

# Denuded forests, wooded estates: Statemaking in a Janmam area of Gudalur, Tamil Nadu

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*Small farmers have been blamed for forest degradation in O'Valley, Gudalur. The state's response to this perceived forest degradation in the post-colonial period has been to increasingly environmentalise forest policy and law through extending its territorial control over the 'forested commons', consequently labelling farmers as encroachers. This article argues that the state was in fact very much implicated, along with the Nilambur Kovilagam janmi (landlord), in the transformation of the forested landscape into a plantation economy so as to increase its revenue. It also highlights the contradictions in the post-colonial state's environmentalisation of policy, the impact of this environmentalisation on small farmers and how small farmers, along with larger estate owners, resisted mostly through legal recourse the state's efforts to reclaim undeveloped forest land. By doing so, the article highlights the contested meanings often ascribed to the forested commons that underlie conflicts over resources.*

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## Introduction

O'Valley<sup>1</sup>, a region in Gudalur taluk of the Nilgiris District (Tamil Nadu), is home to approximately 24,000 people<sup>2</sup>, mainly small-scale farmers (including some *adivasis*<sup>3</sup>) who cultivate mostly tea. These farmers, despite having lived in the area for a minimum of 30–40 years do not have title to their land and are effectively deemed 'encroachers' by the state. The state, and the forest department particularly, sees O'Valley as a valuable forest area in need of protection from further deforestation because of its rich biodiversity, its role in regulating water cycles and its situatedness as part of an elephant corridor that connects Nilambur with Mudumalai.<sup>4</sup> Since the mid twentieth century, forest policy and law has become more stringent by placing restrictions on farmers' use of trees and staking claim to undeveloped forest land within estates.

This article analyses the conflict over the forested commons keeping in mind the peculiar history of statemaking in this *janmam* area<sup>5</sup> with the particular purpose of commenting upon the labelling of small farmers as encroachers responsible for forest degradation. While there is no doubt that O'Valley has been significantly deforested of its 'natural' forests, what requires more scrutiny are the reasons behind it. Unlike in much of British India, where the colonial state claimed property rights to forests in the late nineteenth century, in O'Valley the colonial state recognised the proprietorship of the Nilambur Kovilagam *janmi* and indirectly supported the Kovilagam's promotion of a plantation economy. Plantations were seen as sites of civilised nature and a valuable source of revenue. The growth of the plantation economy resulted in the inflow of estate labourers, many of whom started to cultivate small areas of uncultivated estate land and neighbouring forests.

<sup>1</sup> O'Valley is a short form for 'Oucherlony Valley', the name of the first lessee of land in the mid nineteenth century. It is located at the extreme east of the Wayanad plateau at the foothills of the Nilgiri mountains in the central Western Ghats. The major part of the Wayanad plateau belongs to Kerala state but the eastern portion comes under Tamil Nadu state. This part is known as Nilgiri-Wayanad because it comes under Nilgiris district. The Nilgiri-Wayanad comprises an area of 72,000 hectares and covers two taluks—Pandalar and Gudalur. O'Valley is a town panchayat in Gudalur taluk.

<sup>2</sup> Census of India 2001.

<sup>3</sup> Nowadays *adivasi* communities are referred to as Scheduled Tribes (STs). The ST population of O'Valley is only 1.7 per cent of the total population.

<sup>4</sup> Elephant Task Force (ETF). *Gajah – Securing the Future for Elephants in India*, p. 59. According to the ETF report, the Mukurthy-Mudumalai corridor includes the forests of the Naduvattam Range (Nilgiri South Forest Division) and Gudalur Forest Range (Gudalur Forest Division). Collectively this area is an important elephant corridor between Nilambur-Silent Valley–Coimbatore.

<sup>5</sup> A *janmam* area is an area under the control of a *janmi*. In Malayalam, *janmi* implies birth or birth right and hence hereditary. The *janmam* system of land tenure has existed from the pre-colonial times in Travancore and Malabar. The Malabar Tenancy Act of 1930 defines a *janmi* as 'a person entitled to the absolute proprietorship of land' (section 3 of the Act).

The article further argues that the increasing environmentalisation of state policy in O'Valley, Gudalur in the middle of the twentieth century and the new forms of territorialisation that accompanied it have changed the dynamics of state–farmer<sup>6</sup> interaction that underlie statemaking<sup>7</sup> and adversely affected, in particular, small farmers. It suggests that these changing dynamics and adverse impacts are mediated by the segmented nature of the state bureaucracy and resistance from large estate owners and small farmers through legal challenges to environmental legislation.

The article is, at one level, about how changing state priorities (re)shape social allegiances and how small farmers are impacted by and respond to new environmental priorities. At another level, however, the article is about the making of the environment and the meaning of forested landscapes. It depicts the exclusionary character that environmental conservation has taken in O'Valley through legislation and judicial judgments and juxtaposes this with the more inclusionary wooded landscapes of small farmer tea estates. What the article suggests is that the exclusionary vision of conservation has taken hold in O'Valley to the extent that small farmers have been unable to claim property rights to their land or manage their wooded estates in ways in which they wish.

### **Statemaking and the Territorialisation of the Forested Commons**

The current conflict over the 'forested commons' of O'Valley has its origins in statemaking and the dynamics of state–farmer interaction in the mid to late nineteenth century. Recent environmental history literature has taken issue with earlier depictions of state territorialisation<sup>8</sup> writ large, namely the singular manner in which the state reserved forests, denied people rights and made them encroachers on their own land. Scholars such as Sivaramakrishnan<sup>9</sup> and Scott<sup>10</sup> have highlighted that the state often had to compromise because of farmer resistance, creating zones of anomaly and zones of refuge where the state's property rights and hence control was limited or even non-existent. Protected forests and reserved forests were, therefore, not only legally distinct but also encompassed different histories of

<sup>6</sup> Farmer is used here as a generic term to include landlords (jammis), lessees and tenants (large planters and small farmers). In the text, we often refer to them separately as well, especially to small farmers who we define as those having less than 2 hectares of land (marginal and small farmer categories according to the Agricultural Census).

<sup>7</sup> We use statemaking as Sivaramakrishnan does; i.e., to define 'the forms and legitimations of government and governmentality'. Sivaramakrishnan, *Modern Forests*, p. 5.

<sup>8</sup> Territorialisation, as Vandergeest and Peluso have argued, was the modern state's way of including or excluding people from geographic spaces and defining their rights of access to natural resources within those territorial limits, either in the form of land colonisation or species control. Peluso and Vandergeest, 'Genealogies of Political Forest and Customary Rights', pp. 761–812. Vandergeest and Peluso, 'Territorialisation and State Power in Thailand', pp. 385–426.

<sup>9</sup> Sivaramakrishnan, *Modern Forests*. Sivaramakrishnan, 'A Limited Forest Conservancy', pp. 75–112.

<sup>10</sup> Scott, *The Art of Not Being Governed*; Scott, *The Moral Economy of the Peasant*.

state–society interactions. For example, protected forests in Bengal were the result of *zamindar*<sup>11</sup> resistance.<sup>12</sup>

This literature has also highlighted that the state is often segmented with multiple, competing goals and that state goals themselves are shaped by the interaction of ‘state’ with ‘society’.<sup>13</sup> Early environmental history literature on South Asia, for the large part, highlighted the commercial and economic priorities of the colonial state.<sup>14</sup> The colonial state deemed forests as waste and decided to reserve them for timber supply.<sup>15</sup> State and farmers were seen in opposition to each other and forests and forest-dependent communities in need of civilising.<sup>16</sup> However, statemaking and state–farmer interactions were far more complex. Not only was there farmer resistance, as highlighted above, but also negotiation and compromise.<sup>17</sup> To a large extent, as Sivaramakrishnan has argued, the form statemaking took depended on the ‘ideological and organisational power of the central government to penetrate society, exact compliance and invoke autonomy’.<sup>18</sup> Moreover, state priorities were ever changing, conservation assuming an increasingly important role especially in the post-colonial period.

The environmental history of O’Valley highlights the unique and complex dynamics of state–farmer interaction that underlie statemaking in particular geographical contexts. The regional history of statemaking in O’Valley, while having many similarities to other regional histories, is different in a number of ways. First, while O’Valley and other parts of Gudalur came under the control of the British

<sup>11</sup> A *zamindar* is a landlord; a person responsible for paying revenue to government (Sivaramakrishnan, *Modern Forests*, pp. xxv).

<sup>12</sup> *Ibid.*; Sivaramakrishnan, ‘A Limited Forest Conservancy’, pp. 75–112. Robbins also talks about the state’s limited control and authority in forested landscapes in Rajasthan. Robbins, ‘Authority and Environment’, pp. 410–35.

<sup>13</sup> Rangarajan, *Fencing the Forest*, p. 202. Sivaramakrishnan, *Modern Forests*, pp. 169–173. Agrawal, *Environmentality*, pp. 74 and 77. Chhatre and Saberwal, *Democratizing Nature*, pp. 55–56. Haimendorf, *Struggle for Survival*; Dasgupta, ‘Adivasi Politics in Midnapur’, pp. 101–35.

<sup>14</sup> Guha, ‘Forestry in British and Post British India’, pp. 1882–95 and pp. 1940–47. Singh, *Common Property and Common Poverty*. Gadgil and Guha, *This Fissured Land*. Rangarajan, *Fencing the Forest*. More recent environmental history literature has made similar claims about the commercial and economic priorities of the colonial state (see for example, Saravanan, ‘Colonial Commercial Forest Policy’). Environmental historians have pointed out that the colonial state also had environmental prerogatives that emanated from wider global discourses around desiccation (see Grove, *Green Imperialism*). There is little disagreement, however, that economics and the drive for revenue and raw materials were central to British ambitions in India though the extent such ambitions were fulfilled is disputed (Rangarajan, *Fencing the Forest*). Saravanan, ‘Colonial Commercial Forest Policy’, pp. 403–23. Grove, *Green Imperialism*. Rangarajan, *Fencing the Forest*.

<sup>15</sup> Chakravarty-Kaul, *Common Lands and Customary Laws*.

<sup>16</sup> Philip, *Civilizing Natures*.

<sup>17</sup> Cederlof, *Landscapes and The Law*.

<sup>18</sup> Sivaramakrishnan, ‘British Imperium and the Forested Zones of Anomaly’, p. 5.

in 1805 after the Pychee Raja<sup>19</sup> was killed, the British recognised local janmis as proprietors of the land.<sup>20</sup> Unlike in colonial Bengal where zones of anomaly were the footprints of zamindar resistance, areas under the control of janmis could be better characterised as zones of accommodation, zones in which the British chose to recognise local janmis as a conduit through which to eventually raise revenue. State-making in O'Valley was characterised by the complex and changing relationship between the colonial and post-colonial states and janmis, lessees and small farmers.<sup>21</sup> Whereas the colonial state encouraged farmers to cultivate land in the latter part of the nineteenth century and much of the first half of the twentieth century, the state deemed them as encroachers after it passed the Janmam Estate (Abolition and Conversion into Ryotwari) Act of 1969 (hereafter the Janmam Abolition Act).

Another significant difference in the regional history of O'Valley, hinted at above, was the way in which janmis and the state imagined forests. Unlike in many other parts of British India, including the upper plateau of the Nilgiris, the state indirectly encouraged janmis, in the second half of the nineteenth century in Gudalur, to convert forests into coffee and tea plantations as oppose to reserve them. The state saw plantations, unlike evergreen and moist deciduous forests, in a similar light to monoculture timber plantations, namely as a marker of civilisation. The plantation economy was central to statemaking in Gudalur, first as a way to tame nature and generate revenue during the colonial period, and then as an obstacle to conservation to be controlled through the environmentalisation of state policy in the second half of the twentieth century. The state passed forest legislation primarily to regulate the use of private forests (undeveloped estate land) through the Madras Preservation of Private Forests Act, 1949, the Madras Private Forests (Assumption of Management) Act, 1961 and then finally the Janmam Abolition Act. The changing discourse around plantations, namely from one of a productive and civilised landscape to that of an environmentally destructive one, mediated the interaction between state institutions, janmis, lessees, and small farmers. It also, we argue, shaped the nature of discourse around forests and wooded landscapes, marginalising the tree growing practices of small farmers.

The role that small farmers play in processes of statemaking in O'Valley is the final issue that requires rethinking. Much of the literature on statemaking around the forested commons talks about the marginalisation of the rural poor. Sivaramakrishnan has argued that processes of reservation invariably were to the

<sup>19</sup> When Malabar came under the control of the British in 1799 after the defeat of Tipu Sultan who ruled over Malabar for 36 years, the Pychee Raja rebelled. Wayanad finally came under the control of the British only in 1805 when the Raja was killed.

<sup>20</sup> The British did not accept the Nilambur Kovilagam janmi's control over O'Valley at first but admitted it in 1888–89 (Order dt. 15 February 1889 and 12 March 1888, NOs 174 and 206).

<sup>21</sup> Small farmers could either be tenants of janmis or independent cultivators who 'encroached' on land under lease by larger estates. In non-janmi areas of Gudalur, small farmers were owners of land.

detriment of poor farmers.<sup>22</sup> Scholars have also argued that the plantation economy, through what Harvey<sup>23</sup> calls accumulation by dispossession, alienated small farmers from their means of production and made them estate labourers.<sup>24</sup> Such processes were apparent in nineteenth century Gudalur as the growth of plantations led to the alienation of adivasis (tribals or scheduled tribes[STs]) from their forested landscapes, forcing them at times into estate work.<sup>25</sup> However, small farmers, who migrated to Gudalur to work on plantations, have also captured land in Gudalur that they now cultivate. While their 'legal status' is precarious, their demographic presence is significant. The legal ambiguity in Gudalur that continues to prevail and the fact that small farmers while deemed encroachers continue to cultivate land highlights their significant influence on statemaking and the nature of welfare governmentality.<sup>26</sup> The state cannot entirely ignore their presence, but it continues to delegitimise their livelihoods as environmentally destructive and deny them legal rights to land.

### **Civilising Forests: Emergence of a Plantation Economy and Small Farmers**

In order to understand the current conflict over land in O'Valley and the politics that surround it, it is necessary to understand the complex relationship between state and janmis both in the latter half of the nineteenth century and the first half of the twentieth century. It is during this period that the British came more directly into contact with Malabar janmis and when land became a 'resource with value'<sup>27</sup> that resulted in burgeoning contestations and conflicts. It is also during this period that questions of property rights assumed centre stage. This section traces the dynamics of state-farmer interactions that underlie statemaking, the emergence of a plantation economy and the subsequent growth of a constituency of small farmers, and the impact of these developments on the forest landscape of the region.

#### Plantations and the Colonisation of Land

The year 1855, when the Nilambur Kovilagam janmi leased out land to J.H Ouchterlony to start a coffee plantation, marked a new phase of statemaking and

<sup>22</sup> Sivaramakrishnan, *Modern Forests*, p. 179.

<sup>23</sup> Harvey, *The New Imperialism*, p. 137; Harvey, *Spaces of Global*, p. 43.

<sup>24</sup> Tharian and Tharakan, 'Penetration of Capital into a Traditional Economy'; Ravi Raman, *Global Capital and Peripheral Labour*; Baak, *Plantation Production and Political Power*; Chatterjee, *A Time for Tea*.

<sup>25</sup> Thurston, *Castes and Tribes of Southern India*, Vol. 4, p. 166; Thurston, *Castes and Tribes of Southern India*, Vol. 6, p. 59.

<sup>26</sup> Sanyal, *Rethinking Capitalist Development Primitive Accumulation*.

<sup>27</sup> Harvey, *Justice, Nature and the Geography of Difference*, p. 150–75.

state–farmer dynamics in O’Valley and other janmi areas of Gudalur. Although the British had acquired O’Valley and Gudalur as a whole when they defeated Tipu Sultan<sup>28</sup> and then the Pychee Raja, they recognised the proprietorship of janmis who had not opposed their conquest of lands.<sup>29</sup> Hence, the British accepted the system of land tenure in which janmis charged a *janmabhogam*<sup>30</sup> and shared produce equally with *kanakkarans* (farmers), who acted as supervisors, and under them *verumpattakarans* (cultivators) who were tenants or sub-tenants.<sup>31</sup> The colonial state charged revenue only on cultivated land often underestimating the extent of such land. Forests too remained under the control of the janmi although there were rumbling voices within the colonial bureaucracy that were in favour of staking claim to them.<sup>32</sup>

The growth of the plantation economy in O’Valley and other janmi areas evinced interest from the colonial administration because it was seen as a source of significant revenue. The British divided Wayanad into 16 *Umshums*<sup>33</sup> and appointed an *Adigarry*<sup>34</sup> for each one in order to collect revenue.<sup>35</sup> From 1860 a land tax of ₹2 per acre of coffee bearing land was collected.<sup>36</sup> Given the rapid expansion of area under coffee cultivation, it was an increased source of revenue for the British too. As Krishnan<sup>37</sup> has argued the lease regime under the Nilambur Kovilagam must, therefore, be seen as part of colonial statemaking. The Nilambur Kovilagam was seen as a landlord who could help construct a landscape of plantations. The colonial state wanted to survey and settle O’Valley so as to get a more accurate picture of area under cultivation.<sup>38</sup> In 1890, the British achieved their aim through a proper survey and settlement of O’Valley.<sup>39</sup> In addition to collecting ₹2 per acre of cultivated

<sup>28</sup> Tipu Sultan in many historical records is also spelt as Tippu Sultan.

<sup>29</sup> At the beginning of the nineteenth century, O’Valley was under the control of the Nambalacotta raja (or the Varnavar of Numbelalcottah). When the Varnavar family found itself in debt in 1836, the Nilambur Kovilagam janmi bought the land.

<sup>30</sup> A *janmabhogam* is the rent paid by the lessees to the janmi.

<sup>31</sup> Panikkar, ‘Agrarian Legislation and Social Classes’, p. 880. Kunhi Krishnan, *Tenancy Legislation in Malabar*, p. 6–7. Voucher 39 of the Joint Commissioner’s Report of 25 February 1793, MSS cited by Kunhi Krishnan, p. 14.

<sup>32</sup> Although the Court of Directors pronounced their sovereign rights over forests, in order to avoid a political crisis, they did not claim such rights (Pathak, *Law, Strategies, Ideologies*, p. 154).

<sup>33</sup> Umshums are today called ‘Amshoms’.

<sup>34</sup> The current spelling is ‘Adhikari’.

<sup>35</sup> Indian Office Record (IOR), London, W3023(e), Markham, C.R. 1866. Report on the Coffee-Planting District of Wynaad, p. 17.

<sup>36</sup> Francis, *The Nilgiris*, p. 279.

<sup>37</sup> Krishnan, ‘Of Land, Legislation and Litigation’, p. 285.

<sup>38</sup> While traditional crops were mostly on wetlands, coffee plantations were dry lands that were previously mostly uncultivated. Hence, coffee productions increased cultivated area.

<sup>39</sup> IOR, London, from the L/E/ hard volume catalogue, Madras Land Revenue Reports for Fasli 1299 (1889–90).

land, they also started collecting 6 pies<sup>40</sup> per acre of uncultivated land.<sup>41</sup> Between 1872 and 1889, the assessment of O'Valley increased by 47 per cent because of increased cultivation.<sup>42</sup> Much of the plantation expansion in O'Valley was under the control of Ouchterlony; the main estates included Walwood, Balmadies, Seaforth, Glenvans and Barwood. Coffee was the main plantation crop but by the early twentieth century tea had become more prominent.<sup>43</sup> Planters considered forests as 'an untapped source of wealth' that through hard work could lead to a more civilised future.<sup>44</sup> Besides for large capitalist estates, there were a number of smaller estates started by individuals who had leased land directly from the Nilambur janmi.<sup>45</sup>

The fact that the British allowed the extension of plantations without an increase in taxes for a period of 30 years<sup>46</sup> also encouraged planters to expand their plantations at the expense of forests.<sup>47</sup> Moreover, many of the earlier lease agreements had particular provisions that permitted tenants to fell trees, hunt elephants and extract minerals.<sup>48</sup>

### In-migration and the Servicing of the Plantation Economy

The expansion of the plantation economy in O'Valley and other regions of Gudalur precipitated in-migration to the region. The planters employed native *maistries*<sup>49</sup> who were in charge to enrol coolies from Mysore and Malabar.<sup>50</sup> The first wave of in-migration to Gudalur occurred in the late part of the nineteenth century and was mostly seasonal in nature. Migrants came mostly from Mysore and Kerala. Moplabs, in particular, were appreciated for their skill in felling trees which was done by contract of ₹20 per acre.<sup>51</sup> The 1891 Census<sup>52</sup> put the total population of O'Valley

<sup>40</sup> A *pie* was a unit of currency in India. It was the smallest currency unit, equal to 1/3 of a paisa or 1/192 of a rupee.

<sup>41</sup> Francis, *The Nilgiris*, p. 282.

<sup>42</sup> *Ibid.*

<sup>43</sup> At the beginning of the twentieth century, Ouchterlony Trust produced tea and coffee and had its own tea factory in the valley as well as its own coffee-curing centre near Calicut (Francis, *The Nilgiris*, p. 376).

<sup>44</sup> Philip, *Civilizing Natures*, p. 84–89.

<sup>45</sup> Krishnan, 'Of Land, Legislation and Litigation', p. 287.

<sup>46</sup> The 30 years for which the settlement was to be in force (from 1860 to 1890).

<sup>47</sup> Francis, *The Nilgiris*, p. 282.

<sup>48</sup> Krishnan, 'Of Land, Legislation and Litigation', p. 286.

<sup>49</sup> A *maistry* or *kangani* is an intermediary person who recruits workers for the estates; they often used the advanced payment system to bond labourer. Ravi Raman, *Global Capital and Peripheral Labour*, p. 116–19.

<sup>50</sup> IOR, London, W3023(e), Markham, C.R. 1866. Report on the Coffee-Planting District of Wynaad, p. 19.

<sup>51</sup> *Ibid.*

<sup>52</sup> Data of the Census of India, 1891, *District Census Handbook*.

at 6,693. In 1934, O'Valley became a town panchayat through notification,<sup>53</sup> indicating the significant demographic growth that had taken place. The second wave of in-migration coincided with the Grow More Food campaign in the middle of the twentieth century. Between 1941 and 1951 the annual population growth rate reached 3 per cent<sup>54</sup> and in 1951 the total population of O'Valley was 10,014.<sup>55</sup>

The third wave of migration to service the plantation economy took place post-independence after the signing of the Sirimavo-Shastri Pact between India and Ceylon in 1964.<sup>56</sup> Annual population growth rates were the highest (4.37 per cent) between 1971 and 1981. By 1981, O'Valley's population had risen to 21,148 inhabitants.<sup>57</sup> Large numbers of Tamil repatriates who had worked in plantations in Ceylon (to become Sri Lanka in 1972) returned to India and eventually made their way to the more familiar and friendly climate of the hills. Tamil Nadu Tea Plantation Corporation Limited (TANTEA) was started by the Government of Tamil Nadu, though mostly in non-janmam areas, to absorb much of this labour, but many repatriates also became labourers in large estates such as Manjushree (janmam lands).<sup>58</sup> The state provided financial incentives to private estates to absorb repatriates.<sup>59</sup> It is important to note that TANTEA plantations in the post-independence period, though a state venture, were also created by clear felling of forests. TANTEA comprised three tea divisions. The first division was formed in 1968 comprising a forest area of 1,503.44 ha. It was followed by two more in 1977 and 1980 covering an area of 600 ha and 290 ha respectively.<sup>60</sup>

### Accumulation by Dispossession

The physical growth of plantations in O'Valley and Gudalur transformed the landscape significantly. English travellers, who ventured through Gudalur in the middle of the nineteenth century, spoke about the denseness of forests and the difficulties of navigating through Gudalur from Ootacamund to Wayanad because of the hostility of the terrain and unhealthiness of the region.<sup>61</sup> Equally important, but less worthy

<sup>53</sup> Tamil Nadu Archives (TNA), Chennai, Notification No. N.M 13630/34 dated 5 April 1934, Chennai Tamil Nadu District Municipalities Act, 1920—O'Valley, Gudalur Panchayat Union, Nilgiris District, Public Information.

<sup>54</sup> The data of the Census of India points to an annual population growth of 1.2 per cent between the 1891 census and 2001 census (the population of O'Valley increased from 6,693 inhabitants in 1891 to 24,793 inhabitants in 2001).

<sup>55</sup> Data of the Census of India, 1951, *District Census Handbook*.

<sup>56</sup> After independence, the Sri Lankan government refused to give Sri Lankan citizenship to many Tamil estate workers who were living in Sri Lanka. Under the Sirimavo-Shastri Pact 600,000 Indian Tamils were to be repatriated, while 375,000 were to be granted Sri Lankan citizenship.

<sup>57</sup> Data of the Census of India, 1981, *District Census Handbook*.

<sup>58</sup> In 1969, Ouchterlony Trust was taken over by Birla and named Manjushree Estate.

<sup>59</sup> TNA, Chennai, G.O. No. 859 (Ms), Home Department, dt. 26 March 1968.

<sup>60</sup> Jagdish, *Working Plan for Gudalur Forest Division*, p. 86.

<sup>61</sup> Fletcher, *Sport on the Nilgiris and in Wynaad*, p. 30.

of reflection by English travellers, was the fact that adivasis inhabited the region in which plantations were to burgeon. Adivasi communities of O'Valley included Kurumbas and Kattunayakans.<sup>62</sup> Traditionally, they used to practice hunting, fishing, gathering and shifting cultivation.<sup>63</sup> The expansion of the estate economy and the British recognition of janmi property rights from the late nineteenth century resulted in the colonisation of land that 'non-settled' adivasis had been using. Many adivasis were recruited or forced to become plantation workers.

The large numbers of non-adivasi migrants to the region was also partly the result of push factors in distant places of Madras Presidency, Mysore, Travancore and Cochin. For instance, during the famine of 1877, 350,000 persons from the dry regions of Mysore migrated to the Nilgiris, Wayanad and other parts of Mysore to work on tea and coffee plantations.<sup>64</sup> As Ravi Raman<sup>65</sup> has argued, farmers were often dispossessed of land due to exorbitant revenue rates imposed by the British.<sup>66</sup> The maistry system, moreover, was a semi-feudal system that enabled plantation owners to recruit large pools of labourers by using the maistries' political clout in their native villages. The condition of work and living in estates were extremely precarious,<sup>67</sup> especially as long as the Madras Planters' Act, 1903 was in force.<sup>68</sup>

#### Small Farmers and Welfare Governmentality

To see processes of statemaking in O'Valley simply in terms of dispossession and the emergence of a plantation worker class, would miss the nuances that underlay development in the region. As mentioned above, in the nineteenth century itself, small farmers became tenants on janmi land and cultivated their own patches of plantation crops. Moreover, in the 1950s with the implementation of the Plantations Labour Act of 1951 (PLA), land grabbing became more prominent. This was the case because big estates started to limit their workforce of permanent workers in order to bypass the welfare requirements of the PLA.<sup>69</sup> Casual workers were not

<sup>62</sup> Parthasarathy, *Paniyans of Nilgiri District*; Parthasarathy, *Kurumbas of Nilgiri District*; Parthasarathy, *Kattunayakans of Nilgiri District*.

<sup>63</sup> Parthasarathy, *Kattunayakans of Nilgiri District*, p. 102–09. Noble, *Cultural Contrast and Similarities among Five Ethnic Groups in the Nilgiri District*.

<sup>64</sup> Moore, 'Plantation Labour in Mysore' cited by Ravi Raman, *Global Capital and Peripheral Labour*.

<sup>65</sup> Ravi Raman, *Global Capital and Peripheral Labour*.

<sup>66</sup> For a discussion on similar processes of dispossession in other parts of the Madras Presidency, see Saravanan, 'Colonialism and Coffee Plantations'.

<sup>67</sup> Daniel, *Red Tea*; Ravi Raman, *Bondage in Freedom*.

<sup>68</sup> The Madras Planters' Act of 1903, considered to be an anti-labourer act, was repealed in 1929. Ravi Raman, K. *Bondage in Freedom*, pp. 22–27.

<sup>69</sup> This act prescribes that plantations must provide their permanent workers several benefits: housing for each worker, medical facilities, educational facilities, sufficient and clean drinking water, canteens, crèches, recreational facilities, leave with wages, sickness and maternity benefits.

protected by the PLA and often were employed on a daily basis.<sup>70</sup> For casual labourers, therefore, land grabbing was the most common strategy and possible because land was available. While some small farmers bought land getting either a real or a false *patta*<sup>71</sup> document, others simply settled on estate land that was ‘undeveloped’.<sup>72</sup> From the perspective of the large plantations, this new class of small farmers continued to be a source of labour. A large percentage of the in-migrants, especially the Sri Lankan repatriates, were scheduled caste (SC). Today SCs comprise 43 per cent of the population of O’Valley while STs comprise only 2 per cent of the population.<sup>73</sup>

O’Valley, in other words, was transformed from a forested area inhabited mostly by adivasis to a rural landscape built by planters and small farmers. After the regularisation of ‘encroachments’ in non-janmam lands in the 1960s, more people encroached upon janmam lands as well.<sup>74</sup> The state supported the development of O’Valley by building roads and schools in the town panchayat, increasingly making it home to small farmers cultivating a few acres of land.

### Statemaking and the ‘Woodedness’ of Small Farmers’ Landscape

As mentioned above, the growth of small farmer estates was at one level a product of tightening legislation on plantation welfare. Small farmers were able to carve out their own estates because large estate owners were happy to let them do so and employ them as casual labourers. Estate labourers now had their own land where they grew patches of diverse trees around their houses. During a survey<sup>75</sup> conducted in O’Valley, 27 different tree species were identified on the land of small farmers. The most common species were jack, silver oak, arecanut, mango and several forest trees.<sup>76</sup> These trees formed a good forest cover. On average people had approximately 150 trees/acre (370 trees/ha). Moreover, these trees had multiple functions: shade for tea or coffee cultivation, mulching for green manure, fodder for goats, and fruits and fuelwood for home consumption. Farmers also pointed out that many of these trees were good timber for furniture. In addition to these trees,

<sup>70</sup> The main argument given by the estate companies was that the cost of service provision prescribed by the PLA negatively impacted profit margins and hence that the government should assume the responsibility of looking after workers. Bharali, *The Tea Crisis*.

<sup>71</sup> A patta is a land title.

<sup>72</sup> ‘Undeveloped land’ is the official term for the forested portions of estates. Krishnan, ‘Of Land, Legislation and Litigation’, p. 288.

<sup>73</sup> Data of the Census of India, 2001, *District Census Handbook*.

<sup>74</sup> Krishnan, ‘Of Land, Legislation and Litigation’, p. 289.

<sup>75</sup> In order to understand better the importance of trees and forests to estate workers and small farmers of O’Valley, we interviewed 93 households, including a few Kurumba households, in Bharathi Nagar, a hamlet in O’Valley of 437 households. Most households were small farmers or landless and settled in O’Valley around 1970 because they got employment in tea, coffee or cardamom plantations.

<sup>76</sup> The more common forest trees grown (see sub-section 4.4) by farmers were ventek (*Lagetroemia lanceolata*), senthuram (the scientific name of this species could not be identified), two types of vattakanni (*Kydia calycina* and *Clerodendrum viscosum*) and rosewood (*Dalgerbia latifolia*).

farmers made use of tea bushes, i.e. they used branches that were pruned as sticks for fuelwood. While farmers grew many trees, their fuelwood needs were rarely met from their own lands only. They also fetched fuelwood from forest land and large estate land. The households that were the most dependent on forests were the landless ones and *adivasis*.

Tree growing by small farmers must be seen in the context of vulnerability of livelihoods. Farmers mainly grew tea bushes in a mixed crop system so as to reduce their vulnerability as casual labourers to ups and downs of the market economy. Farmers perceived trees as a critical resource for economic security. Although cultivation (along with wage labour) was their main source of income, their tenurial insecurity<sup>77</sup> often prevented them from getting loans for agricultural purposes. Trees were seen as a possible source of security. Trees not only generated income but were also a way to demarcate land and stake property rights claims.

### Environmentalising State Policy

Although attempts to protect private forests in estate land date back to the 1940s, it was only with the passing of the Janmam Abolition Act, 1969, that the state was able to exert some semblance of legal control over the use of private forests. This was the case because the Act was aimed as much at confiscating undeveloped private forest land from *janmis* and lessees as it was at agrarian reform, the stated purpose of the Act. Here too, however, as previously was the case with legislation aimed specifically at protecting private forests, the state was met with resistance both in the form of legal challenges and encroachment. When the Supreme Court stepped in with its interim judgment in the *Godavarman* case in 1996, a flexing of muscles by the judiciary, large estates and small farmers were faced with their biggest challenge. This section analyses the role of law in environmentalising state policy, the divisions within the bureaucracy in implementing this law and the resistance from both large estates and small farmers.

### Legislating Private Forests

Concerns about deforestation in the hills emerged in the mid twentieth century. The first law enacted, made possible under Chapter IV of the Madras Forest Act, 1882, was the Madras<sup>78</sup> Preservation of Private Forests Act of 1949 that aimed at preventing the destruction of private forests and restricting forest privileges granted by *janmis* to their lessees.<sup>79</sup> This Act gave the state the power to control sale of forest land

<sup>77</sup> The reason for this will be detailed in the following section.

<sup>78</sup> This act was renamed Tamil Nadu Preservation of Private Forest (Assumption of Management) Act in 1969 after the state of Madras was renamed Tamil Nadu in 1968 (Tamil Nadu Adaptation of Laws Order, 1969).

<sup>79</sup> Krishnan, 'Of Land, Legislation and Litigation', p. 286.

(Section 3–1) and restrict the cutting of trees (Section 3–2) in private forests that were situated in estates or private forests having a contiguous area exceeding 12 hectares (Section 1–2).<sup>80</sup> This was followed by the Madras<sup>81</sup> Private Forests (Assumption of Management) Act of 1961 that went further and empowered the state to take over private forests and manage them for a period of time (Section 3). During the period the forest department had control, the owner of the land was not entitled to the rents or profits (including the forest produce) accruing (Section 4–1) but was eligible for compensation (Section 7). The government claimed the rents (Section 4–1–b).

After the rules for the 1961 Act were passed in 1962, the Collector of the Nilgiris served<sup>82</sup> notice under rule 16 to farmers who had private forests.<sup>83</sup> Over 130 notices were served in the Gudalur region.<sup>84</sup> Notice was served on the Ouchterlony Estate that encompassed 5,566 hectares. A total of 7,087 hectares were declared private forests in O'Valley.<sup>85</sup>

The Janmam Abolition Act of 1969 was the most far-reaching attempt by the state to claim private forests.<sup>86</sup> Although the main stated purpose of the Janmam Abolition Act<sup>87</sup> was to introduce ryotwari settlement in janmam estates, and undertake agrarian reform by bestowing lands on farmers, the state used it more as a means to claim back undeveloped forest land. The government only classified 3,144 hectares of land as Sections 8, 9 and 10, the sections under which it afforded pattas to jammis, tenants or others (cultivating land for at least three years prior to the passing of the Act).<sup>88</sup> On the other hand, it declared 5,231 hectares as forests under Section 53.<sup>89</sup> Moreover, in an attempt to protect private forests within leased estates, the government declared 16,902 hectares as Section 17 lands. The government retained the right to terminate rights in Section 17 lands if it felt it was in the public

<sup>80</sup> The minimum area that could be declared private forest was reduced to 2 hectares in 1979 with the passing of Tamil Nadu Preservation of Private Forests (Second Amendment) Act.

<sup>81</sup> This act was renamed Tamil Nadu Private Forests (Assumption of Management) Act in 1969 when the state of Madras was renamed Tamil Nadu in 1968 (Tamil Nadu Adaptation of Laws Order, 1969).

<sup>82</sup> TNA, Chennai, Chief Conservator of Forests, G.O No. 277 dated 24 December, 1963; Food and Agriculture Department Memorandum No. 166177 Div/62-1 dated 27 December, 1962.

<sup>83</sup> All private forests that had a contiguous area of 12 hectares and that had been notified under the Madras Preservation of Private Forest Act, 1949 could be taken over by the Forest Department in consultation with the Collector.

<sup>84</sup> TNA, Chennai, Chief Conservator of Forests, G.O No. 277 dated 24 December 1963; Food and Agriculture Department Memorandum No. 166177 Div/62-1 dated 27 December, 1962.

<sup>85</sup> Jagdish, *Working Plan for Gudalur Forest Division*, Annexe VI.

<sup>86</sup> The government sought ways to acquire forested land from the Nilambur Kovilagam before the act was decided upon. In the 1950s, the government had a discussion with the Nilambur Kovilagam to buy the land but a suitable price was not agreed upon.

<sup>87</sup> This Act came into operation in 1974.

<sup>88</sup> PUCL, *Fact Finding Report into the Land Situation in Gudalur Taluka*.

<sup>89</sup> *Ibid.*

interest to do so.<sup>90</sup> This right of government was aimed at ensuring that undeveloped estate land was reclaimed and not converted into plantation crops.

The government declared the whole of O'Valley as Section 17. The government could either cancel leases or extend them, but pattas could not be issued under this section. Moreover, it had the power to decide which lands were undeveloped and which were developed. According to 'official data' at the time of the Act, out of the 16,902 hectares of Section 17 lands in estates in Gudalur,<sup>91</sup> 12,949 hectares were deemed 'undeveloped' or forest.<sup>92</sup> In O'Valley more than 1,140 hectares in Manjushree Estates alone were deemed undeveloped.<sup>93</sup> The government was staking its claim to these lands.<sup>94</sup> The government used the Janmam Abolition Act to evict people between 1978 and 1981 and again in 1998–99 and 2001–02.<sup>95</sup>

### The Limits to Law: Jurisdictional Dilemmas and Competing Priorities

In 1955, the Working Plan Officer, Nilambur, under the authority of the Conservator of Forests, Development Circle, presented a report that highlighted that 'forests have reached almost the end stage beyond which they cannot yield an adequate return'.<sup>96</sup> This was more than six years after the Madras Protection of Private Forest Act of 1949 was passed. The failure of the 1949 Act<sup>97</sup> resulted in the Madras Private Forests (Assumption of Management) Act of 1961, which unlike its predecessor, provided management powers to the government not only policing powers. But although the government notified rules for the 1961 Act, it did not take control of any forests to manage them. Five years after the 1961 Act, R. Pasupati, Collector of Nilgiris, wrote that forests were significantly denuded and thousands of acres of evergreen and deciduous timber throughout Gudalur Taluk 'have retrogressed into a type of woodland by repeated cutting, grazing and annual fires'.<sup>98</sup> Even

<sup>90</sup> The Janmam Abolition Act Section 17 (1) (a) says:

where at any time before the appointed day, the janmi has created by way of lease, rights in any lands for purpose of cultivation of plantation crops, the Government may, if in their opinion, it is in the public interest to do so, by notice given to the person concerned, terminate the right with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof.

<sup>91</sup> PUCL, *Fact Finding Report into the Land Situation in Gudalur Taluka*.

<sup>92</sup> Krishnan, 'Of Land, Legislation and Litigation', p. 291.

<sup>93</sup> PUCL, *Fact Finding Report into the Land Situation in Gudalur Taluka*.

<sup>94</sup> *Ibid.*

<sup>95</sup> Krishnan, 'Of Land, Legislation and Litigation', pp. 292–94.

<sup>96</sup> TNA, Chennai, Proceedings of the Chief Conservator of Forests, No. 40/59 (Miscellaneous), 31 January 1959—'A Report on the Nilambur Kovilagam Forests' (confidential).

<sup>97</sup> The internal explanation given for the failure of the Madras Preservation of Private Forest Act, 1949 was that it did not bestow managerial powers on the government but only policing powers—TNA, Chennai, Proceedings of the Chief Conservator of Forests, G.O. No. 277(Ms), 24 December 1963.

<sup>98</sup> TNA, Chennai, Conservator of Forests, G.O. No. 26 (Miscellaneous), 2 March 1967.

after the passing of the Janmam Abolition Act of 1969 that gave power to the state to acquire undeveloped estate lands, large areas were converted into estates. The Forest Department estimated, in 1991,<sup>99</sup> that 4,422 hectares of the 12,949 hectares of 'undeveloped' Section 17 lands were encroached upon, perhaps to a large extent, as Krishnan<sup>100</sup> argues, because of the legal ambiguity that prevailed due to the non-implementation of the Janmam Abolition Act (see next sub-section).

State legislation was not effective because of the state's limited control in janmam areas. Janmam lands continued to be under the proprietorship of the Nilambur Kovilagam and though the state exacted revenue from janmis and tenants, the Nilambur Kovilagam had the final say about land use. As Krishnan<sup>101</sup> has highlighted, the Nilambur Kovilagam janmi permitted lessees to fell trees in their estates well into the 1950s. The Conservator of Forests, Development Circle, in a letter to the Chief Conservator, blamed the Nilambur Kovilagam for the degradation of private forests, highlighting that the Kovilagam was primarily interested in revenue. Moreover, the Kovilagam itself was divided into 112 shareholders. It was, therefore, no longer a question of dealing with only one janmi but with multiple shareholders and possibly conflicting interests.<sup>102</sup>

The multiple priorities of state policy compounded jurisdictional complexities. While the state's passing of a number of acts indicated the centrality of forest conservation to the state's agenda, equally important was the plantation economy. The Gudalur economy had been built around estates. Farmers had been encouraged to move there during the Grow More Food Campaign and thousands of repatriates had been welcomed back due to problems of citizenship in erstwhile Ceylon. Government bureaucrats were concerned that developed land not be mistakenly considered undeveloped land. In 1962 itself, the Collector had warned that many of the lands the government deemed to be forest (undeveloped dry or estate undeveloped) were in fact cultivated or the site of permanently occupied houses.<sup>103</sup> In 1964, a conference was held in Cherambadi, a village in Pandalur taluk, to discuss the implementation of the Madras Private Forests (Assumption of Management) Act of 1961. The government decided to go ahead with enforcement of the Act but emphasised the need to delimit 'developed' from 'undeveloped' lands as only the latter would be taken over by the government.<sup>104</sup> John Wilson, the District Forest Officer in Ooty, went further in a letter to H.M. Singh the Collector, in 1965, by

<sup>99</sup> Krishnan, 'Of Land, Legislation and Litigation', p. 292.

<sup>100</sup> *Ibid.*, p. 152.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*, TNA, Chennai, Confidential Letter No. 3481/54T dated 2 February 1955.

<sup>103</sup> TNA, Chennai, Copy of the Board Proceedings (Miscellaneous) 1065 (confidential) dated 25 June 1962.

<sup>104</sup> The thumb rule that the government followed was that all land cleared before the 1949 Act was developed land. Moreover, land cleared after 1949 with the permission of the government was also developed land.

arguing that the assumption of forests without payment of adequate compensation, read alongside Article 31 of the Constitution, would violate Article 14 and Article 19 that ensured equality under law and the right to reside where one pleases.<sup>105</sup> Even when the Janmam Abolition Act came into effect, the state at different points of time recognised encroachments between 1974 and 1978 and in 1998,<sup>106</sup> suggesting that it was partly sympathetic to small farmers.

### Battling it Out in Court

The other main reason that many of the acts were not implemented in full is because jannmis, estate owners and small farmers challenged them in court. In 1961 G.J. Coelho, tenant and owner as lessee of Silver Cloud estate, argued that the Madras Private Forests (Assumption of Management) Act was unconstitutional and *ultra vires*. He made a number of contentions amongst which were: (1) the Act would harm tenants who cultivated this land and hence was not in the public interest, (2) that public interest was not furthered by the government taking over land and (3) that due notice had not been served. He further argued that the government should encourage farmers to develop their estates and render them support too.<sup>107</sup> According to H.M. Singh, the Collector of Nilgiris at the time, a total of 17 stay orders were granted against the Act by the High Court.<sup>108</sup>

The longest legal battle, from 1969 to 1999, was with regard to the Janmam Abolition Act and the declaration of large amounts of land as Section 17 where property rights could not be given to estates and cultivators and where the state decided upon future land use. The larger estates challenged the Act based on a number of concerns related to both ownership and land use.<sup>109</sup> Their first challenge was in 1970 prior to the notification of the Act in 1974. In a writ petition<sup>110</sup> in the Madras High Court eight estates and the Nilambur Kovilagam claimed that the settlement and resettlement processes in the late nineteenth century and early twentieth century had conferred ryotwari rights on those who cultivated land (including estates) and therefore the Janmam Abolition Act should not be applicable. This argument was rejected by the Court in a judgment that highlighted that the settlement and resettlement were merely a means by which revenue was assessed. Jannmis, the

<sup>105</sup> TNA, Chennai, Letter D.O No. 18479/65 dated 13 September, 1965.

<sup>106</sup> Krishnan, 'Of Land, Legislation and Litigation', pp. 292–93.

<sup>107</sup> TNA, Chennai, Proceedings of the Chief Conservator of Forests, G.O. No. 587 (Miscellaneous), dated 26 February 1964, Letter from G.J. Coelho to Secretary of Government, Food and Agriculture Department.

<sup>108</sup> TNA, Chennai, Proceedings of the Chief Conservator of Forests, G.O. No. 26 (Miscellaneous), dated 2 March, 1967. Letter D.O. A3 No. 28269/65 dated 10 August, 1965.

<sup>109</sup> See Krishnan for a more detailed discussion of the Janmam Abolition Act and its chequered history. Krishnan, 'Of Land, Legislation and Litigation'.

<sup>110</sup> WP No 64 of 1970, WP No. 117 to 121, 185, 186, and 220 of 1970. Krishnan, 'Of Land, Legislation and Litigation', p. 289.

Court ruled, continued to have absolute rights over land and hence ryotwari did not prevail, making the Act indeed applicable. In addition to challenging this judgement in the Supreme Court, estates also claimed in the highest court that forests were not part of estates and hence the Janmam Abolition Act should not be applicable to forests. Moreover, they argued that the state's claim on forests (undeveloped land) was counter to the contention that the Act was an act of agrarian reform.<sup>111</sup> The Highest Court in 1972 rejected the petitioners' contention that forests were not part of estates, but agreed with them that the sequestration of forests was not linked to agrarian reform or strengthening of the village economy. The Supreme Court deemed Section 3 of the Act, which provided for the vesting of forests by government, to be invalid.<sup>112</sup> The government responded by placing the Act under the Ninth Schedule of the Constitution, making the Act closed to judicial review.

Court challenges remained the order of the day. The government notified the Act in 1974 after earlier challenges were set aside and proceeded to survey and vest land. As the government had issued notices to the Nilambur Kovilagam and planters between 1970 and 1974 under the Madras Land Reforms (Fixation of Ceiling on Lands) Act of 1961 when the Janmam Abolition Act case was being challenged in court, lessees filed petitions<sup>113</sup> before the Madras High Court in 1974–75 arguing they should be compensated under the former Act.<sup>114</sup> This too was rejected by the court in 1976 citing that the land being claimed by the state were not lands in excess of land ceiling laws but those for public purpose related to the forested character of those lands.

In 1977–78, petitioners made a number of other challenges in the Supreme Court, amongst them questioning the constitutional validity of including the Janmam Abolition Act in the Ninth Schedule.<sup>115</sup> The Supreme Court in 1978 issued an interim injunction that prevented farmers from changing the character of land use while it examined the constitutional validity question, namely whether it was okay to issue pattas under Sections 8, 9 and 10 to holders of land cultivating plantation crops but not to farmers who did the same on Section 17 lands. In 1989, the Court issued a judgment<sup>116</sup> that serious legal issues needed further consideration amongst them a re-look at Section 3 (related to vesting forests with the government) as they had not been dealt with and in fact had been bypassed by moving the Act

<sup>111</sup> WP No. 373 of 1970. Krishnan, 'Of Land, Legislation and Litigation', p. 289.

<sup>112</sup> *Manjushree Plantation Ltd. vs State Of Tamil Nadu And Ors*, 17 February 1989.

<sup>113</sup> WP No. 4386 of 1974, WP No. 2307 of 1975, WP No. 4769–4774 of 1974, WP No. 693 of 1975, WP No. 90 of 1975. Krishnan, 'Of Land, Legislation and Litigation', p. 297.

<sup>114</sup> Lessees made this claim because before the Janmam Abolition Act came into being, the government had attempted to take control of lands under the Madras Land Reforms (Fixation of Ceiling on Lands) Act of 1961 that spoke about due compensation.

<sup>115</sup> I.R. Coelho (CA No. 1344 of 1976), TNK Govindarajula Chettiar (CA No. 1345 of 1976); Civil Appeals No. 367 to 375 of 1977. *Manjushree Estate, O'Valley*, filed a separate petition in 1988, WP No. 242 and 199.

<sup>116</sup> *Manjushree Plantation Ltd. vs. State Of Tamil Nadu And Ors*, 17 February 1989.

to the Ninth Schedule. In 1999 the five-judge bench that was constituted to hear the case resolved to allow petitioners to claim lands under Section 9 and that Section 17 claims could only result in extension of leases not the granting of pattas.<sup>117</sup>

Even the extension of leases was not to happen.<sup>118</sup> Although the government, at one level, recognised the contentious nature of claiming lands for public purpose and the need for settling rights claims, increasingly environmental concerns and the language of ecological services were to assume prime importance.<sup>119</sup> In the next section, we illustrate how the Supreme Court played a crucial role in highlighting and privileging the supra-local public goods functions of forests and the consequences of this in terms of local claims to land.

### Simplifying Forests and Erasing Small Farmers

From the late 1970s the Supreme Court started to entertain public interest litigations including those related to environmental issues.<sup>120</sup> In the case of forests, as Pathak has illustrated, the Court at first mainly protected customary forest rights.<sup>121</sup> However, a shift took place in the 1990s with the highest court ruling at times more in favour of large-scale developmental projects with significant non-local off-site benefits and at other times in favour of 'conservation', both at the expense of more local natural resource based (including forest) livelihoods.<sup>122</sup>

The most significant judgment in terms of forest conservation and common law precedent regarding the meaning and use of forests was the Godavarman judgment. In 1995, T.N. Godavarman Tirumulpad, a member of the Nilambur Kovilagam family, filed a writ petition in the Supreme Court in the hope of preventing further deforestation in Gudalur.<sup>123</sup> In his petition, T.N. Godavarman Tirumulpad ironically alluded to Gudalur's pristine forested past under his family's control and bemoaned the destruction of the forests thereafter. One year later, on 12 December 1996, the Supreme Court passed interim orders<sup>124</sup> that instructed all state governments to stop tree felling and non-forest activities in forests immediately.<sup>125</sup> A Central Empowered Committee (CEC) was established to ensure compliance to the orders. The CEC

<sup>117</sup> Krishnan, 'Of Land, Legislation and Litigation', p. 291. This section is based to a large extent on the discussion by Krishnan, pages 289–90.

<sup>118</sup> Krishnan, *Deforestation and Conflict*, p. 140.

<sup>119</sup> *Ibid.*, p. 141–42.

<sup>120</sup> Bhushan, 'Supreme Court and PIL', p. 1770.

<sup>121</sup> Pathak., *Contested Domains*, pp. 61–64.

<sup>122</sup> Bhushan, 'Supreme Court and PIL', pp. 1772–74.

<sup>123</sup> Civil Writ Petition titled T.N. Godavarman Thirumulpad Vs. Union of India and Others (W.P. (C) No. 202/1995).

<sup>124</sup> In order to justify its instructions, the Supreme Court referred to 'inter-generational equity' as part of Article 21 of the Constitution (Glenrock Estate (P) Ltd. vs The State of Tamil Nadu on 9 September 2010).

<sup>125</sup> The 1996 orders were put to effective use by the District Forest Office after 1999 when the Forest Conservation Act became a crucial tool for the forest department in Gudalur. Krishnan, 'Of Land, Legislation and Litigation', p. 294.

instructed the Tamil Nadu government to stop all tree felling on janmam lands. Forests, the Supreme Court pronounced, should be understood in the dictionary sense of the word. All wooded areas could now be considered forests. The establishment of a Forest Bench in the Supreme Court was to ensure that the Godavarman judgment and its interpretation of both the meaning of forests and the jurisdiction of the Forest Department, was both extensively applied and long-lasting.

Despite the distinction between developed and undeveloped lands within janmam estates, all janmam lands came under the ambit of the Court's orders. On 28 December 2003, the CEC submitted a report in which contempt notices were given to 642 persons/estate owners responsible for tree felling. Subsequent to that, the CEC submitted a supplementary report, after a field visit to Gudalur that highlighted continued encroachment, ineffectiveness of top forest officials and victimisation of sincere government staff. It recommended that the government settled land at the earliest.<sup>126</sup>

The government has yet to settle lands and hence the Court's restrictive orders remain in place. As a result, the customary land use practices of small farmers have been legally erased by both the Janmam Abolition Act and the Supreme Court judgment, tightening the noose around the necks of farmers in O'Valley. Although the Supreme Court order allows for the cutting of 'trees which have been planted and grown and are not of spontaneous growth',<sup>127</sup> in practice the state rarely grants such permission ostensibly because of the fear that cutting trees on janmam lands will be a means to grab more land.

This is not to say that farmers have no trees on their land or have stopped planting them, but rather that their wooded landscape is increasingly shaped by the Godavarman verdict. Farmers now make a clear distinction between *kaattu marangal* (forest trees) and *sondha idathu marangal* (own land trees). *Kaattu marangal* belong to the government whereas *sondha idathu marangal* belong to them. Previously they had many more forest trees, such as *venteak* (*Lagestroemia lanceolata*), *senthuram*,<sup>128</sup> two types of *vattakanni* (*Kydia calycina* and *Clerodendrum viscosum*), *rosewood* (*Dalgerbia latifolia*) and also *ainy* (*Artocarpus hirsute*), *jack* (*Artocarpus integrifolia*), *naval* (*Eugenia* sp.), *thani* (*Terminalia bellirica*), *mani* (*Trema orientalis*) and *lavanga* (*Cinnamomum zeylanicus*) on their land, but because such trees in the state's eyes testify to encroachment, they no longer keep such trees on their land. Rather, farmers instead grow several dozen own land trees, species like *arecanut* (*Areca catechu*), *silver oak* (*Grevillea robusta*) or *konna* (*Cassia fistula*) that provide fruits, branches, leaves and shade. These trees are mostly fast growing and of low economic and use value as opposed to forest trees that have high timber and NTFP value. The state through its legislation, in

<sup>126</sup> Central Empowered Committee, *Supplementary Report 5*.

<sup>127</sup> Order of 12 December 1996.

<sup>128</sup> The scientific name of this species could not be identified.

other words, has actively shaped the wooded landscape. It is not so much a case of new environmental subjectivities being formed, as Agrawal<sup>129</sup> might argue, but a means by which small farmers try to address their livelihood needs given the strict legal regime imposed upon them.

Farmers are also much more hesitant now to enter Section 17 forests (on undeveloped lands) that border their estates given the increasing policing of these forests. Moreover, though farmers in O'Valley have ration cards, highlighting the state's acceptance of their citizenship rights, they no longer have access to development interventions by the state. The District Collector on 30 January 1996,<sup>130</sup> through an order, cancelled all schemes and public works in reserved forests and Section 17 lands on the ground that Section 17 lands are forest lands. Farmers are no longer able to get loans and the state no longer invests in roads and infrastructure in the area. The Forest Department has put a check post on the road to O'Valley in order to intercept illegal timber products or for that matter stop even building material coming into O'Valley. Forest Department staff also uprooted several acres of coffee, tea and spices.<sup>131</sup> Although the government cancelled the district order in November 2007,<sup>132</sup> it has left an indelible impact on people who continue to believe that the state might take similar action in the future. Legal ambiguity, notwithstanding, the law has had a significant adverse impact on people's lives.

### Conclusion

In 2003, when the CEC of the Supreme Court told the government that a political settlement should be sought to the conflict around Section 17 lands, the government had an opportunity to recognise small farmer claims to land they had cultivated for almost three decades. The government, despite apparent support for small farmers from all political parties, did not act. The fact that the Godavarman judgment of 1996 extended the Forest Department's control over all dictionary defined forests meant that things had become even worse than at the time of the passing of the Janmam Abolition Act. The Court's request for a political settlement also foreclosed the possibility of any legal settlement.

This article has analysed how state-farmer dynamics linked to processes of statemaking have shaped the transformation of the forested landscape of O'Valley. In this complex history of changing state priorities, from that of creating productive plantation landscapes to conserving forests, perhaps lies the answer to why the government did not politically resolve the Section 17 conflict.

<sup>129</sup> Agrawal, *Environmentality*.

<sup>130</sup> Ooty vide No. RC.A5. No. 2992/2006 dated 30 January 2006.

<sup>131</sup> *The Hindu* dated 23 January 2007 and Krishnan, 'Of Land, Legislation and Litigation', 293.

<sup>132</sup> The Nilgiris' MP expressed his regret regarding 'forest rules standing in the way of implementing development schemes in O'Valley' (*The Hindu* dated 17 February 2007). He insisted that the 'state's foremost duty is to serve people' and asked for the sanction of public schemes.

The increasing environmentalisation of state policy and the perception of Gudalur as an important forested landscape with multiple supra-local environmental benefits have made it more difficult for the government to grant private property rights to small farmers.

As the article has highlighted, the history of statemaking in O'Valley is tied to the particularities of the janmam system of land tenure, the colonial state's accommodation of this system and attempts by the post-colonial government to abolish it. At different points of time, different groups of people have both benefited and been adversely affected by the janmam system. Adivasis were alienated from their land and sedentarised. Planters were leased land at nominal rates. Small farmers, while emerging from the large pools of plantation labourer that migrated to the region, eventually became encroachers.

What has also been distinct about statemaking in O'Valley has been the role of the judiciary. On the one hand, farmers have used the courts to challenge legislation aimed at extending the control of line departments over land they see as theirs. On the other hand, as in the case of the Janmam Abolition Act, the courts have for the most part upheld state policy and even advocated its extension in the Godavarman judgment. For all practical purposes, O'Valley is under the watchful eye of the Supreme Court even today. This suggests that the judiciary is becoming an increasingly important actor in statemaking, particularly around issues of conservation, and mediating outcomes that in this case appear to be detrimental to small farmers especially. Perhaps more worrisome is the fact that the scope of the Forest Conservation Act and hence the Forest Department has been extended without adequate consideration for local land use practices.

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