Vatticherukuru Village Panchayat And ... vs Nori Vekatrama Deekshithulu And Ors on 26 April, 1991

Equivalent citations: 1991 SCR (2) 531, 1991 SCC SUPL. (2) 228, 1991 AIR SCW 1303, (1991) 2 SCR 531 (SC), 1991 UJ(SC) 2 309, 1991 SCC (SUPP) 2 228, (1991) 5 JT 140 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy, N.M. Kasliwal

PETITIONER:
VATTICHERUKURU VILLAGE PANCHAYAT AND ORS.

Vs.

RESPONDENT:
NORI VEKATRAMA DEEKSHITHULU AND ORS.

DATE OF JUDGMENT26/04/1991

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KASLIWAL, N.M. (J)

CITATION:
1991 SCR (2) 531 1991 SCC Supl. (2) 228
JT 1991 (5) 140 1991 SCALE (1)818

ACT:
A.P. Gram Panchyat Act, 1964-Section 64 and 65-Property of income belongs to or administered for benefit of villagers in common- Vests in Gram Panchayat.

A.P. Gram Panchayat Act 1964- Section85-Vesting of Water courses and tanks, lands used by public with Gram Panchayat- Assumption of management by Government, Subject to villagers' prescriptive right.

A.P. Inams (Abolition and Conversion into Ryotwari) Act, 1956- Section 8-Tank-Grant of ryotwari patta to users of inam land- Conclusive nature of their right , title and interest.

Constitution of India, 1950- Preamble, Chapter IV read with section9, Code of Civil Procedure, 1908- Social legislation-Conferrring power and jurisdiction on tribunals-Orders passed by them Finality-Exclusion of jurisdiction of Civil Courts-Purpose of-Decisions of

Revenue Courts under section 3 read with section7, Inams Act-|Whether retriable in Civil Court.

Words and Phrases- 'Vest', Vested', 'Vesting'-Meaning of.

HEADNOTE:

Civil Appeal Nos. 931 of 1977 and 200 of 1978 relate to the same dispute though arose from, two suits and separate judgements.

Civil Appeal No. 931 of 1977 arose out of the suit for possession by the Gram Panchayat against the descendants of the grantee of inam. The suit was dismissed by the Trial Court and was confirmed by the High Court and the High Court granted leave under Art.133.

Civil Appeal No. 200 of 1978 arose out of the suit for possession and mesne profits which was laid by the descendants of the grantee of inam. The pleadings are the same in both cases.

A Zamindar granted 100 acres of land inam to dig, preserve

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and maintain a tank in favour of the predecessors of the respondents of C.A. No. 931/77.

In 1700 A.D.i.e., 1190 Fasli, the tank was dug by the villagers and ever since, the villagers were using the tank for their drinking purpose and perfected their right by prescription.

In course of time the tank was silted up and fresh water existed only in and around 30 acres. The grantee's descendants-respondents did not make any repairs, Grass and trees had been grown in the rest of the area and was being enjoyed.

Under section 3 of the A.P.Inams (Abolition and Conversion into Ryotwari) Act, (Act XXXVII of 1956) Ryotwari Patta was granted to the respondents in individuals capacity and on appeal the Revenue Divisional Officer confirmed the same and it became final, as it was not challenged any further.

On 7.7.1965, the Gram panchayat- the appellant in C.A. No. 931/77 took unilateral possession of the tank and ever since , it was exercising possession, supervision and control over it.

After the expiry of three year from the date of dispossession, the respoondents filed a suit for possession based on title. Earlier thereto the appellant- Gram-Panchayat had filed a suit for possession.

The Trial Court found that the tank was a 'public trust', the appellants would be hereditary trustees and could be removed only by taking action under s. 77 of the A.P. Hindu Charitable and Religious Institutions and Endowments Act, 1966 and that the respondents had acquired title by adverse possession. Accordingly the suit for

possession was decreed relegating the filing of separate application for mesne profit.

On appeal, the High Court reversed the decree and held that the tank was a public tank, and the tank and the lands stood vested in the Gram Panchyat under A.P. Gram Panchayat Act,1964. Since, the Gram Panchayat was in possession from July 7, 1966, though dispossessed the respondents forcibly and as the suit was not under s. 6 of the Specific Relief Act, 1963, but one based on title, it called for interference and dismissed the suit. This court granted leave to appeal under article 136.

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The respondents in C.A. No. 931/77 (the appellants in C.A. No. 200/78) contended that in view of the entries of the Inam Fair Register, the tank was a public trust and not a public tank; they could not be dispossessed until recourse made under section 77 of the A.P. Charitable and Religious Institutions and Endowments Act; that under the Gram Panchayat Act, the lands did not vest in the gram Panchayat; and that since the grant of ryotwari patta under the Inams Act had become final, S. 14, thereof barred the jurisdiction of the Civil Court to entertain the suit.

The appellant-Gram Panchayat in C.A. No. 931/77 (the respondents in C.A. No. 200/78) contended that the tank and the appurtenant land was correctly held as public tank by the High Court that by operation of sections 85 and 64 of the Gram Panchayat Act, the land and the tank stood vested in the Panchayat, that the entries in the Inam Fair Register established that the grant of land was for preservation, maintenance and repairs of the tank and therefore, the grant should be in favour of the institution, i..e., the tank and the respondents thereby did not acquire any title, that ryotwari patta was only for the purpose of land revenue; that the Gram Panchayat acquired absolute right, title and interest in the land; and the suit was not a bar in the facts of the case.

Dismissing both appeals, this Court

HELD: 1.01. Any property or income, which belongs to or has been administered for the benefit of the villagers in common or the holders in any of the village land generally or of land of a particular description or of lands under particular source of irrigation shall vest in Gram Panchayat and be administered by it for the benefit of the villagers or holders. The lands or income used for communal purpose shall either belong to the Gram Panchayat or has been administered by the Gram Panchayat. It is not the case of the Gram Panchayat nor any finding recorded by the courts below to that effect. So. s. 64 is not attracted though the villagers acquired prescriptive right to use the water from the tank for their use and of their cattle. [554D-F]

1.02. All public water-courses, springs, reservoirs, tanks, cisterns, etc. and other water works either existing on the date of the Act or made thereafter by the Gram

Panchayat, or otherwise including those used by the public ripened into prescriptive right for the use and benefit of the public and also adjacent or any appurtenant land not being private property shall vest in the Gram Panchayat under s. 85(1) and be subject to its control. [554F-G]

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2.01. The word`vesting' in s. 85 would signify that the water-courses and tanks, lands etc. used by the public to such an extent as to give a prescripvtive right to their use, are vested in the Gram Panchayat, and placed them under the control and supervision of the Gram Panchayat. It confers no absolute or full title. It was open to the Government, even after vesting, to place restriction upon the Gram Panchayat in the matter of enjoyment and use of such tanks, and appurtenant lands etc. The assumption of management by the Government would be subject to the prescriptive right of the villagers, if any. The vesting of the tanks etc. in the Gram Panchayat was with absolute rights and the village community rights would over-ride against rights of the Government. [546C-F]

2.02. The tank is a public tank and not a public trust and that under s. 85(1) and s. 64, the vesting of the tanks, the appurtenant land and the common land is only for the purpose of possession, supervision, control and use thereof for the villagers for common use subject to the over-riding title by the Government and its assumption of management should be in terms of sub-s. (3) of s. 85 of the Act and subject to the prescriptive right in the water, water spread tank for common use. [547A-B]

Gram Panchayat, Mandapaka & Ors. V. Distt. Collecctor, Eluru & Ors. AIR 1982 AP 15, approved.

Anna Narasimha Rao & Ors. v. Kurra Venkata Narasayya & Ors., [1981] AWR 325, OVER-RULED.

3.01. Under A.P. Land Encroachment Act, 1905; Talengana Area Land Revenue Act, relevant Abolition Acts like A.P. Estates (Abolition and Conversion into Ryotwari) Act, 1948, Inams Abolition Act etc. give absolute rights or vesting in the State over the forest land, tanks, rivers, mines, poramboke, land, etc. free from all encumbrances and the preexisting rights in the other land stood abolished and will be subject to the grant of Ryotwari Patta etc. [546F-H]

3.02 Grant of Ryotwari patta is not a title but a right coupled with possession to remain in occupation and enjoyment, subject to payment of the land revenue to the State. [546H]

3.03. The entries in the Inam Fair Register are great acts of the State and coupled with the entries in the survey and settlement record

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furnishes unimpeachable evidence. On construction of these documents, it would clearly emerge that the original grant was made for the preservation and maintenance of the tank and tax-free Inam land was granted for that purpose, though

it was in the name of the individual grantee. The grant was for the preservation and maintenance of the tank. [548C-D]

3.04. The grant was for the institution. Under s. 3 of the Inams Act, the enquiry should be, whether (1) a particular land is Inam land; (2) Inam land in a Ryotwari, Zamindar or Inam Village; and (3) is held by any institution. In view of the finding that the grant was for the preservation and maintenance of tank, the Inam land in an inam village was held by the institution, namely, the tank. Ryotwari patta shall, therefore, be in favour of the institution. Undoubtedly the ryotwari patta was granted in favour of the descendants. [548D-F]

3.05. The pattas were obtained in the individuals name, the trustees of an institution cannot derive personal advantage from the administration of the trust property. The grant of patta was for the maintenance of the trust. [548G]

3.06. The descendants, though enjoyed the income from the properties, did not effect the repairs and neglected the maintenance and upkeep of the tank. They rendered the tank disused and abandoned. By operation of s. 85 of the Act the lands and tank stood vested in the Gram Panchayat for control, management and supervision. [550E-F]

3.07. A hereditary trustee is entitled to be the Chairman of a Board of Trustees, if any, constituted under the Endowment Act or else be in exclusive possession and management of the public trust registered thereunder until he is removed as per the procedure provided therein. Since the tank always remained a public tank and not being a public trust, the Endowment Act does not apply. Therefore, the question of initiating action under s. 77 of the Endowment Act for removal of the descendants as trustees does not arise. [550F-G]

Arunachalam Chetty v. Venkatachalpathi Garu Swamigal, AIR 1919 P.C. 62 at P. 65; Syed Md. Mazaffaral Musavi v. Bibi Jabeda & Ors., AIR 1930 Pc 1031; Bhojraj v. Sita Ram & Ors, AIR 1936 P.C. 60; M. Srinivasacharyulu & Ors. V. Dinawahi Pratyanga Rao & Ors., AIR 1921 Madras 467; Ravipati Kotayya & Anr. v. Ramaswamy Subbaraydu & Ors., [1956] 2 A.W.R. 739, referred to.

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K.V. Krishna Rao v. Sub-Colletor, Ongole, [1969] 1 S.C.R. 624, followed.

Nori Venkatarama Dikshitulu & Ors. v. Ravi Venkatappayya & Ors., [1959] 2 A.W.R. 357, approved.

Krishan Nair Boppudu Punniah & Ors. v. Sri Lakshmi Narasimhaswamy Varu, [1963] 1 A.W.R. 214; Bhupathiraju Venkatapathiraju & Ors. V. The President Taluq Board, Narsapur & Ors.; [1913] 19 1.C. 727 (Mad.) (D.B.), distinguished.

Tagore Law Lecture, ``Hindu Religious Endowments and Institutions at p. 6, distinguished.

4.01. In the laws made to restructure the social order creating rights in favour of the citizens and conferring

power and jurisdiction on the hierarchy of Tribunals or the authorities constituted thereunder and giving finality to their orders or decisions and divested the jurisdiction of the established civil courts expressly or by necessary implication Departure in the allocation of the judicial functions would not be viewed with disfavor for creating the new forums and entrusting the duties under the statutes to implement socio-economic and fiscal laws. Courts have to consider, when questioned, why the legislature made the departure. The reason is obvious. The tradition bound civil courts gripped with rules of pleading and strict rules of evidence and tardy trial, four tier appeals, endless revisions and reviews under C.P.C. are not suited to the needed expeditious dispensation. The adjudicatory system provided in the new forums is cheap and rapid,. The procedure before the Tribunal is simple and not hide bound by the intricate procedure of pleadings, trial, admissibility of the evidence and proof of facts according to law. Therefore, there is abundant flexibility in the discharge of the functions with greater expedition and inexpensiveness. {552D-H]

4.02. In order to find out the purpose in creating the Tribunals under the statues and the meaning of particular provisions in social legislation, the Court would adopt the purposive approach to ascertain the socials ends envisaged in the Act, to consider scheme of the Act as an integrated whole and practical means by which it was sought to be effectuated to achieve them. Meticulous lexographic analysis of words and phrases and sentences should be subordinate to this purposive approach. The dynamics of the interpretative functioning of the Court is to reflect the contemporary needs and the prevailing values consistent with the constitutional and legislative declaration of the policy envisa-

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ged in the statute under consideration. [552H-553B]

4.03. The law should, therefore, respond to the clarion call of social imperatives evolve in that process functional approach as means to subserve ``social promises'' set out in the Preamble, Directive Principles and the Fundamental Rights of the Constitution. [553d]

4.04. Section 9 of the Civil Procedure Code, 1908 provides that whenever a question arises before the Civil Court whether its jurisdiction is excluded expressly or by necessary implication, the court naturally feels inclined to consider whether remedy afforded by an alternative provision prescribed by special statute is sufficient or adequate. In cases where exclusion of the civil court's jurisdiction is expressly provided for, the consideration as to the scheme of the statue in question and the adequacy of sufficiency of the remedy provided for by it may be relevant, but cannot be decisive. Where exclusion is pleaded as a matter of necessary implication such consideration would be very

important and inconceivable circumstances might become even decisive. [553G-554B]

4.05. The jurisdiction of a Tribunal created under statute may depend upon the fulfilment of some condition precedent or upon existence of some particular fact. Such a fact is collateral to the actual matter which the Tribunal has to try and the determination whether it existed or not is logically temporary prior to the determination of the actual question which the Tribunal has to consider. At the inception of an enquiry by a Tribunal of limited jurisdiction, when a challenge is made to its jurisdiction, the Tribunal has to consider as the collateral fact whether it would act or not and for that purpose to arrive at some decision as to whether it has jurisdiction or not. There may be Tribunal which by virtue of the law constituting it has the power to determine finally, even the preliminary facts on which the further exercise of its jurisdiction depends; but subject to that, the Tribunal cannot by a wrong decision with regard to collateral fact, give itself a jurisdiction which it would not otherwise have except such tribunals of limited jurisdiction when the statue not only empowers to enquire into jurisdictional facts but also the rights and controversy finally it is entitled to enter on the enquiry and reach a decision rightly or wrongly. If it has jurisdiction to do right, it has jurisdiction to do wrong. It may be irregular or illegal which could be corrected in appeal or revision subject to that the order would become final. [554B-F]

4.06. The Inams Act did not intend to leave the decisions of the revenue courts under s. 3 read with s. 7 to retry the issue once over in the civil court. [561D-E]

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4.07. The glimpse of the object of the Inams Act, scheme, scope and operation thereof clearly manifest that Inams Act is a self contained code, expressly provided rights and liabilities; prescribed procedure; remedies; of appeal and revision, excluded the jurisdiction of the civil court, notwithstanding anything contained in any law, given primacy of Inams Act though inconsistent with any law or instrument having force of law. The jurisdictional findings are an integral scheme to grant or refuse ryotwari pattta under s. 3, read with s. 7 and not collateral findings. It was subject to appeal and revision and certiorari under Art 226. The decision of the Revenue Tribunal, are final and conclusive between the parties or persons claiming right, title or interest through them. The trick of pleadings and the camouflage of the reliefs are not decisive but the substance or the effect on the order of the tribunal under the Inams Act are decisive. The civil suit except on grounds of fraud, misrepresentation or collusion of the parties is not maintainable. The necessary conclusion would be that the civil suit is not maintainable when the decree directly nullifies the ryotwari patta granted under s. 3 of the Inams

Act. [561E-562A]

Deena v. Union of India, [1984] ISCR, referred to.

Kamala Mills Ltd. v. State of Bombay, [1966] 1 SCR 64; Secretary of State v. Mask & Co., [1940] L.R. 67 I.A. 222; Raleigh Investment Co. Ltd. V. Governor-General in Council, L.R. 74 I.A. 50; Firm and Illuri Subbayya Chetty & Sons v. State of Andhra Pradesh, [1964] 1 SCR 752; Deesika Charyulu v. State of A.p., AIR 1964 SC 807; Dhulabhai & Ors v. State of M.P. & Anr., [1968] 3 SCR 662; Hati v. Sunder Singh, [1971] 2 SCR 163; Muddada Chayana v. Karam Narayana and Anr. Etc., [1979] 3 SCR 201; T. Munuswami Naidu v. R. Venkata Reddy, AIR 1978 A.P. 200; O. Chenchulakshmamma & Anr. v. D. Subramanya Reddy, [1980] 1 SCR 1006; A. Bodayya & Anr. V. L. Ramaswamy(dead) by Lrs., [1984] Suppl. SCC 391; Doe v. Bridges, [1831] 1 B & Ad. 347 at p. 359; Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and Ors., [1976] 1 SCR 427; State of Tamil Nadu v. Ramalinga Samigal Madam, [1985] 4 SCC 10; Syamala Rao v. Sri Radhakanthaswami Varu, [1984] 1 A.P.L.J. 113; Jyotish Tahakur & Ors. v. Tarakant Jha & Ors., [1963] Suppl. 1 SCR 13; Sri Athmanathaswami Devasthanam v. K. Gopalaswami Aiyangar, {1964] 3 SCR 763; Sri VEdagiri Lakshmi Narasimha Swami Temple v. Induru Pattabhirami Reddy, [1967] 1 SCR 280; Shree Raja Kandragula Srinivasa Jagannadha Rao Panthulu Bahadur Garu v. State of Andhra Pradesh, [1970] 2 SCR 714; Dr. Rajendra Prakash Sharma v. Gyan Chandra & Ors., [1980] 3 SCR 207; Anne Basant National Girls High School v. Dy.

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Director of Public Instruction & Ors., [1983] 1 SCC 200; Raja Ram Kumar Bhargava (dead) by Lrs. v. Union of India, [1988] 2 SCR 352; Pabbojan Tea Co., Ltd., etc. v. the Dy. Commissioner, Lakhimpur, etc., [1968] 1 SCR 260 and K. Chintamani Dora & Ors. v. G. Annamnaidu & Ors., [1974] 2 SCR 655, distinguished.

D.V. Raju v. B.G. Rao & Anr., [1961] 2 A.W.R. 368, approved.

P.pedagovindayy v. Subba Rao, [1969] 2 A.L.T. 336, over-ruled.

5.01. The word `vest' clothes varied colours from the context and situation in which the word came to be used in a statue of rule. [545B-C]

5.02. The word [vest'], means, to give an immediate, fixed right of present or future enjoyment, to accrue to, to be fixed, to take effect, to clothe with possession, to deliver full possession of land or of an estate, to give seisin to enfeoff. [545C-D]

5.03. The word, `vest', in the absence of a context, is usually taken to mean, `vest' in interest rather than vest in possesion'.[545E-F]

5.04. `Vest'. ``generally means to give the property in''. [545E-F]

5.05. The word, `vested' was defined, `as to the interest acquired by public bodies, created for a particular

purpose, in works, such as embankments, whcih are `vested' in them by statute.' {545D-E]

5.06. ``Vesting'' in the legal sense means, to settle, secure, or put in fixed right of possession; to endow, to descend, devolve or to take effect, as a right'. [545C]

Chamber's Mid-Century Dictionary at P. 1230; Blacks Law Dictionary, 5th Edition at P. 1401; Stroud's Judicial Dictionary, 4th Edition Vol, 5 at P. 2938, Item 12, at P 2940, Item 4 at P. 2939; Port of London Authority v. Canvey Island Commissioners, {1932] 1 Ch. 446; Fruit and Vegetable Merchants Union v. Delhi Improvement Trust, [1957] S.C.R. 1, referred to.

6. Under the Gram Panchayat Act the statutory interposition of vesting the tank and the appurtenant land in the Gram Panchayat made it to retain possession, control and supervision over it, though the Gram Panchayat unlawfully took possession. The need to grant decree for possession in favour of the Gram Panchayat is thus redundant. The suit

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of the descendants normally to be decreed on the finding that ryotwari patta under s. 3 of the Inams Act was granted in their favour and that they were unlawfully dispossessed. Since the grant of ryotwari patta, though in the name of individuals, was to maintain the public tank whcih stood vested under s. 85 of the Act in the Gram panchayat, the descendants are divested of the right and interest acquired therein. Thus the suit of the descendants also is liable to be dismissed. [562A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 931/77 & 200/78.

Appeals by Certificate from the Judgment and Decree dated 1.4.76 and from the Judgment and Decree dated 19.6.1975 of the Andhra Pradesh High Court in A.S. NO. 71/73 and Appeal No. 259 of 1972.

B. Kanta Rao for the Appellants.

C. Sitaramiah, and B. Parthasarthi for the Respondents.

The Judgment of the Court was delivered by:

K.RAMASWAMY, J. Civil Appeal Nos. 931 of 1977 and 200 of 1978 relate to the same dispute though arose from two suits and separate judgements. The Bench that heard Civil appeal No. 931 of 1977 directed on January 24, 1991 to list Civil Appeal No. 200 of 1978 for common disposal. Civil Appeal No. 200 of 1978 arose out of O.S. No 118 of

1968 on the file of the Court of Add. Subordinate Judge. Guntur and Appeal No. 259 at 1972 dated June 19, 1975 of the A.P. High Court. The suit for possession and mesne profits was laid by the descendants of Nori Lakshmipathi Somayaajulu of Vatticherukuru, Guntur Taluq and District, for short `N.L.S.'. The dispute relates to the tank known as `Nori Lakshmipathi Somayajulu's Western Tank' ``Vooracheruva'' (Village Tank). It consists of 100 acres of which roughly 30 acres is covered by water spread area marked A' Schedule `B' Schedule consists of 70 acres (silted up area). The tank was dug in Fasli 1190 (1700 A.D.) Zamindar, Raja Mainikya Rao made a grant of the land for digging the tank and its preservation, maintenance and repairs. It is the descendants' case that it is a private tank enjoyed by the `grantee', N.L.S. as owner and thereafter the descendants and perfected the title by prescription. It was found as a fact by the High Court and the descendants are unable to persuade us from the evidence to differ from the findings that the tank is a ``public tank'' dug by the village. The descendants' plea and evidence adduced in support thereof that it is their private tank, was negated by both the courts. The Trial Court found that the tank is a `public trust', the appellants would be hereditary trustees and could be removed only by taking action under s. 77 of the A.P. Hindu Charitable and Religious Institutions and Endowments Act, 1966 for short `the Endowments Act'. It also held that the descendants acquired title by adverse possession. Accordingly the suit for possession was decreed relegating to file a separate application for meesne profits. On appeal the High Court reversed the decree and held that the tank is a public tank and the tank and the lands stood vested in the Gram Panchayat under A.P. Gram Panchayat Act 2 of 1964 for short `the Act'. Since the Gram panchayat was in possession from July 7, 1965, though dispossessed the descendants forcibly and as the suit is not under s. 6 of the Specific Relief Act, 1963 but one based on title, it called for no interference. It dismissed the suit.

This Court granted leave to appeal under Article 136.

Civil Appeal No. 931 of 1977 arose out of the suit for possession in O.S. No. 57 of 1966 on the file of the court of Subordinate Judge at Guntur filed by the Gram Panchayat against the descendants. The suit was dismissed by the Trial Court and was confirmed by the High Court in A.S. No. 71 of 1973 and the High Court granted leave under Art. 133 on Dec.

10. 1976. The pleadings are the same as in the other suit. In addition the descendants further pleaded in the written statement that the Gram Panchayat unlawfully took possession of the tank on July 7, 1965. They also acquired title by grant of ryotwari patta under s. 3 of the A.P. Inams (Abolition and Conversion into Ryotwari) Act (Act XXXVII of 1956), for short `the Inams Act'. The Gram Panchayat had no manner of right to interfere with their possession and enjoyment. They also pleaded and adduced evidence that they were leasing out the fishery rights and grass and trees grown on the land. The income was being utilized for the repairs of tank. The Trial Court and the High Court found that the lands were endowed to N.L.S. for the maintenance of the tank and the descendants obtained ryotwari patta under Inams Act and are entitled to remain in possession and enjoyment as owners subject to maintain the tank. Accordingly the suit was dismissed. On appeal in

A.S. No. 71 of 1973 by judgment dated April 1, 1976 the High Court confirmed the decree on further finding that by operation of s. 14 of the Inams Act, Civil Suit was barred. Thus both the appeals are before this Court.

In Civil Appeal No. 200 of 1978, Shri Seetharamaiah learned Senior Counsel for the descendants N.L.S. have no exclusive personal right title or interest in the tank and the appurtenant total land of 100 acres. In view of the entries of the Inams Fair Register for short `I.F.R.,' it is a public trust and not a public tank. Unless recourse is had to remove them from trusteeship under s. 77 of the Endowments Act, the appellants cannot be dispossessed. Since admittedly N.L.S. and the descendants were enjoying the property till date of dispossession, presumption of the continuance of the enjoyment anterior thereto as owners could be drawn. The High Court thereby committed error of law in holding that the lands stood vested in the Gram Panchayat under the Act and that it is a public tank. In Civil Appeal No. 931 of 1977, it was further contended that since the grant of Ryotwari patta under the Inams Act had became final s. 14 thereof bars the jurisdiction of the Civil Court to entertain the suit. Shri B.Kanta Rao, learned counsel for the Gram Panchayat contended that the finding of the High Court that the tank and the appurtenant land, namely, the plaint schedule property, as `public tank', is based on evidence that the tank was dug by the villagers and that they have been using for their drinking purposes and the cattle is a finding of fact. By operation of ss. 85 and 64 of the Act, the land and the tank stood vested in the Gram Panchayat. Entries in the I.F.R. establishes that the grant of the land was for preservation, maintenance and repairs of the tank. Therefore, the grant should be in favour of the institution, namely, the tank. The pattas obtained by the descendants should be for the benefit of the tank, though granted in individual names. By operation of s. 85 of the Act, the descendants acquired no personal title to the property. Ryotwari patta is only for the purpose of land revenue. The Gram Panchayat acquired absolute right title and interest in the land. The Civil Suit is not a bar on the facts in this case.

Before appreciating the diverse contentions, the facts emerged from the findings in both the appeals could be gathered thus. Admittedly the Zamindar. Raja Manikya Rao granted 100 acres of land in Inam village to dig the tank and the grant was for its preservation and maintenance, the grant was in favour of N.L.S. In 1700 A.P., i.e. 1190 Fasli, the tank was dug by the villagers and ever since the villagers have been using the fresh water tank for their drinking purposes and of the cattle and perfected their right by prescription. In course of time the tank was silted up and in and around 30 acres the water spread area, fresh water is existing. No. repairs were effected by the descendants. The rest of the land was silted up. Grass and trees have been grown thereon and was being enjoyed. On July 7, 1965, the Gram Panchayat took unilateral possession of the tank and ever since was exercising possession, supervision and control over it. After expiry of three years from the date of dispossession, the descendants filed O.S. No.57 of 1966 for possession based on title. Earlier thereto the Gram Panchayat field the suit for possession. Under the Inams Act, Ryotwari patta under s. 3 was granted to the descendants in individual capacity and on appeal the Revenue Divisional Officer, Guntur confirmed the same. It became final as it was not challenged by filing any writ petition. Both the suits now stood dismissed. The counsel on other side have taken us through the evidence and we have carefully scanned the evidence.

From these facts the first question emerges is whether the tank and the appurtenant land stood vested in Gram panchayat.

Section 64 of the Act reads thus:

> ``Vesting of common property or income in Gram Panchayat-Any property or income which by custom belongs to or has been administered for the benefit of the villagers is common, or the holders in common of village land generally or of land of a particular description or of lands under a particular source of irrigation, shall vest in the Gram Panchayat and be administered by it for the benefit of the villagers or holders aforesaid". Section 85 reads thus:
>
> ``Vesting of water works in Gram Panchayat-(1) All public water-courses, springs, reservoirs, tanks, cisterns, fountains, wells, ponds an other water works (including those used by the public to such an extent as to give a prescriptive right to their use) whether existing at the commencement of this Act or afterwards made, laid or erected and whether made, laid or erected at the cost of the Gram Panchayat or otherwise for the use or benefit of the public, and also any adjacent land, not being private property, appertaining thereto shall vest in the Gram Panchayat and be subject to its control".

Provided that nothing in this sub-section shall apply to any work which is, or is connected with, a work of irrigation or to any adjacent land appertaining to any such work.

(2) Subject to such restrictions and control as may be prescribed, the Gram Panchayat shall have the fishery rights in any water work vested in it under sub-section (1), the right to supply water from any such work for raising seed beds on payment of the prescribed fee, and the right to use the adjacent land appertaining thereto for planting of trees and enjoying the usufruct thereof or for like purpose.

(3) The Government may, by notification in the Andhra Pradesh Gazettee, define or limit such control or may assume the administration of any public source of water-supply and public land adjacent and appertaining thereto after consulting the Gram Panchayat and giving due regard to its objections, if any".

(emphasis supplied) A bird's eye view of the provisions brings out vividly that any property or income which belongs to or has been administered for the benefit of the villagers in common or the holders in any of the village land generally or of land of a particular description or of lands under particular source of irrigation shall vest in the Gram Panchayat and be administered by it for the benefit of the villagers or holders aforesaid. The lands or income use for communal purpose shall either belong to the GRam Panchayat or has been administered by the Gram Panchayat. It is not the case of the Gram Panchayat nor any finding recorded by the courts below to the effect. So s. 64 is not attracted, though the villagers acquired prescriptive right to use the water from the tank for their use and of their cattle.

All public water-courses, springs, reservoirs, tanks cisterns, etc. and other water works either existing on the date of the Act or made thereafter by the Gram Panchayat, or otherwise including those use by the public ripened into prescriptive right for the use and benefit of the public and also adjacent or any appurtenant land not being private property shall vest in the gram Panchayat under s. 85(1) and be subject to its control. The proviso is not relevant for the purpose of this case. Under sub-s (2), the Gram Panchayat shall have fishery rights therein subject to any restriction or control prescribed by the Govt. by rules. The Gram Panchayat also shall have the right to use the adjacent land appertaining thereto for planting trees and enjoying the usufruct thereof or for like purposes. Sub-section (3) gives over-riding power to the Govt., by a notification published in the A.P. Gazettee to define or limit the control or supervision by the Gram Panchayat or the Govt. may assume administration of any public source of water supply and public land adjacent and appertaining thereto. The only condition precedent thereto is prior consultation of the Gram Panchayat and to have due regard to any objections. If raised, by the Gram Panchayat and issue notification published in the Gazette resuming the water sources or the land etc. The word `vest' clothes varied colours from the context and situation in which the word came to be used in a statute or rule. In Chamber's Mid-Century Dictionary at p. 1230 defined ``vesting'' in the legal sense `to settle, secure, or put in fixed right of possession; to endow, to descend, devolve or to take effect, as a right'. In Black's Law Dictionary, 5th Edition at p. 1401, the word, `vest', to give an immediate, fixed right of present or future enjoyment, to accure to, to be fixed, to take effect, to clothe with possession, to deliver full possession of land or of an estate, to give seisin to enfeoff. In Stroud's Judicial Dictionary, 4th Edition, Vol. 5 at p. 2938, the word `vested' was defined in several senses. At p. 2940 in item 12 it is stated thus `as to the interest acquired by public bodies, created for a particular purpose, in works such as embankments which are vested in them by statue, see Port of London Authority v. Canvey Island Commissioners, [1932] 1 Ch. 446 in which it was held that the statutory vesting was to construct the sea wall against inundation or damages etc. and did not acquire fee simple. Item 4 at p. 2939, the word `vest', in the absence of a context, is usually taken to mean vest in interest rather than vest in possession'. In item 8 to `vest',. ``generally means to give the property in''. Thus the word `vest' bears variable colour taking its content from the context in which it came to be used. Take for instance, the land acquired under the Land Acquisition Act. By operation of ss. 16 & 17 thereof, the property so acquired shall vest absolutely in the Government free from all encumbrances. Thereby, absolute right, title and interest is vested in the Government without any limitation divesting the pre-existing rights of its owner. Similarly, under s. 56 of the Provincial Insolvency Act, 1920, the estate of the insolvent vests in the receiver only for the purpose of its administration and to pay off the debts to the creditors. The receiver acquired no personal interest of his own in the property. The receiver appointed by the court takes possession of the properties in the suit on behalf of the court and administer the property on behalf of the ultimate successful party as an officer of the court and he has no personal interest in the property vested thereunder. In Fruit and Vegetable Merchants Union v. Delhi Improvement Trust, [1957] SCR p. 1 the question was whether the Delhi Improvement Trust was vested of the Nazul land belonging to the Government with absolute right, when the property was entrusted under the scheme for construction of the markets etc. It was held by this court that placing the property at the disposal of the trust did not signify that the Government had divested itself of its title to the property and transferred the same to the trust. The clauses in the agreement show that the Government had created the Trust as its agent not on permanent basis but as a convenient mode of having the scheme of improvement

implemented by the Trust subject to the control of the Government.

The word `vesting' in s. 85 would signify that the water courses and tanks, lands etc. used by the public to such an extent as to give a prescriptive right to their use, are vested in the Gram Panchayat, and placed them under the control and supervision of the Gram Panchayat. It confers no absolute or full title. It was open to the Government, even after vesting, to place restrictions upon the Gram Panchayat in the matter or enjoyment and use of such tanks, and appurtenant lands etc. Sub-section (3) of s. 85 expressly makes the matter clear. It empowers the Government to assume the administration of any such tank or lands or to define or limit the control which is vested in the Gram Panchayat. Gram Panchayat being a statutory body is bound by the restrictions imposed by sub-S3 (3) The assumption of management by the Govt. would be subject to the prescriptive right of the villagers if any. The Division Bench in Gram Panchayat, mandapaka & Ors. V. Distt. Collector Eluru & Ors., AIR 1981 AP 15 considered the meaning of the word `vesting and correctly laid the law in its interpreting s. 85 of the Act. Anna Narasimha Rao & Ors. V. Kurra Venkata Narasayya & Ors., [1981] 1 AWR p. 325 relied on by Shri Kanta Rao, though supports his contention that the vesting of the tanks etc. in the Gram panchayat was with absolute eights and the village community rights would over-ride against rights of the Government, in our view the law was not correctly laid down. Under A.P. Land Encroachment Act, 1905; Talengana Area Land Revenue Act, relevant Abolition Act like A.P. Estates (Abolition and Conversion into Ryotwari) Act, 1948, Inams Abolition Act etc. give absolute rights of vesting in the State over the forest land, tanks, rivers, mines, poramboke, land, etc. free from all encumbrances and the pre-existing rights in the other land stood abolished and will be subject to the grant of Ryotwari patta etc. It is also settled law that grant of Ryotwari patta is not a title but a right coupled with possession to remain in occupation and enjoyment subject to payment of the land revenue to the State. Therefore, we agree with the High Court that the tank is public tank and not a public trust and that under s. 85(1) and s. 64, the vesting of the tanks, the appurtenant land and the common land is only for the purpose of possession, supervision, control and use thereof for the villagers for common use subject to the over-riding title by the Government and its assumption of management should be in terms of sub-s. (3) of s. 85 of the Act and subject to the prescriptive right in the water; water spread tank for common use. Admittedly, N.S.L. or the descendants used the plaint schedule property till July 7, 1965. The question then is what rights the descendants acquired therein. Admittedly within six months from the date of dispossession no suit under s. 6 of the Specific Relief Act was laid. Therefore, though the Gram Panchayat was not justified to take law into its own hand to take unilateral possession without due course of law, since the suit filed by the descendants was based on title the descendants in Civil Appeal No.200 of 1978 have to establish their better title. Their claim was based on the Ryotwari patta granted under s. 3 of the Inams Act. Therefore, entries in I.F.R. bear great evidenciary value to ascertain their rights. In Arunachalam Chetty v. Venkatachalpathi Garu Swamigal, AIR 1919 PC. p. 62 at 65 the Judicial Committee of the Privy Council considered the effect of the columns in the I.F.R. and held thus :

> ``It is true that the making of this Register was for the ultimate purpose of determining whether or not the lands were tax-free. But it must not be forgotten that the preparation of this Register was a great act of State, and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. It is to be remembered that the Inam Commissioners through officials

made enquiry on the spot, heard evidence and examined documents, and with regard to each individual property, the government was put in possession not only of the conclusion come to as to whether the land was tax-free, but of a statement of the history and tenure of the property itself. While their Lordships do not doubt that such a report would not displace actual and authentic evidence in individual cases, yet the board, when such is not available, cannot fail to attach the utmost importance, as part of the history of the property, to the information set forth in the Inam Register".

Construction of the relevant entries in the I.F.R. is a question of law. Col. 2, the general class to which the land belongs, described as `Dharmadayam' endowment for a charitable ``institution'', Col. 7, description of tenure for the ``preservation and repairs'' of Nori Lakshmipathi Somayajulu Western Tanks at Vatticherkuru, Col. 9 tax-free, Col. 10, nature of the tenure, permanent, Col. 11, guarantor of the land Raja Manikya Rao in 1190 Fasli (1700 A.D.), Col 13, name of the original grantee `Nori Lakshmipathi Somayajulu', Col. 21 to be confirmed under usual conditions of service and Col. 22, confirmed. In the survey and settlement record of the year 1906 of the same columns have been repeated. The land in the tank were classified as Village `Poramboke' and the tank as `village tank'. In the village map also the same remarks were reiterated. Therefore, the entries in the I.F.R. are great acts of the State and coupled with the entries in the survey and settlement record furnishes unimpeachable evidence. On construction of these documents, it would clearly emerge that the original grant was made for the preservation and maintenance of the tank and tax-free Inam land was granted for that purpose through it was in the name of the individual granted. We are of the view that the grant was for the preservation and maintenance of the tank. In K.V. Krishna Rao v. Sub Collector, Ongole, [1969] 1 SCR 624 this court held under the Inam Act that the tank is a charitable institution. Thereby we conclude that the grant was for the institution. Under s. 3 of the Inams Act, the enquiry should be whether (1) a particular land is Inam land; (2) Inam land in a Ryotwari, Zamindar or Inam Village; and (3) is held by any institution. In view of the finding that the grant was for the preservation and maintenance of tank, the Inam, land in an inam village was held by the institution, namely, the tank. Ryotwari patta shall, therefore, be in favour of the institution. Undoubtedly the ryotwari patta was granted in favour of the descendants. In Nori Venkatarama Dikshitulu & Ors. v. Ravi Venkatappayya & Ors., [1959] 2 A.W.R.357 in respect of the tope dedicated to the public benefits in the same village, namely Vatticherukuru, one of the question that arose was whether the patta granted in the individuals' names, would be their individual property or for the endowment. The Division Bench held that though the pattas were obtained in the individuals' name, the trustees of an institution cannot derive personal advantage from the administration of the trust property. It was held that the grant of patta was for the maintenance of the trust. We approve that the law was correctly laid down.

In Krishan Nair Boppudi Punniah & Ors. v. Sri Lakshmi Narasimhaswamy Varu, by its trustees & Ors., [1963] 1 A.W.R. relied on by Shri Sitaramaiah, on the basis of the

entries in I.F.R., the finding was that the grant was in favour of the individual burdened with service and not to an institution. Therefore, the ratio therein does not assist us to the facts in this case. Moreover, in view of the stand taken by Shri Sitaramaiah that the lands are not the private property of N.L.S. or his descendants but held by them as trustees, the grant of Ryotwari patta to the individuals by necessary implication, as a corollary, is of no consequence. The question then is whether the enjoyment of the usufruct by the descendants would clothe them with any right as owners of the land. In view of the concurrent finding that descendants did not acquire title by prescription, the passage in Tagore Law Lecture, `Hindu Religious Endowment and Institutions' at p. 6 relied on by Shri Sitaramaiah to the effect `dedication of tanks and trees' as private property also renders no assistance to the descendants. Undoubtedly, a presumption of an origin in lawful title could be drawn, as held in Syed Md. Mazaffaralmusavi v. Bibi Jabeda & Ors., AIR (1930) P.C. 1031 that the court has so often readily made presumption in order to support possessory rights, long and quietly enjoyed, where no actual proof of title is forth coming. It is not a mere branch of the law of evidence. It was resorted to because of the failure of actual evidence. The matter is one of presumption based upon the policy of law. It was also further held that it is not a presumption to be capriciously made nor is it one which a certain class of possessor is entitled to, de jure. In a case such as the one in question where it was necessary to indicate what particular kind of lawful title was being presumed, the Court must be satisfied that such a title was in its nature practicable and reasonably capable of being presumed without doing violence to the probabilities of the case. It is the completion of a right to which circumstances clearly point where time had obliterated any record of the original commencement. The longer the period within which and the remoter the time when first a grant might be reasonably supposed to have occurred the less force there is an objection that the grant could not have been lawful. In Bhojraj v. Sita Ram & Ors., AIR (1936) P.C. 60 it was further held that the presumption, not to supplement but to contradict the evidence would be out of place. A presumption should be allowed to fill in gaps disclosed in the evidence. But the documentary evidence in the I.F.R. and the survey and settlement records furnish the unerring evidence. Though the original grant was not produced, the grant was for the institution and not to the individuals. Therefore, the colour of title though enabled them to enjoy the usufruct for personal use, once the tank and the appurtenant land was found to be public tank, the descendants acquired no personal right over it. The decision in Bhupathiraju Venkatapathiraju & Ors. v. The President, Taluq Board, Naraspur & Ors., [1913]19.I.C.727(Mad.) (D.B.) relied by Shri Sitaramaiah the finding was that the grant was to the plaintiffs' family subject to conditions of service. Their right to take the usufruct of the trees therein was held to be for the benefit of the grantee. In that view its ratio cannot be applied to the facts in this case. In M. Srinivasacharyulu & Ors. v. Dinawahi Pratyanga Rao & Ors., AIR (1921) Madras 467 one of the contentions raised was that since the produce was being enjoyed by the trustees for over many years for personal use, it must be construed that the trust was for personal benefit of archakas. It was repelled holding that it would be a dangerous proposition to lay down that if the trustees of the

> religious trusts have for many years being applying the income to their own personal use, the trust-deed must be construed in the light of such conduct. The decree of the trial court that the enjoyment was for the institution was upheld. The finding in Civil Appeal No. 931 of 1977, that since the endowment was the dashabandam the descendants are entitled to the Ryotwari patta cannot be upheld. Dashabandam grant of land burdened with the service of a public nature was made at a time when maintenance of water sources and water courses to the benefits of the villagers was left to the villagers. In Ravipati Kotayya & Anr.v. Ramansami Subbaraydu & Ors., [1956] (2) A.W.R. 739 it was held that in the case of dashabandam inams situated in Ryotwari villages, the government has the right of resumption on default of service. The lands burdened with dashabandam service which is service of public nature, are inclinable as being against public policy. We, therefore, hold that the descendants, though enjoyed the income from the properties, did not effect the repairs and neglected the maintenance and upkeep of the tank. They rendered the tank disused and abandoned. By operation of s.85 of the Act the lands and tank stood vested in the Gram Panchayat for control, management and supervision.

Undoubtedly, a hereditary trustee is entitled to be the Chairman of a Board of Trustees, if any, constituted under the Endowment Act or else be in exclusive possession and management of the public trust registered thereunder until he is removed as per the procedure provided therein. Since the tank always remained a public tank and not being a public trust, the Endowment Act does not apply. therefore, the question of initiating action under s. 77 of the Endowment Act for removal of the descendants as trustees does not arise.

In the suit of the descendants the High Court did not consider the effect of grant of ryotwari patta under Inams Act and in the suit of the Gram (Village) Panchayat the effect of vesting under s.85 of the Act on the grant of ryotwari patta was not considered. Only s. 14 i.e. the bar of civil suit was focussed. Consequently both the suits were dismissed by different division benches. The question is whether the suit is maintainable.

All communal lands, porambokes, tanks, etc., in inam villages shall vest in the government under s.2A of Inams Act free from all encumbrances. Section 3 determines the inam lands whether held by the individual or the institution, provides procedure for determination and s.3(4) gives right of appeal. Section 4 converts those lands into ryotwari lands and accords entitlement to grant of ryotwari patta. Section 5 gives power to restitute the lands to the tenants in occupation though were ejected between specified dates. Section 7 gives power to grant ryotwari patta to the tenants to the extent of two thirds share in the land and one third to the land-holder. If it was held by the institution, two third share would be to the institution and one third to the tenants. Section 3 grants right of permanent occupancy to the tenants in inam lands held by institutions. Section 9 prescribes procedure for eviction of the tenants having right of permanent occupancy. Section 10- A provides right to ryotwari patta to tenants in Ryotwari or Zamindari village with the right of permanent occupancy, even in the lands, held under customary right etc. Section 12 fastens liability on the ryotwari pattadars to pay land assessment. Section 13 gives exclusive power of jurisdiction to Tehsildar, the Revenue court and the collector to try the suit as per the procedure as of a Civil Court

under the Code of Civil Procedure. Section 14 of the Inams Act reads thus:

> 14. " Bar of jurisdiction of Civil Courts: No suit or other proceedings shall be instituted in any Civil Court to set aside or modify any decision of the Tahsildar, the Revenue Court, or the Collector under this Act, except where such decision is obtained by misrepresentation, fraud or collusion of parties.".

Section 14-A and Section 15 provides that:

> "14-A Revision (1) Notwithstanding anything contained in this Act, the Board of Revenue may, at any time either suo moto or on application made to it, call for and examine the records relating to any proceedings taken by the Tahsildar, the Revenue Court or the Collector under this act for the purpose of satisfying itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision made or order passed therein; and if, in any case, it appears to the Board of revenue that any such decision or order should be modified, annulled, reserved or remitted for consideration, it may pass order accordingly. (2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.

15. Act to override other laws: "Unless otherwise expressly provided in this Act the provision of this act and of any orders and Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law".

The Constitution intends to herald an egalitarian social order by implementing the goals of socio-economic justice set down in the Preamble of the Constitution. In that regard the Constitution created positive duties on the State in Part IV towards individuals. The Parliament and the State legislatures made diverse laws to restructure the social order; created rights in favour of the citizens; conferred power and jurisdiction on the hierarchy of Tribunals or the authorities constituted thereunder and given finality to their orders or decisions and divested the jurisdiction of the established civil courts expressly or by necessary implication. The Inam Act is a step in that direction as part of Estate Abolition Act. Therefore, departure in the allocation of the judicial functions would not be viewed with disfavour for creating the new forums and entrusting the duties under the statutes to implement socio-economic and fiscal laws. We have to consider, when questioned, why the legislature made this departure. The reason is obvious. The tradition bound civil Courts gripped with rules of pleading and strict rules of evidence and tardy trial, four tier appeals, endless revisions and reviews under C.P.C are not suited to the needed expeditious dispensation. The adjudicatory system provided in the new forums is cheap and rapid. The procedure before the Tribunal is simple and not hide bound by the intricate procedure of pleadings, trial, admissibility of the evidence and proof of facts according to law. Therefore, there is abundant flexibility in the discharge of the functions with greater expedition and inexpensiveness.

In order to find out the purpose in creating the Tribunals under the statutes and the meaning of particular provision in social legislation, the Court would adopt the purposive approach to ascertain the social ends envisaged in the Act, to consider scheme of the Act as an integrated whole and practical means by which it was sought to be effectuated to achieve them. Meticulous lexographic analysis of words and phrases and sentences should be subordinate to this purposive approach. The dynamics of the interpretative functioning of the Court is to reflect the contemporary needs and the prevailing values consistent with the constitutional and legislative declaration of the policy envisaged in the statute under consideration.

In Denna v. Union of India, [1984] 1 SCR 1 this Court held that the "Law is a dynamic science, the social utility of which consists in its ability to keep abreast of emerging trends in social and scientific advance and its willingness to readjust its postulates in order to accommodate those trends. Law is not static. The purpose of Law is to serve the needs of life". The law should, therefore, respond to the clarion call of social imperatives evolve in that process functional approach as means to subserve "social promises" set out in the Preamble, directive principles and the fundamental Rights of the Constitution.

It is seen that the Inam's Act is an integral part of the scheme of the Andhra Pradesh Estates (Aboilition and Conservation into Ryotwari) Act, 26 of 1984 for short 'Estate Abolition Act' to cover the left over minor Inams. It determined the pre-existing rights of the Inamdars and the religious institutions; envisages grant of ryotwari patta afresh to the concerned and seeks to confer permanent occupancy rights on the tenants. It also regulates the relationship between institutions and its tenants. It created appellate and revisional and forums and declared finality to the orders passed by the tribunals and expressly excluded the jurisdiction of the Civil Court, notwithstanding anything contained in any other law or inconsistent therewith the Inams Act shall prevail. The exception engrafted was that a suit would lie to challenge the decision obtained by fraud, misrepresentation and collusion by parties.

Section 9 of the Civil Procedure Code, 1908 provides that whenever a question arises before the Civil Court whether its jurisdiction is excluded expressly or by necessary implication, the Court naturally feels inclined to consider whether remedy afforded by an alternative provision prescribed by special statute is sufficient or adequate. In cases where exclusion of the Civil Court's jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or sufficiency of the remedy provided for by it may be relevant, but cannot be decisive. Where exclusion is pleaded as a matter of necessary implication such consideration would be very important and in conceivable circumstances might become even decisive.

The jurisdiction of a Tribunal created under statute may depend upon the fulfilment of some condition precedent or upon existence of some particular fact. Such a fact is collateral to the actual matter which the Tribunal has to try and the determination whether it existed or not is logically temporary prior to the determination of the actual question which the tribunal has to consider. At the inception of an enquiry by a Tribunal of limited jurisdiction, when a challenge is made to its jurisdiction, the Tribunal has to consider as the collateral fact whether it would act or not and for that purpose to arrive at some decision as to whether it has jurisdiction or not. There may be

Tribunal which by virtue of the law constituting it has the power to determine finally, even the preliminary facts on which the further exercise of its jurisdiction depends; but subject to that, the Tribunal cannot by a wrong decision with regard to collateral fact, give itself a jurisdiction which it would not otherwise had. Except such tribunals of limited jurisdiction when the statute not only empowers to enquire into jurisdictional facts but also the rights and controversy finally it is entitled to enter on the enquiry and reach a decision rightly or wrongly. If it has jurisdiction to do right, it has jurisdiction to do wrong. It may be irregular or illegal which could be corrected in appeal or revision subject to that the order would become final. The questions to be asked, therefore, are whether the Tribunal has jurisdiction under Inam Act to decide for itself finally; whether the institution or the Inamdar or the tenant is entitled to ryotwari patta under ss. 3,4 and 7 and whether the Tribunal is of a limited jurisdiction and its decision on the issue of patta is a collateral fact.

The consideration as to exclusion of the jurisdiction of Civil Court is no longer res integra. This Court in bead-roll of decisions considered this question in diverse situations. In Kamala Mills Ltd. v. State of Bombay, [1966] 1 SCR 64 the questions arose were whether an assessment made in violation of the Bombay Sales Tax Act could claim the status of an assessment made under that Act, and whether the nature of the transactions was a decision of collateral fact. A Bench of seven Judges of this Court held that if it appears that a statute creates a special right or liability and provides for the determination of the right or liability to be dealt with by tribunals specially constituted in that behalf would be considered whether all questions of said right and liability shall be determined by the tribunals so constituted and it becomes pertinent to enquire whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not. It was held that the Court was satisfied that the Act provided all the remedies associated with actions in Civil Courts and the remedy for refund of the tax illegally collected was provided and it was not collateral. Section 20 prohibits such a claim being made before an ordinary Civil Court and held that the civil suit was not maintainable. The leading decision of the Privy Council in Secretary of State v. Mask & Co., [1940] L.R. 67I.A.222; Raleigh Investment Co. Ltd. v. Governor-General in Council, L.R. 74 I.A. 50 and the ratio in Firm and Illuri Subbayya Cheety & Sons v. State of Andhra Pradesh, [1964] 1 SCR 752 were approved. In Desika Charyulu v. State of A.P.., AIR 1964 SC 807 a Constitution Bench was to consider whether the jurisdiction of the Settlement Officer and the Tribunal created under the Estates Abolition Act to determine whether Shotrium Village was an inam estate was exclusive and the Civil Court's jurisdiction to try the dispute was barred. Despite the fact that no express exclusion of the Civil Court's jurisdiction was made under the Act it was held that very provision setting up an hierarchy of judicial tribunals for the determination of the questions on which the applicability of the Act depends was sufficient in most cases to infer that the jurisdiction of the Civil Courts to try the same was barred.

Accordingly it was held that the jurisdiction of the Settlement Officer and the Tribunal by necessary implication was exclusive and that the Civil Courts are barred from trying or retrying the question once over. The decisions of the Settlement Officer and of the Tribunal were held final and conclusive.

In Dhulabhai & Ors. v. State of M.p. & Anr. [1968] 3 SCR 662 another Constitution Bench reviewed the entire case law on the question of maintainability of civil suit and laid down seven propositions.

Propositions 1 and 2 are relevant, which read thus:

> "(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must he held to be excluded if there is adequate remedy to do what the Civil Courts normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
>
> (2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not."

It was held therein that the civil suit was not maintainable to call in question of assessment made under the Madhya Bharat Sales Tax Act. In hatti v. Sunder Singh, [1971]2 SCR 163 the tenant had a declaratory relief before the authorities under Delhi land Reforms Act that he was Bhoomidar. When it was challenged in the civil suit as not being binding, this Court held that the civil suit was not maintainable.

In Muddada Chayana v. Karam Narayana and Anr. etc., [1979] 3 SCR 201 under s. 56(1) (c) of the Estates Abolition Act, the dispute whether who the lawful ryot in respect of any holding is, shall be decided by the Settlement Officer. Whether it is liable to be questioned in the Civil Court. Chinnappa Reddy, J., who had intimate knowledge as an Advocate and the Judge on the subject reviewed the law and held that the Act is a self-contained code in which provision was also made for the adjudication of various types of disputes arising, after an estate was notified, by specially constituted tribunals. On the general principles it was held that the special tribunals constituted by the Act must necessarily be held to have exclusive jurisdiction to decide dispute entrusted by the statute to them for their adjudication. Dealing with the object of the Act it was held at p. 207 C-D that the Act intended to protect ryots and not to leave them in wilderness. When the Act provides machinery in s. 56(1)(c) to discover who the lawful ryot of a holding was, it was not for the Court to denude the Act of all meaning and by confining the provision to the bounds of ss. 55 and 56(1)(a) and (b) on the ground of contextual interpretation. Interpretation of a statute, contextual or otherwise must further and not frustrate the object of the statute. It was held that the civil suit was not maintainable and approved the Full Bench judgment of 5 judges of the High Court of Andhra Pradesh in T. Munuswami Naidu v. R. Venkata Reddy., AIR 1978 A.P. 200. The same view was reiterated in O. Chenchulakshmamma & Anr. v.D. Subramanya Reddy, [1980] 1 SCR 1006 and held that the order of

the Addl. Settlement Officer was final in so far as the dispute between the rival claimants to the ryotwari patta was concerned and not liable to be questioned in any court of law. In A. Bodayya & Anr. v.L. Ramaswamy (dead) by Lrs. [1984] (Suppl). SCC 391 while reiterating the ratio in both the judgments, Desai, J. Speaking for a Bench of 3 Judges held that under Estate Abolition Act, who the lawful ryot was decided. Self-same question directly and substantially raised in the suit cannot be decided by the Civil Court as it had no jurisdiction to decide and deal with the same but Settlement Officer had the exclusive jurisdiction to decide and deal with it. In Doe v. Bridges, [1831] 1 B & Ad. 347 at p. 859 the oft quoted dictum of Lord Tenerden, C.J. reads that:

> "where an act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner."

In Premier Automobiles Ltd. v. Kamlakur Shantaram Wadke and Ors., [1976] 1 SCR 427 a Bench of three Judges after reviewing the case law held that if a dispute was not industrial dispute, not does it relate to enforcement of any right under the Industrial Dispute Act, the remedy lies only in the civil court. If the dispute arises out of the right or liability under the general common law and not under the Act, the jurisdiction of the civil court is always alternative, leaving it to the election of the suitor to choose his remedy for the relief which is competent to be granted in a particular remedy. If the dispute relates to the enforcement of a right or obligation of the Act,the only remedy available to the suitor is to get an application adjudicated under the Act. In that view, it was held that the civil suit was not maintainable.

In State of Tamil Nadu v. Ramalinga Samigal Madam, [1985] 4 SCC 10 strongly relied on by Shri Kanta Rao, the question therein was whether the jurisdiction of the civil court was ousted to redetermine the nature of the land rendered by the settlement officer under s. II of the Estate Abolition Act, Tulzapurkar, J. speaking for the Division Bench proceeded on three fundamental postulates namely that the decision of the Settlement authorities under s. 11 of the Act was for (I) revenue purposes'," that is to say for fastening the liability on him to pay the assessment and other dues and to facilitate the recovery of such revenue from him by the Government; and therefore, any decision impliedly rendered on the aspect of nature and character of the land on that occasion will have to be regarded as incidental to and merely for the purpose of passing the order of granting or refusing to grant the patta and for no other purpose". (II) only revision against the order and not an appeal; and (III) that by Madras Amendment, s. 64-c was deleted. It was unfortunate that it was not brought to the notice of the court that the purpose of Estate Abolition Act was not solely for the purpose of collecting the revenue to the State. The Act had its birth from a long drawn struggle carried on by the ryots in Madras Presidency for permanent ryotwari settlement of tenures and grant of permanent occupancy rights and the Indian National Congress espoused their rights and passed resolution at Arvadi Session to make a legislation in that regard. The recovery of revenue was only secondary. In Syamala Rao v.Sri Radhakanthaswami Varu [1984] 1 A.P.L.J. 113 a division Bench of the Andhra Pradesh High Court to which one of us (K.R.S.,J) was a member considered the historical background, the purpose of the Act and the scheme envisaged therein in extenso and held that the preamble of the Estate Abolition Act was to repeal the permanent settlements, the acquisition of the rights of the land-holders in the Estates and introduction of the ryotwari

settlement therein; under s. 1(4) by issuance of the notification the prexisting rights shall cease and determined; shall vest in the State free from all encumbrances and declared that all rights and interests created in particular over the State 'shall cease and determine as against the Government' protected only dispossession of a person in possession of the ryoti land who was considered prima facie entitled to a ryotwari patta. Section 11 envisaged to enquire into "the nature of the land" and whether "ryotwari land immediately before the notified dates" to be properly included or ought to have been properly included in the holding of the ryot". The enquiry under the Act was entrusted to the Revenue Authorities who have intimate knowledge of the nature of the lands and the entries in the revenue records of the holders, etc. Act created hierarchy of the tribunals, namely Asstt. Settlement Officer; Settlement Officer; Director of Settlements and Board of Revenue; provided revisional powers to those authorities and ultimately the order is subject to the decision of the High Court under Art. 226. In that view it was held that by necessary implication the jurisdiction of the civil court was ousted, the decision of settlement authorities under s. 11 was made final and no civil suit was maintainable. The legislature having made the Act to render economic justice to the ryots and excluded the dispute between land-holders and the ryots covered under ss. 12 to 15 and the ryots inter se under s. 56(1)(c), from the jurisdiction of the Civil Court, it would not be the legislative intention to expose the ryots to costly unequal civil litigation with the state of the dispute under s. 11. It is not necessary in this case to broach further but suffice to state that unfortunately this historical perspective and the real purpose and proper scope and operation of Estate Abolition Act was not focussed to the notice of this court. In Jyotish Thakur & Ors. v. Tarakant. Jha & Ors.,[1963] Suppl. 1 SCR 13 s. 27 of regulation III of 1872 provides that in respect of transfer of ryoti interest in contravention of the regulation revenue courts shall not take cognizance of such a transfer. It was contended that by necessary implication the civil suit was not maintainable. In that context this Court held that provisions therein were not intended to be exhaustive to bar the relief in Civil Court. In Sri Athmanathawami Devasthanam v. K. Gopalaswami Aiyangar, [1964] 3 SCR 763 the question was whether the civil suit to recover damages and for ejectment of the ryoti lands belonging to the temple was barred. The findings were that the lands were ryoti lands and that the tenant acquired the occupancy rights, but the lease was granted in excess of 5 years. It was contended that it was a transfer without permission of the Endowment department. While upholding that the lands were ryoti lands and the tenant acquired occupancy rights, this Court disagreeing with the High Court, held that there was no transfer and that the tenant is liable to pay the arrears of rent and the suit was maintainable. In Sri Vedagiri Lakshmi Narasimha Swami Temple v. Induru Pattabhirami Reddy, [1967] 1 SCR 280 the contention raised was that s. 93 of the Madras Hindu Religious and Charitable Endowments Act, 1951 was a bar to maintain suit for rendition of accounts and recovery thereof against the ex-trustees. This Court repelled the contention and held that the suit for rendition of accounts was not expressly or by necessary implication barred the jurisdiction of the civil court under s. 93. In Shree Raja Kandregula Srinivasa Jagannadha Rao Panthulu Bahadur Garu v. State of Andhra Pradesh, [1970] 2 SCR 714 it was conceded that the question whether Kalipathnam village is an Inam estate was to be adjudicated before the tribunals appointed under the Rent Reduction Act. It was contended that the tribunals have no jurisdiction to decide the validity of the notification reducing the rent by operation of s. 8(1) thereof. It was held that there was no statutory prohibition to determine the nature of the land contemplated by the Rent Reduction Act. Accordingly the suit was held to be maintainable. In Dr. Rajendra Prakash Sharma v. Gyan Chandra & Ors.,[1980] 3 SCR 207 it was found that under s, 7 of the Administration of

Evacuee Property Act, 1950, no proceedings were taken to declare the suit house as on evacuee property. No notification under sub-s. (3) of 7 was published in the gazette. Under those circumstances it was held that s. 46 did not bar the civil suit. In Anne Besant National Girls High School v. Dy. Director of Public Instruction & Ors. [1983] 1 SCC 200 this Court held that the Civil Court has jurisdiction to examine whether action or decision of an administrative authority was ultra vires the relevant rules of Grant-in-Aid Code and Rule 9 (vii) was held to be ultra vires. Accordingly the suit was held to be maintainable. In Raja Ram Kumar Bhargava(dead) by Lrs. v. Union of India, [1988] 2 SCR 352 two questions were raised, firstly the validity of the assessment and secondly recovery of the tax paid under Excess Profit Tax Act, 1940. On the first question it was held that the suit was not maintainable. On the second question, without going into the technicalities of the maintainability of the suit, this Court granted the relief. In Pabbojan Tea Co., etc. v. The dy. Commissioner Lakhimpur, etc.[1968] 1 SCR 260 the questions were whether the workmen were ordinary unskilled labour or skilled labour; whether the jurisdiction of the authorities under s. 20 of the Minimum Wages Act, 1948 is exclusive and whether the jurisdiction of the Civil Court was barred. This court held that the authorities did not hold any inquiry nor received any evidence for determining that issue. No proper hearing was given to the parties to tender evidence. Section 20 is not a complete Code as there was no provision for appeal or revision against the orders passed under s.20(3). There was no further scrutiny by any higher authority against the imposition of penalty. The Act in terms does not bar the employers from instituting a suit. In those circumstances, it was held that the legislature did not intend to exclude the jurisdiction of the civil court. The ratio in K. Chintamani Dora & Ors. v. G. Annamnaidu & ors. [1974] 2 SCR 655 also does not assist Gram Panchayat for the reason that the decree therein originally granted became final. Subsequently it was sought to be reopened in a later suit. Under those circumstances the civil suit was held to be maintainable notwithstanding the provisions contained under the Estate Abolition Act.

Thus we have no hesitation to hold that the ratio in all these case are clearly distinguishable and render little assistance to the Gram Panchayat. The scope, ambit and operation of the Inams Act was considered by P. Jaganmohan Reddy,J. (as he than was) in D.V. Raju v. B.G. Rao & Anr. [1961] 2 A.W.R. 368 and held that the paramount object of the legislature was to protect the tenant in occupation and is sought to be achieved by making effective orders of eviction made by the Civil Court either in execution or otherwise. It further prohibits the institution of any suit or proceeding in a Civil Court under s. 14 to set aside or modify any decision of the Tehsildar, Collector or Revenue Court except where such decision has been obtained by misrepresentation, fraud or collusion. Section 15 enjoins that the provisions of the Act and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of absolute jurisdiction on the Tehsilder, Revenue Court or the Collector, as the case may be, notwithstanding any provision of law or any suit or decree of a Civil Court or for that matter even where evictions have taken place in pursuance of such decrees, the evicted tenants can be restored to occupation provided the requirements for the protection of the possession of the tenants are satisfied. In that case the occupant in possession laid proceeding before the Tehsildar for injunction restraining the writ petitioner from ejecting him from the lands. The Tehsildar in exercise of the power under Rule 16 of the Rules granted injuction pending consideration of his right to Ryotwari patta. The order of injunction was challenged firstly

on the ground of ultra vires of Rule 16 and secondly on the ground of jurisdiction. While upholding the order on both the grounds the learned Judge held that Tehsildar, Revenue Court and the Collector have exclusive jurisdiction and the civil suit is barred. We respectfully approve it as correct law. The Inams Act did not intend to leave the decisions of the revenue courts under s. 3 read with s. 7 to retry the issue once over in the Civil Court. Undoubtedly the decision of the division Bench in P. Pedagovindayy v. Subba Rao, [1969] 2 A.L.T. 336 is in favour of the contention that the civil suit is maintainable. It is not good law.

Thus the glimpse of the object of the Inames Act, scheme, scope and operation thereof clearly manifest that Inames Act is a self contained code, expressly provided rights and liabilities, prescribed procedure; remedies of appeal and revision, excluded the jurisdiction of the civil court, notwithstanding anything contained in any law, given primacy of Inams Act though inconsistent with any law or instrument having force of law. The jurisdictional findings are an integral scheme to grant or refuse ryotwari patta under s. 3, read with s.7 and not collateral findings. It was subject to appeal and revision and certiorari under Art.

226. The decision of the Revenue Tribunal, are final and conclusive between the parties or persons claiming right, title or interest through them. The trick of pleadings and the camouflage of the reliefs are not decisive but the substance or the effect on the order of the tribunal under the Inams Act are decisive. The civil suit except on grounds of fraud, misrepresentation or collusion of the parties is not maintainable. The necessary conclusion would be that the civil suit is not maintainable when the decree directly nullifies the ryotwari patta granted under s. 3 of the Inams Act. Under the Gram Panchayat Act the statutory interposition of vesting the tank and the appurtenant land in the Gram Panchayat made it to retain possession, control and supervision over it, though the Gram Panchayat unlawfully took possession. The need to grant decree for possession in favour of the Gram Panchayat is thus redundant. The suit of the descendants normally to be decreed on the finding that ryotwari patta under s. 3 of the Inams Act was granted in their favour and that they were unlawfully dispossessed. Since the grant of ryotwari patta, though in the name of individuals, was to maintain the public tank which stood vested under s. 85 of the Act in the Gram Panchayat, the descendants are divested of the right and interest acquired therein. Thus the suit of the descendants also is liable to be dismissed. Accordingly, the decrees of dismissal of both the suits are upheld and the appeals dismissed. But in the circumstances, parties are directed to bear their own costs.

V.P.R. Appeals dismissed.