

STATE OF TAMIL NADU ETC.

v.

RAMALINGA SAMIGAL MADAM ETC.

May 1, 1985

[V.D. TULZAPURKAR AND V. KHALID, JJ.]

Jurisdiction of the civil court when and under what circumstances barred — Civil Court's jurisdiction to determine the nature of the land in respect where of a Ryot has sought a Ryotwari Patta under section 11 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 is ousted or barred under section 64-C of that Act, read with section 3(16)(a), (b) and (c) of the Tamil Nadu Estate Lands Act.

Under the Tamil Nadu Estates' (Abolition and Conversion into Ryotwari) Act, 1948, estates of several Zamindars including the Sivaganga Estates and Ramnad Zamindari estates were abolished and vested with the Government. In Civil Appeal No. 474 of 1971, the respondent religious Math, in respect of the land admeasuring 3.55 acres being a portion of survey No. 114 obtained from the erstwhile Zamindar of Sivaganga under an (Order of Assignment (Ex. A-1) dated 29.1.1938 Kudi right (i.e. Right to cultivate), subject to the payment of a nominal nuzzur of Re. 1 per acre and an annual rent of Re. 1 per acre beside cesses and a Teervapat Cowle Patta issued in favour of its trustee Sutha Chaitnya Swamigal. After the abolition of the Zamindari estates, the religious Math applied on 25.11.53 for Ryotwari Patta in respect of the said land to the Assistant Settlement Officer, who, without reference to the respondent passed an order (Ex. B-4) on 25.6.54 that Survey No. 114 was not a ryoti land on the notified date but had been registered as Proromboke (village communal land) and, therefore, no one was entitled to Ryotwari Patta in respect of it. Aggrieved by the order, the respondent filed a Civil Suit O.S. No. 184 of 1959 in the Court of District Munsiff at Manamadurai for declaration of its title on the basis of its long and uninterrupted possession prior to 1938 as also under Ex. A-1 issued to it by the Zamindar and right to continue in possession and enjoyment of the suit land, subject to payment of Ryotwari or other cess to be imposed by Government without any interference from the Government. The appellant State resisted the suit on merits by contending that the suit land was communal land and that the assignment or grant by the Zamindar in favour of plaintiff-Madam was invalid as well as by raising a technical plea that the decision of the Additional Settlement Officer that the suit land was poromboke and not ryoti land was final and the Civil Court's jurisdiction to decide that question was barred under section 64-C of the Act.

The Trial Court as well as the Sub Judge in appeal accepted the respondent's case on merits by holding that the suit land was a ryoti land and that the assignment of Kudi right therein by the Zamindar in respondent's

A favour was valid and negating the technical plea of want of jurisdiction decreed the suit by granting the necessary declaration and injunction protecting respondent's possession and enjoyment of the suit land. In second appeal preferred by the State of Tamil Nadu to the High Court the plea of lack of jurisdiction in the light of section 64-C of the Act was referred to a Division Bench who negated the contention and dismissed the appeal. The Division Bench took the view that there was no provision under section 11 read with proviso to cl. (d) of section 3 of the Act for the ascertainment of the character of the land (whether it was ryoti land or communal land) and that the decision of the Settlement Officer whether the land is ryoti or not is an incidental one merely for the purpose of granting the Ryotwari Patta and Civil Court's jurisdiction to adjudicate upon the nature of the land when that aspect is specifically put in issue, is not taken away under section 64-C of the Act and that the respondent's suit was not for obtaining a ryotwari patta in its favour (which matter lay within the powers and jurisdiction of the Settlement Officer) but the suit was for injunction restraining the appellant from disturbing respondent's possession and enjoyment of the suit land on the basis of its title and long and uninterrupted possession and such relief the Civil Court could obviously grant.

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D In Civil Appeal No. 1633 of 1971 after an adverse order had been passed by the Settlement Officer to the effect that the land in question was neither a ryoti land in Ramnad Zamindari nor the private property of erstwhile Zamindar, the respondent filed a suit for declaration of their title to the suit land (based on a registered sale deed) and for injunction restraining the appellants from interfering with their possession. In that suit one of the issues raised pertained to the nature or character of the suit land, whether it was a ryoti land in the erstwhile Ramnad Zamindari which had been taken over under the Act or a Poromboke (communal property) and the plea was that the Civil Court had no jurisdiction to decide this question in view of section 64-C. The Trial Court held that the suit property was Poromboke property and dismissed the suit but in appeal preferred by the respondents the sub-Judge held that it was ryoti land and respondents' title and possession thereto had been proved but the suit was barred under section 64-C of the Act and on this basis he confirmed the dismissal of the suit. The High Court in second appeal accepted the findings of the 1st Appellate Court on merits of the respondents' claims and on the question of Civil Court's jurisdiction to adjudicate upon the real nature or character of the suit land following its Division Bench decision held that the Civil Court had jurisdiction to decide that question and allowed the appeal.

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G Dismissing the appeals, the Court

H HELD: 1. Whether a Civil Court's jurisdiction to adjudicate upon the nature and character of the land in question has been excluded or ousted under section 64-C of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 will have to be decided by reference to the principles laid down by the Supreme Court, as to when the exclusion of the Civil Court's jurisdiction can be inferred and in particular two out of seven propositions culled out in *Dhulabhai v. State of Madhya Pradesh*, [1968] 3 SCR 662. [737-H]

2.1 It is true that section 64-C of the Act gives finality to the orders passed by the Government or other authorities in respect of the matters to be determined by them under the Act and sub-section (2) thereof provides that no such orders shall be called in question in any court of law. Even so, such a provision by itself is not, having regard to the two propositions stated in *Dhulabhai's case* decisive on the point of ouster of the Civil Court's jurisdiction and several other aspects such as the scheme of the Act, adequacy and sufficiency of remedies provided by it etc., will have to be considered to ascertain the precise intendment of the Legislature. In between the two sets of provisions dealing with grant of Ryotwari Patta to a Ryot (section II) and the grant thereof to a land-holder (Section 12-15) there is a difference of vital significance, with the result that different considerations may arise while deciding the issue of the ouster of Civil Court's jurisdiction to adjudicate upon the true nature or character of the concerned land. Approaching the question from this angle it will be seen in the first place that section 64-C itself in terms provides that the finality to the orders passed by the authorities in respect of the matters to be determined by them under the Act is "for the purposes of this Act" and not generally nor for any other purpose. [77 E-H]

2.2 The main object and purpose of the Act is to abolish all the estates of the intermediaries like Zamindars, Inamdars, Jagirdars or under-tenure holders etc. and to convert all land-holdings in such estates into ryotwari settlements which operation in revenue parlance means conversion of alienated lands into non-alienated lands, that is to say, to deprive the intermediaries of their right to collect all the revenues in respect of such lands and vesting the same back in the Government. The enactment and its several provisions are thus intended to serve the revenue purpose of the Government, by way of securing to the Government its sovereign right to collect all the revenues from all the lands and to facilitate the recovery thereof by the Government and in that process, if necessary, to deal with claims of occupants of lands, nature of the lands, etc. only incidentally in a summary manner and that too for identifying and registering persons in the revenue records from whom such recovery of revenue is to be made. The object of granting a ryotwari patta is also to enable holder thereof to cultivate the land specified therein directly under the Government on payment to it of such assessment or cess that may be imposed on the land under section 16. [78A-D]

2.3 The expression "for the purposes of this Act" has been designedly used in the section which cannot be ignored but must be given cogent meaning and on a plain reading of the section which uses such expression it is clear that any order passed by the Settlement Officer either granting or refusing to grant a ryotwari patta to a ryot under section 11 of the Act must be regarded as having been passed to achieve the purposes of the Act, namely, revenue purposes, that is to say for fastening the liability on him to pay the assessment or other dues and to facilitate the recovery of such revenue from him by the Government; and therefore any decision impliedly rendered on the aspect of nature or character of the land on that occasion will have to be regarded as incidental to and merely for the purpose of passing the order of granting or refusing to grant the patta and for no other purpose. [78 E-G]

2.3 Secondly, the principle indicated in the second proposition enunciated in *Dhulabhai's case* requires that the statute: when it creates a special right or liability and provides for its determination, should also lay down that all questions about the said right or liability shall be determined by the Tribunal or authority constituted by it, suggesting thereby that if there is no such provision it will be difficult to infer ouster of the Civil Court's jurisdiction to adjudicate all other questions pertaining to such right or liability. Since from the notified date all the estate vests in the Government free from encumbrances all the lands lying in such estate including private land of land-holder and ryoti land cultivated by a ryot would vest in the Government and the Act could be said to be creating a new right in favour of a land-holder (re: his private lands) and a ryot (re: ryoti land) by granting a ryotwari patta to them under sections 12 to 15 and section 11 respectively, and the Act provides for determination of such right by the Settlement Officer. [78 H; 79 A-B]

2.5 However, it cannot be said that the Act also provides for determination of all questions about such right by the Settlement Officer. Unlike in the case of an application for a ryotwari patta by a land-holder under section 12, 13 or 14 where an inquiry into the nature or character of the land and the history thereof is expressly directed to be undertaken by virtue of section 15 in the case of an application for a ryotwari patta by a ryot under section 11 there is no express provision for any inquiry into the nature or character of the land before granting or refusing to grant such patta to the applicant. It is true that some inquiry is contemplated if section 11 is read with proviso to cl. (d) of section 3 but even then there is no provision directing inquiry for the ascertainment of the nature of the land, namely, whether it is a ryoti land or communal land but it is obvious that impliedly a decision on this aspect of the matter must be arrived at by the Settlement Officer before he passes his order on either granting or refusing to grant such patta. Obviously such decision rendered impliedly on this aspect of the matter will be an incidental one and arrived at in the summary manner only for the purpose of granting or refusing to grant the patta. A summary decision of this type in an inquiry conducted for revenue purposes cannot be regarded as final or conclusive so as to constitute a bar to a Civil Court's jurisdiction adjudicating upon the same issue arising in a suit for unjunction filed by a ryot on the basis of title and or long an uninterrupted possession. Since a fullfledged inquiry on the nature or character of land is provided for under section 15 in the case of an application by a land-holder the character of the Settlement Officer's decision on such issue may be different. [79 C-G]

2.6 Thirdly, having regard to the principle stated by the Supreme Court while enunciating the first proposition in *Dhulabhai's case* it is clear that even where the statute has given finality to the orders of the special tribunal the civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of Civil Court's jurisdiction. Since under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, the Settlement Officer has no power,

beyond the power to grant or refuse to grant the patta under section 11 read with section 3(d) of the Act on the materials placed before him, to do what Civil Court would normally do in a suit (like granting of injunction), ouster of Civil Court's jurisdiction cannot be implied simply because finality has been accorded to the Settlement Officer's order under section 64-C of the Act.

[79 H; 80 A-B; E]

Secretary of State v. Mask and Company, [1967] IA 222; and *Dhulabhai v. State of Madhya Pradesh*, [1968] 3 SCR 662 relied on.

M. Chayana v. K. Narayana, [1979] 3 SCR 201; and *O. Chenchulakshamma v. D. Subramanya*, [1980] 1 SCR 1006 discussed and distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 474 of 1971.

From the Judgment and Order dated 7.6. 1968 of the Madras High Court in Second Appeal No. 1149 of 1962.

WITH

Civil Appeal No. 1633 of 1971.

From the judgment and decree dated 17.6.69 of the Madras High Court in Second Appeal No. 1773 of 1964.

T.S. Krishnamurthy and *A.V. Rangam* for the appellant.

B. Parthasarthy for the Respondent in C.A. No. 4747/1.

Gopal Snbramanium and *Mrs. S. Balakrishnan* for the Respondent in C.A. No. 1633 of 1971.

The Judgment of the Court was delivered by

TULZAPURKAR, J. These appeals raise a common question of law for our determination, namely, whether a Civil Court's jurisdiction to determine the nature of the land in respect whereof a Ryot has sought a Ryotwari Patta under s. 11 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948 (for short the Act) is ousted or barred under s. 64-C of that Act ?

The material facts giving rise to the question in both the appeals are almost similar and therefore, it will suffice if facts obtaining in Civil Appeal No. 474 of 1971 are alluded to in details. In this case one Ramalinga Samigal Madam, a religious Math through its trustee Sutha Chaitnya Swamigal filed a suit (O.S.

A No. 184 of 1959) in the Court of District Munsiff at Manamadurai for declaration of its title to the suit land admeasuring 3.55 acres being a portion of Survey No. 114 and for an injunction restraining the State of Tamil Nadu (Defendant-Appellant) from interfering with its possession and enjoyment of the same. The Plaintiff-Madam claimed title to the suit land on the basis of its long and uninterrupted possession since prior to 1938 as also under an Order of

B Assignment (Ex. A-1) dated 29.1.1938 issued in its favour by the Zamindar of the erstwhile Sivaganga Estate whereby the Kudi right (i.e. right to cultivate) in that land was granted to it subject to the payment of a nominal nuzzur of Re. 1 per acre and an annual rent of Re. 1 per acre beside cesses and a Teervapat Cowle

C Patta was directed to be issued in favour of its trustee Sutha Chaithya Swamigal. It appears that the plaintiff-Madam applied on 25.11.1953 for a Ryotwari Patta in respect of this land after the abolition of the Sivaganga Estate under the Act and the Additional Settlement Officer merely informed the Plaintiff-Madam that its petition would receive consideration when s. 11 inquiry would be

D taken up. But subsequently, without reference to the Plaintiff-Madam the Additional Settlement Officer passed an order (Ex. B-4) on 25.6.1954 that Survey No. 114 was not a ryoti land on the notified date but had been registered as a Poromboke (village communal land and, therefore, no one was entitled to Ryotwari Patta in respect of it. Aggrieved by the order the Plaintiff-Madam

E filed the suit for a declaration of its title and right to continue in possession and enjoyment of the suit land, subject to payment of Ryotwari or other case to be imposed by Government without any interference from the Government. The State of Tamil Nadu resisted the suit on merits by contending that the suit land was

F communal land and that the assignment or grant by the Zamindar in favour of plaintiff-Madam was invalid a well as by raising a technical plea that the decision of the Additional Settlements Officer that the suit land was Pmorboke and not ryoti land was final and the Civil Court's jurisdiction to decide that question was barred under s.64-C of the Act. The Trial Court as well as the Sub

G Judge in appeal accepted the plaintiff's case on merits by holding that the suit land was a ryoti land and that the assignment of Kudi right therein by the Zamindar in plaintiff's favour was valid; the technical plea of jurisdiction was negatived and the suit was decreed by granting the necessary declaration and injunction protecting plaintiff's

H possession and enjoyment of the suit land. In second appeal preferred by the State of Tamil Nadu to the High Court the lower Courts' decision on the merits of the plaintiff's claim was not challenged but

the technical plea of the lack of jurisdiction on the part of the Civil Court in the light of s. 64-C of the Act was pressed. In view of the importance of the question the learned Single Judge referred the case to the Division Bench who negatived the contention and dismissed the appeal. The Division Bench took the view that there was no provision under s. 11 read with proviso cl. (d) of s. 3 of the Act for the ascertainment of the character of the land (whether it was ryoti land or communal land) and that the decision of Settlement Officer whether the land is ryoti or not is an incidental one merely for the purpose of granting the Ryotwari Patta and Civil Court's jurisdiction to adjudicate upon the nature of the land when that aspect is specifically put in issue, is not taken away under s. 64-C of the Act; and what is more the Division Bench further held that the plaintiff's suit was not for obtaining a ryotwari patta in its favour (which matter lay within the powers and jurisdiction of the Settlement Officer) but the suit was for injunction restraining the defendant from disturbing plaintiffs' possession and enjoyment of the suit land on the basis of its title and long and uninterrupted possession and such relief the Civil Court could obviously grant.

In the other matter (Civil Appeal No. 1633 of 1971) also, after an adverse order had been passed by the Settlement Officer to the effect that the land in question was neither a ryoti land in Ramnad Zamindari nor the private property of erstwhile Zamindar, the plaintiffs filed a suit for declaration of their title to the suit land (based on a registered sale deed) and for injunction restraining the defendants from interfering with their possession. In that suit one of the issues raised pertained to the nature or character of the suit land, whether it was a ryoti land in the erstwhile Ramnad Zamindari which had been taken over under the Act or a Poromboke (communal property) and the plea was that the Civil Court had no jurisdiction to decide this question in view of s. 64-C. The Trial Court held that the suit property was Poromboke property and dismissed the suit but in appeal preferred by the plaintiffs the Sub-Judge held that it was ryoti land and plaintiffs' title and possession thereto had been proved but the suit was barred under s. 64-C of the Act and on this basis he confirmed the dismissal of the suit. The High Court in second appeal accepted the findings of the 1st Appellate Court on merits of the plaintiffs' claim and on the question of Civil Court's jurisdiction to adjudicate upon the real nature or character of the suit land it followed the Division Bench decision in the earlier matter and held that the Civil Court had jurisdiction to decide that question and allowed the appeal.

A In the instant appeals before us the State of Tamil Nadu has challenged the aforesaid view of the High Court.

B Counsel for the appellants in both the appeals has relied upon s. 64-C of the Act and s. 11 of the Act read with the definition of the 'ryoti land' given in s. 3 (16)(a)(b) and (c) of the Tamil Nadu Estate Lands Act, 1908 for the purpose of contending that an order passed by the Settlement Officer in an enquiry under s. 11 of the Act to the effect that the land in question is not ryoti land but Poromboke property (communal land) and therefore no ryotwari patta could be issued in respect thereof to the applicant has been given finality under s. 64-C of the Act and the same cannot be questioned in any court of law and therefore the Civil Court's jurisdiction to adjudicate upon the nature or character of the land must be regarded as having been ousted or excluded by the Legislature. In order to appreciate this contention it will be necessary to set out the relevant provisions on which the reliance has been placed by the Counsel for appellants. Section 64-C of the Act runs thus:

D "64-C. *Finality of orders passed under this Act.*—

E (1) Any order passed by the Government or other authority under this Act in respect of matters to be determined for the purpose of this Act shall, subject only to any appeal or revision provided by or under this Act, be final.

(2) No such order shall be liable to be questioned in any Court of law."

Section 11 so far as is material runs thus:

F "11. *Lands in which ryot is entitled to ryotwari patta.*—Every ryoti in an estate shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of—

G (a) all ryoti lands which, immediately before the notified date, were properly included or ought to have been properly included in his holding and which are not either lanka lands or lands in respect of which a landholder or some other person is entitled to a ryotwari patta under any other provision of this Act; and

H (b)"

It is thus clear that before a ryotwari patta can be had under s. 11 (a) two conditions must be satisfied (a) the applicant must be a "ryot" in an estate and (b) the land in respect of which the patta is sought must be "ryoti land". The expression 'estate' has been defined in s. 2(3) of the Act to mean—a 'Zamindari' or an under-tenure or an inam estate. But the expressions 'ryot' and 'ryoti land' have not been defined in the Act but their definitions given in s. 3 of the Tamil Nadu Estate Lands Act, 1908 have been adopted for the purpose of the Act. Section 3(15) of the T. N. Estate Lands Act, 1908 defines 'ryot' thus:

'Ryot' means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.

Section 3 (16) defines 'Ryoti land' thus:

'Ryoti land' means cultivable lan in an estate other than private land but does not include—

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

(b) threshing-floor, cattle-stands, village-sites, and other lands situated in any estate which are set apart for the common use of the villagers;

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

The definition of ryoti land given above clearly shows that it means cultivable land in an estate other than private land but it also excludes Porombokes or village communal lands under cl. (b). It is thus clear that any cultivable land in an estate will not be 'ryoti land' if it falls under cl. (b).

Relying upon the aforesaid provisions Counsel for the appellants urged before us that every refusal of a ryotwari patta by a Settlement Officer in an inquiry under s. 11 involves a decision on his part that either the applicant is not a ryot or the land is not ryoti land; in the instant cases it was the latter and such decision on the nature or character of the land has been given a finality

A under s.64-C which cannot be questioned in a Court of law and therefore the Civil Court's jurisdiction to adjudicate upon the nature or character of the suit lands must be held to have been excluded or ousted. Counsel therefore urged that the High Court's view deserves to be quashed.

B On the other hand Counsel for the respondents contended that it is well settled that exclusion of Civil Court's jurisdiction is not to be readily inferred and has to be provided for in express terms or by necessary implication. Counsel urged that there is no express exclusion and if regard is had to the scheme of the Act, particularly the provisions dealing with the grant of ryotwari patta to a Zamindar or landholder under ss. 12-15 in contrast with the grant thereof to a ryot under s. 11 it will appear clear that qua the former there may be such exclusion of Civil Court's jurisdiction but qua the latter none is intended. Counsel also urged us to accept the view taken by the High Court on the point.

D The principles bearing on the question as to when exclusion of the Civil Court's jurisdiction can be inferred have been indicated in several judicial pronouncements but we need refer to only two decisions. In *Secretary of State v. Mask and Company*,⁽¹⁾ the Privy Council at page 236 of the Report has observed thus :

E "It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

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G In *Dhulabhai v. State of Madhya Pradesh*⁽²⁾ Hidayatullah, C. J., speaking for the Court, on an analysis of the various decisions cited before the Court expressing diverse views, culled out as many as 7 propositions; out of them the first two which are material for our purposes are these :

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(1) [1967] I.A. 222.

(2) [1968] 3 S.C.R. 662.

“(1) Where the statute gives a finality to the orders of the special tribunal the civil courts’ jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

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

It is obvious that the question raised before us whether the civil court’s jurisdiction to adjudicate upon the nature or character of the land in question has been excluded or ousted will have to be decided by reference to these principles. It was fairly conceded by Counsel for the appellants that there is nothing in the Act which expressly bars the civil court’s jurisdiction but such exclusion has to be inferred by clear implication in view of s.64—C which accords finality to any order that may be passed by the Government or other authority under the Act in respect of matters to be determined for the purposes of the Act, subject only to any appeal or revision provided by or under the Act and also because the section goes on to provide that no such order shall be liable to be questioned in any court of law. Therefore, an examination of the scheme of the Act and the relevant provisions thereof including s. 64—C becomes necessary

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A before such exclusion of civil court's jurisdiction by necessary implication can be inferred.

B The Act, as its Preamble indicates was put on the statute book with a view "to provide for the repeal of the Permanent Settlement, the acquisition of the rights of the land-holders in permanently settled and certain other estates in the State of Tamil Nadu and the introduction of the ryotwari settlement in such estates"; in other words the avowed object or purpose of the Act was to repeal the permanent settlement and acquire the rights of the land-holders i.e. all intermediaries like Zamindars, Jagirdars, under-tenure holders etc. on payment of compensation and convert the land holdings in such estates into Ryotwari settlements. Section 3, which seeks to abolish all the estates under the Permanent Settlement, provides that with effect on and from the notified date (which in relation to an estate means the date on which the provision of the Act shall come into force in that estate) the entire estate (including all communal lands, porombokes, other non-ryoti lands, waste lands, pasture lands, lanka lands, forest mines and minerals, quarries, rivers and streams, tanks, ooranies (including private tanks and ooranies) and irrigation works, fisheries and ferries shall stand transferred to the Government and vest in them free from all encumbrances and the T.N. Revenue Recovery Act, 1864 and the T.N. Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate; and under s. 3(d) Government has been given the right to take possession forthwith of such estate. However such vesting of the entire estate in the Government on and from the notified date and the Government's right to recover possession thereof are qualified by the proviso thereto whereunder the possession (occupancy right) of a ryot in ryoti land and of a land-holder of his private land in the estate is protected. Section 3(d) together with the proviso is material and it runs thus :

G "3(d) The Government may, after removing any obstruction that may be offered forthwith take possession of the estate, and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to the estate which the Government may require for the administration thereof :

H Provided that the Government shall not dispossess any person of any land in the estate in respect of which

they consider that he is prima facie entitled to a ryotwari patta—

- (i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta;
- (ii) if such person is land-holder, pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta."

The topic of grant of ryotwari patta to a ryot in respect of ryoti land in an estate and to a land-holder in respect of his private lands in such estate is dealt with by ss. 11 and 12 to 15. Section 11 which deals with the grant of a Ryotwari Patta to a Ryot in ryoti land, in so far as is material, has already been quoted above. Sections 12, 13 and 14 deal with the grant of a Ryotwari Patta to a land-holder in respect of his private lands in Zamindari estate, inami estate, and under-tenure estate respectively and s. 15 which follows upon ss. 12, 13 and 14 and deals with the aspect of determination the nature of character of the lands in which the land-holder is to be granted ryotwari patta is very material and it runs thus :

"15 Determination of lands in which the land-holder is entitled to ryotwari patta under foregoing provisions.—

(1) The Settlement Officer shall examine the nature and history of all lands in respect of which the landholder claims a ryotwari patta under section 12, 13 or 14 as the case may be, and decide in respect of which lands the claim should be allowed.

(2)(a) Against a decision of the Settlement Officer under sub-section (1), the Government may, within one year from the commencement of the Tamil Nadu Estates (Abolition and Conversion) into Ryotwari) Amendment Act, 1954, or from the date of the decision, whichever is later; and any person aggrieved by such decision may, within two months from the said date, appeal to the Tribunal.

Provided that the Tribunal may, in its discretion, allow further time not exceeding six months for the filing of any such appeal :

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Provided further that the Tribunal may, in its discretion, entertain, an appeal by the Government at any time if it appears to the Tribunal that the decision of the Settlement Officer was vitiated by fraud or by the mistake of fact.

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(b) The decision of the Tribunal on any such appeal shall be final and not be liable to be questioned in any Court of Law.”

Section 16 deals with the liability to pay assessment, etc. for lands held under Ryotwari Pattas to the Government and it runs thus :

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“16. *Liability to pay assessment, etc. to Government.*—(1) Every person, whether a land-holder or a ryot, who becomes entitled to a ryotwari patta under this Act in respect of any land shall (for each fasli year commencing with the falsi year in which the estate is notified) be liable to pay to the Government such assessment, as may be lawfully imposed on the land.

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(2) If in respect of any such land, the ryot was liable immediately before the notified date to make any payment to the landholder otherwise than by way of rent, whether periodically or not, the ryot shall continue to make such payments as accrue on or after that to the Government.”

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It will be seen that elaborate provisions have been made in the enactment to carry out the main objective and other purposes of the Act and ss. 4 to 8 deal with constituting authorities like Tribunals and Board of Revenue and appointing various officers such as a Director of Settlement Officers and Managers of Estates etc. to carry out functions and duties assigned to them under the Act. It will be pertinent to observe that in between the provisions dealing with grant of Ryotwari Patta to a Ryot (section 11) and the grant thereof to a land-holder (ss. 12 to 15) there is a difference of vital significance; whereas in the case of an application for a Ryotwari Patta by a land-holder under s. 12, 13 or 14, s. 15 in terms enjoins a duty upon the Settlement Officer to examine the nature and character of the land and history thereof and then decide whether the claim of the land-holder should be allowed or not, in the case of an application for a ryotwari patta by a ryot under s. 11 there is no similar

express provision for any inquiry into the nature or character of the land before granting or refusing to grant such patta to the applicant. Even if s. 11 is read with the proviso to cl. (d) of s. 3, whereunder some inquiry is contemplated before granting a Ryotwari Patta to a ryot there is no provision directing an inquiry for the ascertainment of the character of the land, namely, whether it is ryoti land or communal land and the Settlement Officer's decision on this aspect will be incidental to and impliedly rendered only for the purpose of granting or refusing to grant the Ryotwari Patta. There is also this further difference that the Settlement Officer's decision on the nature or character of the land under s. 15 is subject to a regular appeal to the Tribunal under sub-s. (2) thereof while the Settlement Officer's decision to grant or refuse to grant a Patta to a ryot under s. 11 is subject to be revised by the Director of Settlement under s. 5(2) as also by the Board of Revenue under s. 7(c) and the relevant Rules in that behalf and the decision of the Director of Settlement in revision is further revisable by the Board of Revenue under s. 7(d) of the Act. Then comes s. 64-C which accords finality to the orders passed by the Government or other authorities under the Act which we have earlier quoted in extenso.

Now turning to the question raised in these appeals for our determination (it is true that s. 64-C of the Act gives finality to the orders passed by the Government or other authorities in respect of the matters to be determined by them under the Act and sub-s. (2) thereof provides that no such orders shall be called in question in any court of law. Even so, such a provision by itself is not, having regard to the two propositions quoted above from *Dhulabhai's case* (supra), decisive on the point of ouster of the Civil Court's jurisdiction and several other aspects like the scheme of the Act, adequacy and sufficiency of remedies provided by it etc., will have to be considered to ascertain the precise intendment of the Legislature. Further, having regard to the vital difference indicated above, in between the two sets of provisions dealing with grant of ryotwari pattas to landholders on the one hand and ryots on the other different considerations may arise while deciding the issue of the ouster of Civil Court's jurisdiction to adjudicate upon the true nature of character of the concerned land. Approaching the question from this angle it will be seen in the first place that s. 64-C itself in terms provides that the finality to the orders passed by the authorities in respect of the matters to be determined by them under the Act is "for the purposes of this Act" and not generally nor for any other purpose.

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A As stated earlier the main object and purpose of the Act is to abolish all the estates of the intermediaries like Zamindars, Inamdars, Jagirdars or under-tenure holders etc. and to convert all land-holdings in such estates into ryotwari settlements which operation in revenue parlance means conversion of alienated lands into non-alienated lands, that is to say, to deprive the intermediaries of their right to collect all the revenues in respect of such lands and vesting the same back in the Government. The enactment and its several provisions are thus intended to serve the revenue purposes of the Government, by way of securing to the Government its sovereign right to collect all the revenues from all the lands and to facilitate the recovery thereof by the Government and in that process, if necessary, to deal with claims of occupants of lands, nature of the lands, etc. only incidentally in a summary manner and that too for identifying and registering persons in the revenue records from whom such recovery of revenue is to be made. The object of granting a ryotwari patta is also to enable holder thereof to cultivate the land specified therein directly under the Government on payment to it of such assessment or cess, that may be lawfully imposed on the land. Section 16 is very clear in this behalf which imposes the liability to pay such ryotwari or other assessment imposed upon the land to the Government by the patta-holder. The expression "for the purposes of this Act" has been designedly used in the section which cannot be ignored but must be given cogent meaning and on a plain reading of the section which uses such expression it is clear that any order passed by the Settlement Officer either granting or refusing to grant a ryotwari patta to a ryot under s. 11 of the Act must be regarded as having been passed to achieve the purposes of the Act, namely, revenue purposes, that is to say for fastening the liability on him to pay the assessment or other dues and to facilitate the recovery of such revenue from him by the Government; and therefore any decision impliedly rendered on the aspect of nature or character of the land on that occasion will have to be regarded as incidental to and merely for the purpose of passing the order of granting or refusing to grant the patta and for no other purpose.

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H Secondly, the principle indicated in the second proposition enunciated in *Dhulabhai's case* (supra) requires that the statute, when it creates a special right or liability and provides for its determination, should also lay down that all questions about the said right or liability shall be determined by the Tribunal or authority constituted by it, suggesting thereby that if there is no such provision

it will be difficult to infer ouster of the Civil Court's jurisdiction to adjudicate all other questions pertaining to such right or liability. Since from the notified date all the estate vests in the Government free from encumbrances) it must be held that (all the lands lying in such estate including private land of land-holder and ryoti land cultivated by a ryot would vest in the Government and the Act could be said to be creating a new right in favour of a land-holder (re: his private lands) and a ryot (re: ryoti land) by granting a ryotwari patta to them under ss. 12 to 15 and s. 11 respectively, and the Act provides for determination of such right by the Settlement Officer. Question is whether the Act also provides for determination of all questions about such right by the Settlement Officer? On this aspect, as has been indicated earlier (unlike in the case of an application for a ryotwari patta by a land-holder under s. 12, 13 or 14 where an inquiry into the nature or character of the land and the history thereof is expressly directed to be undertaken by virtue of s. 15 in the case of an application for a ryotwari patta by a ryot under s. 11 there is no express provision for any inquiry into the nature or character of the land before granting or refusing to grant such patta to the applicant. It is true that some inquiry is contemplated if s. 11 is read with proviso to cl. (d) of s. 3 but even then there is no provision directing inquiry for the ascertainment of the nature of the land, namely, whether it is a ryoti land or communal land but it is obvious that impliedly a decision on this aspect of the matter must be arrived at the Settlement Officer before he passes his order on either granting or refusing to grant such patta. Obviously such decision rendered impliedly on this aspect of the matter will be an incidental one and arrived at in the summary manner only for the purpose of granting or refusing to grant the patta. A summary decision of this type in an inquiry conducted for revenue purposes cannot be regarded as final or conclusive so as to constitute a bar to a Civil Court's jurisdiction adjudicating upon the same issue arising in a suit for injunction filed by a ryot on the basis of title and/or long and uninterrupted possession. Since a fullfledged inquiry on the nature or character of land is provided for under s. 15 in the case of an application by a land-holder the character of the Settlement Officer's decision on such issue may be different but that question is not before us.

Thirdly, having regard to the principle stated by this Court while enunciating the first proposition in *Dhulabhai's* case (supra) it is clear that even where the statute has given finality to the orders

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A of the special tribunal the civil court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the civil court would normally do in a suit. In other words, even where

B finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of Civil Court's jurisdiction. Now take the case of an applicant who has applied for a ryotwari patta under s. 11 staking his claim thereto on the basis of his long and uninterrupted possession of the ryoti land but the Settlement Officer on materials before him is not satisfied that the land in question is ryoti land; in that case he will refuse the patta to the applicant. But can he, even after the refusal of the patta, protect the applicant's long and uninterrupted possession against the Government's interference? Obviously, he cannot, for it lies within his power and jurisdiction merely to grant or refuse to grant the patta on the basis of materials placed before him. But such a person even after the refusal of the ryotwari patta would be entitled to protect his possessory title and long enjoyment of the land and seek an injunction preventing Government's interference otherwise than in due course of law and surely before granting such relief the Civil Court may have to adjudicate upon the real nature of character of the land if the same is put in issue. In other words since the Settlement Officer has no power to do what Civil Court would normally do in a suit it is difficult to imply ouster of Civil Court's jurisdiction simply because finality has been accorded to the Settlement Officer's order under s. 64-C of the Act.

F Counsel for the appellants invited our attention to two decisions of this Court one in *M. Chayana v. K. Narayana*,⁽¹⁾ under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948 and the other in *O. Chenchulakshamma v. D. Subramanya*⁽²⁾ under the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948. It may be stated that both the enactments (the A.P. Act as well as the Madras Act) contain substantially identical provisions and in particular s. 56 with which the Court was concerned in the two cases is in identical language. Sub-section (1) of sec. 56 provides that "whereafter an estate is notified, a dispute arises as to (a) whether any rent due from a ryot for any Fasil

(1) [1979] 3 S.C.R. 201.

(2) [1980] 1 S.C.R. 1006.

year is in arrear or (b) what amount of rent is in arrear or (c) who the lawful ryot in respect of any holding is, the dispute shall be decided by the Settlement Officer". Sub-sec. (2) provides for an appeal to the tribunal against the decision of the Settlement Officer and the tribunal's decision in appeal has been rendered final and not liable to be questioned in a Court of law. In both the cases this Court has taken the view that a dispute between two rival claimants as to who is the lawful ryot entitled to the patta of the holding in question had been exclusively left to the determination of the Settlement Officer under that provision and since finality has been accorded to such determination which is not liable to be called in question in any Court of law the Civil Court's jurisdiction to adjudicate upon such dispute has been excluded. Relying upon these decisions, counsel for the appellant urged before us that the civil court's jurisdiction to adjudicate upon the issue of real nature or character of the land should be held to have been excluded under s. 64-C of the Act which also accords finality to the Settlement Officer's order refusing to grant the ryotwari patta to a ryot under s. 11 of the Act on the ground that the land in question is not ryoti land. It is not possible to accept this contention for the two decisions are clearly distinguishable. In the first place s. 56 with which the Court was concerned in those cases does not contain the words "for the purposes of the Act" which occur in s. 64-C; and presumably in view of the absence of those words in the section this Court in *M. Chayana's case* observed that there was no warrant for taking the view that the Settlement Officer's decision under s. 56 (1) (c) on the question as to who was the lawful ryot of holding was only for the purpose of indentifying the person liable to pay the arrear of rent. Secondly under s. 56 (1)(c) the Settlement Officer is expressly required to make an inquiry into and decide the question as to who is a lawful ryot of the holding between two rival claimants whereas as stated earlier there is no express provision directing an inquiry into the question of the real nature or character of the land while considering a ryot's application for a patta under s. 11 read with the proviso to s. 3(d). In other words, the two provisions are dis-similar. Moreover, it may be pointed out that so far as the Madras Act is concerned by Madras Act 34 of 1958 s. 56 itself has been repealed with effect from 27th December 1958 and s. 9(2) of the repealing Act (No. 34 of 1958) has gone on to provide that all proceeding pending before the Settlement Officer or Tribunal under that section shall abate. As a result of such repeal the Madras High Court in two decisions, *Krishna Swami Thevar's case*⁽¹⁾ and *A.R. Sanjeevi Naicker's*⁽²⁾

(1) [1961] 1 M.L.J. 168.

(2) [1965] 2 M.L.J. 204.

A *case* has held that now there is no machinery available under the Madras Act to have a determination of the dispute between two rival claimants regarding their title as to who would be entitled to the patta and s. 11 does not contain machinery for deciding disputed questions of title. Whatever be the position in regard to dispute concerning rival claims or titles, the ratio of the two decisions of this Court on which counsel placed reliance is inapplicable to the issue raised in these appeals for our determination.

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Having regard to the above discussion we confirm the High Court's view that the Civil Court's jurisdiction to adjudicate on the real nature of the land is not ousted under s. 64-C by reason of the Settlement Officer's decision to grant or refuse to grant a patta under s. 11 read with the proviso to s. 3(d) of the Act. The appeals are, therefore, dismissed but with no costs.

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S.R.

Appeals dismissed.