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Of Land, Legislation and Litigation Forest Leases, Agrarian Reform, Legal Ambiguity and  
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Source: *Conservation & Society*, Vol. 7, No. 4 (2009), pp. 283-298

Published by: Ashoka Trust for Research in Ecology and the Environment and Wolters  
Kluwer India Pvt. Ltd.

Stable URL: <https://www.jstor.org/stable/26392986>

Accessed: 23-07-2019 14:25 UTC

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# Of Land, Legislation and Litigation: Forest Leases, Agrarian Reform, Legal Ambiguity and Landscape Anomaly in the Nilgiris, 1969–2007

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## Abstract

This paper provides a history and sociology of how and why the Janmam Act, an apparently well-intended scheme of agrarian reform in Gudalur, South India, has had unintended social, legal and ecological consequences. The Act sought to abolish a largely forested *janmam* (Zamindari) estate and reform its tenures. Some of its provisions pertaining to acquisition of forests leased to planters are still operative four decades since. Legal ambiguity, constituted chiefly by litigation and also by long periods of legal incertitude, has rendered ambivalent the revenue and forest departments administration of forests in leases. Planters have expanded and forested portions of leases have been occupied by migrant peasants. Forest leases appear legally and ecologically anomalous to the state. Popular and legal resistance to state efforts in establishing its interests, especially conservation, is rife. Due to sheer denudation and agrarian conversion, Gudalur is ceasing to be a constituency for conservation. This even as a title seeking social constituency has emerged, albeit problematically, because peasant claims are untenable as per the Act. Such local complexities, with distinct agrarian afflictions, have been wrought by the reformatory scheme and contribute to scheme incompleteness.

**Keywords:** agrarian reform, forest, *janmam*, landscape anomaly, legal ambiguity, litigation, planter, peasant, section-17

DOI: 10.4103/0972-4923.65174

## INTRODUCTION

Conflicts between planters, migrant peasants and the state over private *janmam* forests in Gudalur (a revenue region of the Nilgiris district of Tamil Nadu) fall within an analytical scope delineated by environmental sociology and anthropology. While environmental sociology has paid disproportionate attention to indigenous forest dwellers (Baviskar 1997), environmentalisms of migrant settlers have largely been disregarded in third world political ecology (Nygren 1999). Conflicts involving elite actors and the state are mostly ignored. Further, organised protests and prosaic resistance involving indigenous communities have remained the analytical staple. It is however required that sociology 'will begin to systematically study less visible of conflicts'. Some of these conflicts remain deficient as popular responses. They require 'location-specific' analysis (Guha 1997).

Gudalur's forest conflicts involve elite (planters) and migrant (peasants) actors. For this reason and given the predominantly legal contexts, conflicts remain, perhaps like other similar conflicts, peripheral to analysis or popular attention. The historical reasons for the emergence of 'non-indigenous' actors and legal contexts lie in the pre-colonial status of Gudalur's forests being sparsely populated frontiers. Later, substantial portions of forests were privileged as a private *janmam* estate by colonial judiciary. In Malayalam, *janmam* means 'birth' and the *janmi* system implied a proprietary 'birth right' over land which was hereditary and absolute. The *janmam* estate denoted landed tracts held by the *janmi*, a person who held *janmam* rights and, as the absolute proprietor, could create subordinate interests or tenures in his land. Vast portions of forests were then leased by *janmis* to pioneer British planters. In 1969, when leases were sought to be acquired under an agrarian reform legislation abolishing the *janmam* estate, Indian planters, who

had by then assumed possession of leases, resorted to litigation. Peasants squatted and vested interests prospected, even as they resisted evictions. Acquisition of leases still remains a reform provision in operation. Forests within leases have been converted substantially by planter expansions, peasant occupations and resource prospecting. Conflicts over forests in Gudalur's leases need to be understood in terms of legal idiosyncrasies that circumscribe such private tenures created by erstwhile landlords. These idiosyncrasies are central to an understanding of why a well intended state scheme of agrarian reform such as *janmam* abolition remains incomplete. If, as will be discussed, anomalies such as encroachments and deforestation that inflict leases symbolise scheme failure, legal ambiguities due to litigation and adjudication are significant causes of failure.

### The study

The intent of this study is to provide a sociological understanding, using methods of history, of how and why certain provisions of a well-intended agrarian reform scheme such as *janmam* abolition, failed and yielded unintended legal and ecological consequences. More specifically, the study pays methodological obeisance to the 'location-specific' analysis called for by Guha and to a historically situated and empirically grounded approach privileged by Agrawal & Sivaramakrishnan (2001). The latter negotiate the environment in 'predominantly agrarian contexts' and signal the prevalence of 'agrarian environments' or changing 'hybrid' landscapes. Conflicts are 'unavoidably inflected by the agrarian affiliations of the actors and issues involved' (Agrawal & Sivaramakrishnan 2001:1). The authors insist on the contextual specificities—historical, cultural and ecological—of resource conflict identities and interests (Agrawal & Sivaramakrishnan 2001:12).

However, in methodologically acquiescing to the contextual specificity of forest conflicts, this study does not eschew theoretical generalisations as recommended by the authors. According to them, the 'seduction' to theorise about forest conflicts ('divorced from the agrarian') and conflict identities has been responsible for wrong and unsuccessful conservation and protection policies (Agrawal & Sivaramakrishnan 2001: 20).<sup>1</sup> In localities such as Gudalur, it is possible to theorise about conflicts for a better understanding of why agrarian policies have gone legally and ecologically wrong or to theorise about what conditions the agrarian nature and contentions of the locality and the formation of conflict identities afflicted accordingly. Certain sociological arguments on statecraft and state scheme failure, when selectively juxtaposed to the specificities of locality, provide such an understanding. For instance, Scott (1998) seeks to understand how usually well-intended state schemes to improve human welfare fail. It is not 'difficult to understand' as Scott argues, why lives were lost as consequence of 'administered', ideologically driven and authoritarian rural instances such as Soviet collectivisation and compulsory Tanzanian villagisation. But what he seeks to understand is why well-intended agricultural

schemes fail. The third world is 'littered with the debris' of such agrarian schemes. Failure, he argues, is intrinsic to the process of statecraft and the procedure of simplification and legibility that constitute it. Simplification, a statecraft medium, entails the creation of a standard grid to centrally record and monitor complex and illegible local systems such as land tenure customs (Scott 1998: 2–3). Legibility, is a condition of manipulation entailing state intervention in society and the invention of units visible to the state, whether individuals or their environments (Scott 1998: 183). The establishment of freehold tenure, for instance, is an attempt at making legible and simple, local land customs and contexts. But failure ensues given the complexity of such customs and contexts.

Attempted here is a reversal of an ostensibly causal relationship between agrarian reform scheme failure and local complexities. The contextual argument here is that local complexities or anomalies in Gudalur's leased forests, resembling 'agrarian environments' shaped by the *janmam* scheme, both symbolise and influence scheme failure. Pitching it more simply, it is an argument of what happens when 'simple' localities are rendered complex by state interventions, as against localities whose complexities undo intervening state schemes.

### Methodology

A qualitative methodology for field and archival work was designed. Archival research entailing a perusal of legal documents was carried out in the Nilgiris' district record room. Administrative minutes and notes were sourced from the Revenue Department headquarters at the state secretariat, Chennai. Since litigations were pending in various courts, and land conflicts were sub judice, documents including colonial lease indentures, were retained in the district record room and not sent to the archives. Also, due to litigation and unfinished land settlement, Revenue Department proceedings were continuous and related documents were retained at the revenue headquarters. Pertinent to, and perhaps constitutive of litigation, such legal and administrative documents serve as valid primary sources of data for historical research. With regard to field data, landscape observations were field-noted. Topic-guided interviews were conducted with plantations, forest and revenue personnel, and lawyers. Oral histories were recovered from peasants similarly through topic-guided interviews.

Before the discussion scheme is presented, Gudalur's *janmam* geography and colonial history, post-independence migration of peasants and their economic identities, are provided in the following section by way of a background.

### *Janmam's* geography and colonial history

Gudalur, elevated at 3500 feet, is geographically located at the converging borders of the states of Kerala to the west and Karnataka to the north. The receding moist deciduous and evergreen forests of Gudalur are bordered on the north

by the Mudamalai Wildlife Sanctuary. On the south and southwest they share borders with the Amarampalam forests of Kerala. Gudalur has 12 revenue villages spread over an area of 1,78,431 acres (289 sq. miles). Lands are classified as *janmam* or non-*janmam* government *ryotwari*. *Janmam* lands constitute 80,088 acres whereas 98,343 acres are revenue non-*janmam* lands. Non-*janmam* revenue lands are *ryotwari* lands belonging to the government and are consequences of colonial escheat enquiries.

As mentioned, and as with other Indian localities, Gudalur's private forested estates have a colonial context. British colonial rule has been identified to be a 'crucial ecological watershed' as new scientific and legal techniques were institutionalised to manage forests and other natural resources (Guha 1997). Customary and indigenous resource practices in forested and pastoral localities were impacted to extents that have wrought conflicts. Such conflicts have been documented in depth by historians who have analysed their origins, form and content. For instance, in the Himalaya, the Chipko movement was dated back by Guha (1989) to peasant resistance episodes against commercial forestry introduced by the British after 1864. Even as this subaltern perspective, drawing upon political theories of everyday peasant resistance, initiated a 'resistance' genre in environmental history, an empirical strand co-existed (Grove *et al.* 1995). These empirical histories, inclusive of the post-independence period, have paid more attention to the commercial or 'desiccationist' (conservationist) basis of imperial or Indian forestry, specifically in private *zamindari* forests.<sup>2</sup> Histories relevant to our study of Gudalur in as much local *zamindars* (*janmis*) became landlords of vast portions of the locality as part of colonial 'state-making' interventions.

Rangarajan (1995) for instance details how in the Central Provinces, the Forest Department evinced concern over destructive felling and clearing practices of landlords in their *zamindari* forests, and possible climatic disequilibrium. Professing concern over the plight of tenants and also linking climate change and soil erosion to deforestation, the Forest Department invoked an agrarian legitimacy to the gradual control over private forests they were to establish. Conflict between a 'desiccationist' forest administration and *zamindars* ensued. Such desiccation debates were, says Sivaramakrishnan (1999), revived and infused with newer 'international validations' to enable the government to intervene in private forests of Midnapore, West Bengal through the Private Forests Act 1945. The Act was also influenced by the increasing commercial value of timber and public opinion over failed attempts for 40 years to legislate private forests interventions. A 1948 version of the Act provided for acquisition and then settlement. Delays ensued as earlier settlements were not updated. *Zamindars* evaded notice and along with tenants and contractors, felled and leased land with a motive of defeating an ostensible conservation rationale of the Act. Acquisition of private forests of *zamindars* was not completed even till the 1970s due to resistance.

These histories illuminate how agrarian rationales, besides conservation, were recruited by colonial administrations in

acquiring private *zamindari* forests. In private forests, colonial and post-independence forestry fumbled. Not constituting an 'ecological watershed' in its immediacy, it prolonged existing agrarian relations as a state scheme. Rangarajan questions colonial forestry as an 'ecological watershed' in the Central Provinces given its staggered implementation. Sivaramakrishnan details how forest acquisition remained incomplete for nearly three decades. Private forests in Gudalur also similarly emerged as recalcitrant realms in the post-independence period. The 1969 *Janmam* Act became Gudalur's legal watershed having visible ecological consequences. But the British facilitation of *janmam* remains crucial. So, at this point of the narrative, a colonial detour would be instructive. It would also help clarifying the occurrence of an economically and culturally atypical *janmam* tenure within the politico-administrative boundaries of Tamil Nadu.

Gudalur was known as 'Nilgiris' or 'South-east Wynaad' as the south-eastern portions of the Wynaad district were transferred during the colonial period to the Nilgiris district of Tamil Nadu. The inclusion of Gudalur into the Nilgiris was due to colonial territorial transfers of the Nilgiri district and portions thereof, intermittently from and to the jurisdictions of the Coimbatore district and erstwhile Malabar district. Vast portions of the Nilgiris were transferred to Malabar from the Coimbatore district in 1830. Tracts excluding the Kundah southern mountain ranges were again re-transferred to Coimbatore's jurisdiction in 1843. The excluded portions were annexed to the Coimbatore district in 1860. The Ouchterlony Valley and other southeastern portions of Wynaad were transferred to the Nilgiris in 1873 and 1877, respectively. These included Nambalakod, Cherankod and Munnad *amsams*.<sup>3</sup> The Nilgiris was constituted as a separate Collectorate in 1882.<sup>4</sup>

The British confiscated the Wynaad forests in 1805 to quell a rebellion by the Kurumbranad Raja. He belonged to the western branch of the Kottayam family in the Palazhi or Pychy *amsam* whose territory Wynaad was constitutive of. Known as the Pychy escheats, it formed the basis of revenue enquiries conducted eight decades later in 1884 to ascertain its sequestered status. Enquiries were necessitated by the fact that *janmis* leased and sold escheated lands to mining companies during the gold prospecting years that climaxed between 1879 and 1882. Of the three *amsams* that constituted Nilgiri Wynaad, Nambalakod was declared the *janmam* property of the Nilambur Thirumalpad. Twenty seven % of the Munnad and one % of Cherankod were declared the *janmam* properties of the Nelliyalam Arasu and other small proprietors respectively. The 'necessity of permanently securing the results' of the escheat enquiry through land registry led to the resettlement of the Nilgiri Wynaad. However, the issue of title to occupiers was negated by the judiciary, which, in 1890, ordered the issue of titles exclusively in the name of *janmis*.<sup>5</sup> The *janmis* gradually created a forest lease regime. Forests were leased for coffee, cinchona, rubber and tea planting ventures. The ventures were initiated, individually or in partnership, during the mid and late nineteenth century by British pioneer planters with military, civilian and entrepreneurial backgrounds.

Leases of varied duration and extents were created through legal indentures and contracts between members of the Kovilagam, the Nelliyalam family and colonial planters.<sup>6</sup> The lease regime was established in the 1840s when forests were leased by the Kovilagam to the O'Valley Trust (named after J.H. Ouchterlony) and its pioneering estate ventures such as the Lauriston estate.<sup>7</sup> Among leases granted by *janmis* in Nelliyalam during the coffee industry's ascent in the mid 1860s, are the Indian Glenrock (Wynaad) Company limited and the English and Scottish Joint Cooperative Wholesale Society.<sup>8</sup> The Kovilagam's leases during the early 1900s include the Davera Shola estate (later: Devara Shola). The Malayalam Plantations whose leases include the Wentworth and Mayfield estate were originally acquisitions by the East India Tea and Produce Company formed in 1907.

Besides stipulating the temporalities of tenure, *janmis* also sought to regulate, or facilitate, lessees' use of forest leases. Planters' extraction of floral, faunal and mineral resources in terms of felling trees, hunting elephants and detaching tusks, and mining, was regulated through conditions and clauses in lease agreements. Early lessees like James Ouchterlony who procured perpetual leases from the *Raja* of Nilambur in 1846 were allowed to alienate their forests. Transgression of lease stipulations was legally acted upon by *janmis*.<sup>9</sup> The forfeiture of forest rights is also evident in large leases granted during 1900s by Nelliyalam *Janmis*. The *Rani*, for instance, demised 'forests and other trees, timber wood and jungle' to the Glenrock (Wynaad) Company for coffee and other cultivation.<sup>10</sup> Resource extraction privileges were also selectively stipulated. In 1925, the Nilambur *Raja* in an indenture with the Malayalam Plantations restricted elephant hunting except during emergencies and reserved rights over ivory and valuable timber such as teak and rosewood. The Nelliyalam *Janmis* continued to be liberal in their leases. The Nelliyalam *Janmis* also granted lessees the right 'to cut, fell, top, convert and carry the said trees and timber wood' and 'to sell the same at all times'.<sup>11</sup>

Terms decreased in stringency after the Kovilagam's partition in 1951. This eased the charter of forests. As the lease regime progressed, lessees were at liberty to cut and remove existing trees. In 1949, the Madras Presidency enacted the Madras Preservation of Private Forest Act (MPPF), which sought to control the leasing of forests by *janmis* and the exercise by plantation lessees of forest privileges granted by *janmis*. But *janmis* continued to lease forests and planters also sought and obtained official felling permits as stated in a Gudalur Division Working Plan (1987–1997). In 1962, the district collector permitted, under the MPPF Act, a member of the Kovilagam to lease 66.88 acres in Padanthara. Subsequently through indenture, the lessor permitted felling and utilisation of timber of any description to enable the lessee to cultivate the demised lands with the provision that the purpose of felling remains cultivation.<sup>12</sup>

So, while the state exercised marginal jurisdiction over forest leases on the basis of its enactment of the MPPF, its legislation of agrarian reform in 1969, through which it granted itself the

right to cease, curtail or continue leases, led to a prolonged planter initiated litigation for nearly four decades. Conflicts with migrant peasants who occupied forests within leases, and subsequently conflicts between peasants and the state also ensued.

### Peasants' migrant and economic identities

As Adams (1989) states, 'in terms of geography, topography, demography, language, culture, and history, Gudalur finds itself in the confluence of multiple and diverse streams of influence'. Ethnically, hunting and foraging communities such as the Paniyas, Betta Kurumbas and Kattunayakas, and settled agriculturists such as the Maundadan and Wynaadan Chettis form the native populace. Contemporarily, peasant communities with multiple religious and linguistic identities who emigrated from the states of Kerala and Tamil Nadu in the colonial and post-independence periods constitute the majority.

Most peasants immigrated to Gudalur from Kerala and coastal Tamil Nadu. Malayali peasants from erstwhile Travancore migrated to the hill ranges of Malabar and then migrated to its northern portions including Gudalur. Tamil peasants from Sri Lanka were repatriated to coastal Tamil Nadu and subsequently settled in Gudalur. Migration from Kerala in the initial half of the twentieth century was due to the seasonal recruitment by British planters in specifically O'Valley and Davera Shola, of poor Moplah peasants from neighbouring Malabar. Elderly Moplah peasants in O'Valley and Devara Shola claim to have migrated in the 1950s and occupied forests during the 'Grow More Food' scheme introduced by the Madras Presidency to contain wartime scarcity.<sup>13</sup> Immigration to Gudalur during 1940 to 1970 is constituent and residual of a larger migratory movement of farmers from the former princely state of Travancore to Malabar since the 1940s. Among the northern districts of Malabar that witnessed larger rates of immigration from 1941 to 1951, Wynaad experienced the highest rate of population increase of 59.2%.<sup>14</sup> Correspondingly, Gudalur experienced a 33% increase in population during 1941 to 1951. While Wynaad had experienced its highest decadal increase in population from 1940–1950, Gudalur had only begun to experience a trend of escalating decadal population increases since 1950 as evident from Gopalakrishnan's (1995) Nilgiris District Gazetteer (Table 1).

From 1951 to 1961, Gudalur's population increased by 45%,

**Table 1**  
*Decadal population increase in Gudalur: 1951 to 1991*

Year	Decade	Population	Decadal population increase
1951	1941–1951	45,598	33%
1961	1951–1961	66,057	45%
1971	1961–1971	93,153	41%
1981	1971–1981	1,41,339	51%
1991	1981–1991	1,80,795	28%

and from 1961 to 1971, Gudalur's population increased by 41%; the 'Wynaad migration' conjecture sufficing as reason for such increases. The presence of a vast and fertile cultivable frontier in Northern Malabar and the Madras Presidency's encouragement to cultivate it as part of the 'Grow More Food' scheme provided the 'pull' factor. But certain economic factors of 'push' operated in middle and coastal Kerala. Peasants who migrated from Ernakulam district, which formed part of the Travancore state, from 1950 to 1960, also refer to certain push factors. These include work prospects in Malabar, disproportionate land-large family quotient and the difficulties in irrigation in Travancore as reasons for migration. The 51% increase in the subsequent decade of 1971 to 1981, the highest ever in Gudalur's decennial demography, is the consequence of a 'second-stage' migration of Travancorean farmers from Kerala regions geographically proximate to Gudalur, namely, Wynaad, Pulpalli, Nilambur, Sultan Battery and Mallapuram. Also contributing to the decadal increase was the repatriation of Tamil plantation workers from the Sri Lankan high ranges to Gudalur, as part of a bilateral agreement in 1964 between the governments of India and Sri Lanka to repatriate Tamil estate workers in a phased manner. This scheme lasted from 1968 to 1984.<sup>15</sup> The subsequent decadal, albeit comparatively moderate, increase in migration during 1981–1991 owes to residual Tamil repatriation. After the completion of the rehabilitation scheme in 1984, there was a 'second stage' migration by Tamil repatriates, from coastal Tamil Nadu. According to Tamil settlers, this happened largely on the basis of information through formal and informal networks of relatives and friends in Gudalur.

Historically, the swamps that occur in between valleys as well as the flats, had been cultivated with paddy by the local peasantry especially Maundadan Chettis and tribal Paniyas. British pioneer planters introduced coffee and then tea plantations on forested slopes. This 'slope tea' and 'swamp paddy' configuration of Gudalur's colonial landscape, has been layered upon in the post-independence period. Migrant peasants have created a system of small farms measuring an average of 1.5 acres. Peasants reveal a preference for mixed cropping. Tea, pepper, ginger, tapioca and other plants are cultivated. Fruit trees like jack, mango and plantain, as well as palm varieties such as arecanut and coconut are also grown. Softwoods like silver oak provide shade and support for pepper vines. Some peasants cultivate vegetables. Cultivation of cash crops and spices, or labour in medium sized and large tea plantations remain the chief occupations of communities today.

### The discussion scheme

First, the commercial identities of planters and the spatial proportions of their leases are delineated. In the second section, reformatory intent is explained through a narration of the circumstances under which the *Janmam* Act was legislated in 1969. The rationale and content of planter litigation, the delays in their adjudication by various courts, and the content of final and interim judgments as and when they were delivered, shall

be chronologically detailed. This section introduces the onset, and various phases, of legal ambiguity. The historical period broadly referred to in this section is from 1969 to 1999.

Subsequently, due to legal ambiguity, leases have been inflicted by ecological and socio-legal anomalies. In the third section, such anomalies are introduced and explained in terms of their defining characteristics. They are, expansion of planted area, encroachments, and the emergence of peasants as a new title seeking constituency. The periods through which anomalies are considered to have set in are from 1969 to 1999 and broadly beyond up to 2002.

The fourth section presents initiatives by the revenue and forest administrations. These initiatives resembled enhanced state effort to address legal ambiguity and on-ground anomalies. Entailing perambulation of encroachments and eviction drives, these initiatives were taken in the context of certain judicial events. These include the Supreme Court's interim orders in 1996 on forest conservation, the withdrawal of petitions by Gudalur planters in 1999 and a Supreme Court judgment in 2007 on laws included in the Ninth Schedule. Between 2002 and 2007, the government acted in a resolute manner. In the concluding section, arguments are recapitulated and some theoretical implications of forest and land conflicts in Gudalur are drawn out.

### IDENTITIES OF PLANTATION LEASES

When reforms were initiated in 1969, 90 leases had been created, covering 50,300 acres (177.92 sq. km) of land.<sup>16</sup> This extent was in the possession of 11 large and 80 minor leasees or tea estates. Large estates possessed a superior share of approximately 42,000 acres, while minor estates possessed around 8000 acres. The predominant vegetative character of this combined extent was forests that measured 30,246 acres in 1969. Table 2 contains a register of major tea estates, their lease status and acreage.

South Indian households individually own Woodbriar, Sussex, Rousdan Mallai, Peria Shola, Glenrock and Silver Cloud estates. They assumed proprietary titles from English and Indian planters. The Harrisons Malayalam is the contemporary offshoot of the East India Tea and Produce Company. The Manjushree plantations were originally an inheritance by pioneer coffee planter J.H. Ouchterlony's manager in 1921 upon Ouchterlony's demise. The plantation was later registered as the O'Valley Trust in 1938. Purchased later by a firm, Pierce and Leslie, O'Valley since 1969 belongs to the Birla corporate house. Non Such belongs to the Mahaveer business group. The Cooperative Wholesale Society was a colonial partnership with the English Scottish company and was taken over by Parry Agro in the mid 1980s. Tea Estates India was during the colonial period, known as the Madras Tea Estate or the Davera Shola estate. After various mergers and amalgamations in the post-independence period, it came under the control of Hindustan Lever Limited (HLL; now Hindustan Unilever Limited – HUL). This is an Indian subsidiary of the multinational business conglomerate, Unilever. Parry Agro and

**Table 2**  
*Major estates and extent*

Estate	Lessor	Nature of proprietary	Lease status	Landed extent (acres)
Woodbriar	Nilambur Kovilagam	Individual	Expired	847.95
Sussex	Nilambur Kovilagam	Individual	Expired	1,137.34
Rousdan Mullai	Nilambur Kovilagam	Individual	Expired	860.55
Non Such	Nilambur Kovilagam	Mahaveer Groups	Expired	1,836.82
Harrisons Malayalam Ltd.	Nilambur Kovilagam	Harrisons Malayalam Ltd.	Expired	1,261.80
Peria Shola	Nilambur Kovilagam	Individual	Expired	1,359.56
Cooperative Wholesale Society	Nelliyalam Arasu	E.I.D. Parry	Expires in 2009	640.47
Tea Estates India Ltd.	Nilambur Kovilagam	Hindustan Lever Ltd.	Expired	5,980.02
Manjushree	Nilambur Kovilagam	Birla Groups	Expired	19,675.00
Glenrock	Nilambur Kovilagam	Individual	Non-lease / Ryotwari patta	6,456.00
Silver Cloud	Nilambur Kovilagam	Individual	Non-lease / Ryotwari patta	1,907.00
Total				41,963.00

HLL have since, in the mid 2000s, sold substantial portions of their leases.

‘Undeveloped’ (official term for forested portions of lease lands, grassland and degraded savannah formed the greater proportion of plantations. Sussex and Harrisons Malayalam are exceptions as the planted area was larger than undeveloped portions. With more than three-fourths (19,675 acres) of the O’Valley (25,441 acres) constituting its lease, the Manjushree plantations remains the largest lessee. In proportionate terms, it possesses nearly half the area of leased forests in Gudalur. HLL with 4,489 acres and Glenrock with 3,560 acres are the other large leases. With a consolidated holding of nearly 67,000 acres of landed estate, the Kovilagam was the largest forest lessor.<sup>17</sup> The *janmis* also created about 82 smaller leases to an extent of 7,889 acres. As on 2007, all major and minor leases created by the *janmis* have expired except in the instance of Woodbriar which expired later in 2007 and Parry Agro in 2009. Among minor leases, two expire in 2009 and one in 2014.<sup>18</sup>

### **Economic and political identities**

Plantations partake in a capitalist enterprise of producing cash crops, historically coffee and cinchona and then, till date, predominantly tea. Markets are domicile and overseas. Production in larger estates belonging to HLL and Birlas is administered on a corporate basis. Management is by salaried administrators. Managers hire permanent and contractual wage labour, skilled in harvesting the tea crop. Local labour is hired on a seasonal basis. Seasonal labour, usually locality based is also recruited. Plantations in Gudalur are constitutive of a regional economy founded upon tea cultivation and trade and are an important source of work and wage for a labour force of 14,470 workers.<sup>19</sup>

The fact that such a regional economy is crucially dependent on estates, earmarked for acquisition more than three decades ago, is testimony to powers that planters and plantations wield

in Gudalur. Availing of their abilities to hire and solicit legal expertise, planters resisted the state in the dual, albeit common, litigative procedure of petitioning the High Court, and upon adverse ruling, appealing in the Supreme Court. Political connections are not of much consequence to plantations. Gudalur is rife with rumors and anecdotes of nexus between local political representatives, party members and planters. And political parties have on occasion sought rent from planters, promising them with title or threatening them with acquisition. But entitlement or acquisition are both beyond arbitrary politics given the legal complexities of the *Janmam* Act, especially with regard to the provision on acquiring forests leased to planters by *janmis*. It is impossible for the political state to forfeit its interests in forest leases earmarked for acquisition. Therefore, while it is possible that plantations and planters have gratified politicians, they would have done so to gain temporary respite from such intermittent political irritations. Much more important and of greater consequence was engaging with higher courts as will be evident further in this narrative.

Plantations, historically part of the Nilgiri Wynaad Planters’ Association formed in 1918, are contemporarily also the members of the Planters’ Association of Tamil Nadu (PAT), a formally constituted body. The PAT represents the legal interests of planters and engages in public relations exercises with the media. It partakes in negotiations with the revenue and forest bureaucracies. Also when necessary it has clarified in print media issues relating to the status of private forests.

### **THE JANMAM ACT, LITIGATION AND LEGAL AMBIGUITY (1969–1999)**

The *Janmam* Act was legislated as an act of agrarian reform. Plantation leases were to be acquired as per certain provisions. Planters litigated against acquisition of their leases including its forests. They petitioned in the High Court and also appealed in

the Supreme Court. These higher courts, variedly, found merit, stayed or dismissed petitions. The content of these petitions and judgments is elucidated here.

### Reformatory intent

In 1969, the state government legislated the *The Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act*. The Act sought to eliminate intermediaries between the government and *ryots* (farmers). It provided 'for the acquisition of the rights of the *janmis* in *janmam* estates' and the 'introduction of *ryotwari* settlement in such estates'.<sup>20</sup> Though progressive politics of the post-independence period provide the wider framework for the *janmam* legislation, the specific milieu of Gudalur is instructive. The situated rationale for the *Janmam* Act lay in the incidence of culturally and economically atypical *janmam* land tenure within the political boundaries of Tamil Nadu. Since state reorganisation, the policy of abolition of intermediaries through legislative action had been successfully realised in Kerala and Tamil Nadu. The exception was the *janmi* system which 'remained unaffected by legislation' and was 'still in vogue in the Gudalur taluk of the Nilgiri district'.<sup>21</sup> The natural vegetation of the *janmam* estate also remained a significant reason for abolishing the tenure. Revenue and forest officials suggested the regularisation of lands occupied by *janmis* and tenants and the transfer of major unoccupied forest portions to the Forest Department. The regularisation of encroachments in non-*janmam* lands during 1960 (vide Government Order (G.O) No. 2384, Revenue, dated 25 May 1960) gave the impetus for further encroachments in *janmam* and non-*janmam* forest lands in Gudalur. Upon a report filed by a Revenue Divisional Officer and in consultation with the erstwhile Board of Revenue, the government decided to abolish the *janmam* estate, monetarily compensate the *janmis* and introduce *ryotwari patta* (land title).

### Sections '17' and '8' of the *Janmam* act

All plantations, except Silver Cloud and Glenrock, were subject to the legal reordering by the state of their leases as 'section-17' lands. This section provided for the termination of leases in public interest. Silver Cloud and Glenrock, having purchased *janmam* rights prior to the Act find their rights resembling those stated in 'section-8' of the Act. This section entitled *janmis* to *ryotwari patta*. Section-17 plantations seek eligibility under section-9 which provides for *patta* for tenants of *janmis*. According to EID Parry and HLL, section-17 plantations primarily engage the state over the status of the cultivated extents of their leases. They also negotiate for 20–30% of 'unplanted' forest lands or an equivalent monetary compensation. Section-8 plantations expressly engage the state over forests also, professing *janmi* rights.

### Litigation

In 1970, prior to the stipulated date on which the Act would have come into force, eight plantation lessees along with

the Nilambur Kovilagam filed writ petitions (W.P. No. 64 of 1970, W.P. No. 117 to 121, 185, 186, and 220 of 1970) in the Madras High Court. The Kovilagam and planters petitioned the Court to forbear the government from enforcing provisions of the *Janmam* Act that would stalise their properties including forests, teak plantations, planted lands and wastelands. The petitions, according to the Court, raised a 'common question' of the *janmam* estates having forfeited their character subsequent to the settlement in 1886 and resettlement in 1926 and thus converted into *ryotwari* lands. The government argued that the *janmam* estates retained their character. It invoked the protection of Article 31 A of the constitution that defined an 'estate'. The Court made an 'extensive review' tracing the origins of *janmam*, its connotations of birth, hereditary and proprietary right. Also considered were social myths circumscribing such connotations, colonial acceptance of this tradition and colonial treatises and reports that confirmed the absolute right of the *janmi* over the soil. Establishing legal precedent, the Court cited earlier judgments. The judgments verified the absence of any state rights among the colonial government of the day over *janmam* lands. They also affirmed that *janmis* had absolute rights in the soil and the right to create subordinate interests.<sup>22</sup> The court clarified the basic assumption of the *ryotwari* tenure as one where the 'government or state is the owner of the land and that the *ryotwari pattadar* is the tenant'. It considered 'the actual terms and effect of the settlement in 1883 and resettlement in 1926 and the possibility of settlement proceedings putting an end' to the *janmam* tenure. This review, according to the judgment, clarified that settlement schemes only fixed revenue but did not entail *ryotwari* assessment. Settlement and resettlement had caused no prejudice to the proprietary right of landholders. Thus private *janmam* lands had not been converted into *ryotwari* lands due to settlement and resettlement. Accordingly, the Court held that the provisions of the *Janmam* Act are applicable to *janmam* lands in Gudalur. Further, the *janmam* right qualifies as an estate as stipulated in Article 31-A of the Constitution.<sup>23</sup>

### Higher appeals and the 'forest question'

Aggrieved petitioners filed appeals (C.A. Nos. 2211/70, 2212/70, 85-91 of 1971) in the Supreme Court. The Balmadies Plantations, a lessee of the Kovilagam preferred a writ petition (W.P. 373/1970). This petitioner pursued the conjecture of *janmam* estates having been converted into *ryotwari* estates and also questioned the 'reformatory' rationale of the Act. The petition also reciprocated certain arguments of the appellants, namely, the questioning of the status of forests as constituting an estate 'unless they are held or let for purposes of agriculture or for purposes ancillary thereto' as provided under Article 31-A of the Constitution. The 'forest' question was pursued by the appellants albeit in a differentiated submission that the acquisition of forests did not constitute an act of agrarian reform as it did not promote in any manner the objectives of the same. Judging upon the petitions and appeals, the Court in its common verdict in 1972, engaged at length with the

legal, ecological and political aspects of the estate.<sup>24</sup> The Court reviewed the 1886 settlement and 1926 resettlement. It interpreted that any relinquishment of *janmam* right and conversion into *ryotwari* entailed a redundancy of the legislature's assumption of *janmam* rights to exist. That such rights exist is evident in the constitutional inclusion (in Article 31) of *janmam* rights in the state of Madras.

The Court rejected the contention that forests were not an estate as the constitutional definition of a *janmam* 'estate' was inclusive of forests. The Court also expressed its inability to address the petitioner's attribution of a vested interest to the state's enactment of agrarian legislation in that the Act's purported objective was not agrarian reform. But it reasoned the appellant's submission that the acquisition of forests did not fit the objective of agrarian reform as well founded. The absence in the Act, of any professed purpose to which the state would subject forests to, made their acquisition deficient as agrarian reform. The Court held, 'there is no material on record to indicate that the transfer of forests from the *janmi* to the Government is linked in any way with a scheme of agrarian reform or betterment of village economy'. Posing the contingency of how the state would justify the acquisition of forests if constitutional protection is removed, the Court deemed invalid, the provisions of section-3 of the *Janmam* Act. This section provided for the transfer of forests, 'to the Government and vest in them free of all encumbrances'.<sup>25</sup>

With forests comprising the predominant vegetation of the *janmam* estate and their acquisition rendered constitutionally untenable, the very Act remained susceptible to judicial scrutiny and impact. To overcome the circumstance, the state government recommended that the Act be included in the Ninth Schedule of the Constitution. This Schedule saves laws that provide for acquisition of estates under Article 31-A.

### Notification of the *Janmam* act

Subsequent to its inclusion to the Ninth Schedule by the 34<sup>th</sup> Amendment Act on 7 September 1974, the Act was notified on the 27 November 1974. From this date the *janmam* estate was vested with the state of Tamil Nadu. The government commenced survey operations, which it completed in 1976. Statutory enquiries were conducted under sections 8, 9 and 10, of the Act. These provided for *patta* grant for *janmis*, for tenants of *janmis*, and for occupants proving personal cultivation, respectively. Lands were also transferred to the Forest Department under section-53. The collector of the Nilgiris then issued notice to the *janmis* and lessees to hand possession of their estates. Also to be handed over were 'all accounts, registers, *pattas*, *muchilikas*, maps, plans and other documents relating to the *janmam* estate which the Government may require for administration thereof'.<sup>26</sup>

### Contrary proceedings under the land reform act; and petitions (1974–1976)

Meanwhile, during the four year legal hiatus from 1970–1974,

the government issued notices to the Kovilagam and planters under the Tamil Nadu Land Reforms Act of 1961. The lessees petitioned the Madras High Court on the applicability of this Act during 1974 and 1975. The petitioners asked that they be dealt with and compensated under the Land Reforms Act and its provisions.<sup>27</sup> They further contended that albeit both the *janmam* and Land Reform laws entailing agrarian reform, the operative principles were inconsistent in comparison. Having the option of notifying either of the legislations, the state notified the Land Reform Act as on 1 August 1972. The petitioners contended that the government should thus be restrained from applying the *Janmam* Act to the Kovilagam's forests. They petitioned that surplus lands be acquired under the Reform Act and the government 'compensate for trees at market values'. The Court in its order dated 23 September 1976 issued an injunction against the state from interfering with lands possessed and worked by the petitioners. In its common judgment, a year and a half later, the Court disposed the petitions citing difference in criterion. The difference was that while the Land Reform Act was intended to acquire lands exceeding the fixed ceiling, the *Janmam* Act was intended as an acquisition of the whole estate. This verdict was also strengthened by vesting of the estate under the *Janmam* Act.

### Constitutionality of the *Janmam* Act and the Re-emergence of the 'Forest Question' (1976–1999)

The petitioners appealed against the verdict in the Supreme Court during 1976–1977. The proprietors of the Silver Cloud and Glenrock estates (section-8) went on appeal in 1976. Other plantations followed suit in 1977.<sup>28</sup> Apart from appeals against the lower Court's orders, the planters also petitioned the Court on the constitutionality of the *Janmam* Act's inclusion in the Ninth Schedule because the issue of constitutionality had meanwhile reemerged in 1973 in *Kesavananda Bharati vs. State of Kerala*. In this year, the Supreme Court propounded the 'Basic Structure' doctrine which tests the validity of constitutional amendments vis-à-vis the fundamental rights it affects thereby. Thus the petitioners disputed the discrepancies evident in *janmis* getting *ryotwari patta* under section-8 for cultivating plantation crops even as they are denied *patta* for similar cultivation under section-17. The petitioners' counsel alluded to such inequalities and claimed that the issue had substantial constitutional implications. The state also assented.<sup>29</sup> As the right to equality is considered a basic structure of the Constitution, the *Janmam* Act's inclusion to the Ninth schedule could still be invalid.

Subsequently in its order dated 21 August 1978, the Court confirmed stay orders. It stipulated certain conditions to each lessee-petitioner that were to operate till the writ petitions were disposed. The petitioners undertook not to remove dead and wind-fallen trees without prior permission from the Divisional Forest Officer (DFO). They also undertook not to alienate any part of their leases through sale or mortgage. The Court, however, allowed settlement authorities to survey and delineate plans of petitioner's properties with a caveat of not passing final orders under the *Janmam* Act.<sup>30</sup>

In a common judgment a decade later in 1989, the Court reiterated that the litigation involved a substantial question of law in as many forests were concerned. It maintained that the deemed unconstitutionality of the Act in its pertinence to forests, remained the impetus for the Act's inclusion to the Ninth Schedule. The persistence of forests under section-3 (as a resource that was to be transferred to the government) despite the Court having deemed it as unconstitutional entailed 'a substantial question of law pertaining to interpretation of the Constitution'. The Court then posted the litigation before a five-judge bench.<sup>31</sup> The bench, a decade later in 1999, on the plea of all petitioners except Silver Cloud and Glenrock estates, allowed for the withdrawal of petitions. The bench also allowed the petitioners to pursue their application for *ryotwari patta* under section-9 (as tenants). It also gave petitioners the benefit of challenging any adverse order passed by the state government. The appeals and petition of the Silver Cloud and Glenrock estates, given their status as section-8 lands where a *janmi* was entitled to forestlands or compensation for their acquisition, were referred to a nine-judge bench as the question of constitutional validity of the inclusion of the *Janmam* Act to the Ninth Schedule, persisted.

#### LANDSCAPE ANOMALIES: PLANTER EXPANSION, PEASANT OCCUPATION AND DEFORESTATION (1969–2002)

Legal ambiguity in terms of litigation, judgments and delays in judgments, has wrought anomalies in section-17 leases. This section delineates processes that make leases especially O' Valley and Devara Shola appear anomalous to the government. Processes include planter expansion, peasant migration, and occupation or 'encroachments'. Deforestation is also presented in a phased manner.

Fundamentally, anomaly entails the transformation of the leased landscapes from how they appeared to the state in 1969 and how they appeared as on 1999 and beyond; that is, estates predominantly vegetated by forests with only planters involved in tea cultivation to a deforested landscape with planters having expanded their tea cultivation and peasants having occupied forests for cultivation and settlement.<sup>32</sup> Officially the leases were codified under section-17 as lands where only planters have lease rights over estates. But now there were peasants whose occupation and presence was legally incongruous because they are not eligible for tenure in section-17 lands where the state in 1969 had configured only planter rights and codified them for acquisition in 'public interest'. With a legally tenuous status, leased landscapes have also emerged as realms of ambivalent control. Both the state and planters were unable to, or abstained from, exercising power in any conclusive manner given the legal ambiguity. Such ambivalence has been used by plantations to their advantage by expanding cultivation. Both the forest and Revenue Departments have remained indifferent to each other's mandates and have also benefited from the spoils of such indeterminacy. An area of 33,000 odd acres of 'undeveloped' forests lands existed as on

27 November 1974 when the *Janmam* Act was notified. It has reduced to 13,615 acres according to an official perambulation in 2002. Correspondingly, the developed area with plantation lessees has increased from approximately 19,700 acres in 1974 to 25,757 acres in 2002. Further, 10,928 acres have been cleared and cultivated by occupant farmers, 6,426 of whom were identified in the 2002 survey.<sup>33</sup> This includes besides migrant and local peasants, property speculators and loggers. The ambiguity and the ambivalence the *Janmam* Act fostered and allowed such vested interests to prospect for timber and real estate in leases.

#### Planter expansion in leases

Deforestation is common in all plantations given the expansion of tea cultivation. But, as a consequence of occupations it has occurred primarily in section-17 rather than section-8 plantations such as Silver Cloud and Glenrock. The Glenrock and Silver Cloud estates have not experienced large-scale occupation of their forests by migrant peasants and prospectors though deforestation is manifest. The absence of large-scale occupations by peasants and prospectors in Glenrock and Silver Cloud owes largely to the legal status of the estates. In section-8 lands, only *janmis* are entitled to title or compensation. Large-scale occupations and felling have effectively been restricted by these estates due to their section-8 status, which is less ambivalent than section-17 leases. This status negates both the possibility of the state acquisition as with section-17 leases and the subsequent contingency of regularising encroachments therein. This awareness in the region's public domain of section-8 lands not being 'pliable' as section-17 lands has spared the former's forests of a similar fate.

#### Expansion and deforestation in O'Valley and Devara Shola

Amongst section-17 lands, occupations and deforestation are more evident and prevalent in larger leases in O'Valley and Devara Shola. This is due to the fact that plantations here have larger leases and consequently more 'undeveloped' forest extents. The 16,001 acres of undeveloped portions in O' Valley constitute nearly three-fourths of the total forest area of section-17 leases in Gudalur. HLL, with 4,489 acres, along with Manjushree forms a consolidated forested tract of 20,490 acres. Excluding Manjushree and HLL, there is no substantial involvement of 'encroachers' in the denudation of forests in other section-17 leases.

Forests in O' Valley and Devara Shola have emerged as realms of ambivalent control. The state remained indifferent and planters indulged. According to the second Working Plan (1 April 1998 to 31 March 2008), the Forest Department failed to 'notice' felling as protection staff do not 'patrol section-17 lands controlled by estates' and detect 'clandestine activity'. In the event of detection, department personnel are 'too timid and indifferent to make enquiries', and 'when asked', claim that 'estates are developing only their *patta* lands', which implies

an ignorance of boundaries. This official perception, though plausible, ignores the indulgence of protection personnel by seeking monetary gratification and shirking responsibility. On the other hand, the failure of plantations to report felling betrays much. This includes their involvement in felling, their calculated lack of concern over outside involvement in felling and their avoidance of being held accountable for felling.

A 1999 report indicates that Manjushree increased its planted area from 1,977.80 acres to 3,673.73 acres during 1977 to 1997. This resulted in an increase of 1,304.77 planted acres. The HLL expanded its developed portions from 1,490 acres in 1977 to 3,844.08 acres in 1997–1998, entailing a 20-year increase of 2,353 acres.<sup>34</sup> Lessee denial of involvement in felling and expansion is complemented by their depiction as ‘victims’ of outside encroachments. For instance, according to the PAT, despite the initiation of civil, eviction and criminal suits, encroachments continue due to the state’s indifference. This is evident in the state’s ‘specious plea that lands are covered by section-17 and that it is for the lessees to protect their leases’. The failure of the forest, revenue and police authorities to prevent encroachments or perform evictions, makes protection impossible.<sup>35</sup>

Section-8 and section-17 plantations when interviewed refer to the context of administrative ambivalence and legal ambiguity. Silver Cloud, a section-8 estate, in a demeanor reflective of the administrative ambivalence, cites the difficulties of supervising large tracts. This responsibility, it claims, can be appropriately undertaken by the Forest Department.<sup>36</sup> Referring to section-17 plantations, the Silver Cloud estate claims that the ‘ambiguity of section-17 lands is what leads to problems’. In a similar vein, HLL, a section-17 plantation, alludes to the undecided status of lands of belonging neither to the plantation nor to the government. Manjushree, more directly, alleges the indifference and non-cooperation of the Revenue Department.

The district administration however, as evident in its communiqués to the Chief Secretary and the Special Commissioner during 1991 and 1999 took recourse to the fact of private forests remaining under the control and possession of plantations, despite the Supreme Court’s 1978 stay orders. Such a situation was proving ecologically detrimental, and required ‘expeditious’ and ‘early’ disposal of cases. The 1991 report indicted plantations of indirectly encouraging these very encroachments with the ‘oblique motive’ of bringing denuded areas under ‘tea-cover’. This was ‘an ingenious way of getting over the statutory prevention of converting forest into plantation, under the Forest Conservation Act’. The 1999 report held plantations directly responsible for expanding their cultivation, which plantations attributed to outside encroachments.<sup>37</sup> The government, upon occasion also conveyed directly to plantations, its inability to protect forests that were ‘gradually shrinking’ under the custody of plantations.<sup>38</sup>

The indifference, which plantations and the PAT accuse the state of, is also attributed by the beleaguered state to inadequate personnel, both forest and police, to protect vast

tracts of private forests.<sup>39</sup> Subsequently, the PAT had also informed the state of its inability to protect leased forests notified under the TNPPF Act due to lack of ‘manpower and authority’. Such belated acquiescence of the state and planters to the effects of administrative ambivalence came in the wake of a new phase of encroachments since 1999. Encroachments or occupations were basically parasitical to the ambivalence as is acknowledged by plantations such as HLL and Silver Cloud who are confronted by peasants and vested interests with claims of land belonging to the government. And encroachments, according to the Forest Department, are also consequential, to ambiguity as evident in delays in settlement process and procedure.<sup>40</sup>

### ‘Encroachments’ by migrant peasants

In 1991, a report by the district administration approximated 5,000 acres of private forests as being under ‘encroachments’.<sup>41</sup> In 2002, perambulation reveals an extent of 10,928 acres being under 6,426 encroachments.<sup>42</sup> Though this decadal increase is representative of two distinct occupation phases, between 1990 and 1999, and between 1999 and 2001–2002, there remains a preceding phase. It emerged subsequent to the notification of the *Janmam* Act in 1974. Besides indigenous groups such as the Nayaka, Paniyas, and Moplahs who were historically recruited as labour by plantations, Tamil peasants repatriated from Sri Lanka and Syrian Christians from Kerala had occupied lands in O’Valley post notification.<sup>43</sup> Prior to the regularisation of encroachments in *janmam* lands after 1974 under the *Janmam* Act, encroachments by farmers from Kerala in non-*janmam* revenue forests in the erstwhile Pandalur *firkha* had been regularised under separate schemes during 1964–1965, 1971–1974 and 1974–1978.<sup>44</sup> This liberal predilection of the Tamil Nadu government in regularising occupancy in non-*janmam* lands in Gudalur and the decision to abolish the *janmam* tenure and introduce *ryotwari* settlement, provided the impetus for further encroachments in *janmam* lands. Further, there was a legal hiatus between 1981 and 1988 when the Supreme Court stayed evictions based on petitions filed by farmers and their associations. During this hiatus, section-17 forests were encroached along with reserve forests and reserve lands by Kerala farmers and Tamil repatriates. Of the 9,113 applications for *patta* received in 1988 by a Special Deputy Collector, are applications from section-17 farmers also.

The increase in occupied acreage from 5,000 acres to 10,928 acres during 1991 to 1999 constitutes a second phase of occupation that coincided with a tea and spice boom, land speculation and timber poaching. Complemented by a heightened ambivalence during the 1990s, the good tea and spice market, real estate speculation and logging fed into each other. Subsequently, between 1985 and 1995, tea prices increased, accompanied by a buoyant pepper and ginger market. Small occupations ranging from 2 to 3 acres, and larger encroachments varying from 15 to 150 acres, proliferated in O’Valley.

In HLL’s lease, the ethnic identities of occupations vary

given its location in the Padanthorai and Cherumulli villages, which have a substantial Maundadan Chetti presence. The Chettis traditionally inhabited the area and cultivated its swamps with paddy. Paniyas who have customarily worked on Chetti swamps, also have a sizeable presence. Apart from their *patta* lands, Chettis also possess extra lands within HLL's lease that they used historically. But despite their possession, the state did not consider them eligible for settlement.<sup>45</sup> Undeveloped forest-lands have for the most part been occupied by local Moplahs and Moplahs from Nilambur, Wynaad and Mallapuram. Local Moplahs were from erstwhile Malabar and had historically constituted the estate's workforce. Occupations can be classified into two phases, namely, pre-1998–1999 small occupations and post-1999 large occupations. The former phase involved small occupations of 1 to 2 acres at the lease margins by local Chettis, Paniyas, Nayakas and Kurumbas. Estate workers including Moplahs and Kannadigas, and Tamil repatriates also occupied forest lands. Though these small occupations occurred gradually through the 1980s and 1990s, a specific phase, namely, 1994–1996 is notable. During the latter phase, the 'Gulf' phenomenon, operated in Devara Shola, where kin of estate workers or occupants invested money earned in the Middle East in land occupation and cultivation. As on 2002, 186 hectares of forests were encroached and cultivated with tea, coffee and ginger.

Major encroachments during the post 1998–1999 periods in HLL's lease in Padanthara, Cherumulli and Nellyyalam villages and Manjushree's lease in O'Valley have similarities. These encroachments are classifiable into the 145 acres that were regularised in HLL's lease and 707 acres that were regularised in Manjushree's lease during 1998. In addition, an extent of 2,000 acres was encroached in these leases subsequent to 1999. The former, known officially as 'irregular *patta*' for its illegality, entailed *patta* grant by a Settlement Officer. Amidst the prevailing ambiguity, he legally maneuvered the situation in favour of eleven individuals from Gudalur and Kerala who procured fake tax and land documents and fabricated possession and cultivation. The latter post-1999 phase involved occupation of approximately 2,000 acres of forests in O'Valley, Padanthorai, Cherumulli and Nellyyalam.<sup>46</sup> The Tamil Nadu Forest Headquarters claimed that subsequent to the Supreme Court's orders in August 1999 'there is a spurt of encroachments in the lands under section-17 of the Gudalur *Janmam* Act'.<sup>47</sup> According to the PAT, such encroachments are the consequences of 'rumours', spread by 'Government sources'. The rumours pertained to the possibility of lessees losing their case and the Government assuming forest control. Under these circumstances, there were prospects of those in possession being eligible for *patta* under section-10. Planters refer to a general disposition among encroachers of entitlement to *patta* if in possession, and rumours spread by lawyers of encroachers being eligible for *patta* if they applied.

There was no concrete intervention by the forest or Revenue Departments in a largely 'illegal' real estate enterprise. This involved the felling, clearing and developing of forest-lands, and the buying and selling of lands thus developed. Further,

this proxy property regime remained economical given the absence of *ryotwari patta*. This fact along with the dormant risk of evictions encouraged a 'discounted' land trade. Both local and migrant farmers cite the cost effectiveness and absence of any problems with the Forest Department as a rationale for their decisions to settle or cultivate in Manjushree's lease in O'Valley.

A settler refers to the unrestrained nature of the enterprise where 'everyone was buying lands and cultivating in O'Valley'. He also revealed a general demeanor when alluding to the fact that 'a lot of people are involved' and that if there was a problem, he 'would never have bought the land'.<sup>48</sup> The suggestions of a well-embedded illegal enterprise are evident in other claims of migrant occupants. They mention that the availability of labour work and daily wage in larger encroachments that cultivate labour requiring crops like ginger, induced them to migrate and occupy. The occupation of land as a quasi-legal economic enterprise founded upon possession rather than proprietary has also gained livelihood legitimacy. That is, as a work and wage constituency for felling, clearing and cultivation. Interviews with farmers and discussions with guards and foresters of the O'Valley Beat, reveal that Tamil repatriates constitute the predominant felling labour for the timber trade. More commonly in section-17 lands, peasants and vested interests with means and in possession of larger encroachments, had filed false cases in the local and district courts against existent or non-existent individuals. Such litigation served two, albeit mutual, purposes. One, to gain injunctions from the court against future or possible evictions and two, to gain *de facto* possession over lands.

Besides litigation, peasants have also resisted overtly. Resistance over forest control in section-17 lands occasionally assumes overt forms. Occupant farmers are mobilised by politicians and more affluent encroachers. Overt resistance in the form of sporadic processions occurs intermittently in section-17 lands. Such processions ensued when the Forest Department cleared fresh saplings of permanent crops such as tea, lest such crops be used to establish 'occupancy' and thereby possession. Such protests are usually organised by political parties under 'all party' initiatives because the *patta* issue remains politically pertinent and can only be ignored with electoral consequences. Protest processions have been more prosaic in section-17 lands, especially after evictions in 2001 and 2002 based on the 1996 interim orders of the Supreme Court. The orders were passed as part of a writ filed by Godavarman Thirumalpad, a member of the Nilambur Kovilagam in 1995.<sup>49</sup> Peasants with small holdings in O'Valley and Padanthara were not normally disturbed during these evictions. The District Forest Office and the District Revenue Headquarters' prioritised the eviction of large-scale encroachments. But the farmers were strategically mobilised by bigger encroachers. Small farmers also gather on the ground during the frequent evictions of bigger encroachments in section-17 forest lands. This given the fact that they also work for wages on the said lands and are warned of the possibility of facing similar eviction. Tamil peasants in O'Valley claim

to have been approached by affluent encroachers to protest against the Forest Department and even promised lands in the event of their concurrence to participate in protests.

Resistance by affluent encroachers in section-17 lands has also been violent. In some instances, the Divisional Forest Officer and foresters claim that while higher forest officials are ‘gheraoed’, surrounded and heckled foresters and guards are even threatened with arms. The District Forest Office, for instance, noted the cancellation of eviction operations in June 2002, as ‘encroachers had gathered in large numbers, disrupted the eviction process and threatened the eviction team with dire consequences’.<sup>50</sup>

Covert or everyday resistance can also be evidenced from varied furtive activity on the forest floor. The clandestine clearing of forests or few remaining forest tree species in and around occupied lands, itself constitutes such resistance. Where it happens immediately after an eviction episode, it is retaliatory. Where it happens gradually, it is a collective farmer act of removing all evidences of natural vegetation. By doing so, farmers hope to deny the Forest Department, if not legal, ecological criteria of asserting claims in any future course of land reclamation. Farmers in Padanthorai testify to this conjecture. It is generally considered that the presence of forest trees species or its sprouts, entails potential trouble in the form of subordinate personnel’s visits and also being accountable for forest species. Farmers in Padanthorai allude to a general state of ‘good’ if forests are cleared.

The ecological consequences of livelihood and vested encroachments are evident in the altered vegetations of O’Valley and HLL. O’Valley has emerged as a medley of small polycropped patches, medium sized tea tracts, large tea and coffee estates, twenty-four settler colonies, degraded savannah and remnant forests. Despite their contributions, lessees and the Forest Department regularly attribute such anomalies to the Revenue Department. The Revenue Department, specifically the Village Administrative Office, is credited with the establishment of a ‘possession’ regime. The office is accused of issuing tax receipts, encroachment fine receipts, possession certificates, survey numbers and land sketches. All of these are produced in courts to gain ‘*de facto*’ possession and injunctions against evictions.<sup>51</sup> The legal constrains in evicting are evident in encroacher possession of legally admissible documents and encroachers’ participation in legally circumscribed inquiries. Malayali farmers in section-17 forests were also in possession of fabricated ‘*pattom*’ receipts.<sup>52</sup>

#### ATTEMPTS TO ATTENUATE AMBIGUITY AND SURMOUNT AMBIVALENCE: 1999–2007

To an extent, this permissive and enabling disposition of the Revenue Department has put the Forest Department under pressure. The stress is palpable in subordinate forest personnel’s rhetorical rendering of contingencies such as the ‘Revenue Department finishing the Forest Department which might have to shut out as forests are disappearing’. Or ‘a forest being destroyed and a revenue village created’. These

contentions are ironically echoed by the Revenue Department itself. A report based on a preliminary visit by a Settlement Officer in 2001 indicts his department while describing anomalies in the landscape.

He states that ‘section-17 lands have fully been converted into housing plots and houses were constructed thereon. Churches, mosques, temples, schools, hospitals and other public utilities have come up in the above lands. In a few lease cases, there is no plantation at all and all lands have been converted for non-agricultural purposes. A few villages have been converted into Town Panchayats, namely, Devara Shola, Nelliyalam and O’Valley. No ground rent *patta* has been granted to many of the houses and no ground rent is realised from the town site. In short the character of the land has been totally changed’. The report also refers to the discontinuity in settlement proceedings pending Supreme Court appeals and the required implementation of ‘second settlement operations’ in the context of the ‘changed scenario’.<sup>53</sup>

The post 1999–2000 periods have witnessed a more cohesive state initiative marked by inter-bureaucratic effort consequential to changed legal circumstances. The withdrawal of their petitions by plantations in 1999 and the Supreme Court’s interim orders in 1996, held potential to attenuate ambiguity and ambivalence, respectively.<sup>54</sup> Legal ambiguity seemed to have attenuated at least in its connotations of delay. Ambivalence was gradually being surmounted through the Forest Department’s survey of felling in plantations on the orders of the Supreme Court in a contempt petition filed by the Gudalur DFO. There was also the Revenue Department’s ‘perambulation’ of section-17 lands to commence settlement that was delayed for over two decades.<sup>55</sup> The Forest Conservation Act 1980 which had so far remained marginal in its influence to section-17 forests, has since the 1996 interim Supreme Court orders, emerged crucial at that time to conservancy efforts by the Forest Department in Gudalur. The Court had clarified the meaning of forests under the Act as including, apart from its ‘dictionary’ sense, ‘any area recorded as forest in government records irrespective of the ownership’. The interim orders disallowed any further expansion of plantations by way of encroachments or otherwise. Further, such orders were deemed to be operative contingent to any variant order by the state and any court or tribunal. The orders were put to effective use by the District Forest Office in 1999. It led to the eviction of more than 600 acres encroached since 1998–1999.<sup>56</sup>

Until 1990, private forests were normally referred to by the revenue classification of ‘undeveloped’ lands. The following decade is characterised by such fiscal classifications being complemented by legal-ecological concerns. The legal constrains of allowing forest conversion and the ecological services of tropical biodiversity were recognised. The district administration, for instance during 1991, maintained that it would be ‘a pity, if the Government ultimately wins the case against planters but there is no forest to take over’. ‘Undeveloped lands are nothing but forests’ which form the catchment area for the Pandiar and Punampuzha rivers, remain home to animals like the Asian elephant, and are predominantly west-coast tropical evergreen forests that once lost cannot

be regenerated. Any violation by planters will attract the provisions of the Forest Conservation Act which consequent to the Supreme Court's interim orders in 1995 apply to all forests recorded as such by the Government 'irrespective of the ownership or classification thereof'.<sup>57</sup>

Even as the withdrawal of petitions in 1999 paved way for framing rules under section-17 of the *Janmam* Act, the government beleaguered by the 'long and tortuous legal battles' and the potential of litigative contingencies, sensed the futility of terminating leases. The government evaluated the legal constraints of accepting lessee claims and litigative prospects of rejecting them, and the contradictions inherent in treating lessees as tenants as sought by the former and suggested by the court. The Revenue Department even considered the possibility of renewing expired and operative leases and stipulating conditions as recommended by the erstwhile Board of Revenue in 1980. However, on October 2007 the Settlement Office rejected *patta* applications of section-17 lessees. The office anticipates that planters will go on appeal. There has also been further encroachments and conversion of forests. Forest cover has reduced from 13, 615 acres in 2002 to 12,000 acres in 2007. Smaller leases have also been fragmented. When planters in possession of smaller leases applied newly for *patta* in 2008 on orders from the High Court (which the planters approached when the government surreptitiously attempted to take over their leases in early 2008 claiming that they were not part of the Supreme court's old stay orders), there were 400 applications as against 82 applications as had existed in 1969.<sup>58</sup>

Meanwhile in 2007, the Supreme Court pronounced the Ninth Schedule judgment in the petition filed by the late Robert Coelho of Silver Cloud whose appeal was posted before a nine-judge constitutional bench in 1999. The order of reference was to his petition on the *Janmam* Act and another with regard to the West Bengal land Holding Revenue Act, 1979. The bench adjudicated upon the nature and character of protection provided by the Constitution to the laws added to the Ninth Schedule by amendments made after 24 April 1973. This was the date on which the Court propounded the 'Basic Structure' doctrine that tests the validity of constitutional amendments *vis-à-vis* the fundamental rights it affects thereby. The Bench pronounced that though an Act (e.g., *Janmam* Act) is put in the Ninth Schedule by a constitutional amendment, its provisions (e.g., acquisition of forests under section-3) would be open to judicial attack on the ground that they destroy or damage the basic structure. This because the fundamental rights (e.g., of planter) taken away or abrogated pertains to the basic structure.<sup>59</sup> The acquisition of forests in Silver Cloud and Glenrock where planters enjoy the status of a *janmi* now emerges 'illegal'. The fate of these 'forests', a lot of which have been cleared for tea cultivation or alienated, now lies with a three-judge bench of the apex court.

## CONCLUSIONS

The emergence of planters and peasants as conflict actors resisting the state's attempts to acquire and regain control over

lands in their possession is corollary to agrarian reform initiated by the Tamil Nadu state in *janmam* lands. The conservation aspect (forest consolidation) of reform legislation was an effect of forests constituting the predominant vegetation of the *janmam* estate. Two political factors have influenced agrarian reform in Gudalur. One is the progressive politics of the post-independence period entailing land reform and title grant whereby private estates were also identified for abolition. The second was the anomaly arising from the prevalence of a culturally and economically atypical land regime such as the *janmam* estate (a remnant from Kerala) within the political boundaries of Tamil Nadu.

In retrospect, the *janmam* abolition and acquisition scheme was well intended. Tenants and early migrant 'encroachers' received titles. Forests were consolidated from within the *janmam* estate for conservation. Lands leased to planters were to be acquired. And though the Act did not state what it would do with the plantation leases it sought to acquire or what it would do with forests in leases, it is reasonable to speculate positively. That is, estates could have been converted into public sector undertakings, production resumed and livelihoods of the labor force ensured. Forests would be transferred to the Forest Department for conservation. But the consequences of reform have been unintended especially *vis-à-vis* plantation leases codified under section-17 for acquisition. The provision of section-17 of the *Janmam* Act remains operative, stalled as it was due to litigation. Forests have been converted substantially within leases codified as section-17 and earmarked for acquisition. Litigation initiated by planters, delays in judgments and the legal impasses wrought by inconclusive judgments have all rendered ambiguous the legal status of section-17 forest leases. Legal ambiguity also arises from discrepancies inherent in section-17 of the *Janmam* Act. Instead of summary acquisition, the section stipulated that the government may acquire leases if in 'public interest'. The legal impasses continue. Planters have sought *patta* from the government. Upon rejection they have sought relief from the judiciary. The judiciary has only offered temporal respite in terms of stay orders, but ultimately left it to the state to consider *patta* grant to plantations. The state has refused to compromise its interest in leases.

Ambiguity in turn has wrought legal-ecological anomalies in landscapes codified for reform. When the *Janmam* Act was notified, the leased landscapes were vast forests with tea estates interspersed. Now, estate boundaries have expanded and the leases are now landscaped by a medley of large, small and medium tea and spice plantations, settler villages and townships. Peasants and planters alike, now seek land titles. The government cannot entitle peasants given the codification of the leased landscapes as section-17 lands where only planter rights were configured and earmarked for termination. The leased lands now appear as constituencies for revenue but not for conservation.

That forest conflicts in Gudalur have an agrarian context is manifest. Gudalur's agrarian history, in as much it entailed capitalist production of cash crops, can be traced back to

colonial initiatives on this frontier. In this sense, it can be conceived of as an agrarian environment which Agrawal and Sivaramakrishnan (2001) postulate as malleable realms that mutate historically over time. They argue that in many forested or pastoral localities, resource conflicts, though ostensibly labeled ecological, are in reality agrarian in context. However in as much as leased landscapes in Gudalur can be considered as mutative and malleable, and conflicts over these landscapes considered agrarian, a temporal and structural context prevails. Landscape mutation has been pronounced in the post *Janmam* Act (1969) period. Since this period resource conflicts and identities took a strong agrarian turn. The legal impress on these landscapes is unmistakable. The predominantly agrarian afflictions of planters and peasants are now visible in their quest for land and *pattas*. In this sense section-17 landscapes of Gudalur can be understood as agrarian environments that have emerged so in legally circumscribed historical contours. Land rights in terms of free hold title and not access to or control over forest resources, provides the basis for peasant resistance.

Legal ambiguity and landscape anomalies then constitute local complexities. Scott (1998) argues that such complexities in localities also serve to thwart well meaning agrarian schemes. Simplification of land tenure through the institution of freehold and taxable property regime, fails given the complexity of local land customs and contexts. Ground realities differ from official land tenure records. Land invasions and squatting if successful represent the exercise of *de facto* property rights, which are not represented on paper. A shadow land tenure regime coexists. Local practice does not always subscribe to state theory (Scott 1998: 49-51). Further, the progenitors of state schemes overestimate their capacities and underestimate the capacities of their subjects. Subjects, i.e., subaltern agency, abstracted by the state but diverse in actuality, have often resisted, or participated expediently, in schemes with the help of practical knowledge (Scott 1998: 343-46). Scott conceives of such practicality in the form of '*metis*' or dynamic and adaptive knowledge involving practical skills and acquired intelligence.

Gudalur's forested leases, especially in O'Valley were not localities with communities and complex land customs that needed to be simplified. What section-17 intended was to render legible land leases created by *janmis*. As colonial and culturally atypical agrarian remnants, these leases needed to be acquired. In this sense, the state was intervening in rather simple landscapes. What it ended up doing was to 'complicate' these landscapes.

Today, like Scott says, ground realities in leases contrast with revenue and forest records. Leases have been invaded and squatted upon by peasants and vested interests who have established *de facto* land claims. But unlike Scott's argument, local practice does not always subscribe to state theory. In as much as state theory entails for instance legibility through freehold tenure, planters and peasants actually seek tenure and want to be rendered legible as taxable subjects. While the law makers of Tamil Nadu did underestimate the litigative capacities of planters, they were ignorant to the contingency

of peasants emerging as 'subjects' seeking *patta* in leases. Intrinsic to peasant emergence as subjects is their practical adaptation to the prevailing legal ambiguities. Besides practical skills in clearing and multi cropping, peasants have acquired certain 'legal' knowledge by experience or through networks. This ranges from possessing knowledge of ambiguity circumscribing section-17 leases and not section-8 leases, realising the remote possibilities of eviction given the administrative ambivalence, and acquiring documents and receipts admissible in courts as evidence for possession.

In delineating the complexities and related roles of planters and peasants, a caveat is in order. Not much agency can be conferred upon these actors. They do not form a preexisting agency implicated in the complexities, of leased localities, that have thwarted an agrarian scheme, as suggested by Scott.<sup>60</sup> Politico-legal and environmental complexities in Gudalur then were largely structurally wrought. Agency was enabled. As against 'causal' local complexities—inherent or existing—that derail formulaic schemes, juxtaposed here are 'consequential' complexities, so to speak, that are wrought by state schemes and act back upon them.

## ACKNOWLEDGEMENTS

I would like to thank Mahesh Rangarajan for his detailed comments on an earlier version of the paper presented at the *Nature, Knowledge and Power* conference held at Uppsala University in August 2008. I would also like to thank Arun Agrawal for his brief albeit useful insight during the conference on the concept of anomaly and its status as an exception. Constructive and encouraging comments of subject editor and one another anonymous reviewer are appreciated. I am grateful to B.J. Krishnan for patient clarifications on legal complexities prevailing in Gudalur. I remain responsible for residual flaws.

## Notes

1. Though the authors' eschewal of theoretical generalisation would seem pertinent to essentialist environmental scholarship (e.g., benign 'community' vs. bad 'state'), their insistence on local specificities suggests a general theoretical circumspection. The authors themselves are wary about this possibility when they claim that their 'emphasis on the malleability of landscapes is not simply for scoring a postmodern point' (Agrawal & Sivaramakrishnan 2001: 6).
2. Desiccationism fundamentally suggests a connection between deforestation and drought. Gradually it has come to imply ideal concerns of the Forest Department, as against its fiscal prerogatives. (Skaria 1998).
3. *Amsams* were aggregates of '*desams*'. The *desams* were revenue territories.
4. Grigg's (1880), colonial manual suggests that the reasons for territorial transfers range from intra-personnel and departmental power pursuits, administrative expediencies, individual bureaucratic efforts, preemption of dubious proprietary claims by *janmis*, and planter demands. For instance as Cederlöf (2008) notes, John Sullivan, the first district collector had lengthy disagreements with the erstwhile board of revenue over the transfer of Nilgiris to Malabar.
5. (Francis 1908). The Nilambur Thirumalpad belonged to the Nilambur Kovilagam. Thirumalpad was a '*Raja*', literally 'king', and Kovilagam was the *Raja's* residence. Nilambur is contemporarily a district in Kerala and adjoins Gudalur. The Nelliyalam Arasu or '*Urs*' (also meaning '*Raja*', albeit in Kannada) whose family had migrated to Nelliyalam in

- Gudalur from Mysore for reasons not established historically, was the *janmi* of the said region.
6. Document copies pertaining to *janmam* leases, 1880 to 1930; *Janmam* Files (henceforth JF), Nilgiri Record Room (henceforth NRR); 'Note On Gudalur *Janmam* Lands', prepared by the Special Commissioner and Director for Survey and Settlement (henceforth SCDSS), Chennai, 2002, for the Revenue Department (henceforth RD), Fort St. George. The duration of leases ranged from 12, 24, 48 and 96 years with many leases created for 12 years at the end of which they stood renewed. Forests were leased monthly from Rs. (ISO 4217 Code INR) 2 to 6 per acre for developed lands and 10 paise to Rs. 10 per acre for undeveloped forest lands.
  7. Copy of Document No. 236/1883, dated 7-5-1883, Vol. 29, 106; JF, NRR.; Francis, (1908). Lauriston was perpetually leased for a sum of Rs. 1500 and a *janmabogam* (rent) of Rs. 20. The Trust opened up 14 estates and also sold estates such as the Seaforth, which presently constitutes the landed interest of the Non Such estates. Smaller plantation ventures of 20 to 30 acres in O'Valley were leased for 96 years and renewed every 12 years. Lease amounts were fixed at Rs. 100 annually. Perpetual leases were also created for 96 to 99 years and commuted at annual rates.
  8. Francis (1908); Copy of Document No. 12/1906, Vol. 19, pp. 76–78, JF, NRR; Thomas and Davis (1886). Floated as a mining endeavor in the mid 1800s, the Glenrock estate in an indenture with the *Rani* in 1906 had her 'demise and confirm into' it, planted and jungle tracts totaling 3,151 acres for a lease of 36 years at an annual rent of Rs. 200. Earlier in 1882, and by reason of merger the company came to possess a leased extent of 4200 acres. Portions, planted and forested, of Glenrock were 'demised' in an indenture during 1945 to the English and Scottish Joint Cooperative Wholesale Society.
  9. Copy of Document Nos. 236/1883, dated 7-5-1883, Vol.29, pp.106; 379/1879 & 380/1879; 98/1880, Vol. 6, pp.7; 574/1882, Vol 25, pp.130; JF, NRR.
  10. Francis (1908); Copy of Document No 12/1906, Vol. No. 19, pp.76–78; JF, NRR. The *Rani* permitted lessees or their authorised representatives to 'cut, fell, top, convert and carry timber wood and jungle. Also to sell the same at all times during the term. She also granted the liberty to 'kill' or 'capture' all game including elephants.
  11. Document. No. 53/1925; Copies of Lease Documents relating to plantations taken from the sub Registrars office, Gudalur and Ooty for the period from 1881 to 1930, Document No. 59/1945, JF, NRR.
  12. Copy of Document No. 168/1962, Vol No. 44, pp. 304–306, JFF, NRR. The indenture was made between N.K. Sinha Thampatty (Lessee), and T.N.P Tirumalpad (Lessor).
  13. See Kunnikrishnan 1995.
  14. Tharagan 1978. Dharmalingam 1953. Also popularly referred to as the 'Wayanad Migration', as the region emerged the centre of 'Travancorean settlement'.
  15. Under the Shastri-Srimavo agreement, 5,25,000 persons of Tamil origin were to be repatriated to India over a 15 year period. Among various schemes designed for their settlement, was the Tamil Nadu Tea Plantation Corporation (TANTEA) in the Nilgiris.
  16. *Note on the Issues relating to the Gudalur Janmam Lands*, RD, Chennai, 2002.
  17. Affidavit, T.N. Sankara Varman Thirumalpad, Joint Receiver of Nilambur Kovilagam Forests and Petitioner, in Writ Petition (henceforth WP). No. 5470 of 1979. 8 leases were created in Gudalur, 6 each in Devala and Padanthara, 7 in Cherumuli and 9 in O'Valley.
  18. Note on Gudalur *Janmam* Lands, 16 August 2002, prepared by SCDSS, Chennai.
  19. Document prepared by the Inspector of Plantations, Gudalur (01 March 2002).
  20. The *Janmam* Act, (as modified upto 30 June 1985), Government of Tamil Nadu, 1986. 'Estate' is defined in the Indian Constitution as any land held by nature of grant, free held or more significantly any land held or let for purpose of agriculture or for purpose ancillary thereto, including waste land, forests or pasture.
  21. Explication of the rationale for the *Janmam* Act given by the Madras High Court in its judgment in WP Nos. 64, 117–121, 185, 186 and 220 of 1970 in *The Nilambur Kovilagam vs. The State of Tamil Nadu*.
  22. Cederlöf (2008) explicates how the British reinterpreted and converted flexible pre-colonial *janmam* land tenures wherein rights and tenures were not rigidly interpreted, to more rigid interpretations of the *janmam* tenure entailing absolute proprietary.
  23. Judgment of the Madras High Court, 1971, in *The Nilambur Kovilagam v. The State of Tamil Nadu*. As defined in Article 31-A (2) (a) of the Indian Constitution, subsequent to the Act 24 of 1969's inclusion to it, any *janmam* right in the states of Tamil Nadu and Kerala also constitutes an estate.
  24. *Balmadies Plantations Ltd v. State of Tamil Nadu*, 19 April 1972, AIR, 1972, Supreme Court, 2240. The Balmadies plantations, situated in the O'Valley village had leased 170.78 hectares from the Kovilagam.
  25. *Balmadies Plantations Ltd v. State of Tamil Nadu*, 19 April 1972, AIR, 1972, Supreme Court, 2240.
  26. Notice of the Collector of the Nilgiris to the Receivers of the Nilambur Kovilagam Forests dated 25 November 1974; Act 24/69, Ch.2, pp.3.
  27. W.P. 4386/1974, W.P. 2307/1975, W.P. Nos. 4769–4774/1974, W.P. 693/1975, W.P. 90/1975. Tamil Nadu Land Reforms (Fixation of Ceiling on Lands) Act, 1961 (Tamil Nadu Act 58 of 1961, amended by the Tamil Nadu Act 20 of 1972).
  28. I.R. Coelho (CA 1344/76), T.N.K. Govindarajula Chettiar (CA 1345/76); Civil Appeals No. 367 to 375/77. The Glenrock estate and Manjushree also filed Writ Petitions a decade latter, namely, W.P. Nos. 242 & 199/1988.
  29. Civil Appeals (CA) 1344-1345 of 1976, CA 368–375 of 1976.
  30. *Note on the Tamil Nadu Gudalur Janmam Estates (Abolition and Conversion into Ryotwari Act, 2001*, SCDSS, Chennai.
  31. Judgment copy, *Manjushree Plantation Ltd. vs. State Of Tamil Nadu and Others*, 17 February 1989.
  32. Legislations have run into anomalous localities elsewhere. Sivaramakrishnan (1996) analyses how the Permanent Settlement Act of 1793 was thwarted in the 'anomalous zones' rife with banditry in colonial southwest Bengal. Anomalous character emerged from resistance, shaped by, and against, interventions that constituted state-making. Anomaly thus seems to have colonial precedence and anomalous instances are possibly frequent in the post colonial period. This renders problematic the status of anomaly as local/regional exceptions to some pan Indian 'rule' of normalcy. Perhaps then, anomaly, in all its colonial and post-independence variants, is less of an exception even as it may not be a total rule. In this paper, anomaly is used to depict temporal discrepancies in the physical, social and legal characteristics of landscapes codified for reform, i.e., how they were during reform and how they are nearly four decades since. Also to depict how codified landscapes appeared to district and state administrations during occasional surveys to assess the status of land under various stay orders.
  33. *Survey of encroachments-Perambulation of Gudalur Janmam Lands*, Re.A6.No.12185/2002, Dated 22 October 2002, Settlement Officer (henceforth S.O.), Gudalur *Janmam* Lands, Ooty to SCDSS, Chennai. The increase in cultivated area and decrease in forests is inclusive of smaller plantation leases.
  34. Letter from Collector, Nilgiris, to Special Commissioner, Land Administration, Chennai, Rc.A5.No.5761/99, Dated 04 May 1999.
  35. Statement issued by the Secretary and Advisor, PAT, in *The Hindu*, November 1999.
  36. Plea of respondents/contemnors in Contempt Petition No. 193 of 2001.
  37. Letter from the Collector, Nilgiris to The Chief Secretary, Fort St. George, Madras, D.O.A5.No.17989/88, Dated 7/1991 and Letter from Collector, Nilgiris, to Special Commissioner, Land Administration, Chennai, Rc.A5.No.5761/99, dated 04 May 1999.
  38. Minutes of meeting held between the state and planters in Theppakkadu

- on 31 August 1991 to discuss implementation of the Gudalur *Janmam* Abolition Act, pp.3, RC. A5/67646/91, Dated 02 September 1991.
39. 'Strategy' to protect *janmam* forests drawn out in *Comprehensive Note for Discussion* in the High Level Committee Meeting Convened By the Chief Secretary pp.10, dated 21 July 2001.
  40. Interviews with planters and the Divisional Forest Officer (DFO), Gudalur.
  41. 'Encroachments' are an official term for illegal occupations. Studies in the subcontinent show how customary cultivation in forests was subsequently and unjustly classified as 'encroachments' in the colonial and post colonial periods. But in Gudalur, encroachments differ. Migrant peasants have cleared forests for cultivation and occupation both during colonial and post colonial periods. Their pursuits are devoid of any 'customary' claims. In this essay, encroachments and occupations are sometimes used interchangeably.
  42. While encroachments include alienated portions in section-8 plantations like Glenrock and also section-17 plantations such as Periashola, E.I.D. Parry and Mahaveer, almost 90% of encroachments are in Manjushree's and HLL's Lease.
  43. Interviews with estate workers; *Notes on the Issues relating to the Gudalur Janmam Lands*, R.D., pp. 6, 2002, *Comprehensive Note for Discussion in the High Level Committee Meeting Convened By The Chief Secretary To Government*, pp. 5–6, dated 21 July 2001.
  44. Vide Government Order (G.O.) Miscellaneous (MS) No.2384 Revenue, dated 28 May 1960.
  45. Survey by the Maundadan Chetti Association, 2001. There are around 61 Chetti families in the possession of approximately 134 acres. Additionally there are 165 tribal families in occupation of lands, with and without title.
  46. *Note on Encroachment over section 17 lands having green cover and other Forest areas under the control of Forest Department. Problems and Remedies Proposed*. Prepared by Divisional Forest Officer, dated 17 September 2000.
  47. Communication of the Principle Chief Conservator of Forests (PCCF) to RD, in *Notes on Discussion To Be Held On 18 September 2000, Secretary's Chamber*.
  48. Interview with a Malayalee farmer from Sri Madurai village who bought 12 acres for Rs. 3 lakh from a local Malayalee policeman's kin in 1990.
  49. W.P.202/95, *T.N. Godavarman Thirumalpad vs. Union of India & Others*, dated 12 December 1996.
  50. *A Note on Encroachment over Sec 17 lands having green cover and other forest areas under the control of the Forest Department: Problems and Remedies Proposed*. Prepared by the Divisional Forest Officer, dated 17 September 2000; RD.
  51. Interviews with 'encroacher' farmers in, HLL and Manjushree; the DFO and legal representatives of plantations. The 'irregular' *patta* grant was similarly obtained using such fabricated and obtained records.
  52. *Pattom* (rent) receipts were issued by *janmis* to tenants. Such receipts are not valid in non *janmam* lands. *Pattom* receipts hold no validity among Tamil occupants, in case they might want to use it as evidence.
  53. 'Agenda' prepared by the S.O, Gudalur *Janmam* Lands for a meeting convened by the SCDSS on 05 December 2001, Coimbatore, RD, Chennai.
  54. W.P.202/95, *T.N. Godavarman Thirumalpad vs. Union of India & Others*, 12 December 1996.
  55. Contempt Petition No. 193 of 2001, *The Divisional Forest Officer, Gudalur vs. Gowri Shankar & Another*.
  56. *A Note on Encroachment over Sec 17 Lands Having Green Cover and other Forest Areas under the Control of the Forest Department: Problems and Remedies Proposed* prepared by The Divisional Forest Officer, Gudalur, dated 17 September 2000.
  57. *Note on the Issues relating to the Gudalur Janmam Lands*, 2002, RD, Chennai.
  58. Interview with District Rural Officer (DRO) holding Settlement Officer Duty (additional charge), 23 January 2008.
  59. *I.R. Coelho vs. State of Tamil Nadu* (1999), Supreme Court Cases.
  60. Scott configures a resistant subaltern agency based on *metis* in localities. But in Gudalur's conflicts, subaltern and *elite* agency is configured as being structurally enabled by law, litigation and legal ambiguity. However, peasant agency does entail livelihood interests also. Not just an opportunistic involvement in legal ambiguity.

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