

*Privy Council Appeal No. 117 of 1929.*

The Secretary of State for India in Council - - - - *Appellant*

*v.*

Velivelapalli Mallayya, since deceased, and others - - - *Respondents*

Same - - - - - *Appellant*

*v.*

Velivelapalli Mallayya, since deceased, and others - - - *Respondents*

*(Consolidated Appeals)*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1932.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD RUSSELL OF KILLOWEN.

SIR DINSHAH MULLA.

[*Delivered by* SIR DINSHAH MULLA.]

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The principal respondents in this appeal are the *archakas* of the temple of Sri Krita Kritya Rameswara-Swami Varu in a place known as Gudimala Khandrika which forms part, as would appear from a survey map presently to be referred to, of the village of Rameswaram, situated in the Godavari district. Years ago, a grant was made of certain lands in Gudimala Khandrika to the temple as *inam*, but the grant is lost and its origin is not known. In 1860 the grant was confirmed by the *Inam* Commissioner, subject to the payment of a quit-rent of Rs. 20 per year, and a title deed was issued to the temple, which, however, is not forthcoming. The main question in the appeal is as to the extent to which the grant was confirmed.

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. 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*. See Mr. Maclean's Manual of the Administration in the Madras Presidency, Vol. III.

The first regular revenue survey in the Godavari district began in 1858. Demarcation and classification were completed in 1860-61, and field measurements in 1862. The survey map of the Rameswaram village was completed in 1862, and the total area of the village is stated on the map to be 3,860 acres.

It would appear from the *bhuband* accounts of the Rameswaram village that before the survey of 1858 the extent of the village, as well as of Gudimala Khandrika, was expressed in *putties*, a local measure, the extent of the village being 307 odd *putties*, and that of Gudimala Khandrika 70 odd *putties*. There is nothing to show the extent of the village or of the Khandrika in acres before that date, nor is there any direct evidence as to the rate of conversion from *putties* into acres prevailing at that time.

In 1860, when the grant was confirmed, the extent of Gudimala Khandrika was specified in the *Inam* Register both in *putties* and in acres, the extent in *putties* being 70 and a fraction, as in the *bhuband* accounts, and that in acres being 560·79. It would appear from these figures that the rate of conversion then adopted by the *Inam* Commissioner was 8 acres per *putti*. But the temple has been in possession at least since 1860 of the whole of Gudimala Khandrika, and it paid only Rs. 20 per annum for the whole land in its possession until 1917.

As has already been stated, the extent of the Khandrika in local measure was 70 *putties* and odd. At the resurvey and resettlement of 1900-01 it was found, excluding Government *poramboke*, to be 1,837·40 acres. If 70 *putties* and odd be regarded as equivalent to 1,837·40 acres, the rate of conversion would be 27·35 acres per *putti*, and not 8 acres per *putti*, which was the rate adopted by the *Inam* Commissioner. The main question in the appeal is as to the extent to which the *inam* was settled in 1860, whether it was 560·79 acres as stated by the appellant, or 1,837·40 acres as claimed by the respondents. This involves a subsidiary question whether the proper rate of conversion is 8 acres per *putti* as alleged by the appellant, or 27·35 acres per *putti* as contended by the respondents. The respondents say that the *Inam* Commissioner erroneously converted *putties* into acres at the rate of 8 acres per *putti*.

The *inam* consists partly of wet and partly of dry land. As in the case of the *inam*, so in the case of wet land, the extent in the *Inam* register is described both in *putties* and in acres, the extent in *putties* being 51½, and that in acres 400 which obviously is a mistake for 412. Here again the rate of conversion adopted by the *Inam* Commissioner was obviously 8 acres per *putti*. If the rate were taken at 27·35 acres per *putti*, the extent in acres would be 1,408. One of the questions in the appeal is whether

the temple is entitled to hold 412 acres only free of water-cess as is the case for the appellant, or 1,408 acres as claimed by the respondents.

No demand was made by the revenue authorities of any assessment or water-cess against the temple until 1917. In that year the Board of Revenue passed a resolution to the effect that what was settled by the *Inam* Commissioner was not a whole but a minor *inam*, that the extent of the *inam* so settled was 560·79 acres only, and that the excess in the possession of the temple should be charged with full assessment. By the same resolution it was determined that the extent of wet land included in the *inam* was 412 acres only, and that irrigation by the temple of any area in excess thereof should be charged with water-cess. The Board, in fact, took their stand on the extent as expressed in the *Inam* Register in acres. Effect was given to this resolution by the Collector of Godavari, and the respondents had to pay the assessment and water-cess imposed by the Collector.

Thereupon the respondents brought two suits out of which the present appeal arises against the appellant (who was the principal defendant in them both) on the 24th October, 1919, in the Court of the Subordinate Judge of Rajahmundry, one for a declaration that the whole village of Gudimala Khandrika was settled as *inam*, and not 560·79 acres only, and the other for a declaration that the extent of the wet land was 1,688 acres (being the extent given in the *Adangal* account of the Khandrika for 1901), and not 412 acres only. The respondents also asked in each suit for an injunction and other relief.

The appellant filed a written statement in each suit, repeating in substance the resolution of the Board of Revenue of 1917.

The Subordinate Judge heard both the suits together, and delivered one judgment in both. He held that what was settled by the *Inam* Commissioner was not a whole but a minor *inam*, that the extent of the *inam* was 560·79 acres, and that of the wet land was 412 acres, and he passed a decree in each suit dismissing the suit with costs.

On appeal the High Court at Madras reversed the decrees of the Subordinate Judge. They held that the whole village of Gudimala Khandrika was settled as *inam*, and that the extent of the *inam* was 1,837·40 acres. As to wet land they held that its extent was 51½ *putties* as given in the *Inam* Register, and that it should be converted into acres at the rate of 27·35 acres per *putti*, and that the extent so converted was 1,408 acres. Accordingly, they passed a decree in each suit in favour of the plaintiffs-respondents. The defendant-appellant has appealed from these decrees to His Majesty in Council, and the appeals have been consolidated and heard as one appeal.

It was argued before their Lordships on behalf of the appellant that the extent of the *inam* as given in acres in the *Inam* Register was conclusive, and that the learned Judges of the High Court

erred in referring to the area in *putties* and in converting it into acres at the rate of 27·35 acres per *putti*. It must be recognized that there is no direct evidence of the rate of conversion, but the extent of the *inam* having been given in the *Inam* Register both in acres and *putties*, there is no reason why the extent in *putties* should be disregarded and the case decided with exclusive reference to the extent in acres. Their Lordships consider that the real question for determination is, whether what was intended to be settled by the *Inam* Commissioner in 1860 was a whole *inam* or a minor *inam* only; in other words, whether it was the whole village of Gudimala Khandrika that was then settled, or only 560·79 acres in it.

The *Inam* Commission was appointed on the 16th November, 1858, to inquire into title to *inam* lands. The mode in which the operations of the Commission were conducted has been described by Mr. Maclean\* as follows:—

“ Much information was prepared regarding the *inams* of each village by the *talug* and village officers, and the Deputy Collector of the Commission inspected documents and took such further evidence as seemed proper, recording details in an English Register in which the rate of enfranchisement was calculated and the acceptance or refusal of the *Inamdar* recorded. These registers were subsequently forwarded to the Commissioners for review and confirmation and for the issue of a title deed.”

As regards the land in the possession of the temple, two statements were prepared by the *kulkarni* of the village, both dated the 20th December, 1859, one in respect of 50 *putties* stated to be equivalent to 400 acres, and the other in respect of the remaining 20 odd *putties* stated to be equivalent to 160·79 acres. The statements also give the boundaries of the *inam* and the extent both of the dry and wet land in the *inam*.

The *Inam* Register gives the extent of the *inam* and that of the dry and wet land both in *putties* and in acres as in the *kulkarni*'s statements. It does not, however, give the boundaries, but specifies the demarcation numbers of the *inam*, which will presently be referred to. The *Inam* Commissioner considered that the title of the temple to the 20 *putties* was doubtful, and he imposed a quit-rent of Rs. 20 per year on the *inam*. The entries in the Register were confirmed by the *Inam* Commissioner in January, 1860, and one title deed was issued in respect of the whole *inam*. The title deed, as already stated, is not forthcoming, but it was agreed that its contents must be taken to be the same in substance as those of the *Inam* Register.

It is obvious from the entries in the *Inam* Register that the rate of conversion adopted by the *Inam* Commissioner was 8 acres per *putti*, and it is this rate that is relied on by the appellant. It is also the rate adopted by the *kulkarni* in his statements, but neither the boundaries nor the demarcation numbers bear out that rate.

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\* See Standing Information regarding the Official Administration of the Madras Presidency, 2nd ed., 1879, p. 154.

As to the boundaries given in the *kulkarni's* statements, the Subordinate Judge considered that they were not the boundaries of Gudimala Khandrika; the High Court considered that they were. Their Lordships have examined the survey map, and they agree with the learned judges of the High Court that the boundaries are not the boundaries of plots of land containing merely 560 acres, but of the whole of the Gudimala Khandrika claimed by the respondents as *inam*.

The *Inam* Register gives the demarcation numbers of "fields comprised in the grant," and they are "from 595 to 765." It was not disputed that these numbers coincide with the corresponding survey numbers of the *inam*. The numbers are important, for the extent of each of these survey numbers is given in the Survey and Settlement Register of 1866, and the total extent of Survey Nos. 595 to 765 amounts to about 1,800 acres, a figure which approximates the respondents' claim. To get over this difficulty, it was argued on behalf of the appellant that Survey No. 765, which itself contains about 845 acres, was a huge swamp, and ought not therefore to have been included in the demarcation numbers in the *Inam* Register. Their Lordships think that there is no substance in this argument, and that No. 765, having been expressly mentioned in the Register, there is no reason why it should be excluded in determining the extent of the *inam*.

If the boundaries of the *inam* are correctly stated in the *kulkarni's* statements, and it was not suggested that they were not, there can be little doubt that what was intended to be settled was the whole village and not merely part thereof. Again, if the demarcation numbers are correctly stated in the *Inam* Register, as their Lordships think they are, it is impossible to maintain that the correct extent of the *inam*, when settled in 1860, was 560 acres only, as contended by the appellant; it must be somewhere near 1,800 acres. Their Lordships think that the boundaries and the demarcation numbers completely destroy the appellant's case.

Next in order of date is the *pechu* account of Gudimala Khandrika. The account came to be prepared in this way: in 1865 the Board of Revenue passed certain rules contained in Standing Order No. 61 of the Board for dealing with excess over and above the area entered in the *Inam* Commissioner's title-deeds, which might in the course of the revenue survey be discovered in "minor" *inams*. The following is the material part of the Order:—

"(ii) *Allowance for low rate of conversion and inaccuracies of measurement.*—Should it appear on survey that the customary local rate for converting the native measure into acres is inadequate, then the *inamdar* should be allowed free of all additional charge such area in acres as, on the average of the village in which the land is situated, may appear fairly to represent the registered extent of the *inam* in the local native measure, plus an allowance of ten per cent. to cover original inaccuracies of measurement.

“(iii) *Charge for survey of excess.*—Any excess in the *inam* discovered by survey beyond the area thus calculated should be charged with full assessment leviable on land of similar quality in the same village.”

Pursuant to the above order, two *pechu* or “excess” accounts were prepared by the village officer, one of the Rameswaram village, excluding Gudimala Khandrika, and the other of Gudimala Khandrika, both dated the 5th June, 1866. It would appear from the former account that a *putti* in that part of the village was found to be equivalent to about 8·50 acres, and the excess over 8·50 *plus* 10 per cent. was treated as an encroachment liable to full assessment. Such an excess was found in fact in some of the *inams* mentioned in the account, and the account shows the extra amount payable in respect of the excess. But it is quite different as regards the Gudimala Khandrika account. The account gives in column 2 the extent of the *inam* in local measure, namely, 70 odd *putties*, and in column 4 its extent as entered in the registered *patta*, that is, 560·79 acres. These figures are the same as those in the *Inam* Register. The account then gives in column 12 the extent as found on actual survey, namely, 1,917·6 acres, being about 1,356 acres more than that in the *Inam* Register, and in column 17 the total amount of “assessment to be collected hereafter,” which is there stated to be Rs. 20 per year, this amount being the same as that in the *Inam* Register. It is clear from this account that though the extent of this *inam* was found on survey to be in excess of that in the title deed, the amount payable by the *inam* was not increased. This could only be on the footing that the 1,356 acres were not treated as an “excess” within the meaning of Standing Order No. 61, which again could be accounted for only if the 70 *putties* and odd were treated as equivalent to 1,917·6 acres. And this is exactly what the officer who prepared the account would appear to have done, for the figures 1,917·6 appear also in column 6, and the heading of that column, supplementing the torn part from the heading of the corresponding column of the *pechu* account of Antervedi, may fairly be taken to be, “Acres at 27·35 per *putti* corresponding to the measurement in the country on the acreage of the village in the survey.” His mode of dealing with this particular *inam* shows clearly that the officer responsible for it treated the *inam* not as a minor, but as a whole *inam*. The account cannot be explained on any other footing.

It would appear from the judgment of the trial Judge that it was suggested before him on behalf of the appellant that the officer who prepared the account was “rather actuated by a desire to benefit in some way the religious institution in question,” and the suggestion was accepted by the trial Judge. Again, it is stated in ground No. 12 of the grounds of appeal set out in the petition for leave to appeal to His Majesty in Council, that the High Court ought not to have attached any weight to the two *pechu* accounts as they were on the face of them “unreliable and fraudulent.”

This, no doubt, was the only available ground on which the *pechu* account of this *inam* could be assailed, but there was no foundation for it, and it is gratifying to note that these charges were not repeated before this Board.

What was done by the village officer in 1866 was confirmed by the *Inam* Commissioner in 1872. In that year there was some correspondence between the Collector of Godavari and the *Inam* Commissioner from which it would appear that for the purpose of assessment Gudimala Khandrika was treated as a separate village with a recognised boundary, and therefore not liable to further assessment, while as regards the rest of the Rameswaram village the excess over 9·37 acres was charged with full assessment. The figure 9·37 is made up of 8·52 acres, being the average per *putty* in that part of the village as found on survey, and ·85 acre, being the 10 per cent. allowance mentioned in the Standing Order. This shows that the *inam* of Gudimala Khandrika was recognised as a whole *inam*, while the *inams* in the rest of the Rameswaram village were treated as minor *inams*.

Then came certain proceedings in 1876 as regards the village-cess of the *inam*, which, though not connected in any way with assessment, are remarkable for the fact that the extent of the *inam* is there stated to be 1,909·93 acres, and the *inam* is regarded as an "entire village."

Lastly, at the resurvey and resettlement in 1900-1901, the *inam* was surveyed as a separate village, and its extent was found to be 1,910·87 acres, of which 1,837·40 acres was stated to be *inam*, and the rest Government *poramboke*. It would also appear from the Adangel account of Gudimala Khandrika for 1901 that the wet land was 1,693 acres, which was the extent originally claimed by the respondents in the suits.

Upon a consideration of the documents mentioned above, their Lordships are of opinion that the whole village of Gudimala Khandrika was settled as *inam*, and they are in complete agreement with the High Court in all the conclusions reached by them.

Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed. The appellant will pay the respondents' costs of the appeal.

In the Privy Council.

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THE SECRETARY OF STATE FOR INDIA IN  
COUNCIL

v.

VELIVELAPALLI MALLAYYA, SINCE DECEASED,  
AND OTHERS.

SAME

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*Consolidated Appeals.*

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DELIVERED BY SIR DINSHAH MULLA.

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