ANDHRA PRADESH HIGH COURT

T.M. Naidu

Vs.

R. Venkata Reddi

Writ Petn. No. 6735 of 1974

(B.J. Divan, C.J., Sambasiva Rao, Lakshmaiah, Muktadar and Raghuvir, JJ.)

27.07.1977

JUDGMENT

Sambasiva Rao, J.

1. (On behalf of himself and Divan, C. J. and Muktadar and Raghuvir, JJ.) - Is the operation of Section 56 (1) (c) of the Andhra Pradesh (Andhra Area) Estates Abolition Act (hereinafter referred to as 'the Abolition Act') limited only to the purposes of Sections 55 and 56 (1) (a) and (b) of that Act? Cannot the Settlement Officer decide the question as to who the lawful ryot in respect of any holding is when such a dispute arises while considering the application or applications filed under Section 11 of the Abolition Act for granting ryotwari pattas and also when a similar question arises under the other provisions of the Abolition Act ? A Full Bench of three Judges of this Court answered the first question in the affirmative and the second in the negative in *Cherukuru Muthayya v. Gadde Gopalakrishnayya*[1], A Division Bench of this Court consisting of Divan, C. J. and Amareswari J. doubted the correctness of this view and felt that it required reconsideration. That is why as many as five of us are obliged to examine the question.

2. The dispute relates to a land of Ac. 12-32 cents. It is in a former Zamindari estate. The present writ petitioner filed O.S. No. 247/48 in the District Munsif's Court, Madanapalli for declaration of his title to and possession of this land against the respondent. That suit was decreed on 20th of July, 1950. In A. S. 42/51, which was the respondent's appeal, the Sub Court, Chittoor, by its order dated 31-12-1951 reversed the trial Court's judgment. The petitioner carried the matter to the High Court of Madras in S. A. No. 539/S2 which was transferred to the High Court of Andhra. Satyanarayana Rao, J., dismissed the second appeal on 13th of July, 1955 pointing out that the Zamindari estate had been notified under the Abolition Act and consequently the Settlement Officer should decide the questions which were raised in the suit. Even by that time the respondent had filed an application under Section 11 of the Abolition Act before the Settlement Officer. That Officer held that the dispute raised by the respondent under Section 11 should really be decided under Section 56 (1) (c) and could not be decided under an application for patta under Section 11. In revision the Director of Settlements confirmed this view.

3. Thereupon, the present petitioner made an application under Section 56 (1) (c) praying

[1] AIR 1974 And Prad 85

that it might be decided as to who the lawful ryot is in respect of that holding. The Assistant Settlement Officer disposed of the petition on 20th of July, 1964 and held that the petitioner was the lawful ryot. The respondent carried the matter in appeal to the Appellate Tribunal at Chittoor in T. A. Nos. 2 and 3 of 1965. It was pending for nine years and when it was finally taken up for consideration, the above Full Bench decision in Muthayya's case (FB) (supra) had come. Following that decision the Appellate Tribunal, by its decision dated 29th June, 1974, held that the petitioner's application under Section 56 (1) (c) was not maintainable and the dispute as to who the lawful ryot in respect of the holding is could not be decided when it related to a claim for patta under Section 11. Saying this the Tribunal allowed the appeal of the respondent. The present writ petition has been filed challenging the correctness of the Tribunal's decision. The Tribunal was bound to follow the Full Bench decision and so it did. The question now is whether the very limited scope given to Clause (c) of Section 56 (1) of the Abolition Act by the said Full Bench is correct.

4. The Full Bench in Muthayya's case (supra) was decided in a regular civil appeal and a writ petition. The appeal arose out of a suit for injunction. The defence was that the plaintiffs had no title to or possession of the land in question. The defendant also raised a question that since he had filed an application under Section 56 (1) of the Abolition Act, the Civil Court had no jurisdiction to try the suit. The trial Court held that the plaintiffs were entitled to and in possession of the land. All the same it dismissed the suit in regard to one of the items on the ground that the dispute between the parties was as to who the lawful ryot was and although the suit was for injunction it was not a claim beyond the purview of Section 56 of the Abolition Act. Consequently, the Civil Court had no jurisdiction to adjudicate upon the disputes in respect of that item. The trial court accordingly dismissed the suit in regard to Item 1 but decreed it in so far as Item 2 was concerned. The application filed by the defendant under Section 56 (1) (c) of the Abolition Act was dismissed by the Assistant Settlement Officer who held that the dispute could be settled by Civil Court. The defendant appealed to the Estates Abolition Tribunal which set aside the order of the Assistant Settlement Officer and remitted the case to that Officer for fresh disposal. After remand the Assistant Settlement Officer allowed the application finding that the 1st defendant was the owner of Item 1 and was, therefore, entitled to a ryotwari patta. This time the plaintiffs preferred an appeal to the Tribunal who found that the land was in the possession of the plaintiffs in pursuance of the Civil Court's order. Till then, it was in the occupation of the 1st defendant. Thus it agreed with the view taken by the Assistant Settlement Officer and consequently dismissed the appeal. The writ petition was filed to challenge this concurrent view of the two authorities below. The appeal was transferred to the High Court to be heard and disposed of along with the writ petition. Both of them came up for hearing before Obul Reddi, J. (as he then was). Obul Reddi, J. (as he then was), on an analysis of the contentions, posed the question for decision in the two matters thus :

> "What is the effect of a decision rendered by a Settlement Officer or the Estates Abolition Tribunal under Section 56 (1) of the Act. In other words, has the Civil Court no jurisdiction to inquire into the question of title and possession when once the Settlement Officer or the Tribunal decides a question as to who the lawful ryot is, and as a consequence thereof a patta is granted to the person in whose favour the decision was rendered ?"

The learned Judge proceeded to notice several decisions of the Madras and Andhra Pradesh High Courts relating to the jurisdiction of the Civil Court vis-a-vis the decision of the Settlement Officer under Section 56 (1) (c) of the Abolition Act and found that there was a conflict in the opinions expressed by several Division Benches of this Court. In order to resolve the confusion which arose out of this continuous conflict, the learned Judge referred the two matters to a Full Bench. That was how the Full Bench came to consider these cases.

5. We will now point out how Gopal Rao Ekbote, Chief Justice, speaking for the Full Bench, reasoned out his conclusions. After referring to the facts of the cases and how they came up before the Full Bench, the learned Chief Justice noticed that the first contention which had to be answered was " whether an application under Section 56 (1) (c) can lie as was filed in the present case, for getting a decision as to who the lawful ryot, is, irrespective of the context in which Clause (c) of that section appears"? In the first place, it was pointed out that Section 56 is a transitory provision and applies only to cases where immediately after the abolition of an estate disputes arise between the landholder and his ryots regarding the payment of any rents. Then the learned Chief Justice proceeded to point out the contextual relationship of Section 56 (1) (c) with other provisions of the Chapter in which that section appears. Since Section 56 is found in the Chapter which appears under the heading " Miscellaneous" and Section 55, which is the first section in that Chapter, relates to collection of arrears of rent which accrued before the notified date and then Clauses (a) and (b) of sub-section (1) of Section 56 also deal with arrears of rent, it was reasonable, so the learned Chief Justice opined, to construe the scope of Clause (c) as being confined to the questions which might arise under Section 55 and Clauses (a) and (b) of Section 56 (1).

6. Then reference was made to the subsequent provisions upto Section 68 which is the last provision in the Abolition Act. It was pointed out that aptly to the heading " Miscellaneous" , various unconnected and miscellaneous provisions have been incorporated in the Chapter. Secondly, there is a fasciculus of Sections 55 to 59 both inclusive which make provision for settling the disputes between the land-holder and the ryots relating to the claim of the landholder against the ryots pending on the date of notification or arising thereafter. In the opinion of the learned Chief Justice, all these disputes relate to the payment of rent or arrears due. Section 56 has to be read therefore in the context of Section 55. Clause (c) of Section 56 (1) cannot be read in isolation and out of context with the other clauses of Section 56 (1). If so read in the context with the other two clauses and bearing in mind the provisions of Section 55, there is no possibility for any doubt that the dispute postulated by Clause (c) is only in regard to the disputes covered by Clauses (a) and (b). In other words, the inquiry under Clause (c) by a Settlement Officer can only be in regard to the disputes which arise as to from which ryot the arrears of rent are due to the land holder in regard to a particular holding. Clause (c) is not an independent provision nor is it a substantive provision and it does not postulate any independent inquiry. Therefore, in the opinion of the learned Chief Justice the place where Section 56 appears, its contextual relationship with Section 55 and the purpose of Section 56 read as a whole, make it clear that an enquiry into a question covered by Clause (c) is intimately and integrally connected with Sections 55 and 56 only. Further, since there was no other purpose in empowering the Settlement Officer to decide the dispute under Section 56 (1) (c), the scope of the clause must be limited only to purposes for fastening the liability of rent due.

7. Then Sections 12 to 15 were noticed and it was held that for the purpose of these sections it

was not necessary to decide any question as to who the lawful ryot was under Section 56 (1) (c). Section 15 read with Sections 12 to 14 provides a complete code in themselves for granting of pattas to land holders. Consequently Section 56 (1) (c) has no relevance with Section 15.

8. Then taking up Section 11 it was pointed out that it does not indicate any procedure for the grant of a patta. It does not even postulate any application for that purpose. At the same time, it was noted that the enquiry under Section 11 can commence not only *suo motu* but also on an application by a ryot. What Section 11 empowers the Settlement Officer to decide is whether the land in question is a ryoti land and whether a particular ryot is entitled to a ryotwari patta for such a land. Section 11, unlike Section 15, does not make an order under that Section final and does not prohibit that being questioned in a Court of law. Therefore, the legislature's intention to clothe orders under Section 11 with finality is patent. Keeping in view the scheme and the purpose of the Act and its provisions for decision of all disputes, it could be seen that it did not think it necessary or desirable to allow disputes of title between the rival ryots to be finally decided under the Act except for the purpose of Section 15. Therefore, it can be concluded that Section 56 (1) (c) has no relation whatever with determination of any question under Section 11. The two are independent and mutually exclusive provisions and do not supplement each other. Having recorded these conclusions it was held that the application made by the 1st defendant in the suit was misconceived since it was not made for the purpose of Section 55 or clauses (a) and (b) of Section 56 (1). The Settlement Officer and the Appellate Tribunal had no jurisdiction to entertain such an application.

9. Then Gopal Rao Ekbote, C. J., took up the second question that unless and until a patta is granted under the Abolition Act, no suit for possession or injunction by a person who claims dispossession or non-interference in his possession can lie. Since it was already decided on the first point that the Settlement Officer and the Appellate Tribunal had no jurisdiction to entertain the application by the 1st defendant, that would not come in the way of instituting a civil suit for injunction. After referring to a number of decisions the learned Chief Justice concluded his judgment holding that a suit can be filed in a civil court even though the person in possession may not have been granted a patta and that Section 9 of the Civil P. C. does not stand in the way of such a suit.

10. The above decision of the Full Bench is in two parts. The first part relates to the scope of Section 56 (1) (c) and the second part to the maintainability of the suit in a civil court without a patta. In the case before us, the second question does not arise as there is no suit for possession or injunction. In this case we are concerned only with the view expressed by the above Full Bench on the restricted scope given to Section 56 (1) (c). We would like to make it clear that since the question of maintainability of a civil suit without a ryotwari patta or after securing a ryotwari patta under the Abolition Act is not posed before us, we do not express any view on that aspect.

11. In order to decide the question, it is necessary to understand the purpose and scheme of the Abolition Act and to have a conspectus of the statute. We will do so now. In some areas of the Madras Province, there used to be permanent settlement on account of which many estates came into existence. Some were Zamindari estates some were Inam estates and some others were under-tenure estates. In 1908 the Madras Legislature made the Andhra Pradesh (Andhra Area) Estates Land Act, 1908 for the purpose of declaring and amending the law relating to the holding of land in estates in that province. That Act underwent very many amendments in the light of the

developing situation. As the winds of change blew stronger, the Madras Legislature thought it necessary to abolish the estates and to introduce ryotwari system in the areas covered by the estates. Consequently, the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act of 1948 was made. Its declared purpose is " to provide for the repeal of the permanent settlement, the acquisitions of the rights of land-holders in permanently settled and certain other estates in the State of Andhra and the introduction of the ryotwari settlement in such estates."The above declaration is contained in the preamble to the Act. Thus, it is manifest that the two declared purposes of the enactment are firstly to repeal the permanent settlement and acquire the rights of the land holders and secondly to introduce ryotwari settlement in such estates. The process postulated by the Abolition Act could not be completed without implementing either of the two purposes. It is, therefore, reasonable to understand the intendment of the Legislature while making the enactment as introducing ryotwari settlement in all the areas covered by the estates after abolition of the system of permanent settlement and acquiring the rights of the land holders therein. It must necessarily follow that the Legislature has also intended to create the necessary machinery for implementing the purposes of the Abolition Act. To put it in other words, the Abolition Act has been intended to be a self-contained Code and to be self-sufficient for carrying out all the purposes of the Abolition Act.

12. This appreciation of the intendment of the Legislature is fully borne out by the different provisions of the Abolition Act as well. All expressions defined in the Estates Land Act are given the same meanings in the Abolition Act also unless of course there is anything repugnant in the subject or context. It is so made clear by clause (1) of Section 2 of the Abolition Act. According to clause (3) of that section " estate"means a Zamindari or an under-tenure or an inam estate. An inclusive definition to the expression " land holder"is added in clause (8) by bringing into the ambit of the definition a joint Hindu family and a darmila inamdar as well. This is in addition to the definition of that expression contained in Section 3 (5) of the Estates Land Act. According to that definition, a person owning an estate or part thereof and also every person entitled to collect the rents of the whole or any portion of the estate is a landholder. It would be pertinent to note the second paragraph of the definition of " landholder"contained in the Estates Land Act. It lays down that if there is a dispute as to who the landholder is for the purpose of the Act, the person whom the Collector may recognise or nominate as such landholder in accordance with the rules to be framed by the State Government in this behalf is deemed to be the landholder. This is subject to any decree or order of a competent Court. What we would like to emphasise is that the Estates Land Act itself had provided a process through which disputes as to who the landholder is for the purpose of the Act could be settled. Primarily that function was allotted to the Collector. Section 2 (13) of the Abolition Act defined " Settlement Officer"as the officer appointed in relation to any estate or part of an estate under Section 5 (1). Clause (14) says that " Tribunal"means a Tribunal constituted under Section 8 and having jurisdiction.

13. It is Section 3 which elaborates the consequences of notification of an estate that was abolished. Clause (a) of that section says that once there is a notification in respect of an estate, the Permanent Settlement Regulation 1802, the Estates Land Act and all other enactments applicable to the estate shall be deemed to have been repealed in so far as that estate is concerned excepting the Reduction of Rent Act, 1947. Clause (b) declares that on such notification the entire estate stands transferred to the Government and vests in them free of all encumbrances. Not only this, all other enactments applicable to ryotwari areas would also apply to the area of the estate once a notification is made. Clause (c) puts an end to all the rights and interests created

in or over the estate before the notified date by the land-holder and such right and interests cease and determine as against the Government. Clause (d) empowers the Government to remove any obstruction which may be raised while taking possession of the estate. However, there is an exception to this general power to dispossess contained in clause (d). The Government are enjoined not to dispossess any person of any land in the estate in respect of which he is *prima facie* entitled to a ryotwari patta, be he a ryot or be he a land-holder, pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it as to whether he is actually entitled to such patta. Thereafter, erstwhile land-holder will be entitled only to compensation and the relationship of land-holder and ryot stands extinguished.

14. Sections 4 to 8 relate to the constitution of authorities under the Abolition Act. Section 4 envisages the appointment of a Director of Settlements to carry out survey and settlement operations in estates and to introduce ryotwari settlement therein. He is subordinate to the Board of Revenue. It is thus clear that the Director of Settlements has to implement the introduction of ryotwari settlement in the estates which have been notified and abolished. Section 5 requires the Government to appoint one or more Settlement Officers to carry out the functions and duties assigned to them under the Act. He is subordinate to the Director and has to function under the lawful instructions of the Director. The Director of Settlements is also given power to cancel or revise any of the orders, acts or proceedings of the Settlement officer, other than those in respect of which an appeal lies to the Tribunal. It is under Section 6 that Managers of the estates are appointed. Section 7 enumerates the powers of control of the Board of Revenue. Some of the powers thus conferred on the Board of Revenue are to superintend the taking over of estates, to issue instructions for the guidance of the Settlement Officers etc., and to cancel any of the orders, proceedings of the Settlement Officer, other than those in respect of which an appeal lies to the Tribunal. Section 8 enjoins upon the Government to constitute as many Tribunals as may be necessary for the purpose of the Act. It is already noted that the preceding sections postulate preferring appeals to the Tribunal against the decisions of the Settlement Officer on some aspects.

15. Section 9 lays down the procedure for determination of inam estates. The power of such determination is conferred on the Settlement Officer. He has to conduct the inquiry as per the provisions of that section. An appeal against his decision can be filed before the Tribunal and the decision of the Tribunal is declared to be final and not liable to be questioned in any Court of law. Sub-section (6) of Section 9 further proclaims that every decision of the Tribunal and subject to such decision, every decision of the Settlement Officer under the section shall be binding on all persons claiming interest in any land in the village, or hamlet or khandriga, notwithstanding that any such person has not preferred any such application or has not participated in the proceedings before the Settlement Officer or the Tribunal as the case may be. This shows the importance given to the decisions of the Settlement Officer and the Tribunal.

16. In regard to under-tenure estates, under Section 10 the Settlement Officer is once again given the power to decide as to whether an estate was created before or after the date on which the principal estate was permanently settled. Any person aggrieved by the decision of the Settlement Officer may prefer an appeal to the Tribunal. After Section 10, there are seven sections which relate to grant of ryotwari pattas. In fact they occur under the heading " Grant of ryotwari pattas."

17. Section 11 deals with lands in which ryots are entitled to ryotwari pattas. Section 12 deals

with lands in zamindari estate in which landholders are entitled to ryotwari pattas. Section 13, in its turn, deals with lands in an inam estate in which the land holders are entitled to ryotwari pattas and lastly Section 14 is concerned with lands in an under-tenure estate in which land holders are entitled to ryotwari pattas. These four provisions declare the rights of ryots and land holders to obtain ryotwari pattas in respect of certain lands. Section 11 is concerned with the rights of ryots to get ryotwari pattas while Sections 12 to 14 deal with rights of land holders to get similar pattas. Section 11 proclaims that every ryot is entitled to a ryotwari patta in respect of ryoti lands, which immediately before the notified date were properly included or ought to have been properly included in his holding. He is also entitled to a ryotwari patta in respect of lanka lands in his occupation immediately before the notified date, such lands having been in his occupation or in that of his predecessors-in-title continuously from the 1st day of July, 1939. However, no person, who has been admitted into possession of any land by the land holder after the 1st day of July, 1945, is entitled to a ryotwari patta in respect of such land, except where the Government so direct. Likewise, Sections 12, 13 and 14 enumerate lands in zamindari, inam and under-tenure estates respectively in respect of which land holders are entitled to ryotwari pattas.

18. It is true that Sections 11 to 14 do not say that it is the Settlement Officer who is entrusted with the task of adjudicating upon the rights of ryots and land holders for getting pattas. But there can be no doubt, going by the scheme of the Abolition Act, that it is the Settlement Officer that will have to first adjudicate upon those rights. We have already referred to Section 5, which refers to appointment and functioning of the Settlement Officer, which says that the Settlement Officers appointed under it were to carry out the functions and duties assigned to them under the Act. We have also referred to the proviso to Section 3 (d) that the Government while taking possession of the notified estate, shall not dispossess any person of any land in the estate in respect of which they consider he is *prima facie* entitled to a ryotwari patta, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta. Reading Sections 11 to 14 in the light of Section 5 read with the proviso to Section 3 (d), it is abundantly clear that it is the Settlement Officer that will have to decide as to who is entitled to ryotwari patta under Sections 11 to 14, be he a ryot or a land-holder.

19. This conclusion is further reinforced by the provisions of Section 15 which says that the Settlement Officer shall examine the nature and history of all lands in respect of which the land holder claims a ryotwari patta under Sections 12, 13 or 14, as the case may be, and decide in respect of which lands the claim should be allowed. When the Settlement Officer is constituted as the authority to decide the question of lands in respect of which land holder claims pattas under Sections 12, 13 or 14, it to unthinkable that some other authority is contemplated to decide the claims of ryots for ryotwari pattas under Section 11. Further, the other provisions of the Abolition Act would also demonstrate that the Settlement Officer is constituted as the basic authority to decide questions which arise after the abolition of the estates. Therefore, we have no doubt whatever that it is the Settlement Officer that will have to declare the rights of ryots to get ryotwari pattas under Section 11. Moreover, right from 1949 it has been invariably accepted by all Courts that the Settlement Officer decides the questions which arise under Section 11. What is more, the Settlement Officer may adjudicate upon the questions not only on the application filed by a ryot or ryots but also *suo motu.*

20. Before directing that a patta be granted to a ryot under Section 11, the Settlement Officer will have to examine whether the lands were ryoti land, and whether before the notified date they

were properly included or ought to have been properly included in the holding of that particular ryot. If the claim is in respect of lanka lands, the Settlement Officer will have to examine whether they had been in the occupation of the ryot immediately before the notified date and whether they had been in his occupation or that of his predecessors-in-title continuously from the 1st day of July, 1939. It is, however, pertinent to note that more than one person may lay a claim for a ryotwari patta in respect of the same land or holding. If more than one person apply for a ryotwari patta under Section 11, that section does not contain a provision as to by whom, how and in what manner it should be decided as to who the lawful ryot is to whom ryotwari patta can be granted. In the case of landholders, however, Section 15 provides for determination of lands in which a landholder is entitled to a ryotwari patta, and the Settlement Officer is enjoined to examine the nature and history of all lands in respect of which the land-holder claims a ryotwari patta under Sections 12, 13 or 14, as the case may be, and decide in respect of which lands the claim should be allowed. That decision is appealable to the Tribunal whose decision is final and is not liable to be questioned in any Court of law.

21. In the case of ryots seeking ryotwari patta where there is a dispute as to who the lawful ryot is in respect of any land or holding, we will have to seek elsewhere in the Abolition Act for the power of the Settlement Officer to decide as to who the lawful ryot is. It cannot be postulated even for a minute that the Abolition Act has left this aspect unprovided for in its scheme when its very purpose is not only to abolish estates but also to introduce ryotwari settlement in the areas covered by the estates. It is a necessary concomitant of a ryotwari settlement to decide which person is entitled to a ryotwari patta. It is unthinkable that the Legislature has not thought of the possibility of more than one person claiming ryotwari patta in respect of the same land. If a provision is not made for the settlement of such a dispute, then the very purpose of ryotwari settlement would be incomplete and would be defeated. Just as Section 15 has been enacted for the purpose of determination of lands in which a landholder is entitled to a ryotwari patta, under Section 11, provision must have been made by the Legislature to decide questions incidental to the granting of ryotwari pattas under Section 11. As we have said, the Abolition Act having been contemplated as a self-contained and self-sufficient code, it is not permissible to think that certain aspects of ryotwari settlement have been ignored by the Abolition Act.

22. Section 21 provides for survey of estates and Section 22 lays down the manner of effecting ryotwari settlement of estate. It requires the Settlement Officer to effect a ryotwari settlement of the estate or part thereof in accordance with a settlement notification framed and published by the Government for the purpose. Section 23 is concerned with the determination of land revenue before ryotwari settlement is brought into force. From Section 24 onwards up to Section 54-E the Abolition Act deals with determination, apportionment and payment of compensation to the land holder.

23. Sections 55 to 68, which are the last provisions in the Abolition Act, are of miscellaneous nature dealing with various aspects of the Act and they are grouped together under the heading " Miscellaneous" . The very heading denotes that all the provisions are not of one piece, and category and that they do not deal with the same subject or topic. While Section 55 deals with collection of arrears of rent which accrued before the notified date, Section 56 deals with decisions of certain disputes arising after an estate is notified. Then Section 57 deals with peshkash, jodi and quit rent and declares that they shall cease to accrue with effect from the end of the fasli year immediately preceding the notified date. Section 58, in its turn, deals with jodi,

Kattubadi etc. payable by a landholder of an inam village which is not an inam estate. Section 58-A is concerned with an altogether different aspect viz., stay of execution proceedings and setting aside certain Court sales and foreclosures conducted in execution of any decree or order passed against a land holder. Section 59 makes transitional provisions in regard to other liabilities of the landholder. Section 60 makes a provision of the existing estate staff. Section 61 deals with maintenance by Government of institutions maintained by landholders. Sections 63 and 63-A provide for decisions of questions regarding forests. If any question arises whether any land in an estate is a forest or is situated in a forest, or as to the limits of the forest, it shall be determined by the Settlement Officer, subject to an appeal to the Director. Section 63-A declares that the decision of the Settlement Officer or that of the Director or that of the Board of Revenue in further revision is final. In Section 64 the right of an owner or occupier of any land or building is safeguarded against any temporary discontinuance of possession or occupation. Section 64-A provides for *res judicata* . Section 64-B is a saving provision in respect of limitation. Section 65 bars the jurisdiction of civil courts in certain cases. Section 66 repeals the Madras Impartible Estates Act, 1904 and the Madras Tenants and Ryots Protection Act, 1946. Section 67 confers power on the Government to make rules to carry out the purposes of the Abolition Act. And lastly Section 68 gives power to the Government to do anything which appears to them necessary for removing the difficulty, if any, that arises in giving effect to the provisions of the Act.

24. We have referred to every one of the sections which occur under the heading " Miscellaneous"only to demonstrate that they deal with different aspects which arise by virtue of abolition of estates and introduction of ryotwari settlement in the areas of those estates.
25. Section 55 says that the landholder shall not be entitled to collect any rent after the notified date. But the Manager of the estate is entitled to collect the rent with interest. The rent that is referred to was the one which had accrued before the notified date. It also provides for deduction of collection charges, peshkash, quit rent, jodi and other amount due from the landholder to the Government from the amounts collected by the Manager. Thus, the section deals with collection of rents due before the notified date.

26. The subject-matter of Section 56, on the other hand, is decision of certain disputes arising after an estate is notified. Since this provision constitutes the core of debate before us, we will extract the section in its entirety. It is as follows :

> *" 56. DECISION OF CERTAIN DISPUTES ARISING AFTER AN ESTATE IS NOTIFIED* :- (1) Where after an estate is notified, a dispute arises as to (a) whether any rent due from a ryot for any fasli year is in arrear or (b) what amount of rent is in arrear or (c) who the lawful ryot in respect of any holding is, the dispute shall be decided by the Settlement Officer.
> (2) Any person deeming himself aggrieved by any decision of the Settlement Officer under Sub-section (1) 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; and its decision shall be final and not be liable to be questioned in any Court of law."

If after the notification a dispute arises as to whether any rent due from a ryot for any fasli is in arrear, and what amount of rent is in arrear, such dispute will have to be decided by the

Settlement Officer. Likewise, if any dispute arises after an estate is notified as to who the lawful ryot in respect of any holding is, that dispute also has to be decided by the Settlement Officer. The nature of the disputes that are to be decided under Section 56 and the ambit of that section are indicated by the marginal note itself. If that section is merely intended as a supplementary or complimentary provision to Section 55, the marginal note would have been different. Words of general nature like " certain disputes arising after an estate is notified"would not have been used if that were the intention of the Legislature. If it were merely a supplementary provision to Section 55, it would have merely said " decision of disputes relating to arrears of rent" . It should be noted that collection of arrears of rent is a crucial part of Section 55. Since that was not repeated in the marginal note of Section 56 and since, on the other hand, the marginal note indicates a more general and comprehensive nature of the disputes, it is reasonable to construe that Section 56 is an independent section by itself and is not merely supplementary to Section 55.

27. It is true that clauses (a) and (b) of Section 56 (1) relate to rent in arrears and may be that while implementing Section 55, questions contemplated by clauses (a) and (b) of Section 56 (1) arise. They are decided by the Settlement Officer under Section 56. But it would be doing violence to the language of Section 56 and to the scheme of the Abolition Act itself, if the power of the Settlement Officer under Section 56 is limited to disputes which are related to Section 55. It must also be noted that Section 56 is concerned with disputes arising after an estate is notified. So, it is reasonable to understand sub-section (1) as providing for decision of disputes which arise after an estate is notified not only in regard to arrears of rent accrued before the notified date but also subsequent to the notification of the estate.

28. Another important feature of the Abolition Act must be noted. It has abolished certain rights and privileges and created new rights. The landholders' rights to hold their estates have been abolished and instead, they have been given the right to receive only compensation. Further, new rights are created in the ryots as well as in the landholders to secure ryotwari pattas in respect of certain lands. When pre-existing rights were abolished and new rights were created, naturally the Abolition Act constituted its own special forums to adjudicate upon the matters which arise out of abolition of pre-existing rights and creation of new rights. It is logical to conclude that these specially constituted forums are empowered to adjudicate upon all disputes which might arise out of the abolition of the preexisting rights and creation of the new rights. It is untenable to think that a part of the adjudication is left unprovided for.

29. Be that as it may, the crucial provision for the present discussion is Clause (c) of Section 56 (1). This clause empowers the Settlement Officer to decide who the lawful ryot in respect of any holding is if a dispute arises in that behalf. If Clause (c) had been intended as a provision for deciding the disputes connected only with Clauses (a) and (b) of sub-section (1), the simpler way of expressing such an idea would have been " who the ryot in arrears is" . On the other hand, the language of Clause (c) is very wide. The crucial words used are " lawful ryot" , " any holding" . In order to connote the idea as to who the ryot in arrears of rent is, the use of the word " lawful"would be inappropriate. The words " lawful ryot"clearly suggest the idea that a ryot has got a right in accordance with law to a holding. Therefore, the words " lawful ryot"bring into Clause (c) a much wider scope and amplitude than the mere determination of the ryot in arrears of rent. The wider amplitude of Clause (c) is also clearly brought out by the words " any holding" . If the purpose of the provision is only to find out the ryot who is in arrears of rent in respect of a holding, then the Legislature would have used the words " ryot in respect of the holding for

which arrears of rent are due" . The expression " any" clearly and unambiguously shows the intention of the Legislature that whenever a question arises, in whatever context it may be, as to who the ryot in respect of any holding is and who has got right and interest in any holding, that dispute also shall be decided by the Settlement Officer. That dispute, it is patent from the language of the clause and also from the language in which the marginal note is couched, may arise in respect of any holding, be it a holding in respect of which arrears of rent were due or be it any other holding, to find out who the lawful ryot is in respect thereof. Simply because Clause (c) follows Clauses (a) and (b) in Section 56 (1), it cannot be construed to be in the nature of ejusdem generis or that its ambit is confined only to Clauses (a) and (b). To read such a limitation into Clause (c) would be doing violence to the language of the clause.

30. It should be remembered that Section 56 is one of the miscellaneous provisions providing for a miscellany of situations. Just as all the sections which appear under the heading " Miscellaneous"are not of one piece, the different clauses of Section 56 also are intended to cover different disputes and situations. Section 56 is clearly intended to provide for a machinery for a decision of certain disputes which arise after an estate is notified. One of the frequent questions which would generally arise after an estate is notified is who the lawful ryot is in respect of any holding. The Legislature could easily postulate when they were making the law that after an estate is notified and when ryots raise claims for patta in respect of holdings, a machinery will have to be constituted for resolving that dispute. That is why Clause (c) is couched in such wide terms and forms part of Section 56 which is the provision for decision of disputes which arise after an estate is notified. Evidently this did not form pact of Section 11 which essentially is a provision which is intended to decide the lands in respect of which ryotwari pattas can be given to ryots. Certainly there is a difference between the question as to which lands in respect of which ryotwari pattas can be given to ryots and the question as to who the lawful ryot is in respect of any particular holding. Presumably the Legislature thought that the more appropriate place for providing a machinery for deciding the dispute as to who the lawful ryot is in respect of any holding is the miscellaneous provision rather than in Section 11. In any case, Clause (c) with its wide scope cannot be said to be out of place in a miscellaneous provision which is made for deciding disputes arising after an estate is notified. We do not see any contextual incongruity in including Clause (c) in Section 56 which is one of the miscellaneous provisions. We are, therefore firmly of the opinion that Clause (c) of Section 56 (1) is the provision under which disputes as to who the lawful ryot is in respect of any holding which arises in respect of granting of pattas under Section 11 are to be settled by the Settlement Officers.

31. We come to the same conclusion if we examine the position from another perspective. Section 11 provides for granting of ryotwari pattas. Under Section 11 the Settlement Officer will have to decide whether the lands in respect of which pattas are sought are ryoti lands and whether they were or ought to have been properly included in the holding of a ryot before the notified date. But if more than one person claim to be the lawful ryot in respect of any holding, then there must be some way for deciding that question as well. Since it is not provided in Section 11 the Legislature intended to include such a provision in some other part of the Abolition Act. As we said, Section 56, which is a miscellaneous provision and which provides for decision of certain disputes arising after an estate is notified, was considered by the Legislature to be the appropriate place to include such a provision. Otherwise, if there is no such provision for decision of the dispute as to who the lawful ryot in respect of any holding is, then the Abolition Act would have been incomplete and the introduction of ryotwari Settlement in the areas of taken over estates

would not have been completed. Introduction of the ryotwari settlement in the taken over estate being one of the proclaimed purposes of the Abolition Act, it cannot be contemplated even for a minute, that the Legislature has failed to provide a machinery for the determination of a crucial question like who the lawful ryot in respect of any holding is. If the scope of Clause (c) of Section 56 (1) is limited to the purposes of Clauses (a) and (b) of that sub-section, then it would defeat the very crucial purpose of the Abolition Act of introducing ryotwari settlement. Knowing the purpose and the intendment of the Abolition Act, which are clearly proclaimed in the preamble and reiterated in the several provisions of the enactment, a harmonious construction has to be laid so as to give full effect to the declared purpose of the Abolition Act.

32. It is also important to note that sub-section (2) of Section 56 provides for an appeal to the Tribunal from the decision of the Settlement Officer under sub-section (1). In all important matters the Abolition Act has taken care to provide for such appeals, as for instance, there is an appeal provided against the decision of the Settlement Officer under Section 9 when he determines inam estates. Likewise, when the Settlement Officer determines the date on which an under-tenure estate was created under Section 10 an appeal is provided to the Tribunal. Against the decisions of the Settlement Officer under Section 15 also, an appeal is provided to the Tribunal. It is worthy of note that as in Sections 9, 10 and 15, so also in Section 56 (2) the decision of the Tribunal in appeal is declared as final and as not being liable to be questioned in any Court of law. When an appeal is provided against the decision of the Settlement Officer under Section 56, as it has been provided in some other matters like Sections 9, 10 and 15, it is reasonable to construe that Clause (c) is intended to apply not merely to cases which arise under Clauses (a) and (b) of Section 56 (1) but to all cases where there is a dispute as to who the lawful ryot in respect of any holding is which must necessarily include such disputes which arise under Section 11.

33. Conferring of power to decide who the lawful ryot is in respect of any holding on an authority constituted under the Abolition Act is not new to the law relating to estates. While referring to the definition of " landholder"as contained in Section 3 (5) of the Estates Land Act, we have noticed the provision therein that where there is a dispute between two landholders as to which of them is the landholder, the person who shall be deemed to be the landholder for the purpose of the Act shall be the person whom the Collector may recognize or nominate as such landholder in accordance with the rules to be framed by the State Government in this behalf. That was no doubt subjected to any decree or order of a competent Civil Court. But the fact remains that the authority constituted under the Estates Land Act viz., the Collector was clothed with the power to recognize one of the rival claimants as landholder for the purpose of the Act and he had to do it in accordance with the rules framed by the Government in this behalf. The Government has made rules prescribing the procedure for raising a dispute as to who the lawful ryot is in respect of any holding and for adjudicating upon it by the Settlement Officer.

34. Rule 2 of the Rules says that no dispute of the nature mentioned in Section 56 (1) shall be enquired into without a written application by the person interested. The form of the application also is prescribed in form No. 1. Rule 4 requires that separate applications should be filed for separate holdings. Rule 6 enjoins on the Settlement Officer to fix a date of hearing and issue notices to the petitioner, the Manager of the estate and to the respondent in form No. 2. Rule 7 provides that the Settlement Officer shall make a summary enquiry into the dispute. He shall hear the parties and afford them reasonable opportunity of adducing all evidence, either oral or

documentary as they may desire and give his decision in writing. Likewise, Rules 9 and 10 provide for appeals to the Tribunals under Section 56 (2). These rules prescribe the manner and procedure for adjudicating upon the disputes by the Settlement Officer under Section 56 (1) and for preferring appeals and deciding them by the Tribunal under Section 56 (2). When such elaborate care is taken to provide for an appeal and fixing the procedure therefore as in other matters, we see no reason to give a very restricted scope to Clause (c) of Section 56 (1).

35. Sri K. V. Reddy, for the respondent argued that it cannot be countenanced that the Legislature has conferred power on a mere Settlement Officer to decide questions of title under Section 56 (1) (c) and therefore it is reasonable to restrict its scope to the matters mentioned in Clauses (a) and (b). We cannot accept this contention. It was with the declared intention of abolishing the estates and introducing ryotwari settlement in those areas that the Abolition Act was made by a competent Legislature. While making the law for the said purposes, it enacted a self-contained and self-sufficient Code to carry out the purposes for which the law was made. That Act contains and must necessarily contain provisions empowering the authorities as constituted under the Act to decide rights of the parties including ryots, landholders and other persons in respect of lands. Whenever an important decision is postulated, appeals are provided to a higher authority viz., the Tribunal. The Legislature further proclaimed that the decision of the Tribunal in such matters is final and cannot be questioned in any Court of law. In addition to this, the bar of *res judicata* is also introduced in Section 64-A. These provisions make it abundantly clear that the Legislature wanted to make a self-contained enactment for abolition of the estates and for introduction of ryotwari settlement in those areas. If in the process the rights of persons in lands are determined, that is necessarily a part of the introduction of ryotwari settlement. Section 56 (1) (c) and Section 56 (2) are two of such provisions intended to give effect to and implement the purposes of the Abolition Act. The Courts of law can only place proper and harmonious construction on the various provisions of an enactment. The only guiding principle while giving such a construction is whether the intendment of the Act is carried out under the provision or not. No judge shall be deterred while giving a reasonable and harmonious construction to the provision of the Act by the possible consequences of such interpretation. Therefore, this objection raised by the learned counsel for the respondent cannot be entertained.

36. We also draw support to the construction we have placed on Section 56 (1) (c) from an analogous provision contained in Sections 63 and 63-A. Section 63 provides for a decision of questions regarding forests. If any question arises whether any land in an estate is a forest or is situated in a forest, it will have to be determined by the Settlement Officer. That determination is subject to an appeal to the Director and also to a revision by the Board of Revenue. Section 63-A gives an overriding effect to the decision of these authorities and declares that the said decision shall be final and binding on all authorities and parties in relation to the claim for grant of a ryotwari patta in respect of any land under Section 11 or Section 15. It is important to note that this is notwithstanding any judgment, decree or order of a Court, Tribunal or other authority. Sections 63 and 63-A are yet another instance to demonstrate that the Abolition Act has created a machinery of its own to decide all questions which arise and which are incidental to abolition of estates and for introduction of ryotwari settlement in those areas.

37. The above resume' of the scheme and the provisions of the Abolition Act convinces us that the enquiry postulated under Section 56 (1) (c) is not limited merely to situations arising under Clauses (a) and (b) of Section 56 (1) and that under Clause (c) the Settlement Officer is

empowered to decide the question who the lawful ryot is in respect of any holding in whatever context that dispute arises under the Abolition Act.

38. The above review we have made of the provisions of the Abolition Act shows that it is not possible to agree with the restricted construction placed by the Full Bench in Muthayya's case (supra) on the scope of Section 56 (1) (c). The reasoning adopted by the said Full Bench does not commend itself to us. It commenced with the opinion that Section 56 is a transitory provision. That section is transitory only in the sense that the entire Abolition Act is transitory, for once estates are abolished and ryotwari settlement has been introduced, the Abolition Act itself ceases to be of any use. So long as some claims and disputes under the Abolition Act remain unresolved, its provisions continue to be in force and to be applicable. If a question arises as to who is the lawful ryot in respect of a holding, clearly that dispute can be decided only under Section 56 (1) (c). Therefore, we do not agree that Section 56 (1) (c) is a transitory provision. We have already pointed out that it is unwarranted to place a construction on Section 56 (1) (c) on the basis of its contextual relationship with Section 55 and Clauses (a) and (b) of Section 56 (1). It is not safe at all to introduce the concept of contextual relationship in the construction of miscellaneous provisions. When there is a miscellany of provisions dealing with several aspects and features in the statute, it is unreasonable to rely on contextual relationship while interpreting those provisions.

39. From what we have discussed above, the view firmly emerges that Section 56 (1) (c) is an independent provision intended to have amplitude beyond the scope of Section 55 and Clauses (a) and (b) of Section 56 (1).

40. Section 56 (1) (c) is as much an independent and substantive provision as Section 15. The Full Bench was wrong in thinking that there could be no independent enquiry under Section 56 (1). We have already referred to the rules made under that section and they do provide an independent enquiry as contemplated by Section 56 itself. Further, an appeal was provided to the Appellate Tribunal just as an appeal is provided against the decision of the Settlement Officer under Section 15. The Full Bench has also failed to notice Sections 63 and 63-A which provide for similar enquiries in respect of forest lands. It is important to note that those sections also appear as miscellaneous provisions. Once the Full Bench has concluded that Sections 12 to 15 constitute a complete code in themselves for granting pattas to landholders, then we fail to see how the purpose and the provisions of Section 11 can be defeated by giving a narrow construction to Section 56 (1) (c). There is no justification or warrant to think that the Legislature intended to have a complete code in respect of the landholders' claims to pattas and did not think it necessary to provide a similarly complete code for granting of pattas to ryots. It is true that Section 11 does not contain a provision for appeal to the Tribunal as Section 15 does. To the extent that the questions as to whether a particular land is ryoti land and whether it has been properly or ought to have been included in the holding of a ryot are concerned, the Legislature did not think it necessary to provide for an appeal to the Tribunal. It has endowed the Director of Settlements with the power to review any order of the Settlement Officer whenever there is no appeal provided against it. Section 56 (2) provides for an appeal as is provided under Section 15 against the decision of the Settlement Officer and that is so far the significant reason that under Section 56 (1) (c) the Settlement Officer is empowered to decide as to who the lawful ryot is in respect of a holding. This is yet another reason to show that Section 56 (1) (c) is a more comprehensive provision than what the Full Bench thought.

41. We are also unable to agree with the Full Bench when it expressed the view that the Legislature did not think it necessary or desirable to allow disputes of title between the rival ryots to be finally decided under the Abolition Act except for the purpose of Section 15. There is no dispute that the Settlement Officer can decide disputes between ryots and landholders in regard to their rival claims in respect of lands. Then it would be an exercise in contradiction if it is said that rival claims amongst ryots cannot be decided. Further, if such claims and disputes are not decided through the machinery of the Abolition Act, as we have said more than once, the very purpose of the Abolition Act, would be defeated.

42. We are also unable to agree with the opinion of the Full Bench that " there is a fasciculus of Sections 55 to 59 both inclusive which make provision for settling the disputes between the landholder and the ryots relating to the claims of the landholder against the ryots pending on the date of notification or arising thereafter" . All these disputes relate to the payment of rent or arrears due. A plain reading of the said provisions would show that this is not so. Section 55 relates to collection of arrears of rent which accrued before the notified date. Section 56 is concerned with the decision of certain disputes arising after an estate is notified relating to rents in arrears and also as to who the lawful ryot in respect of any holding is. Section 57, on the other hand declares that peshkash, jodi or quit rent in respect of an estate shall cease to accrue with effect from the end of the fasli year immediately preceding the notified date. Either in Section 56 (1) (c) or in Section 57 there is no reference to any dispute relating to the payment of rent or arrears. Section 57 has no reference at all, contrary to what the Full Bench thought, to the disputes between the landholder and the ryots relating to the claims of the landholder against his ryots. So is the case with Section 58 as well. Sections 57 and 58, on the other hand, declare the rights and liabilities between the landholder on one side and the Government on the other. Ryots have no place in the application of Sections 57 and 58. So also is Section 58-A which provides for stay of execution proceedings against landholders. It has no reference at all to any dispute between landholder and ryot. Section 59 makes a transitional provision in regard to other liabilities of landholders. Once again this provision is wholly unconnected with a ryot or any dispute between ryot and landholder. Thus we do not see any fasciculus of Sections 55 to 59. On the other hand, they are divergent provisions providing for different situations.

43. For all these reasons, we are unable to agree with the conclusion of the Full Bench in Muthayya's case (supra) in regard to the scope of Section 56 (1) (c).

44. The Full Bench decision under challenge, in so far as its interpretation of Section 56 (1) (c) is concerned, is not only contrary to the scheme and intendment of the Abolition Act but also appears to be opposed to several decisions of the Madras and Andhra Pradesh High Courts. The first decision on the subject is that of Rajagopala Ayyangar, J. in *Arunachalam Chettiar v. Narayan Chettiar*[2], Indeed the Full Bench has tried to draw support from it. The real question before Rajagopala Ayyangar, J. was as to the origin of disputes which can be decided under Section 56 (1). The learned Judge held that the disputes referred to in Section 56 (1) would not exclude those whose origin was earlier than the notified date but which have continued since then. On a proper construction, Section 56, means and must be read as meaning that all disputes which are factually present after the notified date came within the jurisdiction of the Settlement Officer and within Section 56 (1). The only disputes which are excluded from its ambit are those in regard to which there have been binding adjudications by ordinary courts before that date and

matters pending before other authorities before the notified date. It is in that connection the learned Judge made the following observations:

> "If, therefore a dispute in relation to matters mentioned in Section 56 (1) (a) and (b) would take in disputes originating earlier than the notified date but continuing even, afterwards, the nature of the dispute referred to in sub-clause (c) of Section

[2]1957 (1) Mad LJ 183

> 56 (1) would not be different."

It is from this observation the Full Bench sought to derive support to its view as to the scope of Clause (c). When the decision under consideration related to the origin of the disputes, there is no warrant at all to think that Rajagopala Ayyangar, J. has said that under Section 56 (1) (c) disputes arising under Section 11 as to who the lawful ryot is cannot be decided.

45. On the other hand, the same learned Judge Rajagopala Ayyangar, J. expressed the opinion in *Chidambaram Chettiar v. Md. Aliar Rowther*[3], that Section 56 (1) (c) specifically entrusts the determination of the dispute as to who among the rival claimants was entitled to the grant of patta, to the Settlement Officer, which means that the decision of such dispute was excluded from the competence of other authorities.

46. Soon thereafter, Chandra Reddy, J. then a Judge of the High Court of Andhra Pradesh, expressed the opinion in *Venkatasubbaiah v. Punnayya*[4], that Section 56 seems to contemplate a summary inquiry as seen from the rules framed thereunder and that the dispute envisaged therein is in relation to grant of ryotwari pattas under Section 11. The machinery for the grant of patta seems to have been set up in Section 56. There is no other provision in the Act which deals with the disposal of applications by the ryots for the issue of ryotwari patta. With regard to the applications made by the zamindar for the grant of patta for his private lands provision is made in Section 15. In these circumstances, Section 56 comes into play only when after the abolition of the estates rival claims are put forward to a particular holding and it has to be determined who the real owner thereof is.

47. A Division Bench of this Court consisting of Subba Rao C. J. and Ranganadham Chetty, J, in *Appanna v. Sriramamurty*[5], considered the scope of Section 56 in connection with the question as to the jurisdiction of the Civil Court in regard to matters falling within the scope of that section. This is what Subba Rao C. J., speaking for the Division Bench, observed at p. 424 :

> " Where a special tribunal, out of the ordinary course is appointed by an Act to determine questions as to rights which are the creation of that Act, then except so far as is otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive. Under the Act, old rights were abolished and new rights were created. A lawful ryot is entitled to a patta. When a question arises whether a person is a lawful ryot or not, that question falls to be decided by the special Tribunal created by the Act."

After saying this on the scope of Section 56, the learned Judges proceeded to hold that in respect

of the questions that can be raised under Section 56 of the Act, the jurisdiction of the Civil Court is ousted.

48. Rajamannar, C. J. and Ganapatia Pillai, J. held in *Adakalathammal v. Chinnayyan Panipundar*[6], that having regard to the material provisions of the Abolition Act, Section

[3](1957) 1 Mad LJ 244
[4](1957) 2 AWR 204
[5](1958) 1 Andh WR 420
[6](1959) 1 Mad LJ 314

56 (1) (c) could refer only to a dispute as to rights under the Act i. e., the right to obtain a ryotwari patta. Section 56 (1) (c), so the learned Judge held, should be read along with the other provisions of the Act and the rights and privileges which can be recognised and conferred by or under the Act. It must also be noted that the learned Judges noticed the repeal of Section 56 by the Madras Legislature which, according to them, put an end to the controversy regarding jurisdiction of Civil Courts. It is worthy of note that despite the repeal, the Division Bench held that Section 56 (1) (c) refers only to disputes as to rights under the Act, that is to say, the right to obtain a ryotwari patta.

49. The decision of Subba Rao, C. J. and Ranganadham Chetty, J. in *Appanna v. Sriramamurty,* (supra) was followed in quite a large number of decisions. It was followed in A. S. No. 975 of 1953, decided on 13-9-1958 (Andh Pra); S. A. No. 621 of 1956, decided on 8-7-1959 (Andh Pra) and L. P. A. No. 31 of 1958, decided on 9-11-1959 (Andh Pra).

50. In *Mahalakshmi v. Ammayamma*[7], Chandra Reddy, C. J., observed at p. 15 :

> "It is to be seen that Section 56 is attracted only when the question to be determined is as to who is the person who is entitled to a ryotwari patta. That section contemplates only a summary enquiry into the rival claims of persons for the issue of a ryotwari patta."

51. Bhimasankaram and Srinivasachari, JJ. in *Narasimhayya v. Perayya*[8] were dealing with an appeal arising out of a civil suit filed for a declaration that the plaintiff was the lawful ryot. The dispute related to a land in an estate. The learned Judges held that the dispute being one which was pending when the Abolition Act came into effect and within the scope of that Act, the procedure to be followed by the plaintiff was to file an application before the Settlement Officer for the determination of the dispute between him and the defendant. The learned Judges proceeded to state that a Civil Court had no jurisdiction to give a declaration as to a right the determination of which is expressly committed to the office of the Tribunal appointed under the Abolition Act. We are referring to this judgment only for the purpose of saying that the Abolition Act provides for the determination of the question as to who the lawful person is who is entitled to a particular holding.

52. Once again a Division Bench of this Court consisting of Chandra Reddy, C. J. and Satyanarayana Raju, J. (as he then was) had an occasion to consider the scope of Section 56 in *Rao Gopal Rao v. Official Receiver*[9], relying on Appanna's case (supra) the learned Judges held that the Abolition Act puts an and to the pre-existing rights of the landholder and the ryot and confers on them new rights. They proceeded to lay down that Section 56 of the Act confers special jurisdiction on the Settlement Officer in respect of the dispute as to who is the lawful ryot in respect of the holding. The question of jurisdiction of the Civil Court also decided by the

learned Judges is not relevant for the present discussion.

53. In *Vechalapu Ramulu v. Appala Naidu*[10], a contention was

[7](1960) 1 Andh WR 13 [9](1961) 2 Andh WR 339

[8](1960) 2 Andh WR 215 [10](1969) 2 Andh LT 303

raised before Kumarayya, J. (as he then was) and Madhava Reddy, J. that the question as to which of the parties is a lawful ryot is within the exclusive cognizance of the special forums under the provisions of Section 56 of the Abolition Act and the jurisdiction of the Civil Court is therefore barred. Though the learned Judges held that the Civil Court's jurisdiction is not barred, they did not express any opinion contrary to the one stated in Appanna's case (supra) in regard to the scope of Section 56 (1) (c) and the one stated in *Rao Gopal Rao v. Official Receiver* (supra).

54. The decision in *Peda Govindayya v. Subba Rao*[11], cited and relied on by the learned counsel for the respondent only deals with the question of Civil Court's jurisdiction and as we have said, we are not concerned with it in this case.

55. Reference was also made to the Full Bench decision of this Court in *P. Neelakanteswararaju v. J. Mangamma*[12], There it was held that Section 56 of the Abolition Act cannot have retrospective operation and a Civil Court cannot be divested of its jurisdiction when it is already seized of jurisdiction to decide matters contemplated by Section 56. Where the plaintiff sues for recovery of possession and profits even after abolition of an estate, the Civil Court has jurisdiction to entertain a suit for such reliefs which cannot be given by the Settlement Officer under Section 56 of the Act and the question contemplated by Section 56 can be incidentally decided by the Civil Court. This decision does not say anything contrary to what we have held; on the other hand, the decision proceeded on the assumption that under Section 56 (1) (c) the Settlement Officer can decide as to who the lawful ryot is in respect of a holding for the purpose of granting a ryotwari patta. This decision, however, has not been referred to by the Full Bench in Muthayya's case (supra) which is under challenge.

56. In *K. Rama Murthy v. A. Nagamma*[13], Kondaiah, J. held that an application under Section 56 (1) to decide a dispute as to who is the lawful ryot in respect of a ryoti land, which was either properly included or ought to have been included in his holding, is maintainable even after the grant of rough or fair patta to some one under Section 11 (a) of the Act. In coming to the conclusion the learned Judge relied on *Adakalathammal v. Chinnayyan Panipundar* (supra).

57. Gopal Rao Ekbote, J. (as he then was) and Krishna Rao, J. who were members of the Full Bench in Muthayya's case (supra), themselves held in *Mangu Ramdas v. M. Venkataratnam*[14], that the enquiry under Section 15 is confined to decide the landholder's claim to ryotwari patta after examining the nature and history of the lands. It is unnecessary to examine and find out as to who among the co-respondents is entitled to patta under Section 11. Such an adjudication under Section 11, therefore, does not operate as *res judicata* in an enquiry under Section 56 of the Act. In particular, a passage from the above judgment of Ekbote, J. (as he then was), who spoke for the Division Bench, occurring in para 36 may usefully be extracted. It is like this :

> " It cannot be doubted that in order to attract Section 56 a dispute must have arisen after an estate is notified. The dispute must relate as to who the lawful ryot in respect of any holding is. Such a dispute brought before the Settlement Officer

[11](1969) 2 Andh LT 336 [13](1971) 2 Andh WR 106
[12] AIR 1970 And Pra 1 [14] AIR 1973 And Pra 256

> shall be decided by him" .

58. In this context we may also refer to another decision of Gopal Rao Ekbote, J. (as he then was) sitting single reported in *Venkateswara Rao v. Kamala Devi*[15], The learned Judge held thus at page 311 :

> " It is not in doubt that orders passed under Section 11 are in relation to the grant of pattas and orders which can be passed under Section 56 (1) (c) are in regard to the question as to who is the lawful ryot. These two sections, therefore, connote different ideas and contemplate distinct orders. It is true that in some cases a situation may arise, where during the course of enquiry under Section 11 it is revealed that unless the real dispute between the parties in regard to the question as to who is the lawful ryot is decided under Section 56 (1) (c) the final decision in regard to the grant of patta cannot be given. In such a case, what procedure should be adopted, is not indicated either in the Act or in the Rules. In my opinion, when such a situation arises, the proper course would be to withhold the proceedings under Section 11 and decide the dispute under Section 56 (1) (c) in the light of which decision proceedings under Section 11 may be resumed and final orders passed therein.
>
> A little later the learned Judge also observed that it is the same Assistant Settlement Officer who is competent to dispose of the disputes contemplated under Sections 11 and 56 (1) (c) and without insisting upon a formal application under Section 56 (1) (c), the application filed under Section 11 may be treated as an application filed under Section 56 (1) (c) and the Settlement Officer may then decide the dispute. We are in full agreement with this view and endorse it.

59. Learned counsel for the respondent has invited our attention to a later Full Bench decision in *S. Venkataramaiah v. K. Venkataswamy*[16], The Full Bench only decided that a suit filed by an erstwhile landlord for possession of the land without first obtaining a ryotwari patta under the Abolition Act is maintainable, if the allegations in the plaint and the reliefs sought do not bring the action within the jurisdiction of the Special Tribunal. Though Chinnappa Reddy, J. who rendered the judgment of the Full Bench, referred to Muthayya's case AIR 1974 Andhra Pradesh 85, that was only in connection with the exclusion of the jurisdiction of the civil court and not in respect of the limited scope of Section 56 (1) (c). Therefore, this decision does not render any assistance.

60. Sri K. V. Reddy, learned counsel for the respondent has relied on the decision of Alagiriswami, J. in *K. Madurai v. M. Madurar*[17], The learned Judge was deciding an appeal relating to title and possession. The defence to the suit was that the Settlement Officer had granted a patta to the defendants under the Abolition Act after enquiry under Section 56 as to who the lawful ryot in respect of the lands in question was. The patta in favour of the defendants was granted on 21-2-1957, and the Madras Legislature repealed Section 56 thereafter. The

defendants appellants argued, and this was the point which the learned Judge considered in the appeal, that under Section 56 the Settlement Officer had to decide the dispute as to who the lawful ryot was in respect of

[15](1963) 1 Andh LT 309 [17] AIR 1969 Mad 14

[16](1976) 2 APLJ 28

any holding and he had already decided that question and therefore it was not open to the civil Court to entertain any suit with regard to the same question. The learned Judge then referred to the three clauses of Section 56 (1) and observed : (at pp. 14, 15)

> " It would be obvious from a reading of this section that the power of the Settlement Officer to decide who the lawful ryot in respect of any holding is, is only for, the purpose of the other two clauses, that is, for the purpose of realization of the arrears of rent and not for the purpose of issuing a ryotwari patta."

With this expression of opinion we cannot, with respect, agree. The learned Judge continuing his consideration of the case observed : (at p. 15)

> "The fact that the Settlement Officer has, for the limited purpose of issuing a patta, to decide who the owner of a holding is does not mean that his decision on that point is final and that the civil court cannot decide the question. In fact Section 56 was omitted from the statute only because it was found to be superfluous and giving rise to unnecessary difficulties."

So, the learned Judge held that the Civil Court was not precluded from deciding the question of title. Apart from the fact that the principal question in the decision of Alagiriswami, J. is in respect of Civil Court's jurisdiction, the two passages in the learned Judge's judgment which we have referred to above, would show a conflict of thought. That apart, the repeal by the Madras Legislature of Section 56 weighed with the learned Judge while it did not with the Division Bench of the Madras High Court in *Adakalathammal v. Chinnayyan Panipundar,* , (supra) to which we have already referred. We are, therefore unable to accept this decision as throwing much light on the question we are now called upon to decide.

61. Sri K. V. Reddy, learned counsel for the respondent has relied on the circumstance of the repeal of Section 56 by the Madras Legislature. As the Division Bench in *Adakalathammal v. Chinnayyan Panipundar,* (supra) has held, it was deleted because it was creating confusion in regard to civil court's jurisdiction. We are not concerned with that question here. Quite apart from that, the very telling fact remains that despite the Madras Legislature has deleted this provision, the Andhra Pradesh Legislature has not thought it necessary or desirable to fall in line with it. The very fact that the section is retained in the statute book shows that the Andhra Pradesh Legislature continues to give its due role to the procedure laid down in Section 56.

62. Therefore, on the interpretation of the enactment and on the basis of the decided cases on the point, we hold that under Section 56 (1) (c) the Settlement Officer can decide the question as to who the lawful ryot is in respect of a holding not merely for the purposes mentioned in clauses (a) and (b) of Section 56 (1) but for all purposes of the Abolition Act, including the purpose of granting ryotwari pattas under Section 11. We hold that the view of the Full Bench in Muthayya's

case (supra) to this extent is wrong and the said Full Bench decision is overruled to this extent.

63. Now coming to the merits of the case, as we have pointed out, the Settlement Officer held after remand that the petitioner is the lawful ryot in respect of the holding in question. The Appellate Tribunal, before whom the respondent has preferred an appeal, did not go into the merits of the case or the claims of the respective parties. Instead, it simply followed the decision of the Full Bench in Muthayya's case (supra) and held that the petitioner's application under Section 56 (1) (c) for the decision as to who the lawful ryot is in respect of the holding was not maintainable. Since we hold that the Full Bench decision is wrong in this respect and that such an application is maintainable, we remit back the matter to the Appellate Tribunal for consideration of the appeal on its merits and on the basis of the evidence adduced by the parties.

64. The arguments in this writ petition were completed and the judgment was reserved on 5-7-1977. The preparation of the judgment was also over and then on 13th July, 1977 Sri K. Venkataramana Reddy, learned counsel for the respondent, has circulated to us the decision in *Tamanaidu v. Ramdas Naidu*[18] saying that it was not brought to our notice at the time of the arguments by inadvertence. That is a decision of a Division Bench consisting of one of us (Sambasiva Rao, J.) and Madhusudan Rao, J. It did deal with the scopes of Sections 11 and 56 (1) of the Abolition Act. We must point out that the Division Bench did not follow the Full Bench decision in Muthayya's case (supra) in its interpretation of Section 56 (1) (c) but distinguished it. The dispute in Rama Naidu's case (supra) related to a claim for ryotwari patta on the ground that the land in question ought to have been properly included in the holding of the petitioner and that it was wrongly included in the holding of the respondent. In the light of that claim made under Section 11 for the grant of a ryotwari patta, the Division Bench held that the claim came within the scope of clause (a) of Section 11. So that case is distinguishable from the facts of the present case. In any event, we would like to make it clear that we do not agree with the view expressed therein that for the decision on the dispute, one need not travel to Section 56 and that since it is incidental to the claim under Section 11 it fell within the amplitude of Section 11 (a). As we have elaborated in the judgment above, whenever the real dispute is as to who the lawful ryot is in respect of a holding, the Settlement Officer will have to adjudicate upon it in exercise of his power under Section 56 (1) (c). To the extent that the decision in Ramanaidu's case (supra) is contrary to this view, it is overruled.

65. The writ petition is thus allowed, the order of the Appellate Tribunal is quashed and set ate aside and the matter is remitted back to the Appellate Tribunal for consideration on its merits. Since the Appellate Tribunal followed the Full Bench decision, while allowing the appeal of the respondent and rejecting the application of the petitioner, which it was obliged to do, we make no orders as to costs in this writ petition.

66. (Concurring) :- Lakshmaiah, J. I agree with the view expressed by My Lord The Chief Justice and Mrs. Amareswari, J. in the order of reference and with the conclusion arrived at by my learned brother, Sambasiva Rao, J. that the decision of the Full Bench in *Cherukuru Muthayya v. G. Gopalakrishnayya*[19] is wrong, but having regard to the importance of the issues involved, I propose giving my own reasons.

67. The point that arises for determination is whether the applicability of Section 56 (1) (c) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948

(hereinafter referred to merely as ('the Act') is to be confined only to

[18](1977) 1 Andh WR 339

[19] AIR 1974 And Prad 85

sub-clauses (b) and (c) of sub-section (1) of the aforesaid section read with Section 55 of the Act, or whether it can be extended beyond so as to include within its ambit the matters dealt with by or under Section 11 of the Act also.

68. The point thus raised involves a pure question of statutory interpretation or construction.

69. The common law approach in an interpretative process, according to Lord Lloyd of Hampstead in his " Introduction to Jurisprudence"Third Edition, is primarily based on ascertaining the plain MEANING of the words used in a statute whereas that of the civil law is directed to ascertaining the INTENTION of the legislature.

70. Landis in his essay on " STATUTORY INTERPRETATION"in 43 Harward Law Review page 886 distinguished two ideas in the concept of " intent" . It was, according to the learned author, " a confusing word, carrying within it both the teleological concept of PURPOSE and the more immediate concept of meaning."Meaning is discoverable from particular provisions or from within the four corners of the statute whereas purpose is discoverable from both within as well as from without the statute i.e., from the entire legal system prevalent in the legal unit.

71. Andhra Pradesh State is a legal unit with its legal system in Indian Federation :-

> Sir John Salmond in his Jurisprudence, 12th Edition page 74 says that " States are territorial in nature" and " The law is conceived and spoken of as territorial" and considers the " territorial aspect and nature of a legal system" and proceeding further, the learned author says " The proposition that a system of law belongs to a defined territory means that it applies to all persons, things, acts and events within that territory."In other words, " a legal system belongs to a defined territory."

72. Speaking about the legal units in American Federation, Joseph H. Beal in his learned treatise " Conflict of Laws" says " There cannot be two independent laws within a territory even though that territory be subject to the legislative jurisdiction of two independent sovereigns. The law of the territory, resulting from the legislative action of both sovereigns is a single law. The law of a single legal unit must be one law, the one and undivided law of that territory."

73. The situation obtaining in the State of Pennsylvania, as referred to at page 18 of the treatise is very much relevant to the Indian context. " It is perfectly correct to say, as the Pennsylvania Court has said that the law of each of the States consists of the constitution of the United States, the constitution and statutes of the particular State and the common law of that State." Constitution of India and States :- India is a union of States. The States and the territories thereof are specified in the First Schedule (Article 1). The Andhra Pradesh State being the very first one mentioned therein.

74. Part V of the Constitution provides for the constitution of Union and Part VI for that of the States. Part XI by Chapter I deals with " Legislative Relations between the Union and the States."Article 245 deals with the extent of laws and provides that subject to the provisions of the

Constitution, Parliament may make laws for the whole or any part of the territory of India and the Legislature of a State may make laws for the whole or any part of the State. Article 246 deals with the subject-matter of laws made by Parliament and by legislature of States with respect to matters enumerated in Union List (List I), State List (List II) and Concurrent List (List III) mentioned in the Seventh Schedule. The pattern obtaining in this respect under Government of India Act, 1935 is practically reproduced in the Constitution.

75. It shall be the duty of the law-making bodies to apply the Directive Principles of State Policy in Part IV in making laws (Article 37) and those laws shall not take away or abridge the rights conferred by Part III and all laws in force in the territory of India immediately before the commencement of the Constitution in so far as they are inconsistent with Part III are to the extent of inconsistency void.

76. All the law in force in the territory of India immediately before the commencement of this Constitution continues in force therein, as per Article 372, the law contained in the Act being one such.

77. The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1947 (Madras Act XXVI of 1948) and its Amendment Act, 1950 (Madras Act I of 1950) were specified in the Ninth Schedule to the Constitution as per Article 31-B, as a consequence of which neither the Act nor any of the provisions contained therein shall be deemed to be void or ever to have become void on the ground that they are inconsistent with or take away or abridge any of the rights conferred by Part III (See Article 31-B). The aforesaid two Acts were adopted by the Andhra Pradesh Legislature.

78. Unlike in England, we have a written Constitution. Unlike in United States of America, we have " Directive Principles of State Policy"chapter included in the Constitution. Unlike in common law systems, here, there, everywhere, we have Part IV declaring heads of public policy in the form of Directive Principles of State Policy (obviating thus any necessity on the part of the Judges to invent fresh heads of public policy) which can be characterised as constitutional policy, with a constitutional mandate to the law-making bodies that it shall be their duty to apply the said principles of State policy in making law, direct legislation by the legislature and subordinate legislation in the form of judge-made laws by the judges with a declaration that the Directive Principles are fundamental in the governance of the Country (See Article 37).

79. The very Constitution was adopted and enacted by the people of India with a view to securing to all its citizens, Justice, social, economic and political. These ideals embodied and enshrined in the Preamble are transformed and translated into in the form of Directive Principles of State Policy. As per Article 38 the State shall have to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which Justice, social, economic and political shall inform all the institutions of the national life.

80. As per Article 39, the State shall, in particular, direct its policy towards securing " (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good"and " (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

81. At this stage, it is well to remind ourselves what Dr. D. L. Keir and P. H. Lawson observed in their " Cases in Constitutional Law"Fifth Edition at page 11 speaking about the presumptions which regulate in some measure their application of statutes.

> " The Judges seem to have in their minds an ideal Constitution, comprising those fundamental rules of common law which seem essential to the liberties of the subject and the proper Government of the country. These rules cannot be repealed but by direct and unequivocal enactment. In the absence of express words or necessary intendment, statutes will be applied subject to them. They do not override the statute BUT ARE TREATED, AS IT WERE, AS IMPLIED TERMS OF THE STATUTE."
>
> The Constitution and Welfare State :-
>
> " We have moved away from the 19th century idea of the Police State, negative and oppressive to a new conception of the social service state"(Salmond 'Jurisprudence' 10th Edition at 131).
>
> " If government is for the sake of the governed and not of the governors then all its activities are presumptively concerned with the public welfare."(p. 331)
>
> " The great expansion in recent times of functions of general welfare is tending more than anything else to foster new conceptions of the nature of the state......... .... It is breaking down the tradition of the state as power, the age old tradition of the oligarchical state .... (the State) became the guardian of the service of the community."(p. 340). " The Web of Government"by Mac Iver.
>
> " Traditionally (the purposes of Government) have been said to consist of preservation of order at home and protection of the community from attack by alien enemies, and these remain, of course, primarily important. ....
>
> Nevertheless these two objectives are not generally considered sufficient in the modern world. Laizzez faire died with the dawn of the twentieth century, and today the State has to concern itself with the welfare of its individual members."(at page 5). " To carry out such complicated tasks government has to utilise all its functions, which have traditionally been divided, into three main groups, executive, legislative and judicial."(page 6)
>
> (From Garner " Administrative Law" - 4th Edition).
>
> " The State as a whole is regulated by law. For this reason, the doctrine is expressed in continental legal theory by saying that the State is a 'Legal State'."(at page 48)
>
> (Jennings-" The Law and the Constitution")
>
> " The Social Reform undertaken by the modern State demand that all three arms of government should Smite in Unison for its achievement."(per Lord Delvin on " Judges and Lawyers"in 1976 (39) Modern Law Review 1 at p. 16).

82. Referring to the " relationship between Courts, Legislature and Executive, Jack A. Hiller in his article on " The Law-creative role of Appellate Courts in Developing Countries; An emphasis on East Africa"in 1975 (24). The International and Comparative Law Quarterly said at page 231 :

> "The proper functioning of the various branches of government requires collaboration and

respect, not rivalry. Chief Justice Aguda (as he then was), one of the most thoughtful students of the role of the judiciary in Africa (though his observations are not limited to this continent) said recently :

I can see nothing wrong in a Judge playing an active role in the development of the law and in so doing he must in a sense be regarded as a law maker, not in competition with the legislature but in a supplementary role. The legislature can hardly be expected to foresee all future circumstances when enacting a statute. It is the duty of the Judge to interpret statutes enacted in a by-gone era in a way to sustain the mode of living and the philosophy of the people of the current era. In some cases he can do so only by what can properly be regarded as a law-making judicial decision, ..."

83. The State as a whole is regulated by law. It is a constituted State. It is a constitutional one also. The State manifests its activity through the Legislature, the Executive and the Judiciary. These three branches of Government make law, be it Direct Legislation or Subordinate Legislation, the legislature through direct legislation, the executive through delegated or subordinate legislation and judiciary also in its interpretative process through judge-made law which is also subordinate legislation.

84. Directive Principles of State Policy is the Chief agency or instrumentality through which its user in a welfare state and through which the process of metamorphosis of the concept of the State from what it was a nineteenth century negative, police, laizzez faire state to what it has come to be a positive, modern welfare state, is being assisted and accelerated. This is the contribution to mid-20th century Constitution of India to world constitutional jurisprudence. Welfare Legislation - Principles of Construction :-
This aspect of the discussion may be summed up :

(i) The Andhra Pradesh State is one of the legal units in the Union of India where the legal system prevalent consists of (a) the Constitution of India including its preamble and the Directive Principles of State Policy Chapter, (b) laws made by Parliament applicable within and throughout the territory of Andhra Pradesh State, (c) laws made by the State Legislature, (d) common law or judge-made law. The law of the territory of Andhra Pradesh State is a single law. The law of a single legal unit must be one law, the one and undivided law of the territory.

(ii) For the successful ushering in of a welfare state as envisaged by the Constitution, all the three branches of Government must strike in unison. There is no rivalry or conflict among them.

(iii) Welfare Legislation contained in the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948, having for its object the agrarian reform, envisaged by the Directive Principles of State Policy, shall have to be interpreted or construed even through making judge-made law subject to those principles and the provisions containing those principles are to be regarded as implied terms of the welfare legislation contained in the Act. The concept of fundamentally of these Directive Principles in the governance of the country can be given effect to in no other way.

85. According to dynamic interpretation of Holmes, the functions of the Court is to reflect contemporary needs and prevailing values consonant with constitutional, legislative and executive declarations of policy.

86. It may be noticed here, lest it may be forgotten as is often forgotten, that as per Article 37 the provisions contained in Part IV shall not be enforceable by any Court. But they are as much unenforceable as any other provisions contained in any other part of the Constitution, say like those contained in Part XI, in the sense that they cannot be enforced. At best, it is only a neutral circumstance. See the observation of Das, J. in Kameswara Singh's case (1952 SCJ 354). " Article 246 of the Constitution does not make it obligatory for Parliament or the State Legislatures to make a law under any of the entries in any of the lists in the Seventh Schedule."But that is not to say that the principles those provisions contained are also unenforceable. The distinction between the provisions containing those principles and the principles those provisions contained is often lost sight of if not forgotten. There is no warrant to project the inhibition of unenforceability of provisions into the principles which are declared fundamental in the governance of the country with a constitutional mandate to the States that it shall be their duty to apply them in making laws. The Doctrine of Adoption and Article 372 of the Constitution :

87. How to apply the Directive Principles of State Policy enacted in 1950 to the Act enacted in 1948 though amended subsequently? It is only through the doctrine of adoption. It has already been noticed that Act 26 of 1948 though a pre-constitution enactment was specified in the 9th schedule appended to the Constitution. The law contained in Act XXVI of 1948 is the law in force in the territory of India immediately before the commencement of the Constitution. It has to be interpreted and applied in the post-constitution era in the light of the Directive Principles of State Policy.

88. " Actual Law"says Karl Olivercrona in his " Law as Fact"Second Edition " consisted of the commands and prohibitions of one single sovereign and this was the sovereign of the moment. He commanded, and he threatened with punishment. Henry VIII could neither command nor threaten in 1780.

89. But how could it be explained that laws issued in the reign of Henry VIII were commands and prohibitions of George III and his Parliament? .... The problem would seem to be insoluble. But Bentham found an explanation in the theory of 'adoption.' The actual sovereign made the laws of preceding sovereigns his own. This he did as a matter of course; if he did not, the whole machinery of Government would drop to pieces. No express declaration of the desire of the sovereign to continue established laws needed. He manifested his intention by every act of Government providing for the enforcement of those laws."(page 29)

90. " The theory of adoption is based on the sign theory. The adoption of laws issued by previous sovereigns takes place when the present sovereign tacitly shows that he continues to exercise the will of his predecessors. Customary law (judge-made law) is also explained by way of adoption. The sovereign pre-adopts the acts of the judges; and their acts serve as signs to the people at large that similar acts of power will probably be exercised in the future similar cases."(page 30)
91. " The legislator is he, not by whose authority the laws were first made but by whose authority they now continue to be laws."(Hobbes Leviathan 26, 5. The Limits of Jurisprudence Defined)

Bentham.

92. The Constitutional recognition of this doctrine of " adoption" is found in Article 372 by which all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

93. Referring to the Bihar Land Reforms Act, 1950 the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 and the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, Patanjali Sastri, Chief Justice observed in *State of Bihar v. Kameshwar Singh*[20],:-

> " The common aim of these statutes generally speaking is to abolish zamindaris and other proprietary estates and tenures in the three States aforesaid, so as to eliminate the intermediaries by means of compulsory acquisition of their rights and interests and to bring the ryots and other occupants of lands in these areas into direct relation with the Government."

94. Das, J. in the same report at page 415 (of SCJ) , was of the view that the three aforesaid Acts were intended to subserve the Directive Principles of State Policy in Part IV of the Constitution, particularly those mentioned in Articles 38 and 39.

95. As the Act in question so also the three Acts dealt with in the judgment of the Supreme Court were specified in the 9th schedule appended to the Constitution.
The intent, meaning, purpose, object and scheme of the Act :-

96. The Estates Abolition Act, 1948 is enacted as its preamble discloses, with a view to providing firstly for the repeal of the permanent settlement, secondly for the acquisition of the rights of landholders in permanently settled and certain other estates in the State of Andhra and thirdly for the introduction of the ryotwari settlement in such estates.

97. So far as the first two objectives are concerned, the Act accomplished the first objective by providing through Section 3 (a) for the repeal of the Madras Permanent Settlement Regulation, 1802 the Estates Land Act and all other enactments applicable to the estate except the Madras Estates Land (Reduction of Rent) Act, 1947, in their application to the estate.

98. The second objective is also accomplished by being provided through clauses (b) and (c) that the entire estate (including minor inams, post-settlement or pre-settlement) included in the assets of the Zamindari estate at the permanent settlement of that estate, all communal lands, porambokes other than ryoti lands ... ... Shall Stand TRANSFERRED to the Government and vest in them, free of all encumbrances and that all rights and interests created in or over the estate before the notified date by the Principal or any other landholder shall as against the Government cease and determine.

[20] 1952 SCJ 354

99. The third objective alone pertaining to introduction of the ryotwari settlement in the estates remains to be considered in this case.

100. Section 4 of the Act provides for the appointment of a Director of Settlements to carry out survey and settlement operations in estates in order to introduce ryotwari settlement therein and Section 21 deals with survey of estates.

101. The responsibility for effecting a ryotwari settlement of the estate or part thereof, in accordance with a settlement notification framed and published by the Government for the purpose is squarely placed upon the Settlement Officer as per Section 22. The said notification shall embody the principles adopted in making ryotwari settlement in ryotwari areas and shall adopt the rates of assessment mentioned in sub-section (2) thereof. Sub-section (4) of the aforesaid section provides that neither the settlement notification nor any order passed in pursuance thereof shall be liable to be questioned in any court of law.

Hierarchy of Tribunals :

102. For the purpose of dealing with matters arising under the Act, hierarchy of the Tribunals was constituted by the Act. Section 6 provides for the appointment of Managers of Estates. Every Manager shall be subordinate to the District Collector and shall be guided by such lawful instructions as he may issue from time to time and the District Collector shall also have power to cancel or revise any of the orders, acts or proceedings of the Manager.

103. Section 5 provides for the appointment of Settlement Officers by the Government to carry out the functions and duties assigned to them under the Act. Every settlement officer shall be subordinate to the Director and shall be guided by such lawful instructions as he may issue from time to time; and the Director shall also have power to cancel or revise any of the orders, acts or proceedings of the Settlement Officer, other than those in respect of which an appeal lies to the Tribunal.

104. Section 8 deals with the Constitution of Tribunal by the Government for the purposes of the Act. Sub-sections (2) and (3) of the aforesaid section deals with the composition and the jurisdiction of the Tribunal and under sub-section (4) thereof, every Tribunal shall have all the powers of a Civil Court to compel the attendance of witnesses and the production of documents.

105. Section 4 provides for the appointment by the Government of a Director of Settlements to carry out survey and settlement operations in estates and in order to introduce ryotwari settlement therein. The Director shall be subordinate to the Board of Revenue.

106. Section 7 deals with the powers of the control of the Board of Revenue as per which the Board of Revenue has been given power to give effect to the provisions of the Act and in particular to superintend the taking over of estates and to make due arrangements for the interim administration thereof; to issue instructions for the guidance of the Director, District Collectors, Settlement Officers and Managers of the Estates; to cancel or revise any of the orders, acts or proceedings of any Settlement Officer other than those in respect of which an appeal lies to the Tribunal or of any manager and to cancel or revise any of the orders, acts or proceedings of the Director or of any District Collector, including those passed done or taken in the exercise of revisional powers.

107. Section 51 deals with appeals before the special Tribunal consisting of two judges of the High Court nominated from time to time by the Chief Justice in that behalf to deal with the decisions of the Tribunals under Sections 43 to 50, which deal with the subject matter of compensation.

108. The framers of the Act took scrupulous care in the matter of imputing finality to the decisions of the Settlement Officers and the Tribunals with a further provision to the effect that the decisions of these Tribunals should not be questioned in a Court of law as is evident from the following provisions of law.

I. Section 9 deals with determination of Inam Estates and the Settlement Officer was empowered to give a decision with respect thereto under sub-section (2) thereof. There is a provision of appeal under sub-section (4) (a) (i) before the Tribunal and under clause (c) of the aforesaid section, the decision of the Tribunal shall be final and not be liable to be questioned in any Court of law. As per sub-section (6) thereof, every decision of the Tribunal and subject to such decision, every decision of the Settlement Officer under that section shall be binding on all persons claiming an interest in any land in the village or hamlet or khandriga granted as Inam.

II. Section 10 deals with the determination of the date on which under-tenure estate was created and by sub-section (2) it empowers the Settlement Officer to give a decision in writing with an appeal being provided for under sub-section (3) thereof to the Tribunal and the decision of the Tribunal as per sub-section (3) thereof shall be final and not be liable to be questioned in any Court of law.

III. Section 15 deals with determination of lands in which the landholder is entitled to ryotwari patta under Sections 12, 13 and 14. The Settlement Officer, as per sub-section (1) thereof, shall have to decide in respect of which lands the claim of the landholder should be allowed. There is a remedy of appeal provided for under sub-section (2) (a) against the decision of the Settlement Officer before the Tribunal and the decision of the Tribunal as per that sub-section shall be final and not be liable to be questioned in any Court of law.

IV. Section 56 deals with the decision of certain disputes arising after an estate is notified and provides for the decision of the dispute by the Settlement Officer under sub-section (1) thereof with a provision for an appeal before the Tribunal under sub-section (2) thereof as per which, the decision of the Tribunal shall be final and not be liable to be questioned in any court of law.

V. Section 63 deals with the decision of questions regarding forests to be given by the Settlement Officer subject to an appeal to the Director within such time as may be prescribed and also to revision by the Board of Revenue. Under Section 63-A, the decision under Section 63 is to have overriding effect. As per that section, notwithstanding any judgment, decree or order of a Court, tribunal or other authority-

(a) the decision of-

(i) the Settlement Officer under Section 63., if no appeal or revision is preferred,

(ii) the Director, if no revision is filed,

(iii) the Board of Revenue in revision, shall be final and binding on all authorities and parties in relation to the claim for grant of a ryotwari patta in respect of any land under Section 11 or Section 15. Under Clause (b) thereof, where a final decision as aforesaid is given under Section 63 either before or after an order is passed, or a decision is given by any Tribunal or other authority under Section 11 or Section 15 the said final decision shall prevail over such order or decision of the tribunal or other authority.

109. We cannot leave out of account Section 64-A dealing with the subject-matter of *res judicata* as per which the decision of a Tribunal or Special Tribunal in any proceeding under this Act or of a Judge of the High Court hearing a case under Section 51 (2) on any matter falling within its or his jurisdiction shall be binding on the parties thereto and persons claiming under them in any suit or proceeding in a Civil Court in so far as such matter is in issue between the parties or persons aforesaid in such suit or proceedings.

110. Section 65 provides for the bar of jurisdiction of the Courts with respect to matters mentioned therein.

111. We may as well refer to another fascicule of sections providing for the finality of the decisions taken by the authorities functioning under the Act. Section 18 of the Act deals with vesting of buildings situated in estates and under sub-section (6) thereof, if any question arises whether any building or land falls or does not fall within the scope of sub-sections (1) and (2), (3), (4) or (5), it shall be referred to the Government whose decision shall be final and not be liable to be questioned in any court of law.

112. Section 22 deals with the subject matter of manner of effecting ryotwari settlement of estate, sub-section (4) of which says that neither the settlement notification nor any order passed in pursuance thereof shall be liable to be questioned in any Court of law.

113. Section 39 provides for the determination of basic annual sum and of total compensation, sub-section (7) of which says that no order passed by the Director under sub-section (1) shall be liable to be cancelled or modified except by the Board of Revenue as aforesaid or to be questioned in any Court of Law and that no order passed by the Board of Revenue under sub-sections (5) and (6) shall be liable to be cancelled or modified by the Government or any other authority or to be questioned in any Court of law. In order to make the narration complete of this aspect of the matter, we can as well refer to the Rules made by the Government under Section 67 of the Act to carry out the purposes of the Act and in particular and without prejudice to the generality of the foregoing provision, such rules may provide for what is mentioned in Clauses (a) to (h) under sub-section (2) thereof.

(a) In exercise of the powers conferred by Section 67 read with Section 15 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, His Excellency the Governor of Madras made the rules regarding the claim for a ryotwari patta by the landholder and providing for the procedure to be adopted for claiming the benefit of ryotwari patta under Section 15 of the Act.

(b) Rules were made under Section 67 read with Section 56 of the Act by the Governor of Madras providing for the procedure to avail the benefit under Section 56 of the Act.

(c) The Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973 were made by the Government of Andhra Pradesh as per G. O. Ms. No. 50 Revenue dated 16th Jan., 1974, in exercise of the powers conferred by Clause (d) of sub-section (2) of Section 67 read with Section 11 of the Act. Under Rule 2 thereof as per sub rule (1) any enquiry for the grant of a ryotwari patta under Section 11 may be made by the Settlement Officer either *suo motu* at any time or on an application made by a ryot. Under sub rule (2)., any ryot claiming a patta under Section 11 (a) in respect of ryot lands which immediately before the notified date were properly included or ought to have been properly included in his holdings immediately before the notified date, may file an application in writing before the Settlement Officer either in person or by registered post at any time after the notified date but before the ryotwari settlement of the estate is effected under Section 22.

114. Under sub rule (3), every such application shall be in the form appended to these rules and it shall be signed and verified by the applicant and shall bear a court-fee stamp of the value of rupee one. Under sub rule (4), notwithstanding anything in sub rule (2) but subject to the provisions of sub rule (5), where in respect of an estate in which the ryotwari settlement under Section 22 has already been effected before the commencement of these rules, such an application may be filed before the Settlement Officer within thirty days from the date of such commencement.

115. Under sub rule (5), where an application filed by a ryot for grant of ryotwari patta in respect of a land has already been considered and disposed of otherwise than on grounds of limitation by the Settlement Officer before the date of commencement of these rules, it shall not be open to the said ryot to file another application under sub rule (4) in respect of the same land after the date of commencement of these rules.
STATUTORY AUTHORITIES, ADMINISTRATIVE TRIBUNALS AND SOCIAL WELFARE LEGISLATIONSection

116. The welfare legislation adopted the devise of these statutory authorities and Tribunals for the purpose of securing speedy and effective implementation of all social and economic reforms providing further for the exclusion of the jurisdiction of the Civil Courts also with respect to matters with respect to which the legislation dealt with.

117. The competence of the legislature to make law with respect to the subject-matter of the Act is not in question. Mahajan, J. (Mukherjea and Chandrasekhara Aiyar, JJ., agreeing with him) observed in Kameswara Singh's case (1952 SCJ 354 at p. 377) referring to the three Acts mentioned therein that " the pith and substance of the legislation ... ... is the transference of ownership of estate to the State Government and falls within the ambit of legislative head Entry 36 of List II. The Bihar Legislature was certainly competent to make the law on the subject or transference of estates and the Act as regards such transference is constitutional."

118. As observed by the Supreme Court in *Edward Mills v. State of Ajmer*[21],

> " It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power."

119. The power to make law with respect to the subject-matter of the Act under Articles 245 and 246 read with the relevant entry in the particular list (following the same pattern as in Government of India Act, 1935) includes within its ambit the power to bring into being statutory authorities of Tribunals for the purpose of the Act. The Legislature is also competent to make law with respect to jurisdiction and powers of all Courts except the Supreme Court with respect to any of the matters in the particular lists.

120. The Act in question constituted authorities of Tribunals like Manager, Settlement Officers, Tribunals and conferred power on entities like Director, Board of Revenue and the High Court. For the purpose of securing the exclusion of the jurisdiction of Civil Courts, the following formula is adopted generally - " This decision shall be final and not be liable to be questioned in any court of law" . We find in Section 9, Civil Procedure Code also the jurisdiction of the Civil Courts to try all suits of a civil nature being made subject to the legislature taking away the same either expressly or impliedly.

121. William A. Robson who has done pioneering work in the realm of Administrative Law gives an account of causes of the growth of the Administrative Law and the advantages of statutory authorities end Administrative Tribunals in his classic work " Justice and Administrative Law"Third Edition. Says the author at p. 546 :

> " ... ... during the past three quarters of a century, and particularly during the last thirty years, a mass of judicial functions has been entrusted by social legislation to the central departments of Government or to administrative tribunals connected directly or indirectly therewith... ... ... The whole movement must really be regarded as a new development."

122. Speaking about the " Causes of its growth"the learned author says at page 547 :

> " There are many immediate causes for the growth of administrative law in England, but the underlying explanation is to be found in the vast extension of state and municipal activity which has taken place during the past years ... ... all of them (referring to some social legislative Acts) extending the realm of public administration and regulation to spheres undreamed of by the laissez-faire individualists of the early mid-victorian era. In these and many other fields the social control or private enterprise or the public administration of social services for the common good has superseded the old unregulated individualism of the nineteenth century, or the mere lack of provision for widespread social needs which accompanied it.
>
> It was impossible for the executive to carry out these greatly enhanced and extended functions of government so long as its activities were limited by the old individualistic ideas which prevailed in an extreme form in the courts of law. The Judges in the

nineteenth century, Lord Justice Denning has pointed out, protected

[21]((1955) 1 SCR 735)

the rights of property with as much zeal as they protected a man's personal freedom or his freedom of speech. In doing so they overemphasised individual rights and neglected to pay attention to social duties. The extent to which Judges in the nineteenth century carried rights of property seems to us today to be almost incredible.

The intense legalism of the English system of raw is one of its most notable features, and one which results in a tendency to sacrifice the public welfare to private interests where the latter can lay claim to individual rights. 'It displays', as a foreign observer has said, 'an unlimited valuation of individual liberty and respect for individual property'. It is concerned less with social righteousness than with individual rights. It tries questions of the highest social import as mere private controversy between John Doe and Richard Roe, and is so zealous do secure fair play to the individual that often it secures very little fair play to the public. Even our body of constitutional law is more concerned with the rights of the subject rather than with the claims of the community, or the obligations of citizenship.

Some change in the administration of law indubitably needed if the new world of social control was to be brought peacefully into existence. Social interests cannot be secured, or a social policy effected, by the application of abstract principles of justice as between man and man.

The development that actually occurred has been, we have seen, the creation of a large number of administrative tribunals which were from the outset, unfettered by the existing legal tradition, and able to break away entirely from the prevailing body of legal doctrine based on private rights. If constitutional law emphasises individual rights, administrative law lays equal stress on public needs; that is, on the duties owed by a citizen to the public, on the subordination of private interest to the common weal. In short, the tendency towards the socialisation of Government has been accompanied by a parallel tendency towards the socialisation of law.

Lord Justice Denning correctly summarises the position when he says : " The social revolution of our time has resulted in the creation of a great number of new duties of a kind unknown before - positive duties of the individual towards the state and of the state towards the individual ... ... In the old days the legislature nearly always entrusted to the ordinary Courts of law the task of ascertaining and vindicating the rights and duties which it created ... ... But the enforcement of the great majority of the new duties is now entrusted to Government departments or to tribunals whose members are appointed by the Government departments.' Why, he asks, has Parliament made this radical departure in the allocation of judicial functions ? 'The reason is ... ... we must face it squarely that the ordinary courts are not suited to the task ... ... or, if you will, the disputes are not suitable for decision by the courts'. "

123. Speaking about the subsidiary causes, the learned author proceeded to observe at p. 551 :

" Chief among these subsidiary causes has been the desire to provide a system of adjudication which should be at once cheap and rapid. The elaborate methods of investigation employed by the Courts of law, the insistence on first-hand evidence, the obligation for witnesses to appear in person, the necessity for providing formally every document and fact relevant to the issue, the requirement that pleadings shall be formulated in technical language, the employment of highly trained counsel and solicitors, all these possess great advantages from many points of view, and are necessary for the maintenance and development of the 'artificial reason' of the law, but they make the judicial process inevitably slow and expensive."

124. He deprecated the applicability of the costly and leisurely methods of law courts.

" The ordinary courts need not be jealous of the new tribunals, declares Lord Justice Denning. It should be recognized that they are a separate set of courts dealing with a separate set of rights and duties. Just as in the old days there were the ecclesiastical courts dealing with matrimonial causes and administration of estates - and just as there was the Chancellor dealing with the enforcement and administration of trusts - so in our day there are the new tribunals dealing with the new rights and duties as between man and the state. The great need is to work out the principles and procedure which should govern these tribunals" .

125. At page 558 the learned author observed that Administrative Justice is immensely cheaper than the machinery of the courts. " This is a matter of importance, when litigation is fantastically expensive." At page 559 :

" Rapidity is another advantage possessed by most administrative tribunals as compared with the judicial courts. The freedom which enables a Government department or tribunal to dispense with an oral hearing, to abandon the intricate procedure which attends pleading and trial in an action at law, to waive the elaborate rules as to the proof of facts and admissibility and relevance of evidence, which are rightly insisted upon in a court of law, results normally in an immense saving of time in the determination of controversies."
At pages 571, 572 :
" One further advantage possessed by administrative tribunals lies in the greater flexibility with which they are able to discharge their functions ... ... The greater flexibility of administrative tribunals as compared with courts of law is indeed an inherent characteristic of administrative law during the period of its growth. For administrative law is law in the making; and law in the making is naturally less rigid than the law which is already made and administered in the formal courts."

126. Having regard to the advantages these statutory authorities or administrative tribunals possessed over the ordinary Civil Courts, the welfare legislation thought over the desirability of utilizing these authorities and Tribunals for speedy and effective implementation of laws.

INTERPRETATION AND CONSTRUCTION - PRINCIPLES REGARDING :

> " Interpretation differs from construction in that the former is the art of finding out the true sense of any form of words; that is, the sense which their author intended to convey; and of enabling others to derive from them the same idea which the author intended to convey. Construction, on the other hand, is the drawing of conclusions, respecting subjects that lie beyond the direct expressions of the text, from elements known from and given in the text; conclusions which are in the spirit, though not within the letter of the text."

(Thomas M. Cooley on " Constitutional Limitations"Vol. I at page 97).

127. When the intention of the framers of the Act is not discernible through the ascertainment of the meaning of the words employed by them through interpretative process, resort is to be had to the process of construction. The distinction between the construction and interpretation is explained by Earl T. Crawford in the book " Construction of Statutes"on page 240 thus :

> " Strictly speaking construction and interpretation are not the same, although the two terms are often used interchangeably. Construction, however, to be technically correct, is the drawing of conclusions with respect to subjects that are beyond the direct expression of the text, from elements known and given in the text, while interpretation is the process of discovering the true meaning of the language used. Thus the Court will resort to interpretation when it endeavors to ascertain the meaning of a word found in a statute which when considered with the other words in the statute, may reveal a meaning different from that apparent when the word is considered abstractly or when given its usual meaning. But when the Court goes beyond the language of the statute and seeks the assistance of extrinsic aids in order to determine whether a given case falls within the statute, it resorts to construction. The process to be used in any given case will depend upon the nature of the problem presented. And as is apparent, both processes may be used in seeking the legislative intent in a given statute. If the legislative intent is not clear after the completion of interpretation then the Court will proceed to subject the statute to construction" .

128. At page 291 of the same volume under the heading " The Spirit and Reason of the Law"the learned author observed thus :

> " Closely related to the rule which permits the Court to consider the effect of the statute, is the rule which allows consideration of the spirit and reason of the law. The effect of a suggested construction indicates, as we shall see later whether it is in accord with the actual intent of the Legislature. Actually, there seems to be but little distinction between the spirit and reason of the law and the law's purpose or scope. While the purpose of a statute is the reason for its enactment, the spirit of reason of the law is perhaps strictly speaking more closely connected to the legislative intention.

Since the intention of the Legislature constitutes the law of its enactments, it is the intention rather than the literal meaning of the statute, which controls, or as is generally said the spirit of the statute will prevail over the strict letter. Consequently, cases which do not come within the strict letter of the statute, if within the spirit will fall within the scope of the statute, and cases within the letter of the statute, if without its spirit will not come within its operation. But this principle is not applicable if the statute is clear and unambiguous so that there is no doubt concerning the legislative intent" .

129. The rigour of an exclusively literal interpretation of a statute is sought to be mellowed down by having resort to the objects of a statute in the light of the surrounding circumstances in which it was enacted through the application of what has come to be known as the 'Mischief Rule' propounded in 1584 in Heydon's case 3 Co. Rep. 7-A, in the following words :

" ... ... That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered :

(1st) What was the common law before the making of the Act ?

(2nd) What was the mischief and defect for which the common law did not provide ?

(3rd) What remedy the Parliament hath resolved and appointed to cure the disease of commonwealth? and;

(4th) The true reason of the remedy ; and then the Office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy ... ... according to the true intent of makers, pro bono publico."

130. This approach clearly contemplates a wide enquiry into the policy and purpose behind the statute.

131. *Lord Denning M. R. in Engineering Industry Training Board v. Samuel Talbot (Engineers) Ltd*[22]*.,* said :

" We no longer construe acts of Parliament according to their literal meaning. We construe them according to their object and intent."

132. The propositions in Haydon's case might have been adequate to deal with the limited kind of legislation that then existed. They need to be broadened and adopted to meet the conditions of today as our Supreme Court did in some cases.

133. Justice Venkatarama Iyer said in *R. M. D. C. v. Union of India*[23]*,*

Now when a question arises as to the interpretation to be put on an enactment, what the Court has to do is to ascertain the intent of them that make it, and that must of course be gathered from the words actually used in the statute; however that does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. The literal construction ... ... has ... ... but *prima facie* preference. To arrive

> at the real meaning it is always necessary to get an exact conception of the aim, scope and subjects of the whole Act. To decide the true scope of the present Act, therefore, we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the Legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress ... ... "

134. The deep-rooted common law tradition of judicial hostility to legislative innovation

[22]((1969) 1 All England Reporter 480)

[23] AIR 1957 SC 628 at p. 631

resulting in literal interpretation of a statute has been admirably brought out by Dean Rosoe Pound in a brilliant article 'Common Law and Legislation' published in XXI Harward Law Review at page 383. THE INARTICULATE MAJOR PREMISE. Holmes is of the view that social policy is the 'Inarticulate Major Premise' for judicial decision ;

> " Sociological jurisprudence insists as a matter of value that the social advantage of the rule is its major test, since the welfare of society is the general aim of the law. The Judge applying this test depends not only upon its impression of public opinion or the 'felt' necessities of the time, but also upon the widest possible fund of experience."

(From " The Judicial Process and Social Change"by Davis and Foster at p. 129).
135. Chief Justice Gajendragadkar observed in *Sheik Gulfan v. Sanat Kumar*[24],

> " If two constructions are reasonably possible the Court would be justified in preferring that construction which helps to carry out the beneficent purpose of the Act."

136. Blackstone in his " Commentaries on the Laws of England"in Volume 1 at page 61 had this to say :

> " The most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it, or the cause which moved the legislator to enact it" .

137. Francis J. Mc. Caffrey in his Statutory Construction said at page 13 :

> " There is little difference, if any, between spirit and reason and the purpose of the law" .

138. Maxwell on " The Interpretation of Statutes' Twelfth 1969 Edition at p. 86 is of the view that the object or policy of the Legislation often affords the answer to problems arising from ambiguities which it contains.

139. In American Jurisprudence (Vol. 50) at page 279, paragraph 298 deals with the subject-matter of 'Policy' thus :

" In construing a law of doubtful meaning of application, the policy which induced its enactment, or which was designed to be promoted thereby, is a proper subject for consideration, where such policy is clearly apparent or can be legitimately ascertained. Indeed, the proper course in all cases is to adopt that sense of the words which promotes in the fullest manner the policy of the Legislature in the enactment of the law, and to avoid a construction which would alter or defeat that policy, where the construction in harmony with the policy is reasonably consistent with the language used. Even the literal meaning of the terms employed should not
be suffered to defeat the manifest policy intended to be promoted" .

[24] AIR 1965 SC 1839 thus (at p. 1848)

140. Lord Diplock in *Reg. v. National Insurance Commr. Ex Parte Hudson*[25] speaking about the purposive approach to be made towards welfare legislation contained in the National Insurance (Industrial Injuries) Act, 1946 observed thus :

" That Act was one of several which together wrought a major change in social policy and introduced the welfare state. To find out the meaning of particular provisions in social legislation of this character calls, in the first instance, for a purposive approach to the Act as a whole to ascertain the social ends it was intended to achieve and the practical means by which it was expected to achieve them. Meticulous linguistic analysis of words and phrases used in different contexts in particular sections of the Act should be subordinate to this purposive approach. It should not distract your Lordship from it" .

141. Henry H. Foster, Jr. in a thought-provoking article of Public Law and Social Change published in SOCIETY AND THE LAW had this to say at page 162 on 'Legislative Intent'.

" It has been said that the problem of statutory interpretation is to give meaning to that which is meaningless, and that, to do this, the Court must give expression not to what the legislature thought but to what it would have thought had it thought. On the one hand, it has been recommended that courts abandon the fiction of legislative intent and the pretence of interpretation; on the other, that judicial inquiry be directed in the right direction, namely, to " extrinsic" evidence of legislative meaning. A middle position is that interpretation is legitimate only where the statute is ambiguous."

142. CONSTRUCTION OF STATUTE BY THE EXECUTIVE : (A) AS A POLICY-MAKER, AND (B) AS A RULE MAKING AUTHORITY, THE COURT SHALL HAVE REGARD :

(A) GOVERNMENT AS A POLICY MAKER :

The expression " STATE"as defined in Article 12 of the Constitution and as adopted in Article 36 includes the Government of each State on which the responsibility of applying the Directive Principles of State Policy in making laws is placed under Article 37. Article s 245 and 246 read with the relevant entry in the State List of the 7th schedule appended to the Constitution empowers the State Legislature to make law with respect of the subject-matter of land reforms. The Executive power of the State is vested in the

Governor under Article 154 and rendered exercisable by him either directly or through officers subordinate to him in accordance with the Constitution. The executive power of the State under Article 162 extends to the matter with respect to which the Legislature of the State has power to make laws. The Council of Ministers with the Chief Minister at the head shall have to aid and advice the Governor in the exercise of his functions (Article 123). The same pattern obtains in the case of Union also. A Parliamentary system of Government with a cabinet is thus introduced in India through the aforesaid provisions.

[25](1972 AC 944 (HL) at 1005)

The crux of the Cabinet Government was graphically described by Bagehot as early as in the year 1867 in his book " The English Constitution"thus :-

" The efficient secret of the English Constitution may be described as the close-union, the nearly complete fusion of the executive and legislative powers ...... A cabinate is a combining committee " a hyphen which joins, a buckle which fastens the Legislative part of the State to the executive part of the State. In its origin it belongs to the one, in its functions it belongs to the other" .

Mukherjee, C. J. in *Ram Jawaya Kapur v. State of Punjab*[26], observed thus (at p. 550) :

" Our Constitution, though federal in its structure is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of Legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact, the carrying on or supervision of the general administration of the State" . At page 237 :
" The Cabinet enjoying as it does, a majority in the Legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamental and act on the principle of collective responsibility, the most important question of policy are all formulated by them."

What is therefore manifest is that the responsibility for the formulation of governmental policy and its transmission into law and the subsequent implementation of the same are all squarely placed upon the executive under the Constitution and the cabinet concentrates in itself the citual (virtual ?) control both legislative and executive functions.

(B) GOVERNMENT AS A RULE-MAKING AUTHORITY :
The Act, by Section 67 empowers the Government to make rules to carry out the purpose of the Act. In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for matters specified in Clauses (a) to (h) of the said

sub-section.

The Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Grant of Ryotwari Patta Rules, 1973 were made by the Government of Andhra Pradesh in exercise of the powers conferred by Section 67 read with Section 11 of the Act. Rule 2 by sub rule (1) provide for "enquiry for the grant of ryotwari patta"under Section 11 to be made by the Settlement Officer. Rule 2 (5) contemplates the case of an application filed by a ryot for the grant of a ryotwari patta being considered and disposed of by the Settlement Officer before the date of commencement of these Rules. Two things are evident. Prior to the making of these Rules in 1973 the Settlement Officer has been considering and disposing of the applications filed by the ryot under Section 11 for the

[26] AIR 1955 SC 549

grant of ryotwari patta. This is notwithstanding the fact that there was nothing in Section 11 empowering the Settlement Officer to consider and dispose of the application filed by a ryot under that section claiming grant of ryotwari patta. However, that was the practice obtaining prior to the aforesaid rules which was made the subject-matter of Rules made by the Government as a rule-making authority as per the above rules. This practise was vouchsafed by the Full Bench also when it was said at page 88 of the report in *Cherukuru v. G. Gopalakrishnayya*[27]*,* thus :

> " It is well known that inquiry under Section 11 can commence *suo motu* or on an application of a ryot. Section 11 impliedly empowers the Settlement Officer to decide firstly that the land in question is a ryoti land and secondly that a particular ryot is entitled to the ryotwari patta of such a land. The question whether a particular land is a ryoti land or not is a jurisdictional question decision upon which depends the jurisdiction of the Settlement Officer to grant patta. Any determination of such preliminary question is not conclusive. It is always open to judicial review and can be questioned in a civil suit. Section 11 unlike Section 15 does not make an order under that section final and does not prohibit that being questioned in a court of law."

Speaking about the executive construction Francis J. Mc. Caffrey in his " Statutory Construction" , has this to say at page 77 :

> " The practical construction put upon an ambiguous statute by the executive or administrative officers charged with its execution, made the basis of their practice for a period of long duration and generally acquiesced in, is strong evidence of the meaning of the law *(Wildey v. Mc. Elligott*[28]*,).* Such constructions have their basis in the necessary practice of executive administrative and departmental officers construing statutes for their own guidance in advance of judicial construction. With the increased number of laws affecting the conduct and sphere of activity of such officers, their practical constructions assume a larger role in the interpretation of laws. Such a construction should be carefully examined for the requirements of constant and uniform practice for a period of long duration and general acquiescence in the construction."

Crawford in " THE CONSTRUCTION OF STATUTES"says about the Executive Construction

in para. 219 at pages 393 to 395 thus :

> " As a general rule executive and administrative officers will be called upon to interpret certain statutes long before the courts may have an occasion to construe them. Inasmuch as the interpretation of statutes is a judicial function, naturally the construction placed upon a statute by an executive or administrative official will not be binding upon the court. Yet where a certain contemporaneous construction has been placed upon an ambiguous statute by the executive or administrative officers who are charged with executing the statute, and especially if such construction has been observed and acted upon for a long period of time, and generally or uniformly acquiesced in, it will not be disregarded by the courts,

[27] AIR 1974 Andhra Pradesh 85

[28]3 NYS 2d 434 167 Misc 101

> except for the most satisfactory, cogent or impelling reasons. In other words, the administrative construction generally should be clearly wrong before it is overturned. Such a construction, commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight. It is highly persuasive. At page 396 :
>
> " If the legislature impliedly approves the construction of an administrative or executive officer by later legislation, or fails to indicate its disapproval of such a construction then the same statute or one in *pari materia* is reenacted, obviously the departmental construction's probative value is further enhanced."At page 399 :
>
> " Of course, the construction placed upon a law by the executive department is not the law of the statute but only evidence of what the law is. It is simply an aid to which the courts may resort in their efforts to ascertain the legislative intent. It may be set forth as an argument of a reason for the acceptance of a certain construction, for where the executive places a certain interpretation represents the legislative will. At least, the interpretation given to the statute by the executive officer would seem to be the obvious one and therefore, the one actually intended by the law-makers."

WELFARE LEGISLATION - PUBLIC LAW APPROACH :

143. Law envisaged by Article 37, having for its object application and implementation of Directive Principles of State Policy for the purpose of ushering in a welfare state as contained in the Act is Public Law.

> " The great bulk of legislation is concerned with public law. It is for the most part of a social or administrative character defining the reciprocal duties of a State and individuals rather than the duties of individuals *inter se.*"

144. " Public Law"said Sri Leslie Scarman in the Hamlyn Lectures-26th series - " English Law - The New Dimension"" is concerned with the rights and obligations of the state in the setting of municipal law. The common law is treated as a private law system, concerned, essentially with

the person, the property, and the reputation of the individual. Its primary concern has been to defend private property and to distribute justice between individuals in disputes with each other ...... other this outlook ...... there has arisen the common law's lack of concern with public law."

145. The common law has never understood or accommodated a public right in the changed environment. The modern welfare state with its expanded functions is challenging the relevance or the adequacy of the common law concepts, classifications and principles.

146. The purpose of public law is to usher in a welfare State by applying Directive Principles of State Policy. It deals with social justice i.e., justice in rem (the phrase is of Lord Delivn) (39 MLR 7). It pertains to sociological individualism not rugged individualism of 19th century brand. The tenor texture, the quality, the content and above all the purpose of public law is different from that of private law. Sociological approach to social welfare legislation obliges the judiciary to subject it to public law approach.
JUDICIAL TRADITION AND SOCIAL LEGISLATION :
The civilian variety of abuses of logic in statutory interpretation has been flavoured in England by the deep-rooted common law tradition of judicial hostility to legislation. " The common lawyer is at his worst when confronted with a legislative text."(Pound). There has long been a canon of construction requiring that statute 'in derogation of, the common law shall be strictly construed. The effects of such canon today when legislation is a major (perhaps and major) source of law must obviously be serious; English courts have often inhibited themselves from " seizing the spirit of institutions and situations which are in substance the creatures of modern legislation'. (Legal System and Lawyers' Reasoning by Julious Stone).

147. Lord Write said, " I venture respectfully to think that the view of the court of appeal illustrates attendancy common in construing an Act which changes the law, that is, minimise or neutralise its operations by introducing notions taken from or inspired by the old law which the words of the Act were intended to abrogate and did abrogate. *(Rose v. Ford*[29]*,)*.

148. " When an individualist common law is modified by collectivist legislation, we sometimes see an unsympathetic construction. Thus the real basis of Housing Legislation is a sacrifice of private rights of ownership in order to make possible a planned attack on the problem of the provision of suitable accommodation - Hence an overemphasis on the presumption against interference with the private rights of the land owner led to a defeat of the real purpose of the Act."(Paton : Jurisprudence III Edition at page 218).

149. " That was the reason why Jennings said in 49 Harward Law Review (1936) 426, that the Judiciary shall not interpret social legislation against public policy in the interest of private property (vide *K. Suryanarayana v. District Co-operative Officer*[30]*,)*

150. Justice Krishna Iyer speaking for the Supreme Court in *Venkatachalam v. Dy. Transport Commr*[31]*.,* observed thus (at p. 479) (of SCWR) .

> " Public law, in India, responding to the public needs and the State's functional role mandated by the Constitution, has evolved new approaches to old problems and given up dogmas which once prevailed during laissez faire days but now have become obsolete

because of the " welfare"economy which has been nurtured. This radical change in jural perspectives has its impact on canons of statutory construction and on verdicts about the vires of legislation."

151. JUDGE-MADE LAW - LEGISLATIVE THEORY OF JUDICIAL FUNCTION : Distinction between law-making by legislation and law-making by Courts :-

> " Legislators can lay down rules purely for the future and without reference to any actual dispute; the courts, in so far as they create law, can do so only in application to the cases before them and only in so far as is necessary for their solution. Judicial law-making is incidental to the solving of legal disputes; legislative law-making is the central function of the legislator."(From Salmond's Jurisprudence at page 115).

[29]1937 AC 826 at p. 846 [31](1977) 1 SCWR 471
[30] AIR 1976 And Pra 340

152. " Judicial law-making is at present " as Professor Jaffee phrases it " a by-product of an ad hoc decision or process" . (From English and American Judges as Law Makers)."

153. " In emphasising the law-making aspects of the judicial process I do not wish to under estimate the dispute settlement aspect. The theory and I think the fact is that the latter is the court's job and the former is a consequence of it"(By Jack A. Hiller).

154. " Judges"according to Cardozo " make law by evolution rather than By revolution."(From " The Nature and Judicial Process, 169).

> " Holmes once said, " I recognise without hesitation that judges do and must legislate, but they do so only interstitially, they are confined from molar to molecular motions."Paradoxically, according to Holmes, bringing the fact out into the open would legitimate a circumspect use of the power of judicial review - the fact must be recognized so that judicial legislation might be improved by reducing it."

(From " Society and the Law"at page 170)

155. Learned Hand whose brilliant opinions have greatly enriched American Law said that " the courts have a modest complimentary power to express the social will."(1960 (29) Harward Law Review pages 617 to 621).

156. According to Patterson 'Every appellate judicial decision is law-making in character, is based on a semantic argument'. The semantic theory reduces, according to the learned author, judicial 'law making' to the common place. At page 26 it is observed thus :

> "" Semantics"is here used to mean the body of theories about the meanings of words, terms and symbols......... Since the law of a state is " not a breeding omnipresence in the sky, but the voice of an articulate sovereign" , the law needs effective symbols, and is therefore concerned with semantics" .

157. The contextual theory of meaning was developed at page 28 :

> " Another theory of meaning is that words do not have fixed meanings for all contexts, but rather their meanings depend upon their contexts and vary from context to context. It is an illusion, sometimes apparent in judicial utterances, that a legal term has and must have a fixed meaning in all legal contexts......... The well-known practice of constructing a statute as a whole so as to give effect to all parts of it expresses the principle that there should be continuity or sameness of meaning when necessary to avoid contradiction or absurd diversity in operational effects. Moreover, unless a legal term has a common core of meaning in different legal contexts the usefulness of law as a means of guidance and control is impaired or negated."

(Patterson on Jurisprudence).

> " All interpretation of enacted law starts with a text, that is, a written linguistic formula. If the black lines and dots, which are the physical aspect of the text of the statute, are able to influence the judge, this is obviously because they have a meaning which has nothing to do with the actual physical substance. That meaning is bestowed upon the print by the person who through the faculty of vision experiences these characters. Their function is that of symbols that is, they " stand for"or " point to “something other than themselves."(at pages 111 and 112)
> " All symbols are conventional, that is, the connection between the symbol and what it symbolises is brought about by human beings through agreement or usage (custom).
> Of all the systems of symbols, language is the most fully developed, most effective and most complicated."(pages 112 and 113).
> " The form of activity which aims at expounding the meaning of an utterance is called interpretation. The interpretation is of two kinds. Interpretation by meaning and interpretation by reference. (at page 117).
> " PROBLEMS OF INTERPRETATION - SEMANTIC :
> The semantic problems of interpretation, in the narrower sense, are those concerning the meaning of the individual words of phrases.
> On this topic, in the main, the comments made in Section 24 apply. It must be particularly remembered that most words are ambiguous, and that all words are vague, that is, that their field of reference is indefinite, consisting of a core or central zone and a nebulous outer circle of uncertainty; and that the precise meaning of a word in a specific situation is always a function of the whole unit or entity; the utterance as such, the context and the situation."

158. It is, therefore, erroneous to believe that the semantic interpretation begins by ascertaining the meaning of the individual words and arrives at the meaning of the utterance by adding them together. The starting point is the utterance as a whole and the context in which it occurs, and the

problem of the meaning of the individual words is always bound up with this context."(at page 134).

> " The judge's understanding of the statute will always depend upon his understanding of its social motives and purposes."(from " On Law and Justice"by Alf Ross).

159. Ogden and Richards on their pioneering work " The Meaning of Meaning"and Glanville Williams in his brilliant essay " Language and the Law"(The Law Quarterly Review Volumes 61 and 62) defined the fact that interpretation is nothing but an activity associated with finding what is sought to be symbolized through a symbol bearing in mind the context and the situation.

160. JUDICIAL LEGISLATION IS SUBORDINATE LEGISLATION :

> " A large proportion of English law is in reality made by the judges, ... the adhesion by our judges to precedent, that is their habit of deciding one case in accordance with the principle, or supposed principle, which governed a former case, leads inevitably to the gradual formation by the courts of fixed rules for decision, which are in effect laws. This judicial legislation might appear, at first sight, inconsistent with the supremacy of Parliament. But this is not so. English judges do not claim or exercise any power to repeal a Statute, whilst Acts of Parliament may override and constantly do override the law of the judges, Judicial legislation is, in short, subordinate legislation, carried on which the assent and subject to the supervision of Parliament."

(" an Introduction to the study of the Law of the Constitution"by A. V. Dicey). LEGISLATIVE THEORY OF JUDICIAL FUNCTION :

161. Oliver Wendell Holmes, in his celebrated book " The Common Law"Howe Edition said at page 1 :

> " The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed."
>
> " Judges really make law, Holmes asserted; because they are motivated by the same consideration as is the legislator. Referring to the need to a more conscious recognition of legislative function of the Courts, he said " in substance, the growth of the law is legislative'. And this in a deeper sense than that what the courts declare to have always been the law is in fact new. It is legislative in its grounds."
>
> " The very considerations which the courts most rarely mention, and always with an apology, are the secret root, from which the law draws all the juices of life. We mean, of course, considerations, of what is expedient for the community concerned. Every important principle which is developed by litigation is in fact and at bottom the result of

more or less definitely understood views of public policy; most generally, to be sure, under our practice and traditions the unconscious result of instinctive preferences and inarticulate conviction, but none the less traceable to public policy in the last analysis."(at pages 31, 32).

162. Comparing the role of the Judge in filling up the gaps, to that of the Legislator, Cardozo in the Holmes tradition, had this to say :

" The choice of methods, the appraisement of values must in the end be guided by like considerations for the one as for the other. Each indeed is legislating within the limits of his competence. No doubt the limits for the Judge are narrower. He legislates only between gaps. He fills the open spaces in the law."
(Cardozo " The Nature of Judicial Process").
Cahill in his Book " JUDICIAL LEGISLATION"at page 93 says.
" The emergence of sociological jurisprudence marks the formulation of a general legal theory for the modern State in America. The power of Government, whether exercised through the legislature or through the judiciary is to be used consciously to effect the adaptation of the legal system."
Speaking about the philosophy of judicial action, the learned author said at pages 149, 150 :
" The problem to which the modern jurist addresses himself has been to devise a philosophy of judicial action that would induce the Courts either to accomplish the necessary changes or, at the very least, to refrain from blocking the efforts of others to accomplish them. In point of fact, modern jurisprudence has attempted to accomplish both by means of what has come to be called the legislative theory of the judicial function, which as we have seen holds that Courts should be sensitive to legislative considerations both in construing the powers of other agencies of Government and in the development of these areas of the law traditionally in the keeping of the Courts. The premise underlying both phases of the theory is that a dynamic society requires a dynamic legal system" .
At pages 151 and 152.
" .... Law of necessity embodies a statement of social policy and can therefore be appropriately judged in terms of that policy. In these terms, law becomes an instrument of social ends."

TO SUM UP :

163. Variation if not vacillation of judicial interpretation of welfare legislation from judge to judge and even in the case of same judge from time to time is the justification for dealing with the matter in some depth and detail.

164. The controversy is centered around Sections 56 and 11 of the Act. We shall read the same :

> " 56. Decision of certain disputes arising after an estate is notified :-
> (1) Where after an estate is notified, a dispute arises to (a) Whether any rent due from a ryot for any fasli year is in arrear or (b) what amount of rent is in arrears or (c) who the lawful ryot in respect of any holding is, the dispute shall be decided by the Settlement Officer.
> (2) Any person deeming himself aggrieved by any decision of the Settlement Officer under sub-section (1) may within two months from the date of the decision or such further time as the Tribunal may in its discretion allow appeal the Tribunal; and its decision shall be final and not be liable to be questioned in any Court of law."

11. Lands in which ryot is entitled to ryotwari patta :

> "Every ryot in an estate shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of -
> (a) all ryoti lands, which immediately before the notified date were properly included or ought to have been properly included in his holding and which are not either lanka lands or lands in respect of which a landholder or some other person is entitled to a ryotwari patta under any other provision of this Act, and (b) all lanka lands in his occupation or in that of his predecessors-in-title continuously from the last day of July 1939;
> " Provided that no person who has been admitted into possession of any land by a landholder on or after the first day of July, 1945 shall except where the Government, after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land.
> Explanation : No lessee of any lanka land and no person to whom a right to collect the rent of any land has been leased before the notified date, including an ijardar or a farmer of rent, shall be entitled to ryotwari patta in respect of such land under this section."

165. The Full Bench observed in Cherukuri Muthaya's case AIR 1974 Andhra Pradesh 85 at page 87 " clauses (a) and (b) of Section 56 (1) relates to arrears of rent due from a ryot to the land holder. And clause (c) relates to the dispute as to who the lawful ryot in respect of any holding is"The Full Bench is correct in its para-phrasing of clauses (a), (b) and (c)."

> " Clause (c) cannot be read in isolation and out of context with the other clauses of Section 56 (1)."

166. The text can never be understood without the context. The observation in so far as it suggests invoking of the doctrine of contextual theory of interpretation is concerned is correct. But the complaint is as against its unduly restricted extension.

> " Clause (c) if so read in the context of the two other clauses and keeping in view Section 55 of the Act can leave no one in doubt that the dispute under clause (c) would be required to be decided only in regard to the disputes covered by clauses (a) and (b)."

<+>(Underlining is mine).

167. If instead of " only"the expression " also"is used, the statement would have been perfectly alright. Section 55 and clauses (a) and (b) refer to rents. The expression " dispute"in clause (c) is confined to cover disputes pertaining to rent only.

168. As my Lord the Chief Justice pointed out during the course of the arguments that the marginal note to the section " Decision of Certain Disputes"gives an important clue to the understanding of clause (c). If the expression " dispute"there pertains to rents only as the Full Bench would have it, the expression " certain disputes"could be inappropriate. Nothing would have been easier, if that is so, for the Legislature to say so. But it did not say so. It said " Certain disputes" . It is too comprehensive to include that and some others as well.

169. Clause (c) also for that matter does not mention the nature of dispute as one pertaining to " rent" .

170. There is therefore no internal evidence forthcoming from within the section to support the restricted interpretation of the Full Bench.

171. Then the question that arises is as to why if Section 56 (1) (c) is not to be confined to clauses (b) and (c) it should find a place there at all under the heading " Miscellaneous."

172. Under Clause (c), the Settlement Officer shall have to decide the dispute as to who the lawful ryot in respect of any holding is, with an appeal to the Tribunal from his decision under sub-section (2). Which says that its decision shall be final and not be liable to be questioned in any court of law. That dispute may relate to rent; in which case its position under Section 56 is understandable.

173. Under the heading " Grant of Ryotwari Pattas"there is a fascicule of Sections 11 to 17.

174. The land-holder shall be entitled to a ryotwari patta in the case of the Zamindari estate under Section 12, in the case of an inam estate under Section 13 and in the case of an under-tenure estate under Section 14. The Settlement Officer under Section 15 shall have to decide in respect of which lands the claim of the land holder should be allowed. There is an appeal provided to the Tribunal and its decision under Section 15 (2) shall be final and not be liable to be questioned in any court of law.

175. Every ryot under Section 11 in an estate which according to Section 2 (3) means a Zamindari, or an under-tenure or an inam estate, shall be entitled to ryotwari patta in respect of lands mentioned in clauses (a) and (b) thereof.

176. Section 11 pertaining to ryots and Sections 12, 13 and 14 pertaining to landholders deal with grant of ryotwari pattas. Whereas a machinery in the case of land-holders is provided under Section 15 for deciding in respect of which lands the claim should be allowed, no such corresponding machinery is found provided under the aforesaid fascicule of Sections 11 and 17 for deciding in respect of which lands the claim of a ryot should be allowed.

177. The Full Bench says at page 88 : " Section 11 impliedly empowers the Settlement Officer to decide firstly that the land in question is a ryoti land and secondly that a particular ryot is entitled to the ryotwari patta of such a land. The question whether a particular land is ryoti land or not is a jurisdictional question, decision upon which depends the jurisdiction of the Settlement Officer to grant patta. Any determination of such preliminary question is not conclusive. It is always open to judicial review and can be questioned in a civil suit. Section 11 unlike Section 15 does not make an order under that section final and does not prohibit that being questioned in a Court of law."

178. Even a casual glancing through Section 11 does not indicate that a Settlement Officer is anywhere in the picture with his implied power as opined by the Full Bench to decide whether a particular ryot is entitled to the ryotwari patta under that section. The further assumption made by the Full Bench that " any determination of such preliminary question"is always open to judicial review and can be questioned in a civil court is not warranted, judged by any judicially recognized canons of construction. Probably this circumstance must have unconsciously influenced the decision of the Full Bench when it was of the view that matters under Section 11 could not be decided by the Settlement Officer under Section 56 as the Settlement Officer was, according to Full Bench impliedly empowered under Section 11 itself to decide the matters mentioned therein.

179. The questions of comparing Section 11 with Section 15 is not warranted as there is nothing common in them to be compared or contrasted...... Notice the halting observation of the Full Bench that " Section 11, unlike Section 15 does not make an order under that Section final."(as if that section contemplates passing of any order at all) and the further observation that (Section 11) " does not prohibit that being questioned in a court of law"(as if there is anything in that section to warrant that also).

180. The question of retention by or assumption of jurisdiction by the civil courts, is made to depend upon absence of prohibition in that direction in the Act when the entire tone and tenor, object and scheme of the Act is to entrust the statutory authorities with exclusive jurisdiction, with respect to matters with respect to which it provided, excluding correspondingly, the jurisdiction of the civil courts with respect to such matters.

181. The first proviso to Section 3 (d) of the Act, says that " the Government shall not dispossess any person of any land in the estate in respect of which they consider he is *prima facie* entitled to a ryotwari patta- (i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta."

182. Section 63-A refers to a decision by any Tribunal or other authority under Section 11 or Section 15.

183. No doubt the aforesaid two sections cannot be construed as power-conferring provisions on the Settlement Officer or Tribunal to deal with matters arising under Section 11. But they do certainly indicate the intention of the Legislature that the Settlement Officer and the Tribunal are elsewhere empowered to decide matters arising under Section 11 and they refer to such a situation. That elsewhere must not have been Section 11. What else could it be excepting Section 56.

184. The Executive Construction also is quite in accord with the above construction which this court is entitled to have regard.

185. On the assumption that such a power is anchored in Section 56, the proper place for a provision like Section 56 (1) (c) is only under the heading 'Miscellaneous' but not under the heading " Grant of Ryotwari Patta."The Legislature thought in its wisdom not to curtail the generality of the power of Settlement Officer or Tribunal by describing in the margin note to Section 56 as " Certain disputes" so as to make it comprehend within its ambit not merely disputes relating to rent and grant of ryotwari patta to ryots and some other conceivable classes, of disputes as well contemplated by the Act.

186. Speaking about the determination of Settlement Officer under Section 11, the Full Bench says that " It is always open to judicial review and can be questioned in a Civil Court."

187. We have already noticed two things about the statutory authorities and Administrative Tribunals. Their rapidity, inexpensiveness, informality, flexibility and above all their efficiency commended to the welfare legislation for being adopted for the successful implementation of welfare measures all over the world. That is also the reason why the Act secured the exclusion of the jurisdiction of civil courts by adopting the standard formula about the decisions of these statutory authorities or Tribunals to the effect that " its decision shall be final and not be liable to be questioned in any court of law" with a provision in Section 64-A for administrative *res judicata* . (See Sections 9, 101, 15, 56, 63-A).
188. What Section 15 is to Sections 12, 13 and 14 Section 56 is to Section 11.

189. The power, authority or jurisdiction of these statutory authorities is exclusive, exhaustive and complete with respect to matters with respect to which it deals with as not to leave any thing to the civil Courts, with their slow elaborate and expensive procedures.

190. What is the purpose, be it statutory or constitutional intended to be achieved by the Full Bench through the restrictive interpretation or construction? We have not been told, if there is one. Far from furthering the constitutional policy or the statutory policy or policy of the entire legal system, this interpretation or construction positively hinders and hampers the furthering of such policy.

191. The approach of the Full Bench creates casus omissus. Assuming, only assuming that the courts cannot fill up casus omissus, they cannot by way of interpretation create casus omissus.

192. Welfare Legislation shall have to be subjected to purposive approach and a public law approach, without being in any way inhibited by the individualist common law canons of construction. The approach should be collectivistic.

193. The Act has for its object the application and implementation of the Directive Principles of State Policy. It is included in the 9th Schedule appended to the Constitution. Such is the transcendental importance secured to it in the legal system. The three branches of Government must strike in unison for successful implementation of this welfare legislation. There is no conflict or rivalry among them. They act in co-operation and in co-ordination. Direct legislation

is made by the legislature. The courts in the interpretative process, through judicial law-making which is subordinate legislation must assist legislative process by adopting legislative theory of judicial function. Otherwise, the duty enjoined on them constitutionally to apply the Directive Principles of State Policy which were declared fundamental in the governance of the country, they will not be in a position to discharge fulfill or perform.

194. For the aforesaid reasons, I am satisfied that the applicability of Section 56 (1) (c) of the Act cannot be confined only to sub-clauses (b) and (a) of sub-section (1) of the aforesaid section read with Section 55 of the Act. It can be extended beyond so as to include within its ambit the matters dealt with under Section 11 of the Act also.
Petition allowed.