Supreme Court of India
Balmadies Plantations Ltd. & Anr vs State Of Tamil Nadu on 19 April, 1972
Equivalent citations: 1972 AIR 2240, 1973 SCR (1) 258
Author: H R Khanna
Bench: Sikri, S.M. (Cj), Shelat, J.M., Ray, A.N., Dua, I.D., Khanna, Hans Raj

PETITIONER:
BALMADIES PLANTATIONS LTD. & ANR.

Vs.

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT19/04/1972

BENCH:
KHANNA, HANS RAJ
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KHANNA, HANS RAJ
SIKRI, S.M. (CJ)
SHELAT, J.M.
RAY, A.N.
DUA, I.D.

CITATION:
1972 AIR 2240 1973 SCR (1) 258
1972 SCC (2) 133
CITATOR INFO :
RF 1973 SC1461 (1201)
R 1973 SC2734 (17,33)
RF 1975 SC1193 (24)
E 1990 SC1771 (9)

ACT:
Constitution of India, 1950-Article 31A 2(a)(i) and (iii)-Estate-Forests in Janmam Lands-Requirement of cl. (iii) also need not be satisfied-Agrarian Reform-Acquisition of forests in Janmam lands-Mere transfer of ownership or augmentation of resources of the State not sufficient to show object of agrarian reform.
Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 (Act 24 of 1969)-Constitutionality-Resettlement of 1926-If has the effect of conversion into ryotwari lands.

HEADNOTE:
The appellants and the petitioners challenged the vires of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969, on the ground that it was violative of

articles 14, 19, and 31 of the Constitution. Their case was that their lands in the Gudalur Taluk, in the State of Tamil Nadu, were previously Janmam estates, but, subsequently became ryotwari estates, especially after the Resettlement of 1926,and as such, the provisions of the Act were not applicable to these lands; that so far as the forest areas in the Janmam lands in question were concerned they did not constitute "estate"; and that the acquisition of the lands was not for implementing agrarian reforms and, therefore, did not get the protection of article 31A.

HELD : that the provisions of s. 3 of the Act in so far as they related to the transfer of forests 'in Janmam estates to the government were not protected by article 31A, and, being violative of the Constitution had to be struck down; and that the vires of the Act in other respects had to be upheld.

(i) The effect of the Resettlement of 1926 was to retain the Janmam estates and not to abolish the same or to convert them into ryotwari estates. There was merely a change of nomenclature. Government Janmam lands, were called the new holdings while private Janmam lands were called the old holdings. In respect of Janmabhogam (Janmi's share) relating to government Janmam lands, the order further directed that the amount to be paid to the government should include both the taram assessment and Janmabhogam. It is difficult to infer from these that Janmam rights in the, lands in question were extinguished and converted into ryotwari estates. The use of the word Janmabhogam, on the contrary, indicates that the rights of Jenmis were kept in tact. [271B]

Kottarathil Kochuni and Others v. The State of Madras and Others, [1960] 3 S.C.R. 887, Karimbil Kunhilkoman v. State of Kerala, [1962] 1 Supp. S.C.R. 847 and Secretary of State v. Ashtamurthi, I.L.R. 13 Madras 89, referred to.

The grant of a right of relinquishment to a Janmi would not by itself convert janmam rights in the lands into ryotwari estate. [272A-B]

259

(Khanna, J.)

Further, apart from the lands in question, there are no janmam estates in the State of Tamil Nadu (Madras). To hold that the Janmam rights in the lands ceased to exist after the Resettlement of 1926 would have the effect of rendering the words, in clause (2)(a)(i) of article 31A, wherein there is a reference to Janmam rights in the State of Madras meaningless and without any purpose. [272-D]

(ii)As Janmam lands fall under clause (2) (a) (i) of article 31A it is not essential to show that the requirements of clause (2)(a)(iii) too are satisfied for such lands and it would make no difference whether forests are a part of the Janmam lands. All lands which are part of a Janmam estate of a Janmi in the State of Madras and Kerala would constitute "estate" as mentioned in Clause (2) (a) (i)

of Article 31A. [273-E]
(iii)The object and general scheme of the Act is to abolish intermediaries between the state and the cultivator and to help the actual cultivator by giving him the status of directs relationship between himself and the State. The Act, as such, in its broad outlines,, should be held to be a measure of agrarian reform and would consequently be protected by article 31A of the Constitution. Therefore, it is immune from attack on the ground of being violative of articles 14, 19 or 31. [274-A]
Vajrayelu Madaliar v. Special Deputy Collector, Madras & Anr. [1965] 1 S.C.R. 614, referred to.
(iv)But, the acquisition of forests in Janmam estates is not in furtherance of the objective of agrarian reform, and, as such, is not protected by Art. 31A. In the absence of anything in the Act to show the purpose for which the forests are to be used by the Government, it cannot be said that the acquisition of the forests in Janmam land would be for a purpose related to agrarian reform. The mere fact that the ownership of forests would stand transferred, to the State would not show that the object of the transfer is to bring about agrarian reform. Augmenting the resources of the State by itself, and in the absence of anything more re-garding the purpose or utilisation of those resources cannot be held to be a measure. of agrarian reform. There is no material on the record to indicate that the transfer of forests from the Janmi to the Government is linked in any way with a scheme of agrarian reform or betterment of village ceremony. [274-H]
State of Uttar Pradesh v. Raja Anand Brahma, [1967] 1 S.C.R. 362, held inapplicable.

JUDGMENT:

ORIGINAL/CIVIL APPELLATE JURISDICTION: Writ Petition No. 373 of 1970.

Under Article 32 of the Constitution of India for enforcement of the Fundamental Rights with Civil Appeals Nos. 2211 and 2212 of 1970 and 85 to 91 of 1971. Appeals from the judgment and decree dated October 26, 1970 of the Madras High Court in Writ Petitions Nos. 64, 117, 118, 119, 120, 121, 185, 186 and 220 of 1970 respectively. M.C. Chagla and K. Jayaram, for the petitioners (in W.P. No. 373 of 1970).

M.Natesan, Sardar Bahadur Saharya, K. Jayaram and Yougin- dra Khushalani, for the appellant (in C.A. No. 2211 of 1970).

M.C. Setalvad and K. Jayaram, for the appellant (in C.A. No. 2212 of 1970).

K. Jayaram, for the appellants (in C.As. Nos. 85 to 91 of 1971).

S. Govind Swaminathan, Advocate-General for the State of Tamil Nadu, S. Mohan, A. V. Rangam, A. Subhashini and N. S. Sivan, for the respondent (in all the matters). The Judgment of the Court was delivered by Khanna, J. The Gudalur Janmam Estates Abolition and Conversion into Ryotwari) Act, 1969 (Act No. 24 of 1969), hereinafter referred to as the Act, received the assent of the President on December 6, 1969, after it had been enacted by the legislature of the State of Tamil Nadu. It was thereafter published in the gazette on December 17, 1969. The Act extends to the Gudalur taluk of the Nilgiris district and applies to all janmam estates. It is to come into force on such date as the State Government may, by notification, appoint. This Court stayed the issue of the notification and, as such, no notification has so far been issued.

Nine petitions under article 226 of the Constitution of India were filed in the Madras High Court challenging the vires of the Act on the ground that it was violative of articles 14, 19 and 31 of the Constitution. The case of the petitioners was that their lands in the Gudalur taluk were previously janmam estates but subsequently became ryotwari estates, especially after the resettlement of 1926 and, as such, the provisions of the Act were not applicable to those lands. The Act, it was stated, did not get the protection of article 31A of the Constitution. One of the above petitions was filed by O'Valley Estate Ltd. This petitioner had taken on lease an estate comprising about 2,000 acres of land in the 19th century from the Nilambur Kovilakam who was the proprietor of that land besides some other land. The Company (O'Valley Estate Ltd.) has a plantation on the estate and is engaged in cultivation and manufacturing of tea and other plantation products. The Nilambur Kovilakam was the petitioner in another petition.

The nine petitions were resisted by the State of Tamil Nadu on the ground that the lands in question were janmam estates and had retained that character till the passing of the Act. The State of Tamil Nadu also invoked the protection of article 31A of the Constitution. The nine petitions were dismissed by the Madras High Court by a common judgment given in the petition filed by O'Valley Estate Ltd. It was held that the lands were janmam estates and had not lost that character. The Act was held to be (Khanna, J.) protected, by article 3 1 A of the Constitution. Civil appeals Nos. 2211 and 2212 of 1970 and Nos. 85 to 91 of 1971 have been filed against the above judgment of the High Court.

Writ petition No. 373 of 1970 has been filed under article 32 of the Constitution. by Balmadies Plantations Ltd. and its share holder Dayanand Bansilal Saxena challenging the vires of the Act or. the ground that it is violative of articles 14, 19 and 31 of the Constitution and is not protected by article 31A. According to the petitioner, the janmam estates which are now intended to be abolished by the Act had been converted into ryotwari estates. The purpose of the Act, it is further stated, is not to bring about agrarian reform. The petitioner company in this case had taken on lease 170.78 hectares from the Nilambur Kovilakam, the appellant in civil appeal No. 2211 of 1970, in the 19th century. Out of the above area, 143.22 hectares is under coffee plantation, while the rest of the land consists of forests and waste land.

The writ petition has been resisted by the State of Tamil Nadu and the affidavit of Shri A. S. Venkataraman, Additional Secretary has been filed in opposition to the petition. The respondent has controverted the different grounds taken by the petitioner.

Gudalur taluk, it may be stated, comprises 12 villages. The said taluk was originally part of Malabar district which now forms part of Kerala State. O'Valley village was transferred to the Nilgiris in 1873 and the other eleven villages were transferred in 1877. Originally the janmis in Malabar were absolute proprietors of the land and did not pay land revenue. After Malabar was annexed by the British in the beginning of the 19th century, the janmis conceded the liability to pay land revenue. According to the case set up by the petitioner-appellants, there was a gradual orision of the rights of janmis in the lands in question and the janmam estates became ryotwari estates after the resettlement of 1926. As such, the Act, it is submitted, does not apply to the lands in dispute. Before dealing with this aspect of the matter, it would be pertinent to refer to the different provisions of the Act. Section 2 of the Act contains the various definitions. Relevant clauses of that section read as under :

> "S. 2. In this Act, unless the context otherwise requires,-
>
> (1) all expressions defined in the Malabar Tenancy Act shall have the same,respective meanings as in that Act with the modifications, if any, made by this Act; (2)"appointed day" means the date appointed by the Government under subsection (4) of section 1;
>
> (4) "forest" includes waste or arable land containing trees, shrubs or reeds.
>
> Explanation.-A forest shall not cease to be such by reason only of the fact that, in a portion thereof, trees, shrubs or reeds are felled, or lands are cultivated, or rocks, roads, tanks, rivers or the like exist; (6) "jarmiam estate" means any parcel or parcels of land included in the holding of janmi;
>
> (7) "janmi" means a person entitled to the absolute proprietorship of land and includes a trustee in respect thereof;
>
> (9) "plantation crop" means tea, coffee, rubber, cinchona or cardamom; (11) "tenant" means a verumpattamdar as defined in sub-clause (a) of clause (29) of section 3 of the Malabar Tenancy Act;"

Section 3 of the Act deals with the vesting of janmam estates in Government, and reads as under : "3. Vesting of janmam estates, etc., in Government.-With effect on and from the appointed day and save as otherwise expressly provided in this Act-

(a) the Malabar Tenancy Act, the, Malabar Land Registration Act, 1895 (Tamil Nadu Act III of 1896), the Gudalur Compensation for Tenants Improvements Act, 1931 (Tamil Nadu Act XIII of 1931) and all other enactments applicable to janmam estates as such, shall be deemed to have been repealed in their application to janmam estates;

(b) every janmam estate including all communal lands and porambokes, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries, and

ferries situated within the boundaries thereof shall stand transferred to the Government and vest in them free of all incumbrances, and the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act 11 of 1864), the Tamil Nadu Irrigation Cess Act, 1865 (Tamil Nadu Act VII of 1865), the Tamil Nadu Cultivating Tenants Protection Act, 1955 (Tamil Nadu Act XXV of 1955), the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Tamil Nadu Act XXIV of 1956) and, all other enactments applicable to ryotwari lands shall apply to the janmam estate;

(Khanna, J.)

(c) all rights and interests created by the janmi in or over his jamnam estate before the appointed day shall as against the Government cease and determine;

(d) the Government may, after removing any obstruction that may be offered, forthwith take possession of the janmam estate and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to the janmam estate which the Government may require for the administration thereof;

Provided that the Government shall not dispossess any person of any land in the janmam estate in respect of which they consider that he is prima facie entitled to a ryotwari patta pending the decision of the appropriate authority under this Act as to whether such person is entitled to such patta;

(e) the janmi and any other person whose rights stand transferred under clause (b) or cease and determine under clause (c) shall be entitled only to such rights and privileges as are recognised or conferred on him by or under this Act;

(f) the relationship of janmi and tenant, shall as between them, be extinguished;

and

(g) any rights and privileges which may have accrued in the janmam estate to any person before the appointed day against the janmi shall cease and determine and shall not be enforceable against the Government or against the janmi and every such person shall be entitled only to such rights and privileges as are recognised or conferred on him by or under this Act."

According to section 8, the janmi shall with effect on and from the appointed day be entitled to a ryotwari patta in respect of all lands proved to have been cultivated by the janmi himself, or by the members of his tarwad, tavazhi, illom or family or by his own servants or by hired labour with his own or hired stock in the ordinary course of husbandry for a continuous period of three agricultural years immediately before the 1st day of June 1969. Explanation I to that section defines the word "cultivate" to include the planting and rearing of topes, gardens, orchards and plantation crops. According to Explanation 11, where any land is cultivated with plantation crops, any land occupied by any building for the purpose of or ancillary to the cultivation of such crops or the preparation of the same for the market and any waste land lying interspersed among or contiguous to the planted area upto a maximum of twenty-five per centum of the planted area shall be constituted to be land

cultivated by the janmi. Section 9 deals with lands in' respect of which a 'tenant is entitled to ryotwari patta. According to the section, every tenant shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of the lands in his occupation. The right of the tenant to the ryotwari patta is subject to the conditions regarding cultivation mentioned in the Provisos to that section. Section 10 provides that where no person is entitled to a ryotwari patta in respect of a land in a janmam estate under section 8 or section 9 and the land vests in the Government, a person who had been' personally cultivating such land for a continuous period of three agricultural years immediately before the 1st day of June 1969, shall be entitled to a ryotwari patta in respect of that land. This right too is subject to conditions mentioned in that section. According to section 11, no ryotwari patta shall be granted with respect. to the following categories situated within the limits of a janmam estate

(a) forests;

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

(c) threshing floor, cattle stands, village sites, carttracks, roads, temple sites and such other lands situated in any janmam estate, as are set apart for the common use of the villagers;

(d) rivers, streams and other porambokes. Section 12 empowers the Settlement Officer to inquire into the claims of any person for a ryotwari patta under the Act in respect of any land in a janmam estate and decide in respect of which land the claim should be allowed. A right of appeal against the decision of the Settlement Officer to the 'Tribunal appointed under the Act is given by sub- Section (3) of section 12. The Tribunal, according to section 7, shall consist of one Person only who shall be a Judicial Officer not below the rank of Subordinate Judge. Section 13 fastens liability to Pay land revenue to Government on the person Who becomes entitled to a ryotwari patta under the Act. As regards a building, section 14 Provides that with effect on and from the appointed day, the same shall vest in the person who Owned it immediately before that day, subject to the conditions mentioned in that section. Section 15 deals with rights of sons admitted into possession of any land in a janmam estate by any janmi for a non-Agricultural purpose while section 16 makes provision for directions to be issued by the Government in respect of a person admitted by a janmi into possession of any land of the 2 65 (Khanna, J.) description specified in section II. Section 17 relates to the rights of lessees of plantations and reads as under :

> "S. 17. Rights of lessees of plantations.- (1)(a) Where, at any time before the appointed day the janmi has created by way of lease, rights in any lands for purposes of cultivation of plantation crops, the Govern- ment may, if in their opinion, it is in the public interest to do so, by notice given to the person concerned terminate the right with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof.
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> (b) The person whose right has been so terminated shall be entitled to compensation from the Government which shall be determined by the Board of Revenue in such manner as may be prescribed, having regard to the value of the right and the period

for which the right was created.

(c) Where any such right is not determined under this sub-section, the transaction whereby such right was created shall be deemed to, be valid and all rights and obligations arising thereunder, on or after the appointed day, shall be enforceable by or against the Government Provided that the transaction was not void or illegal under any law in force at the time. (2) The Government may, if in their opinion, it is in the public interest to do so, impose reasonable restrictions on the exercise of any right continued, under this section. Explanation.-Any rights granted in perpetuity shall cease and determine and be dealt with under section (3) (e) and not under this section."

Section 18 deals with the rights of certain other lessees. Chapter TV of the Act, which contains sections 19 and 20, deals with survey and settlement of janmam estates. Chapter V, which contains sections 21 to 30, makes provision for determination and payment of compensation. As regards the Nilambur Kovilagam, one of the appellants before us, the explanation to section 22 reads as under "Explanation.-For the purposes of this section, the janmam estate owned by the Nilambur Kovilagam which is partly divided and partly held in common by the several tavazhis shall be construed as a single janmam estate." 8-1208SupCI/72 Amount of compensation is the subject of section 28, while section 29 relates to the determination of basic annual sum and compensation. The subject deal with by chapter VI, containing sections 31 to 46, is "Deposit and Apportionment of Compensation. Sections 47 to 50 contained in chapter VII make provision for recovery of contribution from pattadars. Chapter VIII contains the miscellaneous provisions. Section 58 makes final the orders passed by the various authorities under the Act, while section 60 confers powers on the Government to, make rules for carrying out the purposes of the Act. The rules are required to be published in the gazette and to be placed on the table, of both Houses of Legislature, so that the Houses may, if they so deem proper, make modification in any such rule.

We may at this stage advert to janmam estate. According to Land Tenures in the Madras Presidency by S. Sundararaja Iyengar, Second Edition (p. 49), the exclusive right to, and hereditary possession of the soil in Malabar is denoted by the term jenmam which means birthright and the holder thereof is known as jenmi, jenmakaran or mutalalan. Until the conquest of Malabar by the Mahomedan princes of Mysore, the jenmis appear to have held their lands free from any liability to make any payment, either in money or in produce, to government and therefore until that period, such an absolute property was vested in them as was not found in any other part of the Presidency. Sir Charles Turner after noticing the various forms of transactions prevalent in Malabar stated that they pointed to an ownership of the soil as complete as was enjoyed by a freeholder in England. Subba Rao J. (as he then was), speaking for the Court, in the case of Kavalappara Kottarathil Kochuni and Others v. The State of Madras and Others(1) observed :

"A janmam right is the freehold interest in a property situated in Kerala. Moor in his "Malabar Law and Custom" describes it as a hereditary proprietorship. A janmam interest may, therefore, be described as "proprietary interest of a landlord in lands", And such a janmam right is described as "estate" in the Constitution."

It was held that the proprietor called janmi could create many subordinate interests or tenures like lease or mortgage in a janmam estate. It is not, however, necessary to dilate upon the matter as janmam estate has been defined in clause (6) of section 2 of the Act to mean any parcel or parcels of land included in the holding of a janmi. Janmi, according to clause (7) of the said section, means a person entitled to the absolute proprietorship of land and includes a trustee in respect thereof.

(1) [1960] 3 S.C.R. 887.

(Khanna, J.) Ryotwari or kulwar system was first introduced into the British possessions by Col. Read in 1792. When the Baramahal and Saleem were ceded to the British by Tippu, Lord Cornwall is specially deputed Col. Read for their settlement. The prevailing system of land revenue settlement at the time was the permanent settlement. Col. Read, however, deemed it prudent to enter into temporary settlements with the actual cultivators and this gave rise to a new system since designated ryotwari or kulwar system. The system introduced by Col. Read embraced the survey of every holding in the district and a field assessment based on the productive powers of the soil. The ryot was not regarded as the proprietor of the soil but only as a cultivating tenant from whom was to be exacted by government all that the he could afford. Certain objectionable features of the ryotwari system were then noticed, and an effort was made to eliminate those objectionable features. The ryotwari system in force at present means the division of all arable land, whether cultivated or waste, into blocks, the assessment of each block at a fixed rate for a term of years and the exaction of revenue from each occupant according to the area of land thus assessed. That area may remain either constant or may be varied from year to year at the occupant's pleasure by the relinquishment of old blocks or the occupation of new ones. This distinguishing feature of this system is that the state is brought into direct contact with the occupant of land and collects its revenue through its own servants without the intervention of an intermediate agent such as the Zemindar. All the income derived from extended cultivation goes to the state. Ryotwari lands are known as taraf lands in the Tanjore District, and as ayan, sirkar. koru, or government lands in the other parts of the Presidency (see pages 152 and 153 of Land Tenure in the Madras Presidency, Second Edition, by Sundararaja Iyengar).

According to Land System of British India by Baden-Powell, the holders of ryotwari pattas used to hold lands on lease from Government. The basic idea of ryotwari settlement is that every bit of land is assessed to a certain revenue and assigned a survev number for a period of years, which is usually thirty, and each occupant of such land holds it subject to his paying the land-revenue fixed on that land. But it is open to the occupant to relinquish his land or to take new land which has been relinquished by some other occupant or become otherwise available on payment of assessment. The above observations were referred to by this Court in the case of Karimbil Kunhikoman v. State of Kerala(1) and it was said :

> "The ryot is generally called a tenant of Government but he is not a tenant from year to year and cannot be ---,ousted as long as he pays the land-revenue assessed. He (1) [1962] 1 Supp. S.C.R. 847.

.lm15 has also the right to sell or mortgage or gift the land or lease it and the transferee becomes liable in his place for the revenue. Further, the lessee of a ryotwari pattadar has no rights except those conferred under the lease and is generally a sub-tenant at-will liable to ejectment at the end of each year. In the Manual of Administration as quoted by Baden-Powell, in Vol. III of Land Systems of British India at p. 129, the ryotwari tenure is summarised as that "of a tenant of the State enjoying a tenant-right which can be inherited, sold, or burdened for debt in precisely the same manner as a proprietary right subject always to the payment of the revenue due to the State". Though therefore the ryotwari pattadar is virtually like a proprietor and has many of the advantages of such a proprietor, he could still relinquish or abandon his, land in favour of the government. It is because of this position that the ryotwari pattadar was never considered a proprietor of the land under his patta, though he had many of the advantages of a pro- prietor."

This Court held in the above case that the land held by ryotwari pattadars in the area which came to the State of Kerala by virtue of the States Reorganization Act from the State of Madras were not 'estates' within the meaning of article 3 1 A (2) of the Constitution. Subsequent to that decision, clause (2) of article 31A was amended by the Constitution (Seventeenth Amendment) Act, 1964. As a result of that amendment, 'estate' would also include any land held under ryotwari settlement.

Let us now go into the question as to whether the janmam rights in the lands in question have been converted into ryotwari estate. We are concerned in the present case with the settlement of 1886 and resettlement of 1926. In connection with the settlement of 1886, G.O. 741 Revenue dated August 27, 1886 was issued and its main purpose was to settle the lands which had been escheated to the Government and to collect revenue for the State An attempt was then made to have direct dealing with the cultivators without notice to the janmi. This act of the State was held to be against law by a Division Bench of the Madras High Court in the case of Secretary of State v. Ashtamurthi(1). In that case the Collector of Malabar let defendant No. 2 into possession of certain waste land in 1869 under a cowle, and in 1872 granted to him a patta for it. The cowledar then brought the land under cultivation but subsequently left it uncultivated and failed to pay the assessed revenue. The land was consequently attached in 1885 for arrears of revenue under the Revenue Recovery Act and sold to defendant No. 3. The plaintiff. who was the janmi of the (1) I.L.R. 13 Madras 89.

(Khanna, J.) land, had no notice of the grant of either the cowle or the patta. He asserted his right to janmabhogam in a petition presented to the Collector at the time of the sale, but the sale proceeded without reference to his claim. Suit was thereafter brought by the plaintiff to set aside the sale. It was held that the interest of the janmi did not pass by the sale. Parker, J. in the above context observed :

> "The evidence shows that the janmis or the proprietors of the soil in Malabar have long been in the habit of leasing out the greater portion of their estates to kanomdars who are thus in the immediate occupancy of the greater part of the soil. This was the state of things at the time of Hyder's conquest (exhibit XIV), and the British Government is stated to have continued the practice of the Mysore Government in settling the assessment with these kanomdars. At the annexation of Malabar in 1799 the Government disclaimed any desire to act as the proprietor of the soil, and

> directed that rent should be collected from the immediate cultivators, Trimbak Ranu v. Naina Bhavani(1) and Secretary of State v. Vira Rayan (2) thus limiting its claim to revenue. Further, in their despatch of 17th December 1813 relating to the settlement of Malabar the Directors observed that in Malabar they had no property in the land to confer, with the exception of some forfeited estates. This may be regarded as an absolute disclaimer by the Government of the day of any proprietary right in the janmis' estate, and is hardly consistent with the right of letting in a tenant which is certainly an exercise of proprietary right."

On account of the above decision, the Madras Government reconsidered the matter and in 1896 the Malabar Land Registration Act (Act 3 of 1896) was enacted. The object of that Act would be clear from its preamble which reads :

> "WHEREAS Regulation XXVI of 1802 provides that landed property paying revenue to Government shall he registered by the Collector; and whereas such landed property in certain areas in the Nilgiri district has in many cases not been registered in the names of the proprietors thereof; and whereas it is desirable for the security of the public revenue to provide a summary means whereby the Collector may ascertain such proprietors; It is hereby enacted as follows."

According to section 13 of the above Act, every person registered ,is proprietor of an estate shall be deemed to be the landholder in (1) 12 Bom. H.C.R. 144 (2) I.L.R. 9 Mad. 175.

respect of such estate within the meaning and for the purposes of the Madras Revenue Recovery Act II of 1864. The janmam rights in the lands in dispute thus remained intact. The stand taken on behalf of the petitioner-appellant, as mentioned earlier, is that the janmam rights in the lands in dispute were converted into ryotwari estate as a result of resettlement of 1926. Government order No. 1902 Revenue dated November 1, 1926 was issued in this connection. Para 3 of that order deals with the janmam estates and reads as under :

> "3. JANMABHOGAM:-Paragraph 11 of the Board's Proceedings-Lands have hitherto been described as-
>
> (a) Government Janmam, i.e. lands which are held directly from the Government and on which taram assessment and janmabhogam are Paid to the Government and
>
> (b) private janmam, i.e. lands which are held directly from the Government and on which taram assessment but not janmabhogam is paid to the Government.
>
> These two classes of land will hereafter be referred to as 'New Holdings' and 'Old Holdings'.
>
> The Special Settlement Officer proposed- (1) to raise the existing rate of janmabhogam of 8 annas an acre on all so- called Government janmam land in

estates to Re. 1 an acre for highly developed estate crops;

(2) to retain the existing rate on lands cultivated with non-estate crops; and (3) to reduce it to 4 annas an acre on undeveloped lands.

The Board supported the proposals (1) and (3) but recommended an increase to Re. 1 in the case of proposal (2). The Government have decided to apply the 18-3/4 per cent limit imposed in G.O. No. 924, Revenue, dated 18th June, 1924, to janmabhogam. After careful consideration the Government have decided to accept the Board's proposal to amalgamate the two items of land revenue, i.e., taram assessment and so called 'Janinabhogam' which are being collected on all so called Government janmam lands, i.e., on new holdings, and in future to collect assessment on these lands at a (Khanna, J.) consolidated rate based upon the total of the rates at which these two items of the land revenue are now being levied. In all the figures quoted in the Appendix to this order concerning these lands the revised rate given is this consolidated rate."

It would appear from the above that the effect of the resettlement of 1926 was to retain the janmam estates and not to abolish the same or to convert them into ryotwari estates. There was merely a change of nomenclature. Government janmam lands were called the new holdings, while private janmam lands were called the old holdings. In respect of janmabhogam (Janmi's share) relating to Government janmam lands, the order further directed that the amount to be paid to the Government should include both the taram assessment and janmabhogam. It is difficult, in our opinion, to infer from the above that janmam rights in the lands in question were extinguished and converted into ryotwari estates. The use of the word 'janmabhogam' on the contrary indicates that the rights of janmis were kept intact.

It has been argued on behalf of the petitioner-appellants that the grant of a right of relinquishment to janmis had the effect of obliterating the distinction between janmam estate and ryotwari estate. The janmam rights, according to the submission, were thus converted into ryotwari estate. In this connection we find that the Government order No. 1902 dated November 1, 1926 shows that question was raised as to, whether a janmi of private janmam land could claim exemption from assessment by leaving cultivable lands waste. The Board of Revenue recommended that exemption should not be granted unless the janmi pattadar relinquished his whole right, title and interest. The Government, however, considered that having regard to the practice of exempting unoccupied janmam lands from assessment the janmi should not be required to pay assessment on lands the cultivation of which was to cease. In 1896 a system was introduced, according to which a janmi could give notice of relinquishment without giving up his janmam rights over the land and claim remission of assessment on the relinquished land if it was not taken up for cultivation in the following year. '.he Board of Revenue in proceedings dated October 16, 1897 pointed out that this was in effect a reversion to the old system of charging all cultivation with all its attendant evils of corruption, loss of revenue and unnecessary labour in inspection. The matter was thereafter further considered and the Board in its proceedings dated June 13, 1916 expressed the opinion that the existing rule relating to relinquishment of private lands was anomalous and proposed that no

relinquishment of such lands should be permitted unless the janmi surrendered also his janmam right and that until he relinquished such right, he should be res- ponsible to the Government for the payment of the assessment due on such lands. This proposal was accepted by the Government in 1917 and reiterated in 1919. It would thus appear that the relinquishment permissible in the case of janmi was of a somewhat peculiar nature inasmuch as there could be no relinquishment of janmam lands unless the janmi surrendered also his janam rights. The above right of relinquishment, in our opinion, did not have the effect of converting the janmam rights in-the lands in dispute into ryotwari estate. It is not disputed that apart from the lands in question, there are no other janmam estates in the State of Tamil Nadu (Madras). If the janmam estates in question had been converted into ryotwari estates as a result of the resettlement of 1926, there would have arisen no necessity to mention the janmam right in the State of Madras in clause (2) (a) (i) of article 3 1 A of the Constitution. The fact that in addition to the janmam right in the State of Kerala, the janmam right in the State of Madras was also mentioned in clause (2) (a) (i) of article 31 A as a result of amend- ment, shows that the janmam rights in the lands in question were assumed by the legislature to be in existence. To hold that the janmam rights in the lands in question ceased to exist after the resettlement of 1926 would have the effect of rendering the, words, wherein there is a reference to janmam right in the State of Madras in clause (2) (a) (i) of article 3 1 A, to be meaningless and without any purpose. Reference has been made, on behalf of the petitioner- appellants to the Full Bench case of Sukapuram Sabhayogam v. State of Kerala(1) wherein it was held that a person would cease to be Proprietor of a soil if he gets a right or is under an obligation to relinquish or abandon the land. The, above case related to the plains of Malabar, while we are concerned with the hilly tracts of Gudalur taluk. In the cited case pattas and Adangal registers were Produced in the court and the State accepted the authenticity of those documents. In the cases before us, no patta was produced by the petitioner-appellants either in the High Court or in this Court. In view of the above, we are of the opinion that the facts of the Full Bench case are distinguishable. In any case, we are unable to subscribe to the proposition that the right of relinquishment of janmam rights of a janmi would by itself convert janmam rights into ryotwari estate. Argument has also been advanced on behalf of the petitioner appellants that so far as the forest areas in the janmam lands in question are concerned, they do not constitute estate unless they are held or let for purposes of agriculture or for purposes ancillary thereto, as contemplated by clause (2) (a) (iii) of article 31 A of the Constitution. This contention, in our opinion, is devoid of 1963 Kerala 101.

(1) A.I.R 1663 Kerala 101 (Khanna, J.) force. Sub-clause (a) of clause, (2) of article 31A reads- as under "(2) In this article,-

> (a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its equivalent has in the existing law relating to land tenures in force in that area and shall also include-
>
> (i) any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any janmam right;
>
> (ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;"

Janmam lands are covered by clause (2) (a) (i) of article 31 A. Forest area, which is part of such janmam land would like the remaining janmam lands, constitute an estate, and it would not be necessary in such a case to show that the forest land is held or let for purposes of agriculture or for purposes ancillary thereto. All lands which are part of a janmam estate of a janmi in the States of Madras and Kerala would constitute estate as mentioned in clause (2)

(a) (i) of article 31A of the Constitution. As janmam lands fall under clause (2) (a) (i), it is not essential to show that the requirements of clause (2) (a) (iii) too are satisfied for such lands and it would make no difference whether forests are a part of the janmam lands. The next question which arises for consideration is whether the acquisition of the lands in question is for agrarian reform. It is well established that in order to invoke the protection of article 3 1 A, it has to be shown that the acquisition of the estate was with a view to implement agrarian reform. The said article is confined only to agrarian reform and its provisions would apply only to a law made for the acquisition by the, State of any rights therein or for extinguishment or modification of such rights if such acquisition, extinguishment or modification is connected with agrarian reform [see P. Vajravelu Mudaliar v. Special Deputy Collector,, Madras & Anr.(1)].

(1) [1965] 1 S.C.R. 614 at p. 622.

We have referred in the earlier part of this judgment to the various provisions of the Act, and it is manifest from their perusal that the object and general scheme of the Act is to abolish intermediaries between the State and the cultivator and to help the actual cultivator by giving him the status of direct relationship between himself and the State. The Act, as such, in its broad outlines should be held to be a measure of agrarian reform and would consequently be protected by article 31A of the Constitution. The said article provides that notwithstanding anything contained in article 13, no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such right shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31, provided that where such law is a law made by the Legislature of a State, the provisions of article 31A shall not apply thereto, unless such law, having been reserved for the consideration of the President, has received his assent. The impugned Act, as stated earlier, received the assent of this President on December 6, 1969. As the Act is protected by article 31A of the Constitution, it is immune from attack on the ground of being violative of article 14, article 19 or article 31. This fact would not, however, stand in the way of the court examining the constitutional validity of any particular provision of the Act It has been submitted on behalf of the appellants that whatever might be the position in respect of other janmam lands, so far as forests in janmam estates are concerned, the acquisition of those forests is not in furtherance of the objective of agrarian reform, and as such, is not protected by article 31A. This submission, in our opinion, is well founded. According to section 1 1 of the Act, no ryotwari patta would be issued in respect of forests in janmam estates after

those estates stand transferred to the Government. There is nothing in the Act to indicate as to what would be purPose for which the said forests would be used after the transfer of janman land containing forests to the Government. All that section 16 states is that, except where the Government otherwise directs, no person admitted by a janmi into possession of any such forest shall be entitled to any rights in or remain in possession of such land. Sub-section (2) of that section specifies the directions which the Government may issue while allowing any person to remain in possession of any such land. In the absence of anything in the Act to show the purpose for which the forests are to be used by the Government, it cannot be said that the acquisition of the forests in janmam land would be for a purpose related to agrarian reform. The mere fact that the ownership of forests would stand transferred to the State would not show that the object of the transfer is to bring about agrarian reform. Augmenting the (Khanna,j.) resources of the State by itself and in the absence of anything more regarding the purpose of utilisation of those resources, cannot be held to be a measure of agrarian reform. There is no material on the record to indicate that the transfer of forests from the janmi to the Government is linked in any way with a scheme of agrarian reform or betterment of village economy.

Learned Advocate General has referred to the case of State of Uttar Pradesh v. Raja Anand Brahma Shah(1). In that case all the estates in a Pargana, including the forests, were acquired by the State of Uttar Pradesh under the U.P. Zamindari Abolition and Land Reforms Act. Objection was taken to the acquisition of forests on the ground that it was not for the purpose of agrarian reform. Repelling the objection, this Court observed :

> "Mr. A. K. Sen further urges that the acquisition of the estate was not for the purposes of agrarian reforms because hundreds of square miles of forest are sought to be acquired. But as we, have held that the area in dispute is a grant in the nature of Jagir or inam, its acquisition like the acquisition of all Jagirs, inams, or similar grants, was a necessary step in the implementation of the agrarian reforms and was clearly contemplated in article 31A."

It would appear from the above that the Court in that case was dealing with the acquisition of an estate which was in the nature of a Jagir, inam or similar grant, and it was found that the said acquisition was a necessary 'Step in the implementation of agrarian reform. We are, in the cases before us, not concerned with Jagir, inam or other grant, and so far as the forests in question are concerned, it has already been observed that the acquisition is not in any way related to agrarian reform. As such, the respondent State, in our view, cannot get much assistance from the cited case. We, therefore, hold that the acquisition of the forests on the janmam land is not protected by article 31A. It has not been shown to us that if the protection of article 3 1 A is taken off, the acquisition of forests can otherwise be justified. We, therefore, are of the view that the provisions of section 3 of the Act in so far as they relate to the transfer of forests in the janmam estates in question are violative of the Constitution. As such, we strike down those provisions to that extent. Invalidity of the provisions relating to the transfer of forests would not, however, affect the validity of the other provisions of the Act as the two are distinct and severable. (1) [1967] 1 S.C. R. 3 62.

The last submission which has been made on behalf of the petitioner-appellants relates to section 17 of the Act regarding the rights of plantation lessees. It is stated that it would be open to the Government under the above provision to terminate by notice the right of the lessees. Such a termination of the lessee rights under the above provision, according to the submission made on ,behalf of the petitioner-appellants, would be violative of their rights under articles 14, 19 and 31 of the Constitution. It is, in our opinion not necessary to deal with this aspect of the matter. It is admitted that no notice about the termination of the lessee rights has been issued under section 17 of the Act to any of the petitioner-appellants. Indeed, the question of issuing such a notice can only arise after the Act comes into force. Even after the Act comes into force, the Government would have to apply its mind to the question as to whether in its opinion it is in public interest to terminate the rights of the plantation lessees. Till such time as such a notice is given, the matter is purely of an academic nature. In case the Government decides not to terminate the lease of the plantation lessees, any discussion in the matter would be an exercise in futility. If, on the contrary, action is taken by the Government under section 17 in respect of any lease of land for purposes of the cultivation of plantation crop, the aggrieved party can approach the court for appropriate relief.

As a result of the above, we uphold the vires of the Act, except in one respect. The provisions of section 3 in so far as they relate to the transfer of forests in janmam estates to the Government are not protected by article 31A and being violative ,of the Constitution are struck down. The appeals and writ petition are disposed of accordingly. The parties, in the circumstances, are left to bear their own costs throughout.

K.B.N. Appeals and petition allowed in part