# Pollisetti Pullamma And Ors vs Kalluri Rameswaramma And Ors on 26 October, 1990

## Equivalent citations: 1991 AIR 604, 1990 SCR SUPL. (2) 393, AIR 1991 SUPREME COURT 604, 1991 AIR SCW 81, (1990) 4 JT 293 (SC), 1990 (4) JT 293, (1991) 1 APLJ 73.1, (1991) 1 MAD LW 16

## Author: K.N. Saikia

## Bench: K.N. Saikia, K. Ramaswamy

PETITIONER:
POLLISETTI PULLAMMA AND ORS.

Vs.

RESPONDENT:
KALLURI RAMESWARAMMA AND ORS.

DATE OF JUDGMENT26/10/1990

BENCH:
SAIKIA, K.N. (J)
BENCH:
SAIKIA, K.N. (J)
RAMASWAMY, K.

CITATION:
1991 AIR 604 1990 SCR Supl. (2) 393
JT 1990 (4) 293 1990 SCALE (2)883

ACT:
Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948: Sections 3(10)(b)(i) 15--Inam Village --How determined--Private lands--Proof of personal cultivation--Whether necessary.

HEADNOTE:
The appellants are the tenants and the respondents are the landholders in respect of the tenanted agricultural lands of the hitherto inam estates. After the coming into force of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948. the inam estates were abolished, the land stood vested in the Government free of all encumbrances, and the pre-existing rights, title and interest of erstwhile landholders ceased except to claim

ryotwari patta.

The respondents--landholders claimed that the lands, in question, were either under their personal cultivation or they intended to resume those for private cultivation, and as such those were their private lands and they were entitled to ryotwari pattas. The appellants--tenants on the contrary claimed that those lands were neither under the personal cultivation of the landholders nor the landlords intended to resume those for personal cultivation, but were in possession of the tenants who were entitled to ryotwari pattas after the abolition of the estates.

The Settlement Officer, after making inquiry under section 15 of the Estates Abolition Act, held that the landholders failed to establish that they were personally cultivating the lands or that they intended to resume the lands for personal cultivation, and as such rejected their claims.

The landholders' appeals to the Estates Abolition Tribunal were allowed. The Tribunal held that the landholders were entitled to the grant of ryotwari pattas as the lands were private lands within the meaning of section 3 (10)(b)(i) of the Andhra Pradesh (Andhra Area) Estates Land Act, 1908 and that the tenants were not entitled to ryotwari pattas in respect of the same.

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The appellants--tenants moved writ petitions before the High Court. The learned Single Judge observed that it was common ground before the Subordinate Tribunal, as well as before him, that the nature of the lands at the inception, whether ryoti or private, was not known; that the burden of establishing that the lands were private lands was on the landholders; and that it was also common ground before him that apart from the fact that there were occasional changes of tenants, and the lands were sometimes leased under short-term leases, there were no other circumstances indicating that the landholders intended to resume cultivation of the lands. The learned Single Judge held that after the pronouncement of this Court in Chidambaram Chettiar v. Santhanaramaswamy Odayar, [1968] 2 SCR 764 the decision of the Full Bench of the Madras High Court in Periannan v. Amman Kovil, AIR 1952 Mad. 323 (F.B.) could no longer be considered good law, and further that the decision in Jagdeesam Pillai v. Kuppammal, ILR 1946 Mad. 687 and in Perish Priest of Narayar v. Thingaraja Swami Devasthanam, App. Nos. 176-178 and 493 of 1946, once more held the field. It was also observed that since in all the cases the only mode of proof attempted by the landholders was the grant of short-term leases and change of tenants and rent, it must be held that the lands were not established to be private lands and that no attempt was made to prove personal cultivation or any intention to resume personal cultivation.

The Division Bench, in writ appeals filed by the landholders, held that, in the first place, the observations of

this Court in Chidambaram's case were in accord with the rule in Periannan's case, and secondly, even if some of the dicta in the judgment of this Court in Chidambaram suggested a contrary principle, the effect of the entire observations did not support the contention that Periannan's case had been impliedly overruled by this Court.

Before this Court, it was inter alia contended on behalf of the appellants-tenants (i) that the learned Single Judge having found as fact that the landholders had failed to establish that the lands were their private lands as these were neither under their personal cultivation nor they were intended to be resumed for personal cultivation, and applying the rule in Chidambaram's case, the learned Single Judge having held that the lands were not private lands, the Division Bench erred in holding to the contrary; (ii) that the learned Single Judge correctly held that Perriannan's case was no longer good law as in Chidambaram Chettiar v. Santhanaramaswamy Odayar, it was held that the definition of private land in section 3(10) of the Estate Land Act of 1908 read as a whole indicated clearly that the ordinary test for private land was the

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test of retention by the landholder for his own personal use and cultivation by him or under his personal supervision, though they might be let on short leases; (iii) that it was not the intention or the scheme of the Act to treat as private those lands with reference to which the only peculiarity was the fact that the landholder owned both the varams in the land and had been letting them out on short leases; and (iv) that the Division Bench erred in holding that Periannan's tests were still applicable.

On the other hand, it was contended that the correct tests for determining what was private land had been laid down in Periannan's case, which were not different from those of Chidambaram's case, and the Division Bench correctly applied those tests to find that the lands were private lands of the landholders.

Allowing the appeals, setting aside the judgment of the Division Bench, and restoring that of the learned Single Judge, this Court,

HELD: (1) To find out whether a village was designated as inam village or not, prima facie the revenue accounts of the Government which were there at the time of the Inam Abolition Act came into force had to be looked into. If it was so shown, no further proof was necessary. Only when the entries in the revenue accounts were ambiguous, and it was not possible to come to a definite conclusion, it might be necessary to consider other relevant evidence which was admissible under the Evidence Act. [406H; 407A-B]

(2) An interpretation of the words "private land" and "ryoti land" had to be made in consonance with the legislative purpose, provisions and scheme of the enactment. Interpretare at Concordare leges legibus, est optimus interpre-

tundi modus. To interpret and in such a way as to harmonize laws with laws in the best mode of interpretation. [410E]

(3) The Estate Abolition Act accepted the definitions of occupancy right and ryoti as in the Estates Land Act, 1908. The above provisions conferred permanent, heritable and transferable right of occupancy on the Tenant. This right stemmed from the will of the legislature and involved an element of social engineering through law star pro rationa voluntas populi: the will of the people stands in place of reason. The right of the landholder to keep his private land to himself has therefore to be interpreted in its proper perspective. Statuta pro publico late interpretaur. Statute made for the public good ought to be liberally construed. [425E-F]

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(4) The concept of past or present intention of the landholder to resume personal cultivation of land let out to a tenant and still in possession of the tenant has to be strictly construed against the landlord and liberally in favour of the tenant. [425E]

The learned Single Judge in the instant case rightly observed that the legislature did not use the word domain or home-farm land without attaching to them a meaning, and it was reasonable to suppose that they would attach to those words the meaning which would be given to them in ordinary English, namely, to connote land appurtenant to the mansion of the lord of the manor kept by the lord for his personal use and cultivated under his personal supervision is distinct from land let to tenant to be farmed without any control from the lord of the manor other than such control as incident to the lease. To that extent, the propositions of the learned Judges in Periannan's case can no longer be held to be good law in view of this Court's decisions in Chidambaram's case and Venkataswami's case, and the decision in Zamindar of Challapali v. Rajalapati/Jagadesan Pillai v. Kuppamal, and in Parish Priest of Karayar Perish v. Thiaparajaswami Devasthanam mast be held to have been correctly decided. [421C-E]

Zamindar of Chellapalli v. Rajalapato Somayya, 39 Mad. 341; Jagadeesam Pillai v. Kuppamal, ILR 1946 Mad. 687; Parish Priest of Karayar Parish v. Thiagarajaswami Devasthanam, App. Nos. 176-178 & 493 of 1946; Chidambaram Chettiar v. Santhanaramaswamy Odayar, [1968] 2 SCR 754; Yerlagadda Malikarjuna Prasad Nayudu v. Somayya, ILR 42 Mad. 400 PC; P. Venkataswami v.D.S. Ramireddy, [1976] 3 SCC 665; Suryanarayana v. Patanna, [1918] 41 ILR Mad. 1012, referred to.

Periannan v. Amman Kovil, AIR 1952 Mad. 323 F.B. partly overruled.

(6) In the instant case the pattas and the muchilkas are not claimed to have shown anything to establish the lands to be private lands. Only the facts of occasional change of tenants and rents have been shown. [431B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 152, 153, 155,156, 158, 160 and 162 of 1972.

From the Judgment and Order dated 20.11. 1970 of the Andhra Pradesh High Court in W.A. No. 616 of 1969. 103 of 1970, 472 of 1970,474 of 1970,473 of 1970,990f 1970 and W.P. No. 4947 of 1968.

G. Venkatesh Rao and A.V. Rangam for the Appellants.

C. Sitaramiah, B. Parthasarthi, A.D.N. Rao and A. Subba Rao the Respondents.

The Judgment of the Court was delivered by K.N. SAIKIA, J. These seven appeals by certificate under Article 133(1)(a) of the Constitution of India are from the common Judgment of the Andhra Pradesh High Court dated 20.11.1970 in several appeals and writ petitions. The appel- lants are the tenants and respondents are the landholders or their legal representatives, as the case may be, in respect of the tenanted agricultural lands of the hitherto inam estates of Kukunuru and Veerabhadrapuram villages in the West Godavari District of Andhra Pradesh. After coming into force of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (A.P. Act 25 of 1948), hereinafter referred to as `the Estates Abolition Act', the inam estates were abolished and the land stood vested in the Government free of all encumbrances. The pre-existing right, title and interest of erstwhile landholders ceased except to claim ryotwari patta. The tenants were not liable to be evicted pending the proceedings for issuance of ryotwari patta. The respondents--landholders, hereinafter referred to as `the landholders', claimed that the lands in question were either under their personal cultivation or they intended to resume those for private cultivation and as such those were their private lands and they were entitled to ryotwari pattas. The appellants-tenants on the contrary claimed that those were not private lands of the landholders as those were neither under their personal cultivation nor they intended to resume those for personal cultivation, but those were in possession of the tenants who were entitled to ryotwari pattas after the abolition of the estates. The Settlement Officer of Anakappalla, after making inquiry under S. 25 of the Estates Abolition Act held in all the cases in these appeals, except one (out of which W.P. No. 695/1968 arose) that the landholders failed to establish that they were personally cultivating the lands or they intended to resume the lands for personal cultivation and as such rejected their claims, except in the aforesaid case. The landholders' appeals therefrom to the Estates Abolition Tribunal were allowed relying on. and applying the tests formulated in Periannan v. Amman Kovil, AIR 1952 Mad. 323 (FB) and holding that in all cases the landholders were entitled to the grant of ryotwari pattas as the lands were private lands within the meaning of S. 3(10)(b)(i) of the Andhra Pradesh. (Andhra Area) Estates Land Act, 1908 (A.P. Act I of 1908), hereinaf- ter referred to as `the Estates Land Act', and that the tenants were not entitled to ryotwari pattas in respect of the same. The appellants--tenants moved writ petitions before the High Court of Andhra Pradesh impugning the deci- sion of the Estates Abolition Tribunal. O. Chinnappa Reddy, J. as he then was, sitting singly, after discussing the case law on the question, by a common Judgment in nine writ petitions, observing that it was common ground before the Subordinate Tribunal as well as before him that the nature of the lands at the inception, whether ryoti or private, was not known and that the burden of

establishing that the lands were private lands was on the landholders; and that it was also common ground before him that apart from the fact that there were occasional changes of tenants, and that the lands were sometimes leased under short-term leases, there were no other circumstances indicating that the landholders intended to resume cultivation of the lands, held that after the pronouncement of this Court in Chidambaraam Chettiar v. Santhanaramaswamy Odayar, [1968] 2 SCR 754, the decision of the Full Bench of the Madras High Court in Periannan v. Amman Kovil, (supra) could no longer be considered good law and that the decision in Jagdeesarn Pillai v. Kupparnreal, ILR 1946 Mad. 687 and in Perish Priest of Karayar v. Thiaga- raja Swami Devasthanam, App. Nos. 176-178 and 493 of 1946 once more held the field. It was also observed that since in all the cases before him the only mode of proof attempted by the land holders was the grant of short-term leases and change of tenants and rent, it must be held that the lands were not established to be private lands and that no `at- tempt was made to prove personal cultivation or any inten- tion to resume personal cultivation. As the Estates Aboli- tion Tribunal applied the tests laid down by the Madras Full Bench in Periannan's case (supra) and since Periannan's case was no longer good law, the writ petitions had to be allowed and the impugned orders of the Tribunal quashed in eight writ petitions. In Writ Petition No. 695 of 1968 the orders of the Assistant Settlement Officer was quashed. The landholders preferred writ appeals therefrom. Two Writ Petitions, namely, Writ Petition No. 4947 of 1968 and Writ Petition No. 310 of 1968 were also taken up for hearing analogously. The Division Bench observing that the main question for consideration in the appeals was whether the decision of the Full Bench in Periannan's case was good law and it turned on the effect of some impor- tant precedents and a review of the principles enunciated by them, and after discussing the case law took the view that in the first place the e observations of this Court in Chidambaram's case were in accord with the rule in Perian- nan's case and secondly, even if some of the dicta in the Judgment of this Court in Chidambaram suggested a contrary principle, the effect of the entire observations did not support the contention that Periannan's case had been im- pliedly overruled by this Court. The writ appeals were accordingly allowed except Writ Appeal No. 616 of 1969 which was dismissed. Writ Petition No. 4947 of was allowed and Writ Petition No. 310 of 1968 was dismissed taking the same view. Hence these appeals by certificate.

Mr. A.V. Rangam, the learned counsel for the appellants, submits that the learned Single Judge having found as fact that the landholders had failed to establish that the lands were their private lands as those were neither under their personal cultivation nor they were intended to be resumed for personal cultivation and applying the rule in Chidamba- ram's case the learned Single Judge having held that the lands were not private lands, the Division Bench erred in holding to the contrary; and that the learned Single Judge correctly held that Periannan's case was no longer good law as in Chidambaram Chettiar v. Santhanaramaswamy Odayar, (supra), it was held that the definition of private land in S. 3(10) of the Estates Land Act of 1908 read as a whole indicated clearly that the ordinary test for private land was the test of retention by the landholder for his own personal use and cultivation by him or under his personal supervision, though they might be let on short leases, it was not the intention or the scheme of the Act to treat as private those lands with reference to which the only pecul- iarity was the fact that the landholder owned both the varams in the land and had been letting them out on short leases, the Division Bench erred in holding that Periannan's test were still applicable. Mr. C. Sitaramiah, the learned counsel for the respondents. submits that the correct tests for determining what was private land had been laid down in

Periannan's case, which were not different from those of Chidambaram's case and the Division Bench correctly applied those tests to find that the lands were private lands of the landholders; and that in Chidambaram's case the appellant had not adduced sufficient evidence to rebut the presumption under S. 185 of the Estates Land Act that the lands con- cerned in the inam village were not ryoti lands as defined in S. 3(16) as the Tanjore Palace Estate was held to be an `estate' within the meaning of S. 3(2)(d) of the Estates Land Act and the widows of the Raja enjoyed both the varams, but were not personally cultivating them. In the instant case, according to counsel, the rights of the landholders were not the same as those of the widows of the Raja of Tanjore after the relinquishment of the landed properties by the Government which amounted to a re- grant. The Division Bench pointed out several misconceptions in some precedents for which they could not be said to have laid down the correct law. Counsel further submits that in Chidambaram's case, the grant of Orathur Padugai village was of the whole village and a named one and, therefore, it was an Estate within the meaning of S. 3(2)(d) of Estates Land Act and the courts having concurrently found that the lands in dispute were ryoti lands and not private lands, the landholders claiming that the lands were private lands had to show that they converted the ryoti lands into private lands which they could prove only by showing their personal cultivation and they failed to prove it, and that case was therefore distinguishable on facts and could not be held to have overruled Periannan's tests.

The question to be decided in these appeals, therefore, is whether in view of this Court's decision in Chidamba- rarn's case the decision in Periannan's case is still good law, and whether on application of the correct legal tests the lands in dispute are private lands of the landholders entitling them to ryotwari pattas in respect thereof or those are ryoti lands in possession of the appellants as tenants of the landholders and, as such, they are entitled to ryotwari pattas thereof. In other words, whether the appellants or the respondents are entitled to ryotwari pattas under the Abolition of Estates Act.

To appreciate the rival submissions, reference to the relevant provisions of the Estates Land Act and the Estates Abolition Act is necessary, and to understand the relevant provisions of the two Acts a little knowledge of development of the land system and legislation in the area will be helpful.

The Estates Land Act amended and declared the law relat- ing to the holding on land in estated in the Andhra Area of the State of Andhra Pradesh which includes the West Godavari District to which the two inam villages concerned in this appeal belong. It appears the scheme of the Estates Land Act divides cultivable lands in the two categories, namely, (1) private lands and (2) ryoti lands. The Act relates to the holding of land in estates. As defined in S. 3(2) `estate' means:

> "(a) any permanently settled estate or temporarily settled zamindari;
>
> (b) any portion of such permanently-settled estate or tempo-

rarily settled zamindari which is separately registered in the office of the Collector;

(c) any unsettled palaiyam or jagir;

(d) (i) any inam village, or

(ii) any hamlet or khandriga in an inam village, of which the grant as an inam has been made, confirmed or recognized by the Government, notwithstanding that subse- quent to the grant, such village, hamlet or khandriga has been partitioned among the grantees, or the successors- intitle of the grantee or grantees.

[Explanation: (1) Where a grant as an inam is expressed to be of a named village, [hamlet of khandriga in an inam 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 [hamlet or khandriga] of that name which have already been granted on service or other tenure or been reserved for communal pur- poses].
>
> [Explanation: (1-A) An inam village, hamlet or kandriga in an inam village granted in inam, shall be deemed to be an estate, even though it was confirmed or recognized on dif- ferent dates, or by different title deeds or in favour of different persons.
>
> Explanation: (1-B) [If any hamlet or khandriga granted as inam] was at any time designated as an inam village of as a part thereof in the revenue accounts, it shall for purposes of item (ii) or sub-clause (d) be treated as being a hamlet or khandriga of an inam village, notwithstanding that subse- quently it [has come to be designated] in the Revenue ac- counts as a ryotwari or zamindari village or part thereof]. Explanation (2) Where an inam village is resumed by the State Government, it shall cease to be an estate; but, if any village so resumed is subsequently regranted by the Government as an inam, it shall from the date of such re- grant, be regarded as an estate.
>
> Explanation (3): 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 purpose of this sub-clause;
>
> (e) any portion consisting of one or more villages of any of the estates specified above in clauses (a), (b) and (c) which is held on a permanent under tenure ."

It appears that the original definition had undergone several amendments. Clause (d) and Explanation (I-A) were substituted by S. 2(i) of Act XXXV of 1956. The Explanation (1) was inserted by S. 2(1) of Act 1I of 1945. Explanation (1) and (1-B) were amended by S. 2(ii) of Act XXXV of 1956 and Explanation (2) and (3) are the renumbered old Explana- tions (1) and (2) inserted by S. 2(1) of Act H of 1945. The respondents claim to have been `landholders'. As defined in s. 3(5):

`Landholder' means a person owning an estate or part there- of and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor-in-title or of any order of a competent Court or of any provision of law.

Where there is a dispute between two or more persons as to which of them is the landholder for all or any of the purposes of this Act or between two or more joint landholders as to which of them is entitled to proceed and be dealt with as such landholder, the person who shall be deemed to be the landholder for such purposes shall be the person whom the Collector subject to any decree or order of a competent Civil Court may recognize or nominate as such landholder in accordance with rules to be flamed by the State Government in this behalf."

Both "Private land" and "ryoti land" have been defined in the Act. As defined in S. 3(10) private land means:

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

clauses (a), (b), (c) or (e) of clause (2) means the domain or home-farm land of the landholder by whatever designation known such as, kambattam, khas, sir, or pannai, and includes all 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 commencement of this Act; and

(b) in the case of an estate within the meaning of subclause

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

(i) the domain or home-farm land of the landholders, 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 stock, for a continuous period of twelve years immedi- ately 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 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 November, 1933, provided that the landholder has retained the kudiva- ram 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 valu- able 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 landholder him-

self, 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 commence- ment of the Andhra Pradesh (Andhra Area) Estates land (Third Amendment) Act, 1936."

As defined in S. 3(16):

> `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 of irrigation channels;
>
> (b) threshing-floor, catfie-stands, village-sites, and other lands situated in any estate which are set apart for the common use of the villagers;
>
> (c) land granted on service tenure either free of rent or on favourable 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.

Village is defined in S. 3(19):

> `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 recognized by the State Government or may hereafter be by the State Government for the purposes of this Act to be a village, and includes any hamlet or hamlets which may be attached there- to."
>
> The Estates Abolition Act provided for `the repeal of the permanent settlement, the acquisition of the landholders in permanent estate and in certain other estates in the State of Andhra Pradesh and the introduction of the ryotwari settlement in such estates. It extended to the whole of the State of Andhra Pradesh and applied to all estates as de- fined in S. 3 clause (2) of the Estates Land Act. This Act, in S. 2(3) defined `estate' to mean a zamindari or an under-tenure or an inam estate. As defined in S. 2(7) `inam estate' means an estate within the meaning of S. 3, clause (2)(d) of the Estates Land Act.

The statement of objects and reasons of the Estates Abolition Act speaks of acute discontent among estate ryots and good deal of agitation under zamindari administration which was considered to have outlived its usefulness and needed abolition. It also mentioned about the election manifesto issued by the Working Committee of the Congress Party in December 1945 urging reform of the land

system and that such reform involved the removal of all intermediaries between the peasant and the State and that the rights of such intermediaries should be abolished on payment of equi- table compensation. In February 1947 the Madras Legislative Council passed a resolution accepting the general principle of the abolition of the zamindari system and recommending to the Government that legislation for the purpose be undertak- en and brought forward at an early date. The Government accordingly proposed to abolish the zamindari system by acquiring all estates governed by the Estates Land Act including whole inam villages and converting them into ryotwari paying equitable compensation to the several per- sons having an interest in the estates.

The Estates Abolition Act has also undergone a number of amendments. The Amendment Act 1 of 1950 inserted S. 54(a)& S. 54(b) dealing with compensation. The Amendment Act XVII of 1951 clarified certain positions in regard to Inam vil- lages. Section 17(1) of the Estates Abolition Act provided for the grant of ryotwari patta to a person holding any land granted on service tenure failing under S. 3(16)(c) of the Estates Land Act irrespective of whether such land consisted of only a portion of a village or of one or more villages. The reference to one or more villages in the section had given rise to the misapprehension that it applied also to an entire village granted on service tenure. But the intention was that the provisions of the section should not apply to such a village and clause 3 of the Act gave effect to it and clause 4 was consequential of clause 3. The provisions of the Estates Abolition Act were brought into force in certain inam villages on the assumption that they were under tenure estates. But it had been subsequently found that the assump- tion was not correct. It was therefore necessary to withdraw the operation of the Act from those villages and the Amend- ment Act provided for such withdrawal. The Amendment Act XXI of 1956 dealt with annual payments to any religious educa- tional or charitable institutions. The Amendment Act XVII of 1957 made provisions for the abolition and conversion in the ryotwari tenure of certain categories of inams under the Estates Abolition Act. Under S. 3(2)(d) of the Estates Land Act, as originally enacted,.whole inam villages in respect of which the original grant conferred only the melvaram right on a person not owning the kudivaram thereof alone became `estates'. By virtue of Third Amendment of the Es- tates Land Act whole inam villages m which both melvaram and kudivaram rights vested in the inamdars also became estates. The provisions of the Madras Estates Land (Reduction of Rent) Act, 1947 (Madras Act XXX of 1947) were applicable to both these categories of whole inam villages. But the provi- sions of the Estates Abolition Act were not applicable to the whole inam villages which became estates under the Madras Estates, Land (Third Amendment) Act, 1936, i.e. those in which the inamdars possessed both the melvaram and kudi- varam rights. Under S. 2 of the Estates Land Amendment Act, 1946, S. 3(2)(d) of the Estates Land Act was further amended so as to include within the definition of `estate' hamlets and khandrigas of inam villages which were previously held to be not estates. Provision was also made so as to bring within its purview only such of the inam hamlets and inam khandrigas of inam villages wherein the melvaram rights alone vest in the inamdars. Thus, the only categories of inam estates which now remained outside the purview of the Estates Abolition Act were: (a) the whole inam village which became estate by virtue of the Madras Act XVIII of 1936 and

(b) inam hamlets and khandrigas of inam villages which became estates by virtue of the Estates Land (Andhra Amend- ment) Act, 1956 but in respect of which both melvaram and kudivaram rights vested in the inamdars. The Amendment Act XX of 1960 dealt with all post 1936 inam villages which

were also brought within the purview of the Estates Abolition Act by the Amendment Act XVIII of 1957. The Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (Act XXXVII of 1956) provided for conversion of all inam lands other than estates into ryotwari tenure. The Act extended to the whole of the Andhra State, but applied only to lands described in clause (c) of S. 2. Section 2(c) defined "inam land" to mean any land in respect of which the grant in inam has been made, confirmed or recognised by the Government, (Act 3 of 1964 inserted thereafter the words) "land includes any land in the merged territory of Banagana- palle in respect of which the grant in inam has been made, confirmed or recognised by any former Ruler of the territo- ry", but does not include an inam constituting an estate under the Estates Land Act. Section 2(d) defines an "Inam Village" to mean a village designated as such in the revenue accounts of the Government, (and includes a village so designated immediately before it was notified and taken over by the Government under the Estates Abolition Act. Thus to find out whether a `village was designated as inam village or not, prima facie the revenue accounts of the Government which were there at the time of the Inam Abolition Act came into force had to be looked into. If it was so shown no further proof was necessary. Only when the entries in the revenue accounts were ambiguous, and it was not possible to come to a definite conclusion, it might be necessary to consider other relevant evidence which was admissible under the evidence Act.

Section 2-A of this Act said: "Notwithstanding anything contained in this Act all communal lands and poramookes, grazing lands, waste lands. forest lands, mines and quer- ries, tanks, tank-beds and irrigation works, streams and rivers, fisheries and ferries in the inam lands shall stand transferred to the Government and vest in them free of all encumbrances."

Section 3 of the Act prescribed the procedure for deter- mination of inam lands and provided for giving opportunity to interested persons.

As we have already noted the High Court found that the basis of the decision of the Tribunal in all the cases was that .sometimes the leases were for short terms with occa- sional change of tenants and rents payable by them and that the nature of the lands, whether ryoti or private, was not known and that it was the burden of the landholder to prove that the lands were private lands and that there was no other circumstances to show that the landholders intended to resume cultivation of the same. It was conceded before the Single Bench by the learned Advocate for the petitioners that if the tests formulated by the Full Bench in Perian- nan's case applied to the facts of these cases the land must be held to be private land and the landholders must be considered to have established their claim to grant of ryotwari pattas. The Division Bench did not change this position in view of the provisions of Section 185 of the Estates Land Act as amended from time to time. The original section said:

> "185. When in any suit or proceeding it becomes necessary to determine whether any land is landholder's private land, regard shall be had to local custom and to the question whether the land was before the first day of July 1898, specifically let as private land and to any other evidence that may be produced, but the land shall be presumed not to be private land untill the contrary is shown: Provided that all 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 twelve years immediately before the commencement of this Act shall be deemed to be the landholder's private land."

Section 185 was amended in 1934, 1936 and 1955 whereafter it 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 subclause
>
> (a) (b), (c) or (c) of clause (2) of section 3 to the ques-

tion 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 sec- tion 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 commencement of the tenancy."

When the Estates Abolition Act was passed, the legisla- ture envisaged the difficulties that could arise in respect of the estates in which the landholder would be entitled to ryotwari patta. Section 13 provided as to in respect of what lands in inam estates the landholder would be entitled to ryotwari patta and said:

> 13. Lands in inam estate in which landholder is entitled to ryotwari patta: In the case of an inam estate, the landholder shall, with effect on and from the notified date, be entitled to ryotwari patta in respect of--
>
> (a) all lands (including lanka lands) which immediately before the notified date, (i) belonged to him as private land within the meaning of Section 3, clause (10)(b) of the Estates I.and Act, or (ii) stood recorded as private land in a record prepared under

> the provisions of Chapter XI or Chapter XII of the said Act, not having been subsequently converted into ryoti land; and
>
> (b)(i) all lands which were properly included, or which ought to have been properly included, in the holding of a ryot and which have been acquired by the landholder, by inheritance or succession under a will provided that the landholder has cultivated such lands himself, by his own servants or by hired labour with his own or hired stock, in the ordinary course of husbandry, from the date of such acquisition or the 1st day of July, 1945 whichever is later and has been in direct and continuous possession of such lands from such later date;
>
> (ii) all lands which were properly included, or which ought to have been properly included in the holding of the ryot and which have been acquired by the landholder by purchase, exchange or gift, including purchase at a sale or arrears of rent;

Provided that the landholder has cultivated such lands himself, by his own servants or by hired labour, with his own or hired stock, in the ordinary course of husbandry from the 1st day of July, 1945 and has been in direct and continuous possession of such lands from that date;

(iii) all lands [not being (i) lanka-lands], (ii) lands of the description specified in Section 3, clause (16), sub- clauses (a), (b) and (c) of the Estates Land Act, or (iii) forest lands which have been abandoned or relinquished by a ryot, or which have never been in the occupation of a ryot, provided that the landholder has cultivated such lands himself, or by his own servants or hired labour, with his own or hired stock, in the ordinary course of husbandry, from the 1st day of July, 1945 and has been in direct and continuous posses- sion of such lands from that date.

Explanation: `Cultivate' in this clause includes the plant- ing and rearing of topes, gardens and orchards, but does not include the rearing of topes of spontaneous growth." Section 15 dealt with the determination of lands in which the landholder would be entitled to ryotwari patta under the foregoing provisions of the Act and said:

> "(1) The Settlement Officer shall examine the nature and history of all lands in respect of which the landholder 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.

XX XX XX XX XX XX XX XX XX XX An interpretation of the words "Private land" and "ryoti land" has to be made in consonance with the legislative purpose, provisions and scheme of the enactment. Interpre- tare et concordare leges legibus, est optimus interpretandi modus. To interpret and in such a way as to harmonize laws with laws is the best mode of interpretation. We may now examine the question whether the tests formu- lated in Periannan's case (supra) can still be applied in face of the decision in Chidambaram's case (supra). In other words whether Periannan's decision is still a good law. In Periannan the Full Bench of Madras High Court dealt with a batch of second appeals and a batch of civil revision peti- tions. The suits out which the second appeals arose. related to the village of Manamelpatti, a Dharmasanam village in the Ramnad District and those were instituted

by the trustees of Airabhadeswarar Soundaranayagi Amman Temple for ejectment of the defendants from the lands in their respective possession and for recovery of rent for faslis 1349 and 1350 and for future profits. The village comprised 80 pangus out of which the plaint temple in this batch owned 231/2 pangus purchased from the original owners and one pangu taken on othi from the owner. The plaintiffs in the batch of suits out of which the civil revision petitions arose were the managers of the Devastha- nam of Nagara Vairavapatti Valaroleeswaraswami Nagara Vaira- vaswami Devasthanam. That temple owned 54 and 5/8th pangus or shares in the village and the suits were instituted for recovery of the balance of amounts due as `irubhogam' for faslis 1349 and 1350. In both the batches of suits the plaintiffs claimed that they were the owners of meIvaram and kudivaram interests in the lands which were being enjoyed as "pannai" lands or private lands; that they were leasing the lands from time to time changing tenants and collecting "swamibhogam" in recognition of their full proprietary rights in the lands. They claimed that the tenants had no occupancy rights in the lands; and in the second appeals batch a relief for ejectment of the tenants was also claimed. The defence of defendants-tenants in both the batches was common. They claimed that the temples owned only the melvaram interest and that they, the tenants, were the owners of the kudivaram which they had been enjoying heredi- tarily paying half varam in respect of the nanjas and a fixed money rent for the punja or dry lands according to the "tharam" (classification) of lands. They denied that they ever paid "swami bhogam" to the temple. In all the suits there was the common plea that the village was an "estate" under Section 3(2)(d) of the Madras Estates Land Act, as amended by the Madras Estates Land (Amendment) Act, 1936 (Act XVIII of 1936); that they had therefore acquired occu- pancy rights under the Act; and that the lands were ryoti and that, therefore, the civil court had no jurisdiction to try those suits. The plaintiffs also raised an alternative contention that on the footing that the village was an "estate" the suit lands were private lands or "pannai" lands of the temples and, therefore, the defendants acquired no occupancy rights in the lands under the statute and that the civil court alone had the jurisdiction to entertain and try the suits.

The High Court found that the main questions that had to be considered by the courts below were whether the village was or was not an estate under the Madras Estates Land Act and, if so, whether the lands were private lands as claimed by the plaintiffs or ryoti lands as claimed by the tenants. The further question that even apart from the Estates Land Act whether the defendants had acquired occupancy rights by prescription was also raised and considered. The jurisdic- tion of the civil court to entertain the suits depended upon the decision of the question whether the village was or was not an estate. On the main questions the concurrent findings of the Courts below were that the village was an "estate" under Section 3(2)(d) of the Madras Estates Land Act as amended in 1936, that the plaint temple owned the melvaram and kudivaram interests in the lands; that the lands were private lands as defined by the Madras Estates Land Act; that the defendants had acquired no occupancy rights in the lands either under the Act or by prescription and that the suits were properly laid in the civil court which had un- doubted jurisdiction to try the suits. The Subordinate Judge, in appeals, agreed with the finding of the trial court but refused the plaintiff's relief for ejectment on the ground that the tenancy was not lawfully terminated. The lands in both the sets of cases were situated in the same village of Manamelpatti.

Before the High Court the findings of the courts below that the temple owned the melvaram and kudivaram interests in the lands and the defendants had not acquired permanent rights of occupancy in the lands apart from the Act had not been disputed by the defendants. The dispute, therefore, was confined to two questions, namely, first, whether the vil- lage was an "estate" under the Madras Estates Land Act and, secondly, whether the concurrent finding of the courts below that the lands were private lands of the temple was correct or not. While deciding the second question and dismissing the second appeals and the civil revision petitions, the learned Judges discussed the relevant case law and therefrom Satyanarayana Rao, J with whom Vaswanath Sastri, J con- curred, at paragraph 49 page 346 of the report held that the following propositions were established:

> "1. If the land is known to be ryoti at its inception the only mode by which it could be converted into private land is by proof of continuous cultivation for a period of 12 years prior to the commencement of the Act.
>
> 2. Even if the nature of the land is not known, continuous cultivation for the required period of 12 years before the commencement of the Act would conclusively establish that the land is private land.
>
> 3. If there is no proof of cultivation for a continuous period of 12 years before the commencement of the Act, the land may be proved to be private land by other methods; provided the land was not shown to be once ryoti.
>
> 4. Cultivation of the lands or leasing of the lands under short-term leases may be one mode of proof.
>
> 5. An intention to cultivate or resume for cultivation is also a test to decide that the land is private land and such intention may be established by any other means, not neces- sarily by cultivation and by cultivation alone.
>
> 6. The essence of private land is continuous course of conduct on the part of the land-holder asserting and acting on the footing that he is the absolute owner thereof and recognition and acceptance by the tenants that the landhold- er has absolute right in the land.
>
> 7. Mere proof that the land-holder is the owner of both the warams is not sufficient to prove that the land is private land."

Considered in light of the definition of "private land", sections 13 and 15 of the Estates Abolition Act and the basic concept of "domain or home-farm land", we are of the view that the proposition 4, 5 and 6 above have to be doubt- ed.

Viswanatha Sastri, J. who concurred summarised his conclusions as under:

"I may now summarise my conclusion on the legal aspects of the case. Where land proved or admitted to be once ryoti land is claimed to have been converted into private land, the claim is untenable unless the land-holder proves direct cultivation for a period of 12 years before 1st July 1908. No other mode of conversion is permissible. Where you have to find out whether a land is private or ryoti its original character not being known, proof of direct cultivation of the land by the land-holder for 12 years before 1st July 1908, would, without other evidence, conclusively establish its character as private land, but this is not the only mode of proof permitted to land-holder. Other evidence may be adduced and looked into and might consist, among other matters, of direct cultivation of the land at some period anterior to 12 years preceding 1st July 1908 but this is not indispensable. Direct cultivation may be valuable and weighty evidence and may be inferred from accounts and other records usually kept by large land-holders. If, owing to lapse of time or other reasons, evi- dence of direct cultivation is not forthcoming its absence is not fatal to the claim that the land is private. S. 185 of the Act does not shut out, but on the other hand allows all evidence that would be relevant and admissible under the law of evidence, to prove that fact in issue, namely, whether the land is private or ryoti. Local usage or custom and the letting of the land as private land in leases before 1898 are specifically mentioned in Ss. 185(1) and (2) as being relevant evidence but other evidence is also expressly made admissible under S. 185(3).

The classification of lands as private lands at the time of the permanent settlement or in the early records of zamindaries, the terms of the grant of an undertenure, the assertion and enjoyment by the land-holder of the right to both the warams, the intention to retain with himself the kudiwaram right and the consequent right to resume direct cultivation if he chooses, leases of the lands as private lands or with terms and conditions inconsistent with any right of occupancy in the leases, admissions by tenants that the land-holder is the owner of both warams and that they have no occupancy rights, changes in the personnel of the tenants, variations in the rates of rent payable by the tenants--these and kindred matters would be relevant and admissible in evidence to prove that the lands are private lands. The probative value of such evidence depends on the facts and circumstance of each case.

The burden of proof that a particular land in an estate is private land rests on the land-holder, the statu- tory presumption being the other way. This burden is not discharged merely by proving that both the warams were granted to or enjoyed by the land-holder once upon a time. There must be evidence of the treatment of the lands as private lands by the land-holder, either by direct cultiva- tion or otherwise in the manner above stated."

Considering the statutory definition, in our opinion, the third paragraph and last part of last paragraph above have to be doubted. Raghava Rao, J. who dissented summarised his conclusions separately.

We are not oblivious the fact that on the basis of the above propositions cases have been decided for a long time. But their tenability having been questioned in the instant case we proceed to examine them. The above propositions no doubt refer to different aspects including the evidentiary aspect of the question of determination of `private lands' and `ryoti lands' but it may be difficult to hold that each or all of them by them- selves laid down any rule to be invariably followed irre- spective of the history, location and nature of the estates, their cultivation and the customs governing them. There is also no sufficient exposition of the central concept of `domain' and `home-farm' lands in the above propositions. These words were not defined ,in the Estates Land Act In Zamindar of Chellapalli v. Rajalapati Somayya, 39 Mad. 341, Wallis C.J. adopted the dictionary meaning, namely, "the land about the mansion house of a Lord and in his immediate occupancy". Seshagiri Aiyar, J. in the same case quoted from the Encyclopaedia Brittanica, Vol. III (3): `Domain' as synonymous to `Domesne' and is explained as follows:

> "Domesne--(Domeine, Demain, Domain etc.) that portion of the land of a manor not granted out in the freehold tenancy, but
>
> (a) retained by the lord of the manor for his own use and occupation, or (b) let out as tenemental land to his retain-

ers or `villani.' The domesne land originally held at the will of the landlord, in course of time came to acquire fixity of tenure and developed into the modern copyhold. It is from domesne as used in sense (a) that the modern re- stricted use of the word comes, i.e., `land immediately surrounding the mansion or dwelling house, the park or chase'."

In Jagadeesam Pillai v. Kupoarnmal (supra) which related to lands in an inam village which was part of the Tanjore palace, Wadsworth, Offg. C.J. accepeted the interpretation put upon the word "Domain" by Wailis, C.J. and Sesnagiri Aiyar, J. In Chellapalli case (supra) as meaning "land immediately surrounding the mansion or dwelling house, the park or chase" and that connoted land appurtenant to the mansion of the lord of the manor kept by the landlord for his personal use and cultivated under his personal supervi- sion as distinct from lands let to tenants to be farmed without any control from the lord of the manor other than such control as in incident to the lease. The learned Judge further observed:-"It seems to us that the sub-clause (b)(1) 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."

In Parish Priest of Karayar Parish v. Thiagarajaswami Devas-

thanam, (supra) Subba Rao and Chandra Reddy, JJ accepted the test laid down in Jagadeesam (supra) and the legal position was summarised as follows:

> "The legal position having regard to the provisions of the Act and the decisions dealing with them in so far as it is relevant for the purposes of this case may briefly be stated thus. Private land as defined under the Madras Land Estates Act comprises

two categories, private lands, technically so called and lands deemed to be private lands. In regard to private lands strictly so called, it must be a domain or home farm land as understood in law. The mere fact that particular lands are described in popular province as pan- nai, kambattam, sir, khas, is not decisive of the question unless the lands so called partake of the characteristics of domain or home-farm lands.

The test to ascertain whether a land is domain or home farm is that accepted by the Judicial Committee in `Mallikarjuna Prasad v. Somayya', 42 Mad 400 i.e. 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. Whenever a question therefore arises whether a land is private land technically so called, as defined in sub-clause (1) of clause (b) to S. 3(10) the presumption is that it is not a private land. The recitals in the leases, pattas etc. after 1918 must be excluded and the recitals in similar documents prior to 1918 in them- selves are not sufficient evidence. There must be in addi- tion direct evidence that these lands were either domain or home farm lands in the sense that they were in their origin lands directly cultivated by the landlord or reserved by him for his direct cultivation. We are not concerned in this case with the question whether ryoti lands could be convert- ed into private lands."

The trend not to confine the concept of private lands only to domain or home-farm lands but to include in it lands situate outside in which land-holder had granted leases or made arrangements for cultivation with a view to resume them for personal cultivation did not find favour in the above three decisions.

In Chidambaram Chettiar (supra) involved lands in Orathur Padugai in Tanjore Palace Estate. The Raja of Tanjore having died without leaving any male issue the East India Company took possession of all his properties including his private property. Later, on representation of the senior widow of the late Raja, the Government of India in 1962 "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 the suit lands situate in Orathur Padugai within Tanjore Palace Estate and instituted suits for possession from the various defendants. The Trial Court having dismissed the suits on the ground that the lands were situated in an estate as defined in S. 3(2)(d) of the Madras Estates Land Act and they were ryoti lands as defined in S. 3(16) in which the defendants have acquired occupancy rights. The Madras High Court having affirmed that decree in appeal, the appellant came to this Court contending that the lands did not form an `estate' under S. 3(2)(d) because the restoration did not amount to a fresh grant but only resto- ration of status quo ante; that Orathur Padugai was not a whole village to be an estate and that the widows of the late Raja enjoyed both the varams and the lands purchased by the appellant were private lands under s. 3(10)(b) so that the defendants did not have any occupancy rights therein. Holding that the relinquishment by the Government in 1962 amounted to a fresh grant and that since 1830 onwards Ora- thur Padugai was a whole village and therefore an estate, their Lordships enunciated the tests as to private land thus:

"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 as understood in law. The mere fact that particular lands are described in popular parlance as pannai, kambattam, sir, khas, is not decisive of the ques- tion unless the lands so-called partake of the characteris- tics of domain or home-fair lands. In our opinion the cor- rect 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, ILR 42 Mad. 400 (PC), 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 sea- son. 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 recog-

nised 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 the word home-farm lands. The other clauses of the definition appear to deal with those lands which would not necessarily be regarded as homefarm 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 seems to us that the definition reads as a whole 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 supervi- sion. 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."

The concept of home-farm does not appear to be much different from that of domain. According to Black's Law Dictionary, a farm means body of land under one ownership devoted to agriculture, either to raising crops or pasture or both. The word farm means a considerable tract of land or number of small tracts devoted wholly or partially to agri- cultural purposesor pasturage of cattle but may also include woodland. The term does not necessarily include only the land under cultivation and within a fence. It may include all the land which forms part of the tract and may also include several connected parcels under one control. According to Collins English Dictionary, farm

means a tract of land usually with house and buildings cultivated as unit or used to rear livestock. According to Webster's Comprehensive Dictionary, International Edition, farm means a tract of land forming a single property and devoted to agricultural stock raising dairing and some allied activity. We are therefore of the view that home-farm necessarily implies a farm with the home of the landholder.

Pollock & Maitland in The History of English Law, 2nd Edn. Vol. 1, at pp 362-363 describing the manorial arrange- ment in England wrote:

> "Postponing until a late time any debate as to whether the term manor bore a technical meaning, we observe that this term is constantly used to describe a proprietary unit of common occurrence:-the well-to-do landholder holds a manor or many manors. Now speaking very generally we may say that a man who holds a manor has in the first place a house or homestead which is occupied by himself, his bailiffs or servants. Along with this he holds cultivable land, which is in the fullest sense (so far as feudal theory permits) his own; it is his demesne land. Then also, as part of the same complex of rights, he holds land which is holden of him by tenants, some of whom, it may be, are freeholders, holding in socage or by military service, while the remainder of them, usually the large majority of them, hold in villein- age, by a merely customary tenure. In the terms used to describe these various lands we notice a certain instructive ambiguity. The land that the lord himself occupies and of which he takes the fruits he indubitably holds `in demesne'; the land holden of him by his freehold tenants he indubita- bly does not hold `in demesne; his freehold tenants hold it in demesne, unless indeed, as may well be the case, they have yet other freeholders; below them. But as to the lands holden of him by villein tenure, the use of words seems to fluctuate; at one moment he is said to hold and be seized of them in demesne, at the next they are sharply distinguished from his demesne lands, that term being reserved for those portions of the soil in which no tenant free or villein has any rights. In short, `language reflects the dual nature of tenure in villeinage; it is tenure and yet it is not tenure. The king's courts, giving no protection to the tenant, say that the lord is seized in demesne; but the manorial custom must distinguish between the lands holden in villeinage and those lands which are occupied by the lord and which in a narrower sense of the word are his demesne.
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> Describing the field system they wrote:
>
> " We have usually therefore in the manor ,lands of three kinds, (1) the demesne strictly so called, (2) the land of the lord's freehold tenants, (3) the villenagium, the land holden of the lord by villein or customary tenure. Now in the common case all these lands are bound together into a single whole by two economic bonds. In the first place, the demesne lands are cultivated wholly or in part by the labour of the tenants of the other lands, labour which they are bound to supply by reason of their tenure. A little labour in the way of ploughing and reaping is not out of the free- hold tenants; much labour of the many various kinds is obtained from the tenants in

> villeinage, so much in many cases that the lord has but small, if any, need to hire labourers. Then in the second place, these various tenements lie intermingled; neither the lord's demesne nor the ten- ant's tenement can be surrounded by one ring-fence. The lord has his house and homestead; each tenant has his house with more or less curtilage surrounding it; but the arable por- tions of the demesne and of the various other tenements lie mixed up together in the great open fields."

In paragraph 758 of Halsbury's Laws of England, 4th Edn., Vol. 9, on the destruction of customs it is said:

> "As manorial customs attached to the tenure as distinguished from the mere locality of the lands, it followed that upon the destruction of the tenure by enfranchisement of the lands at common law the customs were also destroyed. A statutory enfranchisement must have effect, however, in accordance with the terms of the statute, and where the statute preserves rights notwithstanding the enfranchisement and the extent of the rights so preserved depended upon custom, the custom remains relevant to define the rights preserved by the statute."

The basic concept of domain or home-farm land and the concept of cultivation as private land by the landholders used in the definition had, therefore, to be borne in mind in determining private land. The observation of the Division Bench in the impugned Judgment that it is not possible to regard the pronouncement in Zamindar of Chellapalli v. Somayya, (supra) as an authority for the proposition that domain within the meaning of s. 3 (10) of the Estates Land Act must be held to mean land around the mansion home of lord and appurtenant thereto, has therefore to be rejected. The decision of the High Court of Madras in Chellapalli case was confirmed by the Privy Council in Yerlagadda Mallikarju- na Prasad Nayudu v. Somayya, (supra). The learned Single Judge in the instant case also relied on the observations in Chellapalli's case (supra). The learned Single Judge rightly observed that the test laid down by Wadsworth, Offg. C.J. were approved by the Supreme Court in Chidambaram's case in identical language and that the legislature did not use the word domain or home-farm land without attaching to them a meaning and it was reasonable to suppose that they would attach to those words the meaning which would be given to them in ordinary English, namely, to connote land appurte- nant to the mansion of the lord of the manor kept by the lord for his personal use and cultivated under his personal supervision is distinct from land let to tenant to be formed without any control from the lord of the manor other than such control as incident to the lease. We respectfully agree. To this extent the propositions of the learned Judges in Periannan's case (supra) the tenability of which we doubted, can no longer be held to be good law in view of this Court's decision in Chidambaram's case (supra) and P. Venkataswami v.D.S. Ramireddy, [1976] 3 SCC 665. In P. Venkataswami v.D.S. Ramireddy (supra) the question was whether the landlord was entitled to ryotwari patta. The High Court applied the tests in Pariannan's case. Referring to the provisions of Sections 13 and 15(1) of the Estates Abolition Act (which we have quoted earlier).and reiterating what was said in Chidambaram's case this Court held:

> "Thus even on the provisions of the Madras Estat is Land Act, 1908 considered by the Madras Full Bench, this Court appears to have taken a different view. Apart from

this, the provisions we are concerned with, namely, Section 13(b)(iii) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 requires as a condition `that the landholder has cultivated such lands himself, by his own servants or hired labour'. We are unable to agree that the words `has cultivated' could imply a mere intention to cultivate.

Apart from Article 141 of the Constitution of India we are of the opinion that the decision in Chidambaram and Venka- taswarni are in consonance with the objects and purposes of the Estates Land Act, the Estate Abolition Act, the Inam (Abolition and Conversion into Ryotwari) Act and the accept- ed objectives of the land reforms legislation. We now take up the question as to who were entitled to ryotwari pattas in this case. The landholders admitted that if the Pariannan's tests were not applicable, they would not be entitled to ryotwari patta. Even so we proceed to examine the question on the facts on record. As defined in S. 3(15) of the Estates Land Act, "ryot" means a person who holds for the purpose of agriculture ryoti land in an estate on condi- tion of paying to the landholder the rent which is legally due upon it. Under the Explanation, a person who has occu- pied ryoti land for a continuous period of 12 years shall be deemed to be a ryot for all the purposes of this Act. This Explanation was added by the Estates Land Amendment Act, 1934 (Act VIII of 1934). The conferment of occupancy right on the ryot in ryoti land was an object of the Estates Land Act. The original Section 6 dealing with occupancy right in ryoti land was substituted by Section 5 of the Amendment Act VIII of 1934. Thereafter also it has undergone several amendments. At the relevant time it stood as follows:

"6. Occupancy right in ryoti land: (1) Subject to the provi- sions 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 sub-section, the expression `every ryot 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. Explanation: (2) In relation to any inam village which was not an estate before the commencement of the Andhra Pradesh (Andhra Area) Estates Land (Third Amendment) Act, 1936, but became an estate by virtue of that Act, or in relation to any land in an inam village which ceased to be part of an estate before the commencement of that Act, the ex- pression `now' and `commencement of this Act' in this sub- section and Explanation (1) shall be construed as meaning the thirtieth day of June, 1934, and the expression `hereaf- ter' in this sub-section shall be construed as meaning the period after the thirtieth day of June, 1934. Explanation: (3) In relation to any hamlet, or khandriga in an inam village which was not an estate before the commence- ment of the Andhra Pradesh (Andhra Area) Estates Land (Amendment) Act, 1936, but became an estate by virtue of that Act, the expressions `now' and `commencement of this Act', in this sub-section and Explanation (1) shall be construed as meaning the Seventh day of January 1948, and

the expression `hereafter' in this sub-section shall be construed as meaning the period after the seventh day of January, 1948.

Explanation: (4) Every landholder who receives or recovers any payment under Section 163 from any person unauthorizedly occupying ryoti land shall be deemed to have thereby admit- ted such person into possession unless within two years from the date of receipt of recovery of payment or the first of such payments, if more than one, he shall file a suit in a Civil Court for ejectment against such person. (2) Admission to waste land under a contract for the pasturage of cattle and admission to land reserved bona fide by a landholder for raising a garden or tope or for forest under a contract for the temporary cultivation there-

of with agricultural crops shall not by itself confer upon the person so admitted a permanent right of occupancy; nor shall such land, by reason only of such letting or temporary cultivation, become ryoti land."

(3, 4, 5 and 6 are not extracted) Section 6-A which was inserted by the Amendment Act VIII of 1934 provided that a person having a right of occupancy in land does not lose it by subsequently becoming interested in the land as landholder or by subsequently holding land as an ijaadar or farmer of rent. Section 8 provided for merger of occupancy rights and said:

"Whenever before or after the commencement of this Act the occupancy right in any ryoti land vests in the landholder, he shall have no right to hold the land as a ryot but shall hold it as a landholder, but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) Whenever before or after the commencement of this Act the occupancy right in any ryoti land vests in any co-landholders, he shall be entitled to hold the land sub-

ject to the payments to his co-landholders of the shares of the rent which may from time to time payable to them and if such co-landholder lets the land to a third person; such third person, shall be deemed to be a ryot in respect of the land.

(3) The merger, if any, of the occupancy right under sub-sections (1) and (2) shall not have the effect of converting ryoti land into private land.

(4) Where after the passing of the Act, the inter- est of the ryot in the holding passes to the landholder by inheritance, the landholder shall notwithstanding anything contained in this Act have the right, for a period of twelve years from the date of succession, of admitting any person to the possession of such land on such terms as may be agreed upon between them.

(5) If before the first day of November 1933, the landholder has obtained in respect of any land in an estate within the meaning of sub-clause (d) of clause (2) of Sec- tion 3 a final decree or order of a competent Civil Court establishing that the tenant has no occupancy right in such land, and no

tenant has acquired any occupancy right in such land before the commencement of the Andhra Pradesh (Andhra Area) Estates Land (Third Amendment) Act, 1936, the land- holder shall, if the land is not private land within the meaning of this Act, have the right, notwithstanding any- thing contained in this Act, for a period of twelve years from the commencement of the Andhra Pradesh (Andhra Area) Estates Land (Third Amendment) Act, 1936, of admitting any person to the possession of such land on such terms as may be agreed upon between them;

Provided that nothing contained in this sub-section shall be deemed during the said period of twelve years or any part thereof to affect the validity of any agreement between the landholder and the tenant subsisting at the commencement of the Andhra Pradesh (Andhra Area) Estates Land (Third Amendment) Act, 1936".

Section 9 provided that no landholder shall as such be entitled to eject a ryot from his holding or any part hereof otherwise than in accordance with the provisions of this Act. Section 10 made the occupancy rights heritable and transferable providing that "all rights of occupancy shall be heritable, and shall be transferable by sale, gift or otherwise." If a ryot dies intestate without leaving any heirs except the Government, his right of occupancy shall be extinguished but the land. in respect of which he has such right of occupancy shall not cease to be ryoti land. The Estates Abolition Act accepted the same definitions of occupancy right and ryot as in the Estate Land Act. The above provisions conferred permanent, heritable and trans- ferable right of occupancy on the tenant. This right stemmed from the will of the legislature and involved an element of social engineering through law star pro ratione voluntas populi: the will of the people stands in place of a reason. The right of the landholder to keep his private land to himself has therefore to be interpreted in its proper per- spective. Statuta pro publico late interpretatur. Statute made for the public good ought to be liberally construed. The concept of past or present intention of the landholder to resume personal cultivation of land let out to a tenant and still in possession of the tenant has to be strictly construed against the landlord and liberally in favour of the tenant. The aforesaid doubtful propositions formulated by the learned Judges in Periannan's case must, therefore, be held to be erroneous. For the same reason the observation of the Division Bench in this case that the decision in Periannan's case is still good law in face of the decision of this Court in Chidambaram (supra), and subsequent deci- sion in Venkataswami's case (supra) must be held to be equally erroneous and to that extent must be overruled and the decisions in Zamindar of Chellapalli v. Rajalapati Somayya, (supra); Jagadeesam Pillai v. Kuppammal, (supra) and in Parish Priest of Karayar Parish v. Thiagarajaswami Devasthanam, (supra) must be held to have been correctly decided.

We have no doubt that the formation and development of the land revenue system in Madras will justify the view we have taken in the facts of this case. The formation of the Madras Presidency was by successive acquisitions by the East India Company. The State of Andhra Pradesh was curved out of Madras. Baden Powell in Land System of British India, Vol. 3 p. 5 wrote in 1892:

> "In tracing the progress of the Madras Land Revenue System, it will be advisable in the first place to review the gener- al course of acquisition, by which the Madras district became British, and next to describe, in a brief and general manner, the various stages of the history of the early revenue management. Commencing with the

> settlement (above alluded to) in the Baramahal (1792-98), which was soon followed by those of Coimbatore (1799), the ceded districts (1800), and the Carnatik Districts (1801), we shall see how the first raiyatwari system, or rather systems, were over-

thrown for a time by an attempt to make a general zamindari settlement (1801-1808); how on the failure of the attempt, a proposal for `village settlements' (in the sense of granting leases for the whole village, to a renter, a headman, or a joint body of inhabitants) was tried with various success for a few years; and how, in the end, a raiyatwari assess- ment was finally ordered ( 18 12-18 18)."

Ryotwari indicates a system where each field or holding is dealt with separately, and where the holder is free to pay the revenue and keep the field, or free himself by giving it up, as he pleases.

The first general acquisition of territory by the East India Company--the first from a revenue point of view, was the country around Madras,--known as `Jagir' because it was originally granted by the Nawab of the Karnatik as a Jagir; the revenue thus assigned was intended as a contribution towards the expenses of the wars undertaken in aid of the Nawab.

The next acquisition in point of time was that of the Northern Sirkars (often written `Circar'). These territories were granted in 1765 by the Delhi Emperor; but the Madras Government, looking to the practical claim of the Nizam of Dakhan, who was hardly even in name subject to Delhi, also obtained a grant from him in 1768. The five administrative divisions known to the Mughal system as `Sirkar' were those of chicacole (chikakol) Srikakulam, Rajahmundry (Rajamahen- driveram), Eliore (Alur), Mustafanagar .(or Kandafiti), and Murtazanagar (Gantur or Kandavid). Later they formed the districts of Vizagapatam (Visakhapatnam), Gangam, Kishna and Godavari.

The northern Sikars had been brought under Muhammadan domin- ion first in 1471 A.D., and had various fortunes under the different contending dynasties. In 1687, Aurangazeb's con- quest of the Dakhan added them to the Mughal empire, and they were ultimately taken over by the Subedar of the Dakhan (Nizam-ul-Mulk) nominally from the Emperor Karukhsir in 1713 A.D. "These came at once under British administration. It was found that they consisted (1) of lands settled under zamin- dars, as in Bengal, (2) of haveIi lands, those reserved for the support of the royal family and its immediate depend- ants, and therefore `crown' property. Such a state of things invited the application of the Bengal system; the zamindars were accordingly left in possession and the haveIi lands were parcelled out and leased to revenue farmers for a term of years. The Jagir lands were in 1780, divided into blocks and put under a similar system of revenue leases." When the Board of Revenue issued instructions to adopt a system of village lesses so as to prepare for some form of zamindari settlement, i.e. one man should be made answerable for the revenue of each village or other estate after the passing of Permanent Settlement Regulations in Bengal. The Zamindari Regulation No. XXV was passed in 1802 and by 1805 introduction of the system was effected. In the Northern Sirkars land was permanently settled with the zamindars; and the `HaveIi' lands were made into percels or mutthas, and sold to the highest bidder. The Mutthadars (or Mittadars) became the proprietors and permanent settlement-holders. Each settlement became an estate. In some districts the `poligars' became landlords holding sanad-i-milkiat-i-istim- rar or title-deed of perpetual ownership--their estates being called `settled polliems'. According to Paden Powell the

zamindari estates were found chiefly in the North-East- ern districts and especially in the Ganjam and Vizagapatam districts. There were also few Feudatory States which paid only a fixed tribute.

The village leases continued with some form of joint or individual middlemen with varying periods of 3 to 10 years made with a view to eventual permanency. But the system was not successful. Between the ryotwari and village lease system the general difference was that the ryotwari only assessed the `field' or survey-unit, and left the ryot..to hold it or not as he pleased, provided he gave notice of his intention in proper time; if he kept the field he must pay the assessment that was all. The lease system involved payment of a certain sum for a fixed area, whether the land was cultivated or not. It was no use for the middlemen lease-holder to throw up his land, for that would not relieve him of his contract liability. The idea was to make the villagers jointly and severally respon- sible, though the lease was to the head inhabitants of each village. Desire was to see a system under which the proprie- tary inhabitants at large of each village should enter into engagements with the Government, and derive a common and exclusive interest in the cultivation of their lands in proportion of their right of property.

Ultimately the Ryotwari system was adopted. The end of the lease proposals and the village system inquiry was that the home authorities, as Baden Powell says, probably influ- enced by the opinion of Munro, who visited England in 1807, finally decided for the Ryotwari system as it was believed that the village system failed. Hence the Estates Abolition Act protected the rights of the ryots by defining private land on the one hand and preserving the occupancy rights of the ryots on the other. In doing so the two concepts of `private land' and `ryoti' land along with those of `estate' and `occupancy' assumed significance.

The two villages concerned in the instant case are said to be inam viiages. But the origin of the lands in dispute was admittedly not known. The characteristics of the inam estates and the rights and liabilities of the Inamdars from time to time have therefore to be taken into account. Baden Powell wrote at pp.78-80 Vol. 3:

> Section Ill--Settlement of inam Claims.
>
> "The Settlement, as we have seen, only assesses the land under raiyatwari tenure. If, however, there is land in the village, consisting of a few fields or even a division of the village, held revenue-free, or at a reduced rate, such an area is shown in the village registers.
>
> But it may be that a whole village is `inam'. If so, it constitute a separate estate, like a Zamindari or a `pollam', and does not come within the scope of the Settle- ment. Government has no claim to the land or to the revenue, unless there is a fixed quit-rent, which is recorded as is the permanently settled revenue or `peshkash' of the Zamind- ari or pollam estate. There was accordingly a special proce- dure under which the right and title of the holders of these favoured estates was elucidated and put on a sound basis; and the quit-rent, Or reduced rate, where the estate is not entirely revenue-free, determined by rule. All native governments were in the habit of

> reward- ing favourites, providing for the support of mosques, tem- ples, religious schools, shrines, and for almsgiving and the maintenance of Brahmans or Muhmmadan saints, & C., by grant- ing the revenue on the land, whether they granted the land itself or not."

The Inam Commission of Madras appointed on 16.11. 1858 had the task of validating and issuing title deeds for inams lawfully in possession for fifty years and in resuming others, or commuting them for money pensions. The Commission dealt with all kinds whether they included right in the lard or only Government revenue; they were:

> (1) Inams proper, where the land granted, was either a field, or a village, or a group of villages.
>
> (2) Muhammadan jagirs, which were personal grants and might or might not include the land.
>
> (3) Shrotriyams (Srotriyam) and agraharams, grants certain (different) classes of Branmans which did not give more than the revenue, leaving the land in its original occupancy, unless it could be shown that the occupancy was also granted.

The following nine kinds of inams (classified according to their object or purpose) were enumerated:

> (1) For religious institutions and services connect-

ed therewith.

Nearly a million and a half acres were so assigned, including temples, pagodas, and mosques. The largest grants were in the southern districts.

(2) For purposes of public utility. Such as support of chatrams (places where refreshment was given gratuitous- ly), water pandais (drinking places), topes or groves, flower-gardens for temple service (mandavanam), schools (Patshalas), for maintaining bridges, ponds and tanks, etc. (3) `Dasabandham' inams for the construction, mainte- nance, and repair of irrigation works in the Ceded dis- tricts, in Kistna, Nellore, North Arcot and Salem.

(4) To Brahmans and other religious persons for their maintenance called `Bhatavritti' and (Muhammadan `Khairat'. They formed nearly half the inams of the Presidency, and covered more than three and a half million acres.

(5) Maintenance grants for the families of poligars and ancient land-officers. These were grants to families of dispossessed poligars in Baramahal and the ceded districts; to Kanungos (Chingleput), and to Deshmukhs etc. (6) Lands alienated for the support of members of the family (also for religious persons) by poligars, etc. These were the `bisai' (bissoye), doratanam, mukhasa, jivitham, arearam (North Arcot) umlikai, etc. (7) Grants connected with the general police of the country

under former rulers: Such were `kattubadis'.

(8) Grants to village headmen, karnams, and village police (Gramamaniyam, etc. ).

(9) Grants to village artisans, where they were not paid by the fees called merai (or in addition to them). The Commission also took up enfranchisement of the inams, i.e. to convert into his own private property by payment of a moderate quit-rent. From this the inams could be classified as (1) still unenfranchised; (2) enfranchised but liable to jodi or quit-rent as the case may be; (3) enfranchised, the rent being commuted or redeemed. The Commission work was closed in November 1869. A member of the Board of Revenue continued thereafter. The nature and histo- ry of the inam villages would, therefore, have been helpful in deciding the claims.

It was perhaps easier for the landholders to trace the origin of the inam villages than for the tenants to do so. Admittedly that was not done.

We have also considered the question of practice and pre- sump-

tions if any in this regard. By Madras Act VIII of 1865 it was enacted that inamdars and other landholders should enter into written agreements with their tenants, the engagements of the land-owners being termed pattas and those of tenants being termed Muchlika. The patta should contain, amongst other things, "all other special terms by which, it is intended the parties shall be bound. The muckhlika should at the option of the landholders, be counterpart of the patta, or a simple engagement to hold according to the terms of the patta. In the instant case the pattas and the muchlikas are not claimed to have shown anything to establish the lands to be private lands. Only the facts of occasional change of tenants and rents have been shown.

The Privy Council in Suryanarayana v. Patanna, [1918] 41 ILR Madras 10 12, where the decision of the appeal mainly depended on the question whether the Agraharam Village of Korraguntapalem in the Northern Circars of then Presidency of Madras was an estate, observed that the "term kudivaram is not defined in the Act. It is a tamil word, and literally signifies a cultivator's share in the produce of the land held by him as distinguished from the landlord's share in the produce of the land received by him as the rent. The landlord's share is sometimes designated `melvaram"

> The Privy Council held that there was no presumption of law to the effect that in the case of an inamdar it should be presumed, in the absence of inam grant under which he held, that the grant was of the royal share of the revenue only. "In their Lordships' opinion there is no such presump- tion of law. But a grant of a village by or on behalf of the Crown under the British rule is in law to be presumed to be subject to such rights of occupancy, if any, as the cultiva- tors at the time of grant may have had." As against the above, we now have the statutory presumptions in Section 185(3) of the Estates and Act, namely, "that the land shall be presumed not to be private land until the contrary is proved," and in case of estate within the meaning of sub- clause (d) of clause (2) the second proviso (i) and (ii). This evolution of the land revenue system concerned is likely to remind one of what Sir Henry Maine showed in his Ancient

> Law, "that in early times the only social brother- hood recognised was that of kinship, and that almost every form of social organisation, tribe, guild, and religious fraternity, was conceived under a similitude of it. Feudal- ism, converted the village community based on a real or assumed consanguinity of its members, into the fief in which the relations of tenant and lord were those of contract, while those of the unfree tenant rested on status." It also reminds one what was said in the context of rights over land. "This earth", says Jagannatha, "is the cow which grants every wish; she affords property of a hundred various kinds (inferior, if the owner need the assent of another proprietor-superior, if his right precede assent); while she deludes hundred owners, like a deceiving harlot, with the illusion of false enjoy- ment; for, in truth, there is no other lord of this earth but one, the Supreme Lord."

For the foregoing reasons we set aside the impugned Judgment, restore that of the learned Single Judge and allow the appeals. We leave the parties to bear their own costs in these appeals.

R.S.S. Appeals allowed.