(1976) 11 MAD CK 0044

Madras High Court

Case No: S.T.A. 174, 181 and 210 of 1974

The Karivaradaraja Perumal Temple at Pollachi		APPELLANT
	Vs	
K.S.J. Raju Chettiar and other		RESPONDENT

Date of Decision: Nov. 9, 1976

Acts Referred:

- Limitation Act, 1963 - Section 27, 28

Citation: (1978) ILR (Mad) 276

Hon'ble Judges: Kailasam, C.J; Balasubrahmanyan, J

Bench: Division Bench

Advocate: A. Ramanathan for M/s. E. Padhmanabhan and M. Venkatachalapathi, for the Appellant; M.R. Narayanaswami for M/s Raj and Raj and the Addl. Govt. Pleader, for the Respondent

Judgement

Balasubrahmanyan, J.

These three appeals have been brought before us under S. 30 of Tamil Nadu Act 30 of 1963. Sri Varadarajaperumal temple of Pollachi, by its managing trustee is the appellant in all these appeals. The temple was the grantee of a minor inam comprising lands bearing O.S. No. 173 and 175 of the total extent of 19-58 acres in Pollachi village. The grant was made by the Poligar of Ramapatnam. The terms of the original grant are not available, but the inam fair register shows that it was a devadayam religious inam of a permanent character given rent-free for the support of the temple. The inam was confirmed in the year 1863 under title deed No. 161. On the abolition of the minor inam under Tamil Nadu Act 3 of 1963, the Settlement Tahsildar No. II, Gobichettipalayam, initiated an enquiry for the purpose of issue of ryotwari patta. The respondents 1 and 2 in S.T.A. 174 of 1974 were in possession of 4 ac., 2700 sq. ft. in T.S. No. 256/3. The 1st respondent in S.T.A. 181 and 210 of 1974 was in possession of T.S. 254/20 of the extent of O. 25345 sq. ft. and T.S. No. 256/7 of the extent of 2 ac. 24115 sq. ft. All of them appeared before the Settlement

Tahsildar and asked for ryotwari patta to be issued in their favour in regard to the lands in their respective possession. They claimed that the temple had lost possession of the inam lands soon after the grant. According to them, the lands were alienated by one Poosari Thirumalai Ayyan, person in whose name the Inam Commissioner had conferred the grant. No sale deed by this individual was, however, produced by the respondents before the Settlement Tahsildar at the time of the enquiry. Instead, they produced a partition deed, dated 17th February 1888 between three members of a joint family, by name Kuppanna Mudaliar, Marianna Mudaliar and Lakshmana Mudaliar. These individuals were grandsons of one Kuppanna Mudaliar. The recitals in the partition deed were relied on by the respondents to show that long prior to the partition in the year 1888, the family of Kuppanna Mudaliar had been in exclusive possession and enjoyment of the inam lands. The respondents also produced a number of subsequent documents to show how they and their predecessors-in-title had purchased portion of the lands from the dividing members (sic) of whom they were allotted under the partition deed. The Settlement Tahsildar held that the partition deed relied on by the respondents could, by no means, be regarded as a sale by the inamdar of the temple in question. Nevertheless, taking note of the subsequent sale deeds under which the respondents traced their title to the respective town survey numbers and taking note of the fact that after purchase they were in continuous possession of the lands for more than 12 years before 1st April 1960, the Settlement Tahsildar proceeded to issue ryotwari patta to the respondents purporting to do so under S. 8(2) (i) (b) of the Act, subject to the terms and conditions contained therein. The record shows that before the Settlement Tahsildar, the respondents had agreed to pay the Government 20 times the excess of the fair rent for the lands over the land revenue, as a condition of obtaining ryotwari patta. Nevertheless ,they appealed against the Settlement Tahsildar''s order, objecting to the stipulation that they should pay compensation to the Government. They urged that they were entitled to the grant of ryotwari patta without any strings attached. They put their claim under S. 8(1) of the Act contending that the temple had no title to the melwaran interest and they alone were rightfully entitled to the kudiwaram interest, and consequently, to the issue of ryotwari patta on the abolition of the minor inam. The minor Inams Tribunal (Principal Subordinate Judge, Coimbatore) held that the grant in favour of the temple was not an iruvaram inam. It gave three reasons. In the first place, it relied on the circumstance that the inam to the temple was granted by a Poligar who himself, in all probability, possessed only a melwaram interest in the lands. Secondly, it took note of the recitals in the partition deed of 1888 to show that Kuppanna Mudaliar and his ancestors had been enjoying the lands. Lastly, the Inam Fair Register referred to some boris deductions in 1926 and 1927 of a portion of the inam lands which were compulsorily acquired by the Government for public purposes. The Tribunal accordingly allowed the respondent''s appeals, modifying the order of the Settlement Tahsildar and directing the patta to be granted to the respondents under S. 8(1) of the Act.

2. In the appeals before us filed by the temple against the decision of the Tribunal Mr. A. Ramanathan, arguing for the temple, relied first and foremost, on S. 44 of the Act and contended that the Tribunal had overlooked the presumption that the grant in favour of the temple should be held to have included not merely the melwaram in the land but also the kudiwaram. Learned counsel urged that the Tribunal was not justified in taking the view that the grant was of melwaram alone, merely from the circumstance that it was granted by a poligar. Even the other two circumstances relied on by the Tribunal were not, according to learned counsel, enough to displace the statutory presumption in favour of the temple under S. 44.

3. Mr. M.R. Narayanaswami, appearing for the respondents, did not seek to support the order under appeal on any of the reasons that weighed with the Tribunal. He took somewhat novel position to urge that even assuming that the original grant to the temple was an iruwaram inam, yet the respondents and their predecessors-in-interest must be held to have acquired title to the kudiwaram interest by prescription. He referred to the documents in the case, including the earliest partition deed as furnishing evidence to show that the lands had not been in the possession of the temple at all even prior to 1888 and that they were under exclusive and uninterrupted possession of the respondents. On this basis, learned counsel urged that the respondents were entitled to ryotwari patta under S.8(1) of the Act. He referred in this connection to a decision of a Division Bench of this court in Bhagavathi Amman temple v. Krishna Gounder 1949-2-M.L.J. 609. The inam which figured in that case was a sarvadambala inam. At the time of the inam confirmation, the said lands were under tenants. They had been let into possession by the pujari on a kandayam basis. The question before the Bench was whether the tenant owned the kudiwaram interest in the lands. On a construction of the inam statement and the extract from the Inam. Fair Register the Bench held that the original grant to the temple was of the land itself and not merely of the melwaram interest therein. The tenants in occupation, however, had put forward an alternative case to the effect that they had prescribed title to the kudiwaram interest against the temple by being in continuous and uninterrupted possession and by asserting absolute ownership thereof as against the temple. On behalf of the temple, however, it was contended that an assertion of animus pertinent to the absolute ownership of the land may not be relevant for prescribing title by adverse possession in regard to kudiwaram interest alone. The Bench rejected this contention of the temple on the broad ground that even persons prescribing title by adverse possession to kudiwaram interest alone were apt to describe their title in their documents as absolute. On the question of onus, the Bench observed that it was for the tenants to establish that they had acquired title to the kudiwaram by prescriptive possession. On the facts before them, the Bench held that the tenants had sufficiently discharged that burden.

4. Mr. Narayanaswami heavly relied on the above decision and urged that as in the case before the Division Bench, so too in the present case, there was evidence of

continuous and uninterrupted possession by the respondents on the basis of which it must be held that they had prescribed title as against the temple in regard to the kudiwaram interest. We are unable to agree with Mr. Narayanaswami''s contentions. The decision of this court in Bhagavathiamman temple v. Krishna Gounder 1949-2-M.L.J. 609, it may be pointed out, was rendered at a time when, in a case where the court did not have to deal with a statute like the Tamilnadu (Abolition of Minor Inams and Conversion into Ryotwari) Act, 1963. But, sitting as an appellate Tribunal constituted under the Act, we are bound to render a decision in accordance with its provisions. Besides, the case before us fairly calls for their interpretation and application. What is more, as respects the matters covered by the Act, it must be held to be a complete and exclusive code in itself. Indeed, S.3(a) of the Act enacts, in so many words, that with effect from the appointed day all previous enactments applicable to minor inams be deemed to have been repealed. The same section under Cl.(c) further declares that the inamdar and any other person whose rights stand transferred under the Act shall be entitled only to such rights and privileges as are conferred or recognised by the Act. Chapter III of the Act deals with the issue of ryotwari patta on the abolition of the minor inams. S.8(1) enacts a general rule to the effect that ryotwari patta shall issue to the person who, immediately before the abolition of the minor inam, was entitled to the kudiwaram. S.8(2) enacts a set of special provisions, especially intended for grant of ryotwari patta in regard to iruwaram religious inams granted for the support of religious institutions. The normal rule in the case of such iruwaram religious inams would seem to be to grant the patta to the religious institution itself. But, there is an exception to this rule, and it operates in cases where the institution concerned has parted with both title and possession by way of sale. These exceptional cases are further subdivided into two categories. To the first category belongs a case where the land has been sold by the religious institution and the purchaser of his successor-in-interest has been holding and possessing the same for more than 12 years continuously, although not for more than 60 years, from 1st April, 1960. In such a case, the purchaser or his successor-in-interest shall be entitled to ryotwari patta for the land, subject to the condition that he pays the Government an amount equal to 20 times the excess of the fair rent over the land revenue actually payable. Where, however, the purchaser has purchased an iruwaram inam land from a religious institution more than 60 years before 1st April, 1960 and he and his successors-in-interest have been in possession of the same for a continuous period of 60 years from such date, then the purchaser or his successor-in-interest shall be absolutely entitled to ryotwari patta without being required to make any payment therefore to the Government. This is the second category of exception under S.8(1) of the Act.

5. In view of the special statutory scheme outlined above for grant of ryotwari patta in regard to iruwaram lands of religious minor inams, it would be a misapplication of the doctrine of precedents to seek to decide the present case calling for the interpretation and application of those statutory provisions on the basis of any

decision laid down by courts of co-ordinate jurisdiction or even by higher authority on the law as it stood before the statute came into force. We, therefore, do not regard Bhagawathiamman Temple v. Krishna Gounder 1949-2-M.L.J. 609 as in any way binding on us in the determination of the question before us in this case.

6. The matter will, therefore, have to be decided by us strictly within the four corners of the Act. Before the Tribunal, although not before the Settlement Tahsildar, the respondents put their case squarely under S.8(1). They claimed that S. 8(2) did not apply to the case. That was because, according to them, the grant in favour of the temple was of the melwaram alone. Although the Tribunal persuaded itself to accept this contention and record a finding to that effect, we are satisfied that the reasonings on which the Tribunal''s decision are founded are Untenable. We do not accept the Tribunal''s view that the grant to the temple, being a grant from a Poligar, could only have been of the melwaram. This is based on a general assumption that poligars, as a class and without exception, did not possess both the warams in the lands which they held, an assumption for which no basis in law or history has been placed before us. Nor was the Tribunal right in treating the partition deed entered into between the respondent''s predecessors-in-interest as providing evidence of the terms of the original grant, in the absence of the original inam grant. We must also reject the other reasoning of the Tribunal based on certain boris deductions (sic) entered in the register by reason of the Government''s acquisition of a portion of the lands in question. We, therefore, have no hesitation in rejecting the Tribunal''s conclusion that the grant in favour of the temple was of melwaram alone. It is true that the temple is not in a position to produce its original grant. Nor are the terms of the grant clear from the extract from the Inam Fair Register. All the same, the temple is entitled in such a situation, to rely on the statutory presumption under S.44 of the Act. In view of this position, and on the materials on record, we must hold that the respondents have not succeeded in dislodging that presumption. It follows from this that for the purpose of considering the issue of grant of patta in respect of the lands in question, the temple must be held to be the owner of both the warams. This at once renders S.8(2) applicable. By the same token, S.8(1) is ruled out from consideration. That is because, S.8(1), in terms would have operation only "subject to the provisions of sub-S. (2)".

7. Mr. Narayanaswami''s contention on behalf of the respondents is that the language of S. 8(1) is quite apt to cover their case. He referred to the words ''every person lawfully entitled to the kudiwaram in any land immediately before the appointed day, whether such person is an inamdar or not''. He submitted that on the overwhelming documentary evidence produced by the respondents, they and their predecessors must be held to have been in continuous and uninterrupted possession of the lands right from 1888, if not from an anterior date. He further pointed out that there was no evidence at all to show that the temple at any time had possession of the lands or had asserted its right to possession either against the respondents or against their predecessor in title. In the circumstances, learned

counsel urged that the respondents must be held to have acquired title by adverse possession as against the temple in regard to the kudiwaram interest in the lands. According to learned counsel, as persons who had acquired title to kudiwaram by prescription, the respondents must be regarded as persons "lawfully entitled to the kudiwaram" within the meaning of S.8(1).

8. For the purpose of examining the legal submission made by Mr. Narayanaswami, we may assume that the respondents have in fact been in possession for sufficiently long to have prescribed title by adverse possession under the general law relating to limitation and prescription. Even so, the question would be whether that would bring the respondents within the class of persons who are ''lawfully entitled to kudiwaram'' within the meaning of sub-S.8(1). According to learned counsel, a person, even though not the inamdar, might become entitled under the law to the kudiwaram interest by prescription, if he were in continuous uninterrupted possession of that interest adversely to the owner of the kudiwaram.

9. The law relating to acquisition of title by prescription or adverse possession is now declared by S. 27 of the Limitation Act, 1963. The Section says that at the determination of the period limited under the Limitation Act to any person for instituting the suit for possession of any property, his right to such property shall be extinguished. Referring to the corresponding provisions of S. 28 of the Indian Limitation Act, 1908, the Privy Council observed in Md. Mumtazali v. Mohan Singh 50 I.A. 202, that they "were not referred to and are not aware of any other section which would have the effect of extinguishing a right of property which is vested in one person and transferring it by mere lapse of time to the person actually in possession".

10. Mr. Narayanaswami''s contention, as we understood it, would appear to be that while construing the phrase "any person lawfully entitled to kudiwaram" in S.8(1) of Tamilnadu Act 30 of 1963, the court must include therein persons successfully claiming acquisition of title by adverse possession. We are unable to accept his contention. It is not his case that S.8(1), on its own terms, either expressly or impliedly enacts any rule of prescriptive title to kudiwaram interest. What falls to be considered in this case, then, would be the question whether S. 27 of the Limitation Act has application and can be read into S.8(1) of Tamil Nadu Act 30 of 1963, as urged before us.

11. As we mentioned earlier, the whole purpose of Tamil Nadu Act 30 of 1963 was to abolish the minor inams in the State and introduce the ryotwari settlement in their place. The scheme of the Act, in its operative provisions was so contrived to effectuate this desired legislative objective. One of the objects being abolition of the minor inams, it was necessary for the Legislature first to do away with the rights and obligations, powers and privileges that were in vogue under the preexisting system which it was decided to destroy. Understandably enough, therefore, S.3(a) explicitly declares, inter alia, that as and from the appointed day, the Tamilnadu Act 30 of

1963 alone shall be applicable to the minor inams and that any other existing law on the subject shall be deemed to the repealed. S.3(e) declares that all rights created by the inamdar in or over his inam before the appointed day shall cease and determine as against the Government. S.3(g), which is important for the present discussion, lays down that "any rights and privileges which may have accrued in the minor inam to any person before the appointed day against the inamdar shall cease and determine and shall not be enforceble against the Government or against the inamdar, and every such person shall be entitled only to such rights and privileges as are recognised Or conferred on him, by or under this Act." It is in the context of these provisions that the statutory machinery for the introduction of of the ryotwari settlement and the grant of ryotwari patta should be considered.

12. In our considered opinion, the claim, as put forward by the respondent cannot lie in view of the clear provisions of S. 3 (g) of the Act. While S.3(e) destroys the rights create by the inamdar himself in or over his inam, S.3(g) applies to rights which had ''accrued'' to any person ''against the inamdar,'' and puts an end to all such rights and interests which had accrued before the appointed day. Title by adverse possession, obviously, does not fall under S.3(1), but the language of S.3(g) aptly covers it. Acquisition of title to the kudiwaram by prescription or adverse possession must, in our view, be held to answer the description ''accrual of rights against the inamdar'' occurring in S.3(g) of the Act. Two results flow from this position. In the first place, such rights as might have accrued to the respondents against the temple cease to exist. Secondly, in the place of these ''accrued'' rights which have ceased to exist, nothing would be recognised by the law excepting such rights as are conferred or recognised under the Act itself. It follows, therefore, that the respondents could not rely on their so-called prescriptive title which accrued to them as against the temple as a foundation for claiming ryotwari patta under S.8(1) of the Act.

13. There is yet another consideration. In our view, the very scheme of S. 8 rules out of the recognition of prescriptive title to kudiwaram right in a religious inam. We have earlier referred to the terms of S.8(1) to the effect that its provisions are ''subject to the provisions of sub-S.(2). "S.8(2) reiterates the same overriding effect in its opening words "notwithstanding anything contained in sub-S.(1)...". S.8(2) as we have noted earlier, is a special provision in the matter of grant of ryotwari patta specially designed for iruwaram religious inams. S.8(2) has two clauses, Cl.(1) and Cl. (ii). Under the scheme of the sub-section, Cl. (ii) would apply only where Cl.(1) does not apply Cl.(i) has two sub-Clauses (a) and (b). They are in the following terms--

8(2)(i). Where the land has been transferred by way of sale and the transferee or his heir, assignee, legal representative or person deriving rights through him had been in exclusive possession of such land--

(a) for a continuous period of 60 years immediately before the 1st day of April 1960, such person shall, with effect on and from the appointed day, be entitled to a

ryotwari patta in respect of that land ;

(b) for a continuous period of 12 years immediately before the 1st April 1960, such person shall, with effect on and from the appointed day, be entitled to a ryotwari patta if he pays as consideration to the Government in such manner and in such number of instalments as may be prescribed an amount equal to 20 times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and with the land revenue due on such land.

These two sub-clauses contemplate that ryotwari patta in an iruwaram minor inam of a religious institution would be denied to that institution and would be granted to any other person only in cases where that other person it able to establish two things: (1) that he had obtained a transfer of the land from the religious institution by way of sale, and (2) that he had been in uninterrupted possession of the land for a period of 60 years or 12 years, as the case may be, immediately before 1st April 1960. Both the conditions, the transfer by sale, as well as the continuous possession, must be fulfilled in order that the said provision may be relied on.

20. In Marimuthu v. K.K. Sri Sankaranarayanaswami Temple 87 L.W. 652 (D.B.--Veeraswami, C.J.), it was held that "Where a religious or charitable inam land had been alienated, but possession was not proved as provided in clause (i) of Sub-S. (2) of S. 8, the alienee will not be entitled to patta". In a case where, such as the present, persons claim kudiwaram interest solely on the basis of adverse possession, S. 8(2)(i)(a) or (b) cannot, obviously apply. The fact that these provisions require not merely long possession but also a right derived from actual transfer of title by purchase as the foundation of the claim shows that the legislative intention was not to recognise, for the purpose of the Act, any claim to ryotwari patta on the basis, merely of adverse possession.

14. To sum up, on the very language of the provisions of S. 8(1), read in the context of S. 8(2), respondents cannot ask for a ryotwari patta in their favour. The expression lawfully entitled to the kudiwaram'' occurring in S. 8(1) would only be applicable to cases where the person claiming to be entitled to ryotwari patta is in a position to show that he was entitled to the kudiwaram interest under the very terms of the grant of the inam. On the terms of S. 8(1) an inamdar who is the grantee of both the warams would certainly be entitled to the kudiwaram interest. So too, would be a person holding land as a kudiwaramdar under an inamdar the grant to whom is of the melwaram alone. In cases where the grantee is of both the warams, and is, in addition a religious institution, S. 8(1) cannot apply, because of the special provisions under sub-S. (2). We have already referred to the provisions of S.8(2) (i), clauses (a) and (b). S. 8(2) (ii) provides for those cases which are not covered by S. 8(2)(i)(a) and (b). Clause (ii), in other words, provides for all cases of iruwaram religious inams in which there has been no transfer by way of sale of the land and the transferee is not in possession at all, or is in possession for less than 12 years

continuously prior to 1st January 1960. In the case of such lands, it is categorically enacted that the ryotwari patta has got to be granted only to the religious institution and to no other persons. In Marimuthu v. K.K. Sri Sankaranarayanaswami Temple 87 L.W. 652 (D.B.--Veeraswami, C.J.) it has been held that if either of the provisions in clause (a) or (b) is not satisfied then under clause (ii) of S. 8(2), the Tribunal, will have to grant patta to the institution itself. To the same effect is an unreported decision of this Bench, dated 15th March 1976 in S.T.A. No. 66 of 1973 Sri Sandhi Vinayagar Devasthanam (sic) The State of Tamil Nadu 89 L.W. 580 (D.B.). In that case, Sri Sandhi Vinayagar Devastanam, Tirunelveli, was the grantee of a Devadayam inam grant consisting of both the warams. It was found as a fact that the lands were, however, in the possession and enjoyment of the respondents. But, it was also found that there was no sale of the land on the basis of which possession was claimed within 60 years or within 12 years before 1st April 1960 in favour of the respondents or their predecessors-in-interest. In the circumstances, the Bench held that S.8(2)(ii) being applicable, the religious institution cannot be deprived of a patta. It was observed that a reading of that sub-section itself would show that the application should succeed and the relief prayed for by him had to be granted.

15. In view of the above legal position, we have no doubt whatever that in this case it is the appellant temple that should get the ryotwari patta in regard to the lands in question. There can be no question at all that S. 8(2)(ii) applies to the temple in regard to these lands. We have already held the grant in the temple''s favour to be iruwaram lands, and although the possession may not be with the temple for over 12 years, or even 60 years, the persons it possess on have not been able to make out than their possession and those of their predecessor-in-title are derived from a transfer of title by the temple by way of sale. It follows that S. 8(2)(i) does not apply. Thus, the residuary provision in S. 8(2)(ii) clearly applies, and the temple would be exclusively entitled to the patta. We hold accordingly.

16. Mr. Narayanaswami, learned counsel for the respondents, however, raised a question of the ambit of this court''s jurisdiction in this appeal to direct a grant of ryotwari patta in favour of the appellant. He recalled how all the earlier proceedings had gone on in this case. He pointed out that the Settlement Tahsildar had granted the patta to the respondents under S. 8(2)(i)(b) and no appeal was filed by the appellant against the decision of the Settlement Tahsildar. He further pointed out that it was in the appeal filed by the respondents against the order of the Settlement Tahsildar that the tribunal had granted the ryotwari patta to the respondents under S.8(1). In these circumstances, even if the appeal by the appellant temple against the Tribunal''s appellate order should be allowed, that would not enable the appellant to press a claim in the appeal before this court for the issue of a ryotwari patta in its favour under S. 8(2)(ii) considering that the decision of the Settlement Officer in the first instance granting the patta to the respondents under S. 8(2) had become final as against the appellant. Mr. Narayanaswami submitted that, in these circumstances, this court will not have jurisdiction to reverse the decision of the

Settlement Tahsildar and grant ryotwari patta in favour of the temple.

17. We are not impressed with this argument. In the first place, we must remember that we are not sitting here in Letters Patent Appeal, but only as an appellate tribunal specially constituted by virtue of the special provisions of S. 30 of the Tamilnadu Act 30 of 1963. The entire scheme and structure of the Act as well as the purpose of constituting the authorities and functionaries under the Act is to effectively administer the provisions of this Act and to carry put the principal objective of introduction of ryotwari settlements in the place of the minor inams in the State. In this context, therefore, we do not think that the rules of procedure applicable to trial of suits in courts of first instance and the entertainment of appeals against decrees and orders of courts of first instance provided under the CPC can at all be regarded as applicable to proceedings under the Act. Mr. Narayanaswami referred to S. 30(3) of the Act which lays down that the Special Appellate Tribunal shall, subject to the provisions of S. 47-A, have the same powers as are vested in a civil court under the CPC (Central Act V of 1908) when hearing an appeal. He also referred us to S. 46 of the Act which provides that any order passed by any officer, the Government or other authority or any decision of the Tribunal or the Special Appellate Tribunal under this Act In respect of matters to be determined for the purposes of this Act, shall, subject only to any appeal or revision provided under this Act, be final. But, we do not regard these provisions in the Act as in any way restricting or limiting our powers as an appellate tribunal to determine finally and effectively the question of issue of ryotwari patta or any other matter that may come before us in appeal. S. 46 itself indicates that the orders to be passed by the Special Tribunals and Appellate Tribunal shall not be liable to be questioned in a court of law, thereby implying that while acting under S. 30, the High Court does not function as a court of law. As for S. 30(3) of the Act, we do not see how it can restrict the scope of the appeal before the Special Appellate Tribunal. Even under the Civil Procedure Code, Order 41, rule 33 clearly provides that the Appellate Court shall have power to pass any decree and to make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, and although such respondents or parties may not have filed any appeal or objection. See: Kok Singh v. Smt. Deokabai 1976-1-S.C.W.R. 135 and Gianiram v. Ramjilal 1969 S.C.R. 944. In the case last cited, the Supreme Court contrued the expression "which ought to have been passed" occurring in Order 41, rule 33, C.P. Code, as meaning "what ought in law to have been passed." From this they deduced the principle that if the Appellate Court is of the view that any decree which ought in law to have been passed", was in fact not passed by the court below, it may pass or make such further or other decree or order as the justice of the case may require. They held that even if the respondent did not file any appeal from the decree of the trial court, that was no bar to the High

Court passing a decree in favour of the respondent for the enforcement of the charge.

18. We believe that the same principles apply with greater force in matters which arise before us under S. 30 of Tamilnadu Act 30 of 1963. Whenever an appeal is filed in this Special Appellate Tribunal, what is brought before us is not merely the particular subject of appeal which the appellant prefers to draw up in the various grounds in his appeal memorandum, but the entire proceedings out of which the order under appeal emanates. That is because, this court is acting as a Special Appellate Tribunal appointed for the express purpose of acting as a court of last resort in the matter of adjudicating on the rights of parties in the light of the relevant provisions of the Act. In this view, therefore, we do not feel any constraint whatever in going into and examining the correctness of the order made in the first instance by the Settlement Tahsildar and pass what would be the proper order in the circumstances of the case.

19. On the view we hold of the facts of this case and applying the law on the basis of our construction of the relevant provisions of the Act, we hold that the Settlement Tahsildar had not properly instructed himself in the law when he proceeded to consider the question of issue of patta under S.8(2)(i)(b) of the Act. He assumed that the respondents were claiming rights to ryotwari patta as transferees from the appellant temple, when this was not the case at all. Either he had mis-understood the Section or he had assumed that the respondents had obtained the transfer from the temple. In either case, his decision cannot stand, for not only is S. 8(2)(i) clear on the point but even the decided authorities show that the transfer spoken of by S. 8(2)(i) is a transfer by the religious institution.

In Marimuthu v. K.K. Sri Sankaranarayanaswami Temple 37 L.W. 652 , it has been observed--

The alienation should have been made by the inamdar and the transferee or his heir, assignee, legal representative or person deriving rights through him should have been in exclusive possession for the period provided by clause (a) or clause (b).

Having clearly found that the order of the Settlement Tahsildar was not in accordance with law, we do not see any other course open to us as the final Appellate Tribunal but to set it aside. Not to do so would be to Perpetuate an illegality. We accordingly allow the appeals, set aside the order of the Settlement Tahsildar and direct him to grant ryotwari patta to the appellant in respect of the lands which are the subject matter of these appeals, viz., T. S. No. 256/1 of the extent of 4 acres 2700 sq. ft., T. S. No. 254/20 of the extent of O. 25345 sq. ft., and T. S. No. 256/7 of the extent of 2 acres, 25114 sq. ft. in Pollachi town.

In the circumstances of the case there will be no order as to costs.