PETITIONER:
R.E.M.S. ABDUL HAMEED

Vs.

RESPONDENT:
GOVINDARAJU & ORS.

DATE OF JUDGMENT: 01/08/1999

BENCH:
A.P.Misra

JUDGMENT:

MISRA, J.
L.....I.....T.....T.....T.....T.....T.....T..J

These two appeals raise a common question hence are being disposed of by means of this common judgment. The question raised is, whether Arayapuram Thattimal Padugai, consisting of two distinct areas, viz., Mela Thattimal Padugai and Kizha Thattimal Padugai was known at the relevant time, is a minor inam coming within the purview of The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, (hereinafter referred to as the Act 30 of 1963) or it would fall under the Madras Inam Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1963, (hereinafter referred to as the Act No. 26 of 1963). The State Government initially issued notification treating it to be under Act No. 26 of 1963, later withdrew and notified it under Act No. 30 of 1963. The appellants contention is that the State Government rightly issued it to be under Act No. 30 of 1963 and it is held to be valid also by the Settlement Officer, S.R. II, Thanjavur.

The short facts are that the respondents filed a petition under Section 5 of the Madras Inams (Supplementary) Act (XXXI of 1963) (hereinafter referred to as Act No. 31 of 1963) for a declaration that the said two distinct areas of lands in Arayapuram Thattimal Padugai Village, of Papanasam Taluk form a new inam estate falling under Act No. 26 of 1963. The notification issued by the Government of India under Act No. 30 of 1963 is illegal, liable to be quashed as the original grant of the disputed areas was not made in terms of acreages or cawnies hence would only constitute to be a part of inam estate in view of Section 2 (11) of the Act No. 26 of 1963. The Settlement Officer after hearing parties, including the State, held that the Madras High Court in Karumbavira Vanniar & Ors. Vs. Govindaswami Vanniar & Ors., 1977 Madras Law Weekly, 741, held that Arayapuram Thattimal Padugai is not estate within the meaning of Section 3 (2)(d) of the Madras Estates Land Act, 1908. It further recorded that evidence shows that in 1829 there were two areas, namely, Mela Thattimal Padugai (hereinafter referred to as Mela) and Kizha Thattimal Padugai (hereinafter referred to as Kizha). The former formed part of Rajagiri village and the latter formed part of Papanasa village. It is the area of this land in

Mela and Kizha which is the subject matter under consideration. The Settlement Officer held it neither to be whole village nor part village, and even not covered under Explanation 1 (a) of Section 2 (11) of the Act No. 26 of 1963 as the grant is not of any fraction or specified number of shares of a part of village. It concluded that the grant was of specified extents of lands, hence, is covered by Explanation 1 (b) of Section 2 (11), thus a minor inam and so the suit land in Arayapuram Thattimal Padugai is only a minor inam falling under Act No. 30 of 1963, thus upheld the impugned notification. The petition of the respondents was accordingly dismissed. The respondents then preferred an appeal before the Minor Inam Estates Abolition Tribunal (Subordinate Judge) of Thanjavur, hereinafter referred to as the Tribunal). The appeal was allowed. The Tribunal held with reference to the Karumbavira Vanniar (Supra) that the undisputed facts which emerges are that in 1862, which is the year of grant, there were two areas, namely Mela and Kizha falling under villages Rajagiri and Papanasam, respectively. In the list of 193 villages in the grant of 1862, one of the entries is Arayapuram Thattimal Padugai. It further records, it is conceded by the learned counsel for the respondents (appellants here) that the extent of the padugai or the boundaries of the lands in question are not given. It is these two portions, namely, Mela and Kizha, subsequently, were merged together and formed into the present revenue Village No. 5 as Arayapuram Thattimal Padugai in 1919. The Tribunal further accepted submission on behalf of the appellants (respondents here) that the said two distinct portions granted in inam can be easily identified without its extents and boundaries being given. Thus, it construed it to be a part village inam estate. The Tribunal also accepted that Arayapuram Thattimal Padugai which mentioned among 193 items covering the grant of 1862, consisted of the aforesaid two portions, namely Mela and Kizha, respectively. So what have been granted are defined portions in two different villages. But extents of the two padugais are not given. It is also relevant to quote the following observations made in Karumbavira Vanniar (Supra), as the said observations have also been referred and relied by the Tribunal. This was because both the parties relied it for gathering facts, in the absence of proper evidence in the present case. This reliance was, as it also pertains to the same estate of Raja of Thanjavur with reference to this land itself which is in dispute though was not between the same party with a different question raised. The observations are:

> It is in evidence that as early as the year 1829 there were two areas, Mela Thattimal Padugai and Kizha Thattimal Padugai, the former formed part of Rajagiri Village and the latter of papanasam Village. Evidently, both these portions, although there was no geographical contiguity, were designated as Aryapuram Thattimal Padugai at the time when the East India Co., took over the village and later granted it to the heirs of the last of Rajahs of Tanjore.It will be plain from what we have stated above, that both before and immediately after the grant of the year 1862, the two parts of the present Aryapuram Thattimal Padugai were attached to different taraf villages and could have only formed part of those villages.This will show that there was no such distinct village of that name, though there were two areas designed as Mela Thattimal Padugai and Kizha Thattimal Padugai, which perhaps for convenience was referred to as Aryapuram Thattimal at the time of the

grant.We, therefore, agree with the conclusion reached by the learned Subordinate Judge as well as by the Tribunal that the grant was of two separate bits of land lying in two different Taraf villages and that it was now the year 1919 that they were amalgamated to form what is now known as No. 5, Aryapuram Thattimal Padugai village.

Hence, the Tribunal held that what were granted in 1862 were two distinct portions of land in two different taraf villages. It set aside the finding of the Settlement Officer by holding:

The learned Settlement Officer is not quite correct when he says that the evidence available indicates that the grant was of a specified extent of lands only. Admittedly the extents are not mentioned in the grant

The said earlier decision records that the survey numbers of Kizha are 1 to 56 and of Mela are 57 to 68 though are separated by a mile but they formed one block. The grant thus is of two parts of two villages. Thus, the Tribunal allowed the appeal, set aside the judgment of the Settlement Officer and also the notification under Act No. 30 of 1963 and held that the said two parts were compendiously known then as Arayapuram Thattimal Padugai and is a part village inam estate. Aggrieved by this, the present appellants filed revision before the High Court.

Appellants submitted before the High Court, in the absence of original grants, on the residuary evidence specially on the fact as recorded in Karumbavira Vanniar (supra) to which both parties relies, expresses the grant to be only in terms of acreages or cawnies and, therefore, it cannot be deemed to be a part village inam estate. The submission, in fact, was in terms of the language of Explanation 1 (b) of Section 2 (11) of Act No. 26 of 1963. On the other hand, submission for the respondents was that it is established by the evidence that the grant was of a part of the village and was not expressed in acreage or cawnies and thus would be covered by Explanation 1 (a) of Section 2 (11). In order to substantiate that the area of the aforesaid two Mela and Kizha was described in an acreage etc. reliance was placed for the appellant on the following observations in Karumbavira Vanniar (Supra);

This position is made clear from the paimash accounts and the subsequent surveys. Mala Thattimal, which till 1919 formed part of Rajagiri village, covered as we said an extent of 26-21 acres. In the Paimash accounts of the year 1829 the area was designated by Nos. 1272 to 1302. In the survey of the year 1886 the area was represented by S.No. 11 of Rajagiri. In the land register of the year 1919, the area was given Nos. 45 to 49 in the newly formed No. 5, Arayapuram Thattimal Padugai

Now, coming to Kizha Thattimal, which covered on area of 267-44 acres they were represented Nos. 335 to 614 in the Paimash account of the Taraf Village of Papanasam. In the survey of 1886 the corresponding numbers were S.Nos. 1 to 10 in No. 2, Arayapuram Thattimal Padugai . The position continued to be the same in the survey of 1921. But in the Record of Rights Register, they have been given S.Nos. 1 to 56 in No. 5, Arayapuram Thattimal Padugai.

The reference of the acreage therein was relied. The High Court rejected this submission holding that this collateral references of paimash account and subsequent survey were compiled after the grant, hence it could not be concluded it was so described in the grant itself. It further records that the grant was only of two distinct portions in two different villages wherein there is no specific mention of its extent, hence it would not fall under (b) of Explanation 1 of Section 2(11) and so the notification by the Government under the Act No. 30 of 1963 cannot be sustained. The High Court finally concluded, having regard to the definition of minor inam in Section 2 (9) of the Act No. 30 of 1963 read with the definition of a part village named estate in Section 2 (11) of the Act No. 26 of 1963, the Tribunal was right in setting aside the order of the Settlement Officer and the notification of the Government under Act No. 30 of 1963. It is this judgment which is the subject matter of the present appeals. It is significant that the State Government has not filed any appeal against it. Though it is one of the respondents but has not made any submission either way. It is also not in dispute, the original grant has not been filed and is not on the record.

The central question in issue is, the interpretation of sub-clause (b), Explanation 1 to Section 2 (11) of the Act No. 26 of 1963. Learned counsels, for the aforesaid respective appellants, Mr. Tripurari Ray and Mr. A.T.M. Sampath senior counsel, submit on the facts of this case, the disputed land cannot be construed to be part village inam estate to fall within Act No. 26 of 1963 but is a minor Inam to fall under Act No. 30 of 1963. Before taking up this issue of part village inam estate, it is necessary to look back to the history of inam lands, how it emerged, recognised, canalised and dealt with through various enactments till it reached into the legislative umbrella of both Act Nos. 26 and 30 of 1963. The law relating to the land holdings, agrarian reform, in the Presidency town of Madras, with reference to the landlords and ryots started from the previous century and it is interesting to note few of the essential features of this agrarian development. The origin of inam tenure is traced back to its grant made by Hindu rulers for the support of temples and charitable institutions, for the maintenance of holy and learned men rendering public service, etc. This practice was followed by the Muhammadan rulers and by British administrators until about a century ago. According to the ancient Hindu Law, there were two beneficial interests in land, namely, (1) that of the sovereign or his representative, and (2) that of the cultivator holding the land. The sovereigns right to collect a share of the produce of the cultivated land was known by the name melvaram, the share of the ryot or cultivator was known by the name kudivaram. The ryots right arose from occupation of the land. Thus, the grant of an inam did not touch, and could not have touched, the cultivators right in the land, namely, the kudivaram, except in rare cases where the grantor was also holding the cultivators interest at the time of the grant.

It is also relevant to refer to Madras Inams Act, 1869 (Madras Act VIII of 1869). This Act declares that the enfranchisement of an inam and the grant of a title deed to the inamdar should not be deemed to define, limit, infringe

the right of any description of holder or occupier of the land from which the inam was derived. Thus, the right of an inamdar does not ordinarily extend to the full proprietorship of the land, especially in the case where the inam consisted of an entire village. Thus, inam villages were treated as estates on exactly the same footing as zamindaris in the Madras Regulations of 1802 and 1822, the Madras Rent Recovery Act, 1865, the Madras Proprietary Estates Village Service Act, 1894 (Madras Act II of 1894) and Madras Hereditary Village Officers Act, 1895 (Madras Act III of 1895) and it ultimately resulted into Madras Estates Land Act, 1908.

The Madras Estates Land Act (Act No. I of 1908), (hereinafter referred to the 1908 Act) came into force which is the first major enactment in the Presidency of Madras controlling and defining the rights of the landholders and ryots. Prior to that both zamindars and ryots were subjected to and treated under the Madras Regulations of 1802 and Regulation No. IV of 1822. The 1908 Act repealed the Madras Rent Recovery Act (VIII of 1865). This Act not only safeguarded the interest of the cultivators but also of the landlords including collection of rents. It is interesting to record here the concern expressed by Honble Mr. Forbes on this subject while introducing the Original Estates Land Bill in the Council, which is quoted hereunder:

The ancient zamindars are being displaced by new men who have no traditional connection with the soil, and whose action will be guided solely by commercial or selfish motives, and who will strain the laws to its utmost limits. A Law is a bad Law which gives opportunities for diverting its power to oppress the poor and weak. Moreover, unless rights are firmly fixed and declared the slow process of erosion imperceptibly wears them away. The zamindar is the flood stream; the ryot, the river bank. Not only justice to a weak class, who are specially in need of the protection of the strong arm, but on every ground political and economic the Government could not sit by impassive.

The Government have to hold the scales evenly, distributing the benefits of the Act both to the landlord and tenant, remembering that the value of a thing to a person does not depend on its intrinsic cost. On the side of the zamindar, he is given a charge over the ryots holding - a first charge indefeasible by any encumbrance; he has been given the right to enhance rent with reference to rise in prices;

On the other side, the ryot has been confirmed in his rights; he is secured in the occupancy of his holding from which he cannot be ejected so long as he pays his shist; nor can his shist be enhanced except by suit before the Collector; and he is given the right to have the irrigation of his fields secured;

Looking at both sides it must be admitted that the Government has, as far as it lay in its power, discharged with equal justice its obligations to safeguard the established rights of both zamindars and ryots, in the sense of the old Regulation IV of 1822.

The intervention of the Government is thus as much to the benefit of the landholders as of the ryot. All that is done for the ryot is to protect him against the horrors or

arbitrary eviction, against the oppression of rackrents and to secure to him his right to enjoy his established share of the produce, conditions which are essential to the stability of an agricultural community and the undoubted and ancient right of the Madras ryot.

The aforesaid observations by Hon. Mr. Forbes gives clear indication of the objects and reasons for introducing the 1908 Act. It is interesting to see how even at that time the exploitations by the haves for commercial and selfish ends down right were condemned and provisions made to protect the oppressed, poor and weak. Subsequently, by Madras Amending Act No. IV of 1909 the definition of rent as given under the 1908 Act was changed with an object that the land holder should not employ the machinery of the Act for the recovery of quit rents from intermediate landholders but seek his remedy only through civil courts. Next Madras Act VII of 1934 brought various changes for the benefit the ryots. This was followed by Madras Act I of 1936 amending 1908 Act to bring in inam villages in which the inamdar had the kudivaram interest within the purview of 1908 Act. It is interesting after this was passed, His Excellency the Governor General withheld his assent to the provisions in the Madras Estates Land Amendment Act of 1934 under which occupancy rights were to be conferred on tenants in inam villages even though kudivaram interest may have been granted to the inamdars. This led to the appointment of a Select Committee which drafted another bill giving effect to the suggestion made by His Excellency the Governor General which made into Madras Estates Land (Third Amendment) Act XVIII of 1936. By this definition of estate in Section 3 (2)(d) of the 1908 Act was amended to bring within its scope any inam village of which the grant has been made, confirmed or recognised by the British Government. By virtue of new Section 23 a presumption was laid down that an inam village was an estate even before the commencement of the aforesaid 1936 Act. There were some other amendments also but are not relevant for this case. Then came the two Acts, namely, Act No. 26 of 1963 and Act No. 30 of 1963. Prior to these two enactments there were two forms of inam (i) the full inam, where whole village comprised of inam and (ii) part inam or minor inam, where part of village was given in inam.

We now herewith give some of the decisions as how they have understood and interpreted the said relevant provisions including the provisions to which we are concerned.

In Act No. 26 of 1963 it is necessary to refer to some of the definitions to appreciate this case and some of the decisions given by courts. Sub-section (4) of Section 2 defines existing inam estate means an inam village which became an estate by virtue of the Madras Estates Land (Third Amendment) Act, 1936 (Madras Act XVIII of 1936). Sub-section (7) defines inam estate means an existing inam estate or a new inam estate. Sub-section (9) defines new inam estate means a part village inam estate or a Pudukkottai inam estate. Sub-section (11) of Section 2 defines part village inam estate, which is quoted hereunder;

(11) part village inam estate means a part of a village (including a part of a village in the merged territory of Pudukkotiai) the grant of which part has been made, confirmed or recognised by the Government, notwithstanding that subsequent to the grant, such part has

been partitioned among the grantees or the successors-in-title of the grantee or grantees.

Explanation 1. - (a) Where the grant of a part of a village as an inam is expressed to be a specified fraction of, or a specified number of shares in, a village, such part shall be deemed to be a part village inam estate notwithstanding that such grant refers also to the extent of such part in terms of acreage or cawnies, or of other local equivalent.

(b) Where a grant as in inam is expressed to be only in terms of acreage or cawnies, or of other local equivalent, the area which forms the subject- matter of the grant shall not be deemed to be a part village inam estate.

Explanation II. - A part of a village granted in inam shall be deemed to be a part village inam estate notwithstanding that different parts of such part village were granted, confirmed or recognised on different dates or by different title-deeds or in favour of different persons;

The minor inam defined under sub-section (9) of Section 2 of Act No. 30 of 1963. The relevant portion is quoted hereunder:

(9) Minor inam means - (i) any inam which is not - (a) an estate within the meaning of sub-clause (d) of clause (2) of section 3 of the (Tamil Nadu) Estate Land Act, 1908 (Tamil Nadu Act I of 1908); or (b) a new inam estate as defined in clause (9) of section 2 of the Inam Estates Abolition Act; or (c) an estate within the meaning of sub-clause (d) of clause (2) of section 3 of the (Tamil Nadu) Estate land Act, 1908 (Tamil Nadu Act I of 1908), as in force in the territories specified in the Second Schedule to the Andhra Pradesh and (Tamil Nadu) (Alteration of boundaries) Act, 1959 (Central Act LVI of 1959);

In Secretary of State Vs. Velivelapalli Mallayya & Ors., AIR 1932 PC 238, (From Madras) recognised the two forms of inams. It records:

It is usual to divide inams into two classes, namely, (1) major and (2) minor. Technically a major inam is a whole village or more than one village, and a minor inam is something less than a village.

If further defined and held:

A Khandrika means a small hamlet. It is a large block of land granted as inam, less than a village, but much larger than an ordinary inam

In H.R. Sathyanarayana Rao Vs. The State of Tamil Nadu, 1977 (1) Madras Law Journal 305, reliance is placed on the following passage:

This is also clear from the fact that Explanation 1 (b) excludes where the grant is of an extent of land. If

the grant was of a specified fraction of a village or a specified number of shares in a village, the inam would not be covered by the definition of inam estate under section 2(7) of the Madras Act XXVI OF 1948 and it would also not be an existing inam under section 2(4). It is those inams that were sought to be covered under section 2(11) of the Madras Act XXVI of 1963. If, part inam village is understood as literally meaning any part of a village then that will directly come under Explanation 1(b) to section 2(11). All those inams which related to a part of a village of with reference to specified extent of land, in my opinion, would be covered by the definition of minor inam in Madras ACT XXX of 1963 and it would not be a part village inam estate under section 2(11) I am therefore of the opinion that Marasandram village is also not a part village inam estate. The result of it is the notification of the village under Madras Act XXVI of 1963 was not valid and is liable to be set aside and it is accordingly set aside.

This case records in order to come within the definition of an inam estate three essential conditions have to be satisfied, namely, (i) the grant should be of both the warams or of melwaram to a person already owning the Kudivaram thereof; (ii) it should be of the whole village or named village and (iii) the grant should be made, confirmed or recognised by the British Government. There the question was whether Marasandram village could be said to be a confirmation of grant of a whole village? The Court records:

Where the grants of two minor inams and portion or the village remaining thereafter were confirmed by the Inams Commissioner separately and three separate title deeds were issued, and the Inam Commissioner had recognised by confirmation of the part of the village the title of the grantee derived from the original grant, it could not be said to be a confirmation of a whole village. Marasandram village was not an existing inam estate within the meaning of section 2(9) of the Madras Act XXVI of 1963.

In Sri Akkaloi Ammani Chatram Vs. State of Tamil Nadu, 1980 Madras Law Journal, 67 (Full Bench), the Court considered both the Acts, namely, Act No. 26 of 1963 and Act No. 30 of 1963. This is also a case with reference to the estate of Raja Thanjavur, as is the case under consideration by us also. The question in issue in this case is similar to the question in issue before us. There also the Settlement Officer under Section 5 of the Tamil Nadu Act XXXI of 1963 was to decide whether a non- ryotwari area is an existing inam estate or a part village inam estate or a minor inam or a whole inam village in Pudukkottai. There also as in the present case it was nobody case that the property in issue was of whole inam village. The relevant portion of the decision is quoted hereunder:

33. Let us assume for the sake of argument that in view of the earlier decision of the Division Bench of this Court in A.S. Nos. 223 and 292 of 1956, it is no longer open to any of the parties to contend that the inam in question will come within the scope of the existing inam estate. Still the case can certainly come within the scope of new inam estate because the definition of the term inam estate in section 2 (7) of the Tamil Nadu Act XXVI of 1963 takes in both an existing inam estate and a new inam

estate.

34. We have already referred to the definition of the new inam estate in section 2(9) of the Tamil Nadu Act XXVI of 1963 and that means a part village inam estate. We have again referred to the definition of the term, part village inam estate in section 2(11) of the Tamil Nadu Act XXVI of 1963 and in the present case both the Settlement Officer and the Tribunal have held that the inam in question is a part village inam estate and therefore a new inam estate and consequently an inam estate under the Tamil Nadu Act XXVI of 1963.

The Full Bench further considered the meaning of the word part as referred in the main part of the definition of part village inam estate in sub-section (11) of Section 2 of Act No. 26 of 1963 with reference to various dictionaries. It recorded that the word part is not a word of art or a technical term conveying a special meaning. It records:

There is nothing in the scheme of the Tamil Nadu ACT XXVI of 1963 or in the context of the definition of the term part village inam estate justifying giving to the expression part occurring therein a meaning other than the dictionary meaning referred to above.

There is nothing in the scheme of the Act No. 26 of 1963 or in the context of definition of the term part village inam estate justifying to the expression part occurring therein meaning other than the dictionary meaning referred to above. Significantly, the Full Bench with reference to Explanation 1 (b) of the aforesaid Section recorded the findings as:

The very deeming provision will make it clear that but for this explanation, the grant would fall within the scope of the definition itself. Therefore, if Explanation 1 (b) had not been there, even where the grant, as an inam, is expressed to be only in terms of acreage or cawnies or of other local equivalent, it will still mean a part village inam estate, as defined in section 2(11) of the Tamil Nadu Act XXVI of 1963 and be creating afiction, in Explanation 1(b), the said grant is taken out of the definition of a part village inam estate. Similarly Explanation II also will support our conclusion that the word part should be given its ordinary meaning.

39. The next aspect to be considered in this case is, whether Explanation (b) can come into operation at all. The said Explanation refers to acreage or cawnies or other local equivalent. The expression other local equivalent must necessarily mean equivalents to acreage or cawnies.

From the aforesaid decisions and enactments, their amendments it is revealed, the word estate as defined in Section 3 (2)(d) of 1908 Act was different than this word after its amendment by Tamil Nadu Act XVIII of 1936. Similarly, the word estate as defined in Tamil Nadu Act XXVI of 1963 is different then what is defined under the 1908 Act as it originally stood but is the same after its amendment by the Tamil Nadu Act XVIII of 1936. So definition under Act No. 26 of 1963 of estate is what is defined through amending Tamil Nadu Act XVIII of 1936 only it is further clarified through the definition clauses. It

is significant that the definition in 1908 Act prior to its amendment by Act XVIII of 1936 dealt with the grant of the land revenue of any village to a person not owning the kudiwaram thereof. While definition after the said amendment dealt with cases where any inam village has been granted. By virtue of Section 3 of Act No. 26 of 1963, with effect from the date of notification, all other enactments applicable to inam estate, is deemed to have been repealed, in respect of its application to the inam estate and the entire such inam estate stands transferred and vested in the State and all rights and interests created in such inam estate before the notified date stands ceased and determined. Thus, the significance of interpretation of Explanation 1 (b) of Section 2 (11) of the Act gains importance. We have seen gradually how inam estate were brought in within the definition of estate through various enactments. Initially it was divided into two, namely, (i) for the whole village or more than one village and (ii) for the part of the village. In spite of this some of the inams contested not to fall under either of the two, for which disputes were raised in courts in large numbers which lead to bringing in the said two enactments in 1963 by giving it more precise meaning. This is sought to be achieved through definitions in Section 2 of Act No. 26 of 1963 of existing inam estate, i.e., inam estate and new inam estate and part village inam estate to make the law and the subject clear. The existing inam estate are inam villages which are estate as recognised through the aforesaid Third Amendment Act XVIII of 1936. It is what is said to be not covered under it is brought in under the said 1963 Act within its definition new inam estate to mean part village inam estate. Thus inam estate under this Act included both the existing inam estate and new inam estate. As new inam estate referred to mean a part village inam estate or a Pudukkottai inam estate, the part village inam estate itself is defined under sub-clause (11) of Section 2, which is subject to scrutiny in the present case. This Act brings all forms of inam villages under its broad definition to include all preceding inams and also such inams which is said to have been excluded but yet excluded a small fraction out of the part village inam estate by virtue of sub-clause (b) of Explanation I of Section 2 (11). So the net conclusion is that now all inam estate are covered under this Act, and all preceding enactments in respect of the inam estate is repealed except to the extent of sub-clause (b) of Explanation I. This residual inam is carried to be read as minor inam under the aforesaid Act No. 30 of 1963. So what is excluded under sub-clause (b) of Explanation 1 would be what would be covered under the definition minor inam under sub-clause (9) of Section 2 of Act No. 30 of 1963. So if appellants could be said to have been excluded from sub-clause (b) of Explanation I they would be out of Act No. 26 of 1963 and to be in Act No. 30 of 1963.

Returning to the present case, to be out of Act No.26, the area of grant to the appellants should not constitute to be a part village estate and for this the appellants have to prove that its grant was expressed only in terms of acreage or cawnies etc. Unless this is shown exclusion from the Act cannot be gained. Looking back to the history of legislation of inam estates, the intention of legislature to encompass all inam estates within its folds and if small exclusion is made, the exclusion has to be read keeping with the intention of legislation. The exclusion cannot be read

by ipsi dipsi but only through clear and unimpeachable evidence. Legislature further makes it clear through sub-Section (9) of Section 2 of Act no. 30 of 1963 that it is only such area of grant which is not included within the purview of Act No. 26 of 1963 will constitute to be minor inam under Act No. 30 of 1963.

In the present case, the grant itself is not on the record which would have been the primary evidence to test appellant case through the provision of sub-clause (11) of Section 2. The parties reenclined to the collateral evidence and that too what is recorded in the case of Karunbavira Vanniar (supra) which is also of Thanjavur estate which also refers to the aforesaid two distinct sets of areas, namely, Mela and Kizha. The only question, as we have said, which arises is, whether either on the evidence led and the collateral evidence gathered from the aforesaid decision, could be it said, on the facts of this case that the grant as an inam of the disputed area was expressed only in terms of acreages or cawnies or other local equivalent.

Before we proceed to refer to the judgment in Karumbavira Vanniar (Supra), we herewith give short facts as recorded in the same judgment in respect of the estate of Raja of Tanjore. In the year 1799 Raja of Tanjor ceded its entire raj and reserved for himself the fort of Tanjor and about 190 villages which formed part of his private property. The last of the Rajas died in 1855. The East India Company then took over the aforesaid both the sets of properties. The heirs of Raja contested the right of the Company though were successful in the Supreme Court at Madras, but the Privy Council held that the validity of the confiscation could not be challenged in the Municipal Court. Thereafter on account of certain influential persons the British Government, as an act of grace granting 190 villages to the Rajas widow and they were compendiously referred to as Tanjore Palace Estate. Thereafter a full Bench decision in Sundaram Ayyar Vs. Ramachandra Ayyar, ILR 40 Mad. 389, held that this grant to the widow was a fresh grant and not a restoration of what had been taken away from heirs of the last Raja by the East India Company. The Full Bench also held the question whether it was an inam of an entire village or grant was of Melwaram or both melwaram and the kudiwaram has to be decided on the facts of each case. In T.R. Bhavani Shankar Joshi, 1962 (2) SCR 421, this Court while dealing with similar Tanjore Palace estate held that such a grant was a fresh grant. It held:

the act of State having made no distinction between the private and public properties of the Rajah the private properties were lost by that of State leaving no right outstanding in the existing claimants. The Government order was thus a fresh grant due to the bounty of the Government and not because of any antecedent rights in the grantees.

Some submissions were made on behalf of the learned counsel for the parties, in respect of the onus of proof. The submission was that the party seeking exclusion from the field of an Act by virtue of any provision for gain, the onus lies on such party to prove the same. Reliance was placed for the respondents in the case of Aluru Kondayya and Ors. Vs. Singaraju Rama Rao & Ors., AIR 1966 SC 681. However, this was a case under 1908 Act and was with reference to suit. The present case falls in terms of Rule 5 of the Tamil Nadu Inam (Supplementary) Rule, 1965, under

which a proceeding before the Settlement Officer is of a summary nature and is to be governed as far as possible by the provisions of CPC. We feel since the proceeding before the Settlement Officer as far as the present case is concerned is of summary in nature we would not like to put much emphasis on the burden of proof though primary burden still remains on the person seeking an exclusion from the Act who has to prove it. In the present case the appellants relied on a portion of finding and evidence as recorded in the Karumbavira Vanniar (Supra). The relevant portion are quoted hereunder:

This position is made clear from the Paimash accounts and the subsequent surveys. Mela Thattimal, which till 1919 formed part of Fajagiri village, covered as we said an extent of 276-21 acreas. In the Paimash accounts of the year 1829 the area was designated by Nos. 1272 to 1302. IN the survey of the year 1886 the area was represented by S.No. 11 of Rajagiri. - In the Land Register of the year 1919 the area was given Nos. 45 to 49 in the newly formed No.5 Arayapuram Thattimal Padugai. Under the Record of Rights Register, the corresponding numbers were S. Nos.57 to 62.

Now coming to Kizha Thattimal, which covered an area of 267-44 acres, they were represented Nos. 335 to 614 in the Paimash account of the Taraf village of Papanasam.

We fail to see how this portion helps the appellants. This portion refers only to Paimash account and subsequent survey of Mela, it records till 1919 it formed part of Rajagiri village. It no doubt records its extent to be of 26.21 acres. The question is as to when this area was measured, that is not recorded in the above passage. The said judgment does not reveal, whether the Paimash account and subsequent surveys referred to therein were of 1862 the year of grant. Unless the reference of the document first is established to be of the year of grant or refers to a fact as existed in the year of grant and that documents refer to the acreages, no inference in favour of the appellants could be drawn. The reference of paimash account or the subsequent survey referred does not indicate it to be of the year in question nor whether it refers to the acreage. There might have been surveys subsequent to the grant giving acreage but that would not help the appellants unless there is some document referred in the judgment of the year in question which fixes the acreage or a document which refers, what was acreage of the area is question in the year of grant, would not help the appellant to exclude the appellants from the purview of the Act No 26 of 1963. It cannot be based on possibilities, conjecture or inferences on this feeble evidence. The reference of the year 1829, on which great emphasis was made, only refers to paimash account of the area of Mela Thattimal which is shown to have been designated by numbers, namely, 1272 to 1302. The references there are of survey numbers not acreage. Similarly is the position for Kizha Thattimal, the acreage referred there is again not with any paimash account or survey for the relevant year in question. On this basis no inference even remotely could be drawn that the grant or inam of the disputed areas was only in terms of acreage or cawnies or of other local equivalent. In this case we find the Tribunal clearly recorded the finding that reference of

acreage in the said judgment in relation with Mela and Kizha could only have been from the compilations subsequent to the period of grant. This is a finding of fact which is confirmed by the High Court. This apart even we examined the same and find there is no evidence which merits interference in favour of the appellants. In T.R. Bhavani Shankar Joshi Vs. Somasundara Moopanar (Supra) this Court while dealing with the Tanjor Palace estate to which we are concerned also was faced with similar situation where evidence was lacking an inference almost to the same effect was drawn on the basis of meagre evidence. This Court recorded:

In view of this evidence, it is quite clear that the finding concurrently reached in the High Court and the two Court below is based on evidence. It was contended that this evidence is of modern times, and what is to be proved is the existence of an inam village in 1862, when the private properties of the Rajah were returned to his widows. There is no doubt that the evidence does not go to that early date, but the documents take it back to 1873, and there is nothing to show to the contrary. In this state of evidence we do not think that the High Court was in error in holding that this land is a part of an inam village, and has been so ever since 1862.

It is significant that the case of Karumbavira Vanniar (Supra) records that in the year 1929 there were two areas, namely, Mela and Kizha the former formed part of Rajagiri village later of Papanasam village. The question raised there and which was considered was, whether Arayapuram Thattimal Padugai was an inam estate within the meaning of estate under Section 3 (2)(d) of 1908 Act, further whether it was of entire village or was it merely of two parts of two different villages. It is in this context, the Court finally held the grant was of two separate bits of land lying in two different Taraft villages and that it was only in the year 1919 that they were amalgamated to from what is now known as No. 5 Arayapuram Thattimal Padugai village. Hence, the two different bits were held not an estate within the meaning of Section 3 (2)(d) of the 1908 Act. The finding recorded thus is that the area Mela and Kizha were parts of the village Rajagiri and Papanasam, respectively and once they are part of the village it would be covered within the definition of Section 2 (11) of the Act No. 26 of 1963. The Act No. 30 of 1963 clearly, while defining the meaning minor inam under sub- Section (9) of Section 2 excludes from its ambit by virtue of sub-clause (b) of this very Section what is covered by sub-clause (9) of Section 2 of Act No. 26 of 1963, a new inam estate as defined under clause (9) of Section 2 of Act No. 26 of 1963 is a part village inam estate. Since the aforesaid two bits of land is admittedly a part of the village and part village inam estate is defined under such clause (11) of Section 2, thus the area in question being part of two villages, it would be a new inam estate within the meaning of Section 2 (9) of Act No. 26 of 1963 and thus it cannot be exclused by virtue of clause (b) Explanation I of Section 2 (11) and thus it cannot be minor inam under Act No. 30 of 1963.

Lastly reliance for the appellants was placed in the decision of this Court in the P. Munian & Ors. Vs. State of Tamil Nadu & Anr., 1994 (1) SCC 643. In this case, the Court held that the area in question would fall within the ambit of sub-clause (b) of Explanation 1 to Section 11 of

the Act No. 26 of 1963. This case will render no help to the appellants. This case records there is concurrent finding of fact that the grant was in terms of acreages or cawnies. Once there is finding of fact that the grant was in terms of acreages or cawnies then there is no difficulty to hold such area to fall under clause (b) of Explanation 1 of Section 2 (11).

Hence, we come to an irresistible conclusion that the area both of Mela and Kizha since formed a part of the aforesaid two villages at the relevant time it would be a part village inam estate and on the evidence on the record it could not be held that its grant was in terms of acreages or cawnies etc. The learned senior counsel for the respondents also made alternative submission that even if it could be said that grant referred to the acreage also even then the appellants cannot succeed as exclusion from the provision of the Act by virtue of sub-clause (b) of Explanation 1 could only if the grant expresses it only in terms of acreages or cawnies etc. In the present case admittedly the description is by a definite name of the area, namely, Mela Thattimal Padugai and Kizha Thattimal Padugai, also by the survey numbers. Hence it cannot be said that the grant was only in terms of acreages or cawnies. We find merit in the said submission also.

For the aforesaid reasons and also in view of the findings recorded by both the Tribunal and the High Court concurrently that the grant could not be said to be only in terms of acreage. Hence the notification issued under Act No. 30 of 1963 was rightly held to be illegal. On the other hand the Settlement Officer findings to the contrary that it was a grant in terms of acreage was without proper appreciating the evidence and was based on no evidence, hence, was rightly set aside. We do not find it to be a fit case to interfere. Accordingly, both the appeals are dismissed. Costs on the parties.