide the issue and vesting them with the requisite jurisdiction and providing for the procedure to be followed by them in that regard. We have already expressed our agreement with these conclusions of the High Court. In this view we intimated to learned Counsel for the appellant that it would not be open to him to invite our attention to the evidence which was led before the Settlement Officer for proving that the original grant was of both the warams and that the Settlement Officer and the Subordinate Judge who tried the suit erred in recording that the shrotriem grant of the village was of the melvaram alone.

32. Learned Counsel for the State pointed out that the legislature of Andhra Pradesh has in 1956 and 1957, effected amendments to the Abolition Act which would render any arguments about the merits of the original grant being of both the warms, wholly academic but we have not thought it necessary to refer to it as this is hardly relevant for the points arising for disposal in the appeal.

33. The appeal fails and is dismissed with costs.

Appeal dismissed.

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