The Roman Catholic Mission

Vs

State of Madras and Another

Civil Appeals Nos. 389 of 1964 and 69 of 1965

(CJI P. B. Gajendragadkar, V. Ramaswami-I, K.N. Wanchoo, R. Satyanaryan Raju JJ)

14.01.1966

JUDGMENT

HIDAYATULLAH, J. -

In village Vandiyur of Madurai Taluk there are two blocks which bear the names Melapappathu and Keelapappathu. The former is 28.90 acres and bears survey No. 45 (the old survey No. was 33 and the area 28.75 acres). The extent of the area in kanieas is 21-9. The other block Survey No. 78, area 20.88 acres (the old survey No. was 100 and the area 20.53 acres). The extent of the area in kanies is 17-10. These lands were originally situated in village Managiri and the lands were manyam lands, that is to say, lands held at a low assessment or altogether free in consideration of services. It is now clear from the record and indeed it is admitted on all hands that they were the subject of an inam granted in ancient times by the Rulers and that they were held for the performance of puja in Sri Meenakshi Sundareswaral Devasthanam, Madurai. In 1948 the Revenue Divisional Officer, Madurai, held, after enquiry, that the inam consisted of both melwaram and kudiwaram and as the inam lands had been alienated the inam was liable to be resumed. His order was passed on April 9, 1948 and purported to be under s. 44B of the Madras Hindu Religious Endowments Act, 1926 (Madras Act 2 of 1927). The inam lands were resumed and regranted to the Devasthanam. At that time the lands were in the possession of the Roman Catholic Mission of St. Mary's Church, Madurai, and were so held by the Mission since October, 1894. Against the order of the Revenue Divisional Officer the Mission appealed to the District Collector under s. 44B(4) of the Act. The appeal was dismissed on March 13, 1949. The District Collector also held that the inam comprised both the Warams.

The Roman Catholic Mission thereupon instituted a suit in the court of the Subordinate Judge, Madurai under s. 44B(2)(d) of the Act for a declaration that the inam consisted only of the melwaram. The suit was later withdrawn by the District Judge to his own file and it was registered as O.S. 1 of 1954. The Mission also instituted another suit in the Court of the Subordinate Judge Madurai, which was also withdrawn by the District Judge to his file and was registered as O.S. 2 of 1954. The second suit was a mere general one. It also sought the declaration which was the subject of O.S. 1 of 1954 and it questioned both the right to resume the lands as well as the resumption which was ordered by the revenue courts. In that suit the Mission contended that the particular inam was outside the scope of s. 44B of the Madras Act 2 of 1927 as it was a personal inam and not liable to resumption under that section and that the section itself was ultra vires the Provincial Legislature. The Province of Madras (now the State of Madras) and Sri Meenakshi Sundareswaral Devasthanam, Madurai were made defendants.

The District Judge dismissed O.S. No. 1 of 1954, holding that the inam consisted of both the

warams. In O.S. 2 of 1954 the same finding was repeated and it was further held that the order of resumption was in valid and without jurisdiction since the inams in question were personal inams and did not come within the purview of s. 44B. The District Judge granted a declaration to that effect and also issued an injunction against the Devasthanam which had not taken possession of the land till then. Against the decision in O.S. 1 of 1954 the Mission appealed and against the decision in O.S. 2 of 1954 the Devasthanam and the State of Madras filed appeals. A.S. 734 of 1954 was filed by the Roman Catholic Mission against the decision in O.S. 1 of 1954 and A.S. 773 and 787 of 1954 were filed on O.S. 2 of 1954 by the State of Madras and Sri Meenakshi Sundareswaral, etc. Devasthanam, respectively. The High Court decided all the three appeals on December 14, 1959 pronouncing a separate judgment in A.S. 734 of 1954 and disposing of the other two appeals by a common judgment.

The finding that both the warams were the subject of the inam was reversed by the High Court and O.S. 1 of 1954 was decreed. The finding that the inams were personal and, therefore, not liable to be resumed were reversed and O.S. 2 of 1954 was ordered to be dismissed except for the modification that the inam was held to be of the melwaram only, which was the sole decision in the other suit. The High Court repelled all contentions about the ultra vires nature of s. 44B. The High Court certified both the appeals as fit for appeal to this Court and this appeal and Civil Appeal 69 of 1965 (Sri Meenakshi Sundareswaral, etc. Devasthanam, through its Executive Officer v. The Roman Catholic Mission and two others) have been filed. This appeal relates to O.S. 2 of 1954 and is filed by the Roman Catholic Mission with the State of Madras and the Devasthanam as the respondents. The companion appeal is by the Devasthanam and the answering respondent is the Roman Catholic Mission. This judgment will dispose of the two appeals.

Before we mention the matters in controversy in this appeal, we shall give an outline of the transfers by which the Roman Catholic Mission came to be possessed of the lands. It does not appear to have been seriously questioned at any time that these lands originally belonged to certain Mahomedans as proprietors. It appears, however, (as we shall see presently) that the land itself was not subjected to any grant but that the theerva, that is, the rent paid in money, alone was the subject of the grant. Although the right in respect of the concession in theerva was made out in the names of the Bhattars who were the Archakas of the Devasthanam, both the concession as well as the land were subjected to alienations. Even before May 12, 1861 half of Melapappapathu was purchased by one Krishnaswamy Chettiar, son of Andiappa Chettiar, and the other half was purchased by him on May 1, 1861. Similarly, Krishnaswami Chettiar had purchased a half of Keelapappapathu, from the original proprietors. On January 4, 1863 one half share in Melapappapathu was purchased by one Chockalingam Pillai from Krishnaswamy Chettiar. He also purchased one half of Krishnaswamy Chettiar's part of Keelapappapathu, for the benefit of the Muthuramalingam Pillai. In October 1864 Chockalingam granted a formal release in favour of Muthuramalingam. The other half of Keelapappapathu, which continued with the original proprietors was sold by them to Krishnaswamy Chettiar (less one kani) on July 18, 1867. On June 25, 1870 Muthuramalingam Pillai executed a usufructuary mortgage of a part of the land released in his favour, to one Vairavalingam Pillai son of Muthuramalingam Pillai. It is not clear whether he was his own son but it is not relevant to inquire. On December 14, 1871 Muthuramalingam's widow, Adaikalathammal, sold, on behalf of her minor son Muthuswami Pillai, half share of Melapappapathu and the quarter share of Keelapappapathu to Krishnaswami Chettiar. The mortgage of June 25, 1870 was paid off and Krishnaswami redeemed the property on September 11, 1872. This left out from Krishnaswamy Chettiar's ownership one Kani of land which the original proprietors still held. On June 17, 1872, Krishnaswamy Chettiar purchased that land and in this way he became owner of all the lands comprised in these two appeals. Krishnaswamy executed a release and sale deed in favour of Andiappa Chettiar of all the

lands and it appears that Andiappa Chettiar was the beneficiary of the purchases and thus the real owner.

On October 20, 1894, the Roman Catholic Mission purchased for Rs. 1,500 and Rs. 6,500 the greater part of Malapappapathu. The remaining portion of this block and the Keelapappapathu block was purchased by one Anthonimuthu and when he set up his own title the Mission sued him and obtained a decree in O.S. 45 of 1895 from the Sub-Court, Madurai West. The Roman Catholic Mission has thus been in possession of both the blocks from the last century. We shall now consider the contentions in the two appeals.

The High Court and the District Judge have differed on two aspects of this case. Both the aspects are connected with the nature of the inam in dispute. The first is whether the inam was of the Melwaram alone or comprised both the warams and the second is whether the inam was a personal inam which could not be resumed or one granted for the service of the temple, which could be resumed when there was an alienation and the service was stopped. On the question of the validity of s. 44B of the Madras Hindu Religious Endowments Act, 1926, the District Judge found it unnecessary to express any opinion in view of his decision on the nature of the inam which he held to be personal and not liable to resumption, but the High Court considered the question and held the provision to be valid. In these appeals these three points were mainly argued, along with a claim of adverse possession which the Roman Cathol ic Mission had set up. We shall begin by considering the nature of the inam-first from the point of view, whether it comprised both the warams and then from the point of view whether it was a grant to the temple or a grant for an office to be remunerated by the use of land or a grant of land burdened with service. We shall next consider the arguments on the basis of which s. 44B is said to be ultra vires and void. Lastly, we shall consider the question of adverse possession.

As there is no document recording the grant of inam and its conditions, one has to turn to a number of documents from which the High Court and the court below have drawn opposite conclusions regarding what was included in the inam. There is, of course, no dispute that the inam must have comprised the melwaram at least. That it must have done in any event. Thus the sole question is whether it comprised the Kudiwaram also. In reaching the conclusion that both warams were included, the District Judge took into consideration certified copies of certain leases from the record of an old case O.S. No. 124 of 1944 of the Court of Subordinate Judge, Madurai. These documents are Exts. B-4, 5, 6 and A-68, 69 and 77. Ex. B-4 is a Kararnama (agreement) executed for the fasli years 1348 and 1349 by which the lessees undertook to hand over 1/3 share of the produce as melwaram and to retain 2/3 share as kudiwaram from the lands leased out of Keelapappapathu. Ex. B-5 is another lease for cultivating the whole of Keelapappapathu nanja (wet) lands. Ex. B-6 is a muchilika in respect of nanja lands in Keelapappapathu by which lessee undertook to pay half produce as melwaram and to retain the other half as kudiwaram. These documents undoubtedly would have thrown light upon the matter but they were not admissible because they were only copies. The originals were not produced at any time nor was any foundation laid for the establishment of the right to give secondary evidence. The High Court rejected them and it was plainly right in so deciding. If we leave these documents out of consideration, the other documents do not show that the inam comprised the kudiwaram also. Ex. A-3 is an extract from the village account of Managiri village, Mandakulam Taluk relating to inamas. It is for the years 1802 - 1803. The lands are sufficiently identified with the suit lands by the area. The lands were described as Stelather inam Poruppa manyam, conducted for Meenakshi Sunderashwaral temple. The poruppu being a low or quit rent according to the 5th Report p. 765 we get an indication as to what the inam comprised. The account shows that from the total assessment of 96 Pons 0 fanoms and 15 thuddus,

the poruppu was only 19 Pons 2 fanoms and 3 thuddus. Again in Ex. A-5, which is an extract of the Inam Account of Manigiri village of 1217 fasli i.e., five years later, the heading was Inam Enquiry Mauje (village) Manigiri". Now the word Mauje is used in respect of villages in which there are cultivators owning cultivable lands. This has been so held for a long time. (See Venkata Sastrulu v. Sitharamadu, (I.L.R. 38 Mad. 891.) per Sadasiva Iyer, J. and Sethayya v. Somayajulu.) (I.L.R. 52 Mad. 453, 463. (P.C.)) In the remarks column, the poruppu amount payable is stated and it almost corresponds to the poruppu earlier mentioned, and there is a further mention of the service of the temple. The pattas exhibits A-6 to A-8 of the years 1856, 1857 and 1860 also speak of sournadayam manibam poruppu which is revenue payable in money at a concession. The inamdars did not themselves claim in the Inam enquiry anything more than the melwaram rights and in Exts. A-10 and A-11, which are the Inam statements (1862) and the Inam Fair Register dated September 25, 1863, the Stalathar Poruppu Manibam is again mentioned and the Inam were registered in the names of Bhattars as the Sthaniks of the temple.

The only document in which a contrary note was struck was the othi-deed (mortgage) Ex. A-64 if 1876 by which Muthu Meenakshi had mortgaged her Melwaram interest in half of the inam for 20 years in favour of Krishnaswamy Chettiar. Muthu Meenakshiammal was the wife of Vikramapandia Battar the sthaneekam of the Devasthanam. This concerned both Melapappapathu and Keelapappapathu and the mortgagee undertook to pay the poruppu. In describing the property it was stated that the melwaram and kudiwaram rights were in the mortgagee's possession. This probably represented the true state of affairs because Krishnaswamy Chettiar was slowly acquiring through the years the lands as well as the inam. A similar statement was made by Krishnaswamy Chettiar in Ex. A-42 but it does not advance the case further. It is obvious that Krishnaswamy Chettiar had already acquired not only the melawaram out also the kudiwaram. Neither document really showed that the inam comprised the kudiwaram as well. There is no other evidence of the inclusion of kudiwaram in the inam and the dealings were with melwaram which alone the inamdars claimed at the Inam Enquiry.

Although the matter has been discussed carefully by the High Court, we have re-examined the material and set down here what we consider to be adequate reasons for holding that there is no proof that the kudiwaram was the subject of the inam. All admissible matter points to the conclusion that the melwaram alone was the subject of the grant. The appellant in Civil Appeal No. 69 of 1965 took us through the two judgments and pressed upon us the view of the trial Judge. We have considered the two views and are of opinion that the High Court has reached the right conclusion on the admissible evidence on record. Civil Appeal No. 69 of 1965 must thus fail and this finding by us will be read in the other appeal also.

We shall now consider whether the inam was a personal inam or for the service of the Devasthanam. The High Court has relied upon a decision of the Madras High Court in Rasa Kondan v. Janaki Ammal ((1950) 2 M.L.J. 177.) Inams are of various kinds. They are classified on the basis of concession in land revenue, that is to say, whether the whole of the land revenue is remitt ted or a part, or whether the land is held subject to a payment of money. Where the whole of the land revenue is remitted the inam is known by names such as Sarva Inam, Sarva manyam, Sarva dumbala or darobust inam. When the right to the soil is not included in the inam it is known according to the share which was free such as Ardha manyam (half), chaturbhagam (1/4) etc. The third kind of inam comprised payment of a quit rent called the poruppu. The question is whether this inam in which only a poruppu was payable comprised the right to the soil. In Venkata v. Sitaramadu (I.L.R. 38 Mad. 891.) it was held by the Privy Council that there was no presumption in law that an inam grant, even if made to a Brahmin, did not include the kudiwaram. We have borne

this observation in mind but we hold that the evidence in this case points to the fact that the inam comprised only the melwaram. It was thus an inam where the land was held subject to payment of an amount as quit rent. It was granted to the archakas and was recorded in their name. That they alienated the lands is without any doubt and the question is whether the inam could be resumed or not. Section 44-B inserted by the Madras Hindu Religious Endowment (Amendment) Act 1934 (Madras Act XI of 1934) in the parent Act II of 1927 and further amended by the Amendment Act X of 1946 reads :

> "44-B. (1) Any exchange, gift, sale or mortgage, and any lease for a term exceeding five years, of the whole or any portion of any inam granted for the support or maintenance of a math or temple or for the performance of a charity or service connected therewith and made, confirmed or recognized by the British Government, shall be null and void.
>
> Explanation. - . . .
>
> (2) (a) The Collector may, on his own motion, or on the application of the trustee of the math or temple or of the Assistant Commissioner or of the Board or of any person having interest in the math or temple who has obtained the consent of such trustee, Assistant Commissioner or Board, by order, resume the whole or any part of any such inam, on one or more of the following grounds, namely :-
>
> (i) that the holder of such inam or part has made an exchange, gift, sale or mortgage of the same or any portion thereof or has granted a lease of the same or any potion thereof for a term exceeding five years, or
>
> (ii) that the holder of such inam or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage of such math or temple, the charity of service for performing which the inam had been made, confirmed or recognized be the British Government, or any part of the said charity of service, as the case may be, or
>
> (iii) that the math or temple has ceased to exist or charity or service in question has in any way become impossible of performance.

When passing an order under this clause, the Collector shall determine whether such inam or the inam comprising such part, as the case may be, is a grant of both the melvaram and the kudiwaram or only of the melvaram.

. . . . . .##

> Sub-section (1) of s. 44-B was the subject of interpretation in P. B. Bheemsena Rao v. Sirigiri Paddayella Reddi and others. ((1962) 1 S.C.R. 339.) The question then was whether s. 44-B(1) covered a grant of land burdened with service as against a grant for an office to be remunerated by the use of land but resumable when the service was not performed. In dealing with these two distinct aspects of an inam grant, Gajendragadkar J. (as he then was) and Wanchoo J. point out that the former is not a case of a service grant proper and such a grant can only be resumed if the conditions

> of the grant contemplate a resumption when the service is not performed. The other is a proper service inam and unless service is performed resumption is inevitable. They also point out that prior to the enactment of s. 44-B the inams were governed by the Board's Standing Orders : rule 54. That laid a duty on Revenue Officers to see that inams confirmed by the Inam Commissioner as being for the service of some religious or charitable institution were not enjoyed without the performance of service. Grants were liable to be resumed when the whole or part of the land granted had been alienated or lost. Provision was, however, made to deal with such cases in two ways. Either there was resumption or the grantee was left in possession and the full assessment being imposed on him, the difference was made available to the particular charity or institution for the service of which the grant was made. Therefore, in the case of personal inams burdened with service, when the service was not being performed, whether there was an alienation or not, the full assessment being demanded, the personal portion was left to the grantee but the concessional portion was given to the charity concerned.

After the enactment of s. 44-B the Board's Standing Order Rule 54 was amended and inams for religious and charitable purposes were classified :

> (i) inams granted for the performance of a charity or service connected with a Hindu math or temple; and
>
> (ii) inams not falling under class (i).

The first two kinds were governed by the provisions of the Madras Hindu Religious Endowments Act and the second by the Board's Standing Orders Rule 54. Taking this history into account it is pointed out that s. 44-B(1), in spite of the width of its language is only open to a restricted interpretation and includes in resumable inams those in which the whole of the income or a very great part is required for the service and not large personal inams with a small or slight service. On the other hand grant of land made to an office-holder to remunerate him for service is always resumable if he ceases to hold office or to perform service.

The rival contentions in this case may now be considered. The Roman Catholic Mission submits that these are personal inams and they do not come within s. 44-B. This submission was accepted by the District Judge. According to him, the inam was made to the ancestor of the persons named in the Inam Fair Register, subject to the obligation to perform service in the temple. The inam is thus held not to be attached to any office, archaks or other; not is the income remuneration for that office. It is urged that such an inam is alienable, and if the service continues, the alience cannot be distributed and can enjoy the inam. The High Court accepted the contention of the Devasthanam that the inam was granted for the office of the archakas and for service as such In other words the inam is said to be attached to the office and thus incapable of alienation and if alienated liable to resumption.

In deciding which it is, certain documents throw a flood of light. In Ex. A-3 to which we have already referred, this inam is called Devedayam inam and again as stalethar inam porupou manyam "conducted for Meenakshi Sundareshwaral Temple, thaatie Devasthanam". The inam is entered in the names of Bhattars. The word Devadayam ordinarily is used in revenue & records to describe land attached to a temple and in the dictionaries the meaning is 'lands or allowances for the support of a temple'. The expression sthalather poruppu manyam or shortly sthala manyam means land held at a low or quit rent. The word poruppu also means quit rent. Thus this document shows that the

Bhattars were granted these lands in inam for the performance of service of the temple but not granted as inam personal to the grantee. The High Court rightly pointed out that the description in the same document "Shanmugasundra Bhattar Mritunjaya Bhattar inam" was merely a description of the inam with reference to the inamdars, but could not in any circumstances mean that the inam was their personal inam.

Further Ex. A 11, the Inam Fair Register of 1863, does not mention the name of the original grantee which it would have if the grant is personal. The names of the two Bhattars are entered but as athanikama of Pagoda Meenakshi Sundareshwaral and the inam is described as Devadayam for the archakal service, that is to say, of puja parichakaram in the temple and it is stated that the Inam Commissioner confirmed the inam.

Now in a series of cases, the Inam Enquiry has been held by the Judicial Committee to be a landmark. In Arunachalam Chetty and others v. Venkatachalapathi Guruswamingal (L.R.46 I.A. 204.) the utmost importance was attached to the Inam Fair Register, the preparation of which was described as a great act of State. In Narayan Bhagwantrao Gosavi Balajiwala v. Gopal Vinayak Gosavi ((1960) 1 S.C.R. 773) thus Court held, accepting the finding of the Inam Commission, in the absence of other evidence, that the grant was to a Devasthan and constituted a Devasthan Inam.

Mr. Ramachandra Aiyer attempted to prove to us that the expression 'act of state' in the Privy Council judgment was a misuse of the term and cited some cases where the act of state has been discussed. We do not find it necessary to refer to them. The term act of state does not always mean a sovereign act against an alien which is neither grounded in law nor does it pretend to be so. The term means more than that because it has many meaning. In State of Saurashtra v. Memon Haji Ismail Haji other meanings of this term are given. Here it indicates an act in respect of which there was an official declaration. The Inam Fair Register incorporated an official declaration. which was the result of detailed inquiries. All evidence collected in respect of each inam was carefully sifted and considered before any conclusion was reached or declared. In the absence of positive and proper evidence to the contrary such declaration must possess supreme importance.

It is significant that the Roman Catholic Mission in the plaint as it was originally filed had said that the office of the archaka was remunerated by the income of lands in dispute and by the income from other sources. However, when the decision sub nom. P. V. Bheemsena Rao v. Yella Reddi of the High Court of Madras was reported in (1954) 1 M.L.J. 384 it pleaded by an amendment that the inam was a personal inam. As the High Court in the judgment under appeal points out, there was litigation between the Bhattars and the Roman Catholic Mission and the evidence we have discussed, must have been known to the Mission when the original plaint was filed. The fact that their plea was that this was an inam for remunerating the office of the archakas represented a true reading of these documents. The Inam Fair Register speaks of the inam as Devadayam and reads it as permanent. If the inam was to a Brahmin personally it would have been shown as 'Brahmadayam' and 'hereditary'.

Finally in Ex. A-10, which is a statement of Muthumeenakshiammal who was in enjoyment of the inam in 1863, it is stated :

> #". . Particulars as to how the inam . .was obtained and the abstract of the deeds.. . (7) . . Nenjakani 39During the time of our predecessors the said. . Manibam was allotted by the . .##

previous Government for sthalathar inam of Meenakshi Sundareswaral and just as our predecessors enjoyed, we also in the aforesaid manibam, I Muthu Meenakshi Ammal half share, I Ponnammal 1/4th share, we Kalyana Battar and Bhinna Subba Battar 1/8th share and we Villu Battar alias Shunmuga Sundara Battar 1/8 to share, we are in enjoyment of the aforesaid Maniba lands in the aforesaid manner and we are paying the poruppu manyam due in respect thereof as per our proportionate share and we are also remaining in enjoyment of the said Manibams as our predecessors enjoyed. We are doing archakam (pooja) and cooking in the aforesaid temple."

This clearly shows that the inam was always considered as remuneration for archaka service of the temple and on its alienation it is liable to resumption under s. 44-B. Even before the incorporation to s. 44-B such an inam could have been resumed by Government, under Standing Order of the Board of Revenue Rule 54 (1) (see Anjanayalu v. Sri. Venugopala Rice Mill Ltd. (I.L.R. 45 Mad. 620 (F.B.) at 624.) Mr. Ramchandra Aiyar even attempted to question the correctness of this case, which has been followed consistently. The finding of the learned District Judge, Madurai, that this was a personal inam to an individual was erroneous and the High Court was right in reversing it.

Mr. Ramchandra Aiyer next contends that s. 44-B was void when the legislature purported to enact it, and, therefore, no action could be taken under it. This argument is many faceted and often it is obscure. Shortly stated, the argument is this : The inam was confirmed on September 25, 1863 under title deed 1354 by the Inam Commissioner. The alienations of the rights, whatever they be, were before that date. Prior to the Inam Commission there was no prohibition and the confirmation could not affect prior alienations. As the inam deeds were validated by an Act of the British Parliament (32 and 33 Vict. c. 29) the right to forfeit the inam concession or to resume it could be exercised by the Crown only as the inam became a contract between the Secretary of State for India and the inam-holder. Section 44-B is said to be void because it conflicted with this position and /enabled the Revenue Officers to order resumption. The resumption or forfeiture itself was said to be ineffective without the order either of the Governor General or Governor in exercise of his individual judgment and also because the right to resume the inam was said to be extinguished by prescription. The resumption was characterised as a forfeiture and was said to be void under s. 299 of the Government of India Act, 1935 and Arts. 31 and 296 of the Constitution. Madras Hindu Religious and Charitable Endowments Act (XIX of 1951) which by s. 35, reenacts s. 44-B was further said to be void as, it was said, it seeks to protect only Hindu religious institutions and not those belonging to other religions. The power of the provincial legislature to enact s. 44-B in 1934 or 1946 was also challenged under the Government of India Act 1915 and the Government of India Act, 1935, respectively.

The District Judge did not consider any of these arguments except the last, because he decided the issue of resumption against the Devasthanam and the State Government. The District Judge decided that the section was validly enacted by the provincial legislature. The District Judge, however, mentioned in the judgment all the arguments which were raised before him and they were the arguments which we have set down above. However, in the High Court most of these arguments do not appear to have been advanced because the High Court judgment is silent about them. We intimated Mr. Ramchandra Aiyer that we would not allow any argument to be advanced which the High Court was not invited to consider. In the High Court the validity of s. 44-B of the Madras Act and s. 35 of the Act of 1951 was considered from the point of view of the powers of the Provincial legislature when the former was enacted and from the angle of the Constitution in respect of both. We shall consider these arguments mainly from the same two standpoints.

The powers of the Provincial legislatures under the Government of India Act, 1915 were determined

under the Devolution Rules made by the Governor General in Council under ss. 45-A and 129-A of the Government of India Act. By these rules a classification of subjects was made for the purpose of distinguishing the functions of the local governments and local legislatures of Governors' provinces from the functions of the Governor General in Council and the Indian Legislature. The Devolution Rules set out in two lists the subjects so classified and any matter in the list of provincial subjects set out in Part II of Schedule I was excluded from any central subject. Under rule 4 of these rules, if any doubt arose as to whether a particular matter did or did not relate to a provincial subject, the Governor General in Council was to decide whether the matter did or did not relate and his decision was final.

At this distance of time, it is somewhat inept for a Court, without a proper inquiry, to decide whether the powers of the Provincial legislature did or did not extend to the making of s. 44-B. For aught we known, this identical question might have been raised and the decision of the Governor General in Council obtained. That would be end of the matter. No one seems to have challenged the section although numerous inams were resumed under that section. However, considering the matter in principle we do not feel any doubt the competence of the Provincial legislature. As the District Judge and the High Court have rightly pointed out, the powers of the Provincial legislatures extended over land tenures, land revenue administration and religious and charitable endowments. A concatenation of these several powers must obviously furnish adequate scope for undertaking the most comprehensive legislation on the subject of inams in general and inams connected with religious and charitable endowments in particular. Section 44-B was thus fully within the competence of the Provincial legislature.

The next question which was considered by the High Court was whether resuming and regranting the inam to a Hindu temple, offended the Constitution. The High Court did not accept this submission. It is obvious that by the transfer of the inam the temple was deprived of a benefit and the transferee had no right to hold that benefit. What was done was to restore to the temple what it had lost and this was not putting a denominational religious institution at an advantage.

Once we hold that the Provincial legislature had competence to enact the impugned section, it would follow that the section would be sustained by s. 292 of the Government of India Act, 1935. Indeed, the power of the Provincial legislature under the Act of 1935 was no whit less than that of the legislature which enacted the section. Any amendment of the section in 1946 would have clear authority even under the Act of 1935. And the some may be said of the Madras Hindu Religious and Charitable Endowments Act, 1951 vis a vis the Constitution.

The theory that contracts between the Secretary of State for India and the inam-holders came into existence after the passing of 32 and 33 Vict. c. 29 and that this took the matter out of the powers conferred by the Devolution Rules upon the Provincial Legislatures, is equally fallacious. What had really happened was this. In 1958, when the Government of the East India Company, which held the territories in trust from the Crown, came to an end, the British Parliament passed "An Act for the better Government of India". We are not concerned with its provisions. A year later another Act was passed to amend the Act of 1858. It provided that any deed, contract or other instrument for the purpose of disposal of real estate in India, vested in Her Majesty under the Act of 1858 must be expressed to be executed as on behalf of the Secretary of State or India or by order of the Governor General in Council or the Governor of Fort Saint George or of Bombay in Council. Although this statute was there, the title deeds which were issued by the Inam Commissioner were not expressed to be executed by order of the Governor in Council and purported to have been executed on behalf of the Governor in Council instead of on behalf of the Secretary of State for India in Council. This

created a doubt about the validity of the title created under them. By the enactment of 32 and 33 Vict. c. 29 the title deeds for inam lands were validated. They were to be read and to have the same effect as if they were executed by order of the Governor in Council and on behalf of the Secretary of State for India in Council. In this way the flaw in the numerous grants was removed without having to reissue fresh title deeds.

This legislation did not create a contract. It only validated the old title deeds and no more. To read into the grants by which inams were created, a contract which was inviolable except by resumption by the Crown is to read into the Acts of British Parliament something which is not there. Like any other grant which is resumable on breach of its conditions, these inams were resumable according to their terms and conditions. There was nothing in the inam title-deeds or these statutes which inhibited the Provincial legislature from enacting s. 44-B under its undoubted powers or the Collector from resuming the inam on breach of its conditions under the power granted by the section.

The other arguments on the subject of the validity of s. 44-B need not detain us. They proceed on obliterating the difference between resumption of an inam for breach of its terms and forfeiture which is a kind of punishment annexed by law to some illegal act or negligence, in the owner or possessor of land. We are not here concerned with forfeiture but with the resumption of a concession granted by Government, which is occasioned by the alienation of the concession to a stranger. Any argument based on forfeiture is entirely out of place. Similarly, the arguments based on bona vacantia or deprivation of property sufficiently indicated by the reliance on the articles of the constitution mentioned earlier by us cannot help, partly because they are irrelevant and mainly because no such arguments appear to have been advanced in the High Court. We accordingly reject the contention that s. 44-B or the resumption under it were invalid.

There remains only the question of adverse possession. In Boddapalli Jagannadham and Anr. v. Secretary of State (I.L.R. 27 Mad. 16.) it was held that there is no period of limitation prescribed by any law within which alone Government should exercise its prerogative of imposing assessment on land liable to be assessed with public revenue. This case was followed in Subramaniam Chettiar v. Secretary of State (28 M.L.J. 392). As the resumption was of the melwaram only these rulings apply. Mr. Ramchandra Aiyer admitted that he had no authority to the contrary. This point has no force. This appeal (Civil Appeal 389 of 1964) must also fail.

The two appeals will accordingly be dismissed with costs. There will be a right to set off the costs.

Appeals dismissed.

</html