T. S. Pl. P. Chidambaram Chettiar vs T. K. B. Santhanaramaswami Odayar & Ors on 10 January, 1968

Equivalent citations: 1968 AIR 1005, 1968 SCR (2) 754, AIR 1968 SUPREME COURT 1005, 1968 2 SCJ 568

Author: V. Ramaswami

Bench: V. Ramaswami, J.C. Shah, Vishishtha Bhargava

PETITIONER:
T. S. PL. P. CHIDAMBARAM CHETTIAR

Vs.

RESPONDENT:
T. K. B. SANTHANARAMASWAMI ODAYAR & ORS.

DATE OF JUDGMENT:
10/01/1968

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
BHARGAVA, VISHISHTHA

CITATION:
1968 AIR 1005 1968 SCR (2) 754
CITATOR INFO :
RF 1976 SC1066 (5)
F 1991 SC 604 (19,30,34)

ACT:
Madras Estates Land Act 1 of 1908, ss. 3(2)(d), 3(10)(b) and 3(16)-Lands in Orathur Padugai in Tanjore Palace Estate whether fall under definition of 'estate' in s. 3(2) (d) - Tanjore Palace Estate whether created by grant-Orathur Padugai whether a whole village or part of a village-Distinction between 'private land' as defined in s. 3(10)(b) and 'ryoti land' as defined in s. 3(16).

HEADNOTE:
When the Raja of Tanjore died in 1855 without leaving male issue the East India Company took possession of all his

properties including his private property. However on a memorial being presented by the senior widow of the late Raja, the Government of India in 1862 "sanctioned the relinquishment, of the whole of the landed property of the Tanjore Raja in favour of the heirs of the late Raja." The Tanjore Palace Estate thus came into existence. In 1948 the appellant purchased certain lands situate in Orathur Padugai which was part of the aforesaid Tanjore Palace Estate, and thereafter instituted suits for possession of these lands from various defendants. The trial court dismissed the suits on the ground that the lands were situated in an 'estate under s. 3(2)(d) of the Madras Estates Lands Act 1 of 1908 and they were 'ryoti lands' as defined in s. 3(16) in which the defendants had acquired occupancy rights. The Madras High Court affirmed the decree, whereupon the appellant came to this Court. it was contended on behalf of the appellant that (i) the lands did not form an 'estate' under s. 3 (2) (d) of the aforesaid Act because the restoration of the land to the widows of the Raja of Tanjore did not amount -to a fresh grant but only a restoration of the status quo ante; (ii) that Orathur Padugai was not a whole village as required by the definition of 'estate'; (iii) the widows of the Raja enjoyed both the 'warams' and the lands purchased by the appellant were 'private lands' in s.. 3(10)(b) so that the defendants did not have any occupancy rights therein.

HELD: (i) The relinquishment by the Government of India in favour of the widows of the Raja in 1862 was a fresh grant as already held in several cases. In view of the authorities it could no longer be questioned that the Tanjore Palace state was an 'estate' within the meaning of s. 3(2)(d) of the Madras Estates Lands Act. [759 F-760 B]

Jijoiamba Bayi Saiba v. Kamakshi Bayi Saiba, 3 M.H. C.R. 424, Sundaram Ayyar v. Ramachandra Ayyar, I.L.R. 40 Mad. 3891, Maharaja of Kolhapur v. Sondaram Iyer, I.L.R. 48 Mad. 1, Sundaram v. Deva Sankara, A.I.R. 1918 Mad. 428 and T. R, Bhavani Shankar Joshi v. Somasunakra Moopanar, [1963] 2 S.C.R. 421, relied on.

Chota Raja. Saheb Mahitai v. Suddaram Iyer, 63 I.A. 224, referred to.

(ii) There was sufficient material on the record to show that at least since 1830 onwards Orathur Padugai was a whole village and therefore an 'estate' within the meaning of the Act. [762 C]

(iii) The lands in suit were 'ryoti lands' and not 'private lands'.

The definition in s. 3(10) read as a whole indicates clearly that the ordinary test for 'private land' is the test of retention by the landholder

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for his own personal use and cultivation by him or under his personal supervision. No doubt, such lands may be let on short leases for the convenience of the landholder without

losing their distinctive, character; but it is not' the intention or the scheme of the Act to treat as private those lands with reference to which the only peculiarity is the fact that the landlord owns both the warams in the lands and has been letting them out on short]cases. 1765 H-766 B)
In the present case there was no proof that the lands were ever directly cultivated by the landholder. The High Court had found that the same tenants continued to cultivate the lands without break or change, and the fact that there were periodical auctions of the lease rights did not necessarily deprive the tenants of the occupancy rights which they were enjoying. The appellant had not been able to adduce sufficient evidence to rebut the presumption under s. 185 of the Act that the lands in the inam village are not private lands. [766 C-G]
Yerlagadda Malikarjuna Prasad Nayudu v. Somayya, I.L.R. 42 Mad. 400 (P.C.), referred to with approval.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 54 to 65, 67 and 69 to 71 of 1963.

Appeals from the judgment and decree dated January 10, 1956 of the Madras High Court in Appeal Suit Nos. 223 and 224 of 1951, and 264 to 273, 275 and 277 to 279 of 1952. R. Kesava Iyengar, R. Thiagarajan and R. Ganapathy Iyer, for the appellants (in all the appeals).

Bishan Narain and O. P. Malhotra, for respondent No. 1 (in C.A. Nos. 54 and 55 of 1963).

M. R. K. Pillai, for respondent No. 2 (in C.A. No. 55 of 1963) and for the respondents (in C.As. Nos. 56 to 65, 67 to 71 of 1963).

The Judgment of the Court was delivered by Ramaswami, J. These appeals are brought against the judgment and decree in A.S. nos. 223 and 224 of 1951, 264 to 273 of 1952, 275 of 1952 and 277 to 279 of 1952 of the Madras High Court dated January _10, 1956 affirming the judgment and decree in O.S. nos. 75, 77 to 81 of 1949 and 19 to 22, 24 to 26, 28 & 30 to 31 of 1950 of the Subordinate Judge, Tanjore. The appellant instituted the above-mentioned suits for re- covery of possession from the respective defendants of the disputed lands and for payment of damages at the rate of Rs. 501per annum per acre. The case of the appellant was that the disputed lands which were purchased by him by a sale deed dated November 11, 1948 (Ex. A-145) are situated in Orathur Padugai which is attached to Pannimangalam, one of the villages comprised in what is known as the "Tanjore Palace Estate", that the said lands are not situated in an estate as defined by the Madras Estates Land Act 1 of 1908 (hereinafter referred to as the 'Act') and in any event the said lands are 'private lands' of the appellant and not 'ryoti lands' as defined in the Act and the various defendants are trespassers in unlawful occupation of the lands and had no right to continue in possession and were therefore liable to ejectment. The appellant also claimed that the defendants were liable to pay damages at the rate of Rs. 501- per, annum per acre in respect of the lands in their unlawful occupation. The

defence in all the suits was substantially the same. it was contended by the defendants that the disputed lands are situated in an estate within the meaning of s. 3 (2) (d) of the Act, that the lands are 'ryoti lands' in which they have permanent right of occupancy and that they are not "private lands" as. alleged by the appellant and the civil court had therefore no jurisdiction to entertain the suits and the Revenue Courts alone had jurisdiction. By his two judgments dated October -')1, 1950 and February 2, 1951, the Subordinate Judge, Tanjore dismissed the suits, holding that the lands were situated in an estate and were 'ryoti lands' in which the defendants were entitled to occupancy rights. The appellant took the matter in appeal to the Madras High Court which affirmed the decision of the trial court and dismissed all the appeals.

The two principal questions which are presented for deter- mination in these appeals are : (1) whether the suit-lands are located in an estate within the meaning of s. 3 (2) (d) of the Act, and (2 ') if the answer to the first question is in the affirmative, whether the suit-lands are 'private lands' or 'ryoti lands' as defined in the Act.

Section 3 (2) (d) of the Act, as originally enacted states "3. In this Act. unless there is something repugnant in the subject or context (2) 'Estate' means-

(d) any village of which the land revenue alone has been granted in inam to a person not owning the kudivaram thereof, provided that the grant has been made, confirmed or recognised by the British Government, or any separated part of such village;"

> The section was amended by the Madras Estates Land (Third Amendment) Act 18 of 1936 to the following effect " (d) any inam village of which the grant has been made, confirmed or recognised by the British Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees, or the successors in title of the grantee or grantees.

Explanation (1):

> Where an inam village is resumed by the Government,it shall cease to be an estate; but, if any village so resumed is subsequently regranted by the Government as an main, it shall, from the date of such re-grant be regarded as an estate.
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> Explanation (2):
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> Where a portion of an inam village is resumed by the Government, such portion shall cease to be part of the estate, but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently regranted by the Government as an inam, such portion or part shall, from the date of such re-grant be regarded as forming part of the inam village for the purposes of this sub-clause."

> By s. 2 of the Madras Act 11 of 1945 s. 3 of the Act was further amended as follows "Section 2 : (1) In sub-clause (d) of clause (2) of s. 3 of the Madras Estates Land Act, 1908 (hereinafter referred to as the said Act) Explanations (1) and (2) shall be renumbered as Explanations (2) and (3) respectively and the following shall be inserted as Explanation (1)namely :
>
> Explanation (1):
>
> Where a grant as an inam is expressed to be of a named village, the area which forms the subject matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved for communal purposes :
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> (2)The amendment made by sub-section (1) be deemed to have had effect as from the date on which the Madras Estates Land (Third Amendment) Act, 1936 came into force and the said Amendment shall be read and construed accordingly for all purposes;"

Section 3(19) of the Act has defined a "Village" as follows " 'Village' means any local area situated in or constituting an estate which is designated as a village in the revenue accounts and for which the revenue, accounts are separately maintained by one or more karnams or which is now recognised by the State Government or may hereafter be declared by the State Government for the purposes of this Act to be a village, and includes any hamlet or hamlets which may be attached thereto."

The history of what is known as the "Tanjore Palace Estate"

> is well-known and will be found in various reported decisions of the Judicial Committee and of the Madras High Court : (See Jijoyiamba Bayi Saiba v. Kamakshi Bayi Saiba(l), Sundaram Ayyar v. Ramachandra Ayyar(2), Maharaja of Kolhapur v. Sundaram Iyer (3) and Chota Raja Saheb Mohitai v. Sundram Iyer(4). In 1799, Serfoji, the then Raja of Tanjore, surrendered his territory into the hands of the East India Company, but he was allowed to retain possession of certain villages and lands which constituted his private property. When his son the last Raja died in 1855 without leaving male issue, the East India Company took possession of all his properties including his private property. Thereupon the senior widow, Kamachee Boye Sababa filed a Bill on the Enquiry Side of the Supreme Court of Madras, and obtained a decree that the seizure of the private properties was wrong. On appeal by the Secretary of State in Council of India, the Privy Council reversed the decree, and ordered the dismissal of the Bill. Thereafter, a memorial was submitted to the Queen and in 1862 the Government of India which had succeeded the East India Company "sanctioned the relinquishment of the whole of the landed property of the Tanjore Raj in favour of the heirs of the late Raja". Under instructions from the Government of India, the Government of Madras, on August 21, 1862, passed an order the material part of which is as follows :

"In Col. Durand's letter above recorded the Government of India have furnished their instructions with reference to the disposal of the landed property of the Tanjore Raj regarding which this Government addressed them under date the 17th May last. Their decision (1) 3 M.H.C.R. 424.

(2) I.L.R. 40 Mad. 389.

(3) I.L.R. 48 Mad. 1. (4) 63 I.A. 224.

is to the effect, that 'since it is doubtful whether the lands in question can be legally dealt with as State property, and since the plea in equity and policy, for treating them as the private property of the Raja is so strong that it commands the unanimous support of the members of the Madras Government,' the whole of the lands are to be relinquished in favour of the heirs of the late Raja (page

228)."

The Tan ore Palace Estate came into being as a result of this grant.

The question in these appeals is whether the property invol- ved in the suits being a part of the Tanjore Palace Estate can be considered to be an "estate" within the meaning of the term in the Act. It was conceded by the Counsel for the appellant that if it was part of an inam it would be an ,estate' within the meaning of that Act. It was, however, contended that the manner in which the property reverted to the widows of the Raja in 1862 after an act of State did not show that the estate was freshly granted but was restored to the widows who enjoyed both the warams, in the same way as the warams were enjoyed before. To -put it differently, the argument was that the effect of restoration or re- linquishment was only the undoing of the wrong and therefore if the villages were the private properties of the Raja at the time of the seizure then the same character is maintained when they were handed back to his widow. The contention was that what actually happened in 1862 was the restoration of the status quo ante rather than a fresh grant by the British Government. The argument is not a new one but has been raised before and rejected in a number of authorities. In Jijoyiama Bayi Saiba v. Kamakshi Bayi Saiba(1) it was held by the Madras High Court that the Government Order, 1862 was a grant of grace and favour to persons who had forfeited all claims to the personal properties of the Rajah by the act of State and was not a revival of any antecedent rights which they might have bad. A similar opinion of the grant was expressed in a Full Bench case of the Madras High Court in Sundaram Ayyar v. Ramachandra Ayyar(2) But in Maharaja of Kolhapur v. Sundaram Iyer(3), Spencer, O.C.J., appeared to doubt the decision of Scotland, C.J., in Jijoyiamba Bayi Saiba v. Kamakshi Bayi Saiba(l) that there was a grant of grace and favour in 1862. A similar view was taken in Sundaram v. Deva Sankara(4), but these cases have been subsequently ex-

(1) 3 M.H.C.R. 424.

(3) I.I.R. 48 mad. 1.

(2) I.L.R. 40 Mad. 389.

(4) A.I.R. 1918 Mad. 428.

plained or not accepted on this point. In T.R. Bhavani Shankar Joshi v. Somasundra Moopanar(1), it was held by this Court that the act of State having made no distinction between the private and public properties of the Rajah the private properties were lost by the Act of State leaving no right outstanding in the existing claimants. The Government Order, 1862 was therefore a fresh grant due to the bounty of the Government and not because of any antecedent rights in the grantees. It was pointed out that the words "relinquished" or "restored" in the Government Order did not have the legal effect of reviving any such right because no rights survived the act of State. The root of title of the grantees was the Government Order of l862 and it was therefore held that the restoration amounted to a grant in inam by the British Government within the meaning of the Act. But the question whether with regard to any-particular area what was granted in inam is a whole village or less than a whole village is a question that has to- be decided with reference to the facts of each particular case. The question therefore arises whether the area in question, viz., Orathur Padugai, constitutes a whole village and therefore an estate within the meaning of s. 3 (2) (d) of the Act. It was contended for the appellant that the suit- lands were not comprised in a whole inam village. The contention was rejected by both the lower courts which concurrently held that the lands were located in Orathur Padugai, a whole village by itself or a named village and therefore an estate within the meaning of the Act. It was argued on behalf of the appellant that the finding of the lower courts is vitiated in law because it is based on no evidence. In our opinion, there is no justification for this argument. On behalf of the respondents reference was made to Ex. A-64, Pannimangalam Vattam Jamabandhi Account individual-war, Fasli 1296, which shows in column no. 3 Orathur Padugai as a village . Similarly, in Ex. A-78(a), Cess account for Pannimangalam Vattam and Ex. A-79, the Village war Jamabandhi Account Fasli 1309 Orathur Padugai village is shown as a whole village. Exhibit A-82, Village war Jamabandhi Individual War, Fasli 1310, Ex. A-84, Jamabandhi Ghoshpara for the village, Fasli 1311 and Exs. A-153 to A-157 all mention Orathur Padugai as a village. All the leases, lease-auctions and receipts given for payment of rent speak of Orathur Padugai as a separate village. Even the sale deeds, Exs. B-6, B-31, B-32 and B- 33 contain a recital of Orathur Padugai as a separate village. It is manifest therefore that there is sufficient material to show that at least since 1830 onwards Orathur Padugai is a whole village. On behalf of the appellant reference was made (1) [1963] 2 S C.R. 421.

to Ex. A-128 and Ex. A-129 dated April 6, 1800 and July 5, 1800. Exhibit A-128 is a letter from the President, Tanjore to the Secretary to the Government of Madras in which there is a reference to Pannimungalam. It is stated therein 'that "the fields of Pannymungalam to the westward of Tanjore which from time immemorial have been reserved for the pasture of the circar cow do remain in the Raja's possession. There is neither village nor cultivation on these lands". In answer to this letter there is a communication from the Chief Secretary to the Government to the Resident, Tanjore, Ex. A-129. In para 5 of this letter it is stated: "The fields of Pucanymangalam containing neither village nor cultivation shall remain in the hands of Rajah for the pasturage of His Excellency's cows." Much reliance was placed by Counsel for the appellant on these two documents, but the High Court has rightly pointed out that the identity of the lands referred to in Exs. A-128 and A-129 is doubtful. The

lands in suit ate situated at least 30 miles south-east of Tanjore town in Mannaroudi taluk but in Exs. A-128 and A-129 the lands are described as westward of Tanjore. That there was Orathur village in existence even as early as 1830 is clear from Ex. A-151 because in describing certain boundaries of another village it is mentioned as to the north of assessed Orathur village nadappu karai (bund pathway). Exhibit A-4 of 1868 is a Debit and Credit Balance account relating to Orathur Padugai attached to Mukasa Pannimangalam Thattimal. It is clear from this Exhibit that the entire village except the waste land was assessed. From Exhibit A-5 dated September 4, 1870, it appears that the punja lands in Orathur village were taken on lease from the Collector of Tanjore who was the receiver and manager of the estate of the Rajah of Tanjore for a period of 5 years on payment of a total sum of Rs. 122/9/3. Exhibits A-7, A-8, A-12 to A-16 and A-18 are either Adaiyolai muchilikas or lease deeds for leasing the lands in Orathur padugai village for a term -ranted by the Collector of Tanjore. In all these documents the description is that the lands are situated in Orathur Padugai in Mokhasa Pannymangalam Thattimal. The documents range between the years 1870 to 1875. In Ex.A-63 which is the individual war settlement register for Pannymangalam vattam for Fasli 1296 against column 6 it is stated that the income in the matter of the amani cultivation of sugarcane, etc., on 95 kullis is Rs. 4 and it is in Orathur padugai village, Pannymangalam vattam. Exhibit A-61 is the debit and credit balance account of Orathur padugai for Fasli 1294. Similarly, in Ex. A-64, the individual war settlement register for Pannimangalam vattam, column 3 relating to the village of Orathur states that the Orathur padugai is a village and the vattam is Pannimangalam. There are similar des-

criptions of Orathur as a village in Ex. A-65 which is the settlement register for Pannimangalam vattam for Fasli 1297. Exhibit A-80 contains a similar description of Orathur village in Pannimangalam vattam. Exhibits A-153 to A-155 and A-157 are all lease deeds between the years from 1901 to 1906 relating to lease of lands in Orathur padugai. It is manifest that there is sufficient evidence to show that from 1868 right up to 1907 Orathur padugai was considered as a separate village. It was contended for the respondents that even after the passing of the Act Orathur padugai was treated as a separate village. Reference was made in this connection to a number of documents, Exs. A-158, A-105, A- 159, A-106, A-116, A-161, B-17,A-117 to A-120, B-18, A- 12 1, A- 1 62 and A- 1 63. In our opinion, the finding of the lower courts that Orathur padugai is a whole village and therefore constitutes an 'estate' within the meaning of the Act is supported by proper evidence and Counsel for the appellant is unable to make good his argument that the finding of the lower courts is in any way defective in law. We proceed to consider the next question arising in this case, viz., whether the suit-lands are 'private lands' within the meaning of s. 3 (1 0) (b) of the Act which reads as follows :

> "3. In this Act, unless there is something repugnant in the subject or context- .
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(10) 'Private land'-

(b) in the case of an estate within the meaning of sub-

clause (d) of clause (2), means-

(i) the domain or home-farm land of the landholder, by whatever designation known, such as, kambattam, khas, sir or pannai; or

(ii) land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years, immediately before the first day of July 1908, provided that the landholder has retained the kudivaram ever since and has not converted the land into ryoti land; or

(iii) land which is proved to have been cultivated by landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the first day of November 1933, provided that the landholder has retained the kudivaram ever since and has not converted the land into ryoti land; or

(iv) land the entire kudivaram in which was acquired by the landholder before the first day of November 1933 for valuable consideration from a person owning the kudivaram but not the melvaram, provided that the landholder has retained the kudivaram ever since and has not converted the land into ryoti land, and provided further that, where the kudivaram was acquired at a sale for arrears of rent the land shall not be deemed to be private land unless it is proved to have been cultivated by the land holder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years since the acquisition of the land and before the commencement of the Madras Estates Land (Third Amendment) Act, 1936."

Section 3(16) of the Act defines 'Ryoti land' as follows :

"Ryoti land' means cultivable land in an estate other than private land but does not include--

(a) beds and bunds of tanks and of supply, drainage, surplus or irrigation channels;

(b) threshing-floor, cattle-stands, village-

sites, and other lands situated in any estate which are set apart for the common use of the villagers;

(c) lands -ranted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists."

Section 185 of the Act enacts a presumption that land in inam village is not private land and reads as follows :

"185. When in any suit or proceeding it becomes necessary to determine whether any land is the landholder's private land, regard shall be had--

(1) to local custom, (2) in the case of an estate within the meaning of sub-

clause (a), (b), (c), or (e) of clause (2) of section 3, to the question whether the land was before the first day of July 1898, specifically let as private land, and (3) to any other evidence that may be produced Provided that the land shall be presumed not to be private land until the contrary is proved:

Provided further that in the case of an estate within the meaning of sub-clause (d) of clause (2) of section 3-

(i) any expression in a lease, patta or the like, executed or issued on or after the first day of July, 1918 to the effect or implying that a tenant has no right of occupancy or that his right of occupancy is limited or restricted in any manner, shall not be admissible in evidence for the purpose of proving that the land concerned was private land at the commencement of the tenancy; and

(ii) any such expression in a lease, patta or the like, executed or issued before the first day of July 1918, shall not by itself be sufficient for the purpose of proving that the land concerned was private land at the com-

mencement of the tenancy."

Section 6 is to the following effect "6. (1) Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land situated in the estate of such landholder shall have a permanent right of occupancy in his holding. Explanation (1).-For the purposes of this subsection, the expression 'every ryo t now in possession' shall include every person who, having held land as a ryot continues in possession of such land at the commencement of this Act.

The Subordinate Judge and the High Court have concurrently come to the conclusion, upon consideration of the evidence, that the lands in suit are not private lands but ryoti lands. On behalf of the appellant Mr. Kesava Iyengar conceded that onus is on the appellant to show that the lands are 'private lands' within the meaning of the Act', but the argument was stressed that the lower courts have failed to take into account certain important documents filed on behalf of the appellant, viz., A-128, A-129 and the Paimash account dated August 25, 1830, Ex. A-147 and the Land Register, Ex.A-134. In our opinion, there is no warrant for the argument advanced on behalf. of the appellant. As regards Exs. A-128 and A-129 it is apparent that apart from the question as to the identity of the land, they relate to a period previous to the grant of 1862 which alone constitutes the root of title of the grantees and there is no question of restoration or revival of any anterior right. The same reasoning applies to the Paimash account dated August 25, 1830, Ex. A-147 which cannot, therefore, be held to be of much relevance in this connection. Reliance was placed on behalf of the appellant on Ex. A-134, the Land Register for Pannimangalam which shows that in Orathur Thattimal Padugai which consists of Punjais (dry lands) and are rain-fed, the land-holder (the Tanjore Palace Estate) owns both the warams (Iruwaram in vernacular). It was argued for the appellant that the expression 'Iruwaram' means that the land was owned as Pannai or private lands. Reference was made to the record of rights and Irrigation Memoir dated January 13, 1935, Ex. B-8 which shows that the lands are lruwaram and there are no wet lands. But the use of the expression "Iruwaram" in these documents is not decisive of the question whether the land is private land of the appellant or not. Under s. 3(10) of the Act, private land comprises of two categories, private lands technically so-called, and lands deemed to be private lands. In regard to private lands technically so- called, it must be the domain or home-farm land of the landholder a,,. understood in law. The mere fact that particular lands are described in popular parlance as pannai kambattam, sir, khas, is not decisive of the question unless the lands so-called partake of the characteristics of domain or homefarm lands. In our opinion the correct test to ascertain whether a land is domain or home-farm is that accepted by the Judicial Committee in Yerlagadda Malikarjuna Prasad Nayudu v. Somayya(1), that is, whether it is land which a zamindar has cultivated himself and intends to retain as resumable for cultivation by himself even if from time to time he demises for a season. The Legislature did not use the words 'domain or home-farm land' without attaching to them a meaning; and it is reasonable to suppose that the Legislature would attach to these words the meaning which would 'be given to them in ordinary English. It seems to us that the sub-clause (b) (i) of the definition is intended to cover those lands which come obviously within what would Ordinarily be recognised as the domain or home- farm, that is to say, lands appurtenant to the landholder's residence and kept for his enjoyment and use. The home-farm is land which the landlord cultivates himself, as distinct from land which he lets out to tenants to be farmed. The first clause is, therefore meant to include and signify those lands which are in the ordinary sense of he word home- farm lands. The other clauses of the definition appear to deal with those lands which would not necessarily be regarded as home-farm lands in the ordinary usage of the term; and with reference to those lands there is a proviso that lands purchased at a sale for arrears of revenue shall not be regarded as private lands unless cultivated directly by the landlord for the required period. It seeing to us that the definition reads as a whole (1) I.L.R. 42 Mad. 400(P.C.).

3 Sup. CI/68-5 indicates clearly that the ordinary test for 'private land' is the' test of retention by the landholder for his personal use and cultivation by him or under his personal supervision. No doubt,

such lands may be let on short leases for the convenience of the landholder without losing their distinctive character; but it is not the intention or the scheme of the Act to treat as private those lands with reference to which the only peculiarity is the fact that the landlord owns both the warams in the lands and has been letting them out on short term leases. There must, in our opinion be something in the evidence either by way of proof of direct cultivation or by some clear indication of an intent to regard these lands as retained for the personal use of the landholder and his establishment in order to place those lands in the special category of private lands in which a tenant under the Act cannot acquire occupancy rights. In the present case there is no proof that the lands were ever directly cultivated by the landholder. Admittedly, soon after the grant of 1862 the estate came under the administration of Receivers, who always let out the lands to the tenants to be cultivated. In Ex. B-8, the Record of Rights the lands are entered in column 5 as Punja or dry land. In column 4 which requires the entry to be made as private land they are not entered as private lands. If was argued for the appellant that the lands are sometimes called 'Padugai' and that the expression meant that the lands were within the flood bank and forming part of the river bed. But the description of the land as 'Padugai' is not of much consequence because they are also called as Orathur 'Thottam meaning a garden where garden crops are raised to distinguish it from paddy fields. It appears that the lands actually lie between two rivers and comprise more than 100 acres, and by their physical feature cannot be 'padugai' in the sense in which the term is normally used. The argument was stressed on behalf of the appellant that leasing rights of the land were auctioned periodically. But the High Court has observed that one and the same tenant continued to bid at the auction and there was evidence that tenants continued to cultivate the lands without break or change, and the fact that there were periodical auctions of the lease rights did not necessarily deprive the tenants of the occupancy rights which they e' were enjoying. We accordingly hold that the appellant has not adduced sufficient evidence to rebut the presumption under s. 18: of the Act that the lands in the inam village are not private land and the argument of the appellant on this aspect of the case must be rejected.

For the reasons expressed we hold that the judgment of the Madras High Court dated January 10, 1956 is correct and these appeals must be dismissed with costs--one set of hearing fee.

G. C. Appeals dismissed