
(1986) 02 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 298 of 1981

Abdul Wahed and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 13-02-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1986) 3 BomCR 288 : (1986) MhLj 833

Hon'ble Judges : V.P. Salve, J;H.D. Patel, J

Bench : Division Bench

Advocate : A.G. Godhamgaonkar, for the Appellant; S.S. Choudhari, G.P. for respondent No. 1 and R.G. Bhadekar, for the Respondent

Final Decision : Allowed

Judgement

V.P. Salve, J.—In this petition, the petitioners have challenged the judgment and order dated 16-12-1980 passed by the Additional Commissioner, Aurangabad, in case No. 1976-WTN - App-8 by which the appeal filed by the petitioners was dismissed and the judgement of the Deputy Collector. Land reforms, dated 29-12-1975 was confirmed.

2. The lands involved in this petition are Survey Nos. 288 and 293 of village Apparao Peth, Taluka Kinwat, District Nanded. It is the case of the petitioners that they were cultivating the land in question. Petitioner No. 3. was cultivating land Survey No. 288 and petitioner No. 1 was cultivating land Survey No. 293. Petitioner No. 2 is the son-in-law of petitioner No. 3. Respondent No. 2 was Inamdar of the said lands. After the application of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 (hereinafter referred to as "the Inam Abolition Act") the said lands were declared and recorded in the names of petitioner No. 3 and petitioner No. 1 and occupancy rights was granted to them by the Naib Tahsildar, Kinwat, by order dated 22-12-1964. Respondent No. 2 it appears, had filed on objection petition before the Tahsildar, kinwat on 30-7-1964 challenging the grant of occupancy right in favour of the petitioners. This objection was also

rejected. On appeal, the Deputy Collector, Nanded, also rejected the claim of respondent No. 2. It appears that respondent No. 2 had preferred a revision before the commissioner, Aurangabad against the grant of occupancy right to the petitioners in respect of the lands in question. However, the order in favour of the petitioners granting them the occupancy rights of the said lands was not disturbed. Thereafter, it appears that respondent No. 2 filed a regular civil suit bearing No. 14 of 1967 against the petitioners as also respondent No. 1 for recovery of possession of the said lands and for certain other reliefs. It further appears that after summons were served on the defendants, the suit was withdrawn by the plaintiff-respondent No. 2. It is the claim of respondent No. 2 that he is Mutawalli of Masjid and Idgah of Kosmet, Taluka Kinwat, and that by virtue of being a Saheb Muntakhab and the existence of Mohal-e-Shart in good condition he is still performing the service of the institution. According to respondent No. 2 the lands of village Apparao Peth and Kosmet were granted to him for the service to the Masjid and Idgah situated at village Kosmet under Muntakhab No. 118/12 Meher 1305 Fasli. According to him, the Muntakhab showed that the grant was on condition as Khidmat, Kazzat. The succession was sanctioned in the name of respondent No. 2 on 29-6-1341 Fasli. It appears that respondent No. 2 having lost the first round of litigation even after going before the Commissioner, Aurangabad, Started a second round of litigation by filling an application before the Commissioner, Aurangabad to register a case and decide the nature of the lands referred to above. Strangely enough, the Commissioner, by letter dated 7-3-1974, over looking all other previous legislation and decisions, directed the Deputy Collector, Land Reforms, Nanded to register a case and decide the nature of the lands. The Deputy Collector, Land Reform Nanded registered the said application showing respondent No. 2 as the appellant, against respondent No. 1 and the petitioners being shown as other respondents. The Deputy Collector, Land Reforms, Nanded decided the said matter by an order dated 29-12-1975. The matter has been decided supposedly u/s 2-A of the Inam Abolition Act. The entire reasoning of the Deputy Collector is based on the Muntakhab filed before him. He is under an impression that u/s 2-A of the Inam Abolition Act, he is called upon to decide the nature of lands even though the same have been the subject matter of previous litigation.

3. The Inam Abolition Act abolishes all inams excepts (i) inams held by or for the benefit of charitable and religious institutions; and (ii) inams held for rendering village services useful to the Government or to the village community including sathsendhi, neeradi and belutha inams (Vide sub-section (2) of section 1 of the Inam Abolition Act). The Deputy collector is obviously labouring under a misapprehension that all inams held in respect of religious institutions are exempted. A plain reading of Clause (1) of sub-section (2) of section 1 of the Inam Abolition Act shows that the inam must be held by or for the benefit of charitable and religious Institutions. It is not the case of respondent No. 2 that the inam held by him is by or for the benefit of any charitable and religious institution. On the contrary, it is his case that the inam is for his benefit, he being

Mutwalli of the Masjid and Idgah at Kosmet. This is one aspect of the matter. In fact, the Deputy Collector seems to have been impressed only because the Commissioner, Aurangabad, sent a letter to him to register the case and decide the nature of inam when it was not permissible.

4. The power to make rules under the Inam Abolition Act have been vested in the Government u/s 35 of that Act. The rules were first notified by the Government of Maharashtra in Revenue Department under their Notification No. HTA-II-6659 L of 22nd July, 1960 and thereafter the rules were made on 30th August, 1960. The scheme of the Inam Abolition Act and the rules clearly takes into account the fact that the Inamdar is never on the land. He is an absentee landlord and the persons in possession of the lands on the date of the application of the provisions of the Inam Abolition Act have to be recognised as tenants on the lands. The first part of the Inam Abolition Act, namely, sections 1 and 2, came into force on 20th July, 1955 and the rest of the provisions of the Inam Abolition Act came into operation with effect from 1st July, 1960. Section 5(1)(I) of the Inam Abolition Act is as under :---

" In the case of an occupied land comprised in an inam including a community service inam or watan, which under the terms of the grant or commutation settlement was to continue in perpetuity and was alienable without the permission of any competent authority (I) if it is in the possession of a Kabiz-e-Kadim, or of a permanent tenant or tenant holding from the Inamdar, such Kabize-Kadim, permanent tenant or tenant,....

Shall be primarily liable to the State Government for the payment of land revenue due in respect of the land held by him and shall, subject to the provisions of sub-sections (2), (3), (4) & (5), be entitled to all the right and be liable to all the obligations in respect of such land as an occupant under the Land Revenue Act, 1317 Fasli and the Rules made thereunder."

And thus a duty is cast on such a tenant, who is in possession of the land on behalf of the to be Inamdar to be primarily liable to the State Government for payment of land revenue due in respect of the land held by him. Rule 3 of the rules framed under the Inam Abolition Act is to the following effect :---

Period for payment of occupancy price under sections 5(2) and 6(2).

The occupancy prices payable under sub-section (2) of section 5 or sub-section (2) of section shall be paid within five years from the appointed date."

Rule 4 reads as under :---

"Installment of occupancy price to be paid u/s 5(2).

The first Installment of occupancy price payable by a tenant under the proviso to Clause (b) of sub-section (2) of section 5 shall be paid within the two years from the appointed date, the second within next two years and the third during the fifth year from the said date."

Rule 5 is in respect of the manner of payment of occupancy price u/s 5(5) of the Inam Abolition Act. It is obvious that the tenant in occupation of the land must deposit the occupancy price payable by him under the proviso to Clause (b) sub-section (2) of section 5 within two years from the appointed date. The appointed date is 1st July, 1960. As staged earlier, the manner of payment of occupancy price is given under Rule 5. The occupancy price deposited with the collector under sub-section (2) of section 5 shall be accompanied by an application in Form "A". On deposit of such occupancy price, the Tahsildar shall give to the person depositing the amount a receipt in respect of the amount deposited and to issue a notice in writing to the Inamdar to appear before him within fifteen days from the date of service of notice the amount so deposited or to state the grounds on which he refuses to accept the amount of occupancy price deposited with the Collector. On the touchstone of the principle of law that all actions as laid down in law must be presumed to have been done, it is obvious that on deposit of the amount by the petitioners, who were admittedly holding the lands on the appointed date, i.e., 1st July, 1960, the Inamdar must have been noticed as per section 5(2)(b). Sub-rule (3) of Rule 5 states that after giving an opportunity to the parties as to be heard and after holding a summary enquiry regarding the application, if the Tahsildar finds that it is not disputed that the person depositing the amount is his permanent tenant, or, as the case may be, his tenant, the Tahsildar shall direct that the amount shall be paid to the Inamdar. This is Clause (a) of sub-rule (3). Clause (b) of sub-rule (3) of Rule 5 is as under :---

"(b) if the Tahsildar finds that it is disputed that the person depositing the amount is his permanent tenant or, as the case may be, his tenant, the Tahsildar shall direct the parties to have the dispute decided under sub-section (1) of section 2-A."

Obviously, after the notice, which we presume must have been sent in accordance with law, to the Inamdar i.e., respondent No. 2. The Inamdar either objected to receive the amount of occupancy price or received the amount. In case, there was a dispute, then clause (b) of sub-rule (3) of Rule 5 would come into play and the Tahsildar was constrained to make a reference under sub-section (1) of section 2-A to the competent authority namely, the Deputy collector, with the direction to the parties to get the dispute decided. Obviously, no reference was made by the Tahsildar to the Deputy collector for resolving the dispute, if any, under sub-section (1) of section 2-A. It is not disputed that in 1964 respondent No. 2 had lodged some objection which was also rejected by the Tahsildar and on appeal, by the Deputy Collector. What that objection was is not forthcoming either from the petitioners or from respondent No. 2. In the absence of any such document or objection being filed by respondent No. 2, we can assume that the objection related to something else than the dispute referred to in Clause (b) of sub-rule (3) of Rule 5. Once this procedure is over, then section 6 comes into operation and once it is found that the land is occupied by a Kabiz-e-Kadim or a permanent tenant or a tenant holding from the Inamdar, he

becomes primarily liable to pay to the State Government the land revenue and would be entitled to all the rights as also liable to all the obligations as an occupant in respect of such land under the Land Revenue Act, 1317 Fasli and the Rules made thereunder. This occupancy right would be subject to the provision of sub-sections (2), (3), (4) and (5) of section 5 of the Inam Abolition Act.

5. Mr. R.G. Bhadekar, learned Counsel for respondent No. 2, contended that it was for the petitioners to file those documents, which should be his possession, regarding the enquiry in which he was granted occupancy rights and in the absence of filing of such documents, we should hold against the petitioners for having suppressed those documents. We are unable to accept this contention in view of the fact that in the return filed, respondent No. 2, in terms, has admitted all the allegations made in the petition in respect of the proceeding before the Naib Tahsildar the Tahsildar, the Deputy Collector and the Commissioner in the first round. The petitioners have filed the copy of the plaint in Civil Suit No. 14 of 1967 filed by respondent No. 2 against several persons including the petitioners. In that suit also, the facts stated in the petition in respect of the first round of litigation are admitted in paragraphs 6, 7 and 8 (Exhibit "A"). Thus, it is not now open to respondent No. 2 to rely on the non-submission of documents by the petitioners, the contents of which have been admitted by respondent No. 2 in his return. Mr. Bhadekar filed a judgment of Chandurkar and Deshpande, JJ., dated 19th June, 1979 in Special Civil Application No. 1221 of 1974, Uttamchand Limbaji and others v. Kazi Bashiruddin and others. We do not understand how this judgment can help respondent No. 2. In fact, the special civil application was dismissed and Chandurkar, J., on behalf of the Division Bench, held that there was no material on record on which it could be ascertained as to what exactly was the nature of inam. The view taken by the Deputy Collector and the Commissioner, Aurangabad, was therefore, not disturbed, in this case also, the finding of the Naib Tahsildar, the Tahsildar, the Deputy Collector and the Commissioner in the first round of litigation could not have been disturbed by the Commissioner or the Deputy Collector in the second round. As we have stated earlier, there is no material before us to hold that the inam held was by or for the benefit of Charitable and religious institutions.

6. The second authority submitted by Mr. Bhadekar, learned Counsel for respondent No. 2 is Yarakaraddi Mallereddi v. Sayed Amanulla Hussain, (1972) 2 An. W.R. 327. The specific reliance of the learned Counsel is on the ratio as decided by the Bench consisting of Obul Reddi and Venkateswara Rao, JJ., at para 33. The ratio is to the following effect :---

"In order to constitute a wakf, it is not necessary to use the word "wakf" in the deeds. If the intention of donor is to use proceeds of any specific property for pious purpose recognised by Mahomedan Law, it constitutes valid wakf. Kazi is in the position of the trustee of the wakf property."

According to us, this decision will not help Mr. Bhadekar, learned Counsel for respondent No. 2 it is not his case at all that there was a wakf created in respect

of these lands. It was the case of respondent No. 2 throughout that he is a Saheb Muntakhab and Mutwalli of Masjid and Idgah of Kosmet, Taluka Kinwat. The Mohal-e-Shart is in good condition and he is performing services to the institution. But he does not speak of wakf created by him or by any one else in favour of the Masjid and Idgah of village Kosmet, Taluka Kinwat. Thus, we find that this argument of learned Counsel for respondent No. 2, Mr. Bhadekar, has no force and thus we reject it. We have, therefore, to hold that the occupancy rights in favour of the petitioners were rightly decided by the Tahsildar in 1964 and once those orders have become final in the further proceedings, must also suffer from the infirmity of being barred by the principle of res judicata.

7. We are supported in our view by a decision of division of a Division Bench of the Court reported in 1981 Bom.C.R. 743, Sadashiv Ranganath v. Shaikh Biban Shaikh Balambhai and others. Kurdukar, J., speaking for the Bench (D.P. Madon and S.P. Kurdukar, JJ.), in paragraph 8 has clearly laid down as under :---

"Shri A.V. Savant, the learned Advocate appearing on behalf of the respondent No. 1 .did not challenge the fact that the Tahsildar on January 4, 1967 decided the application of the respondent No. 1 on merits and the Tahsildar has rejected the said application of the respondent No. 1 seeking grant of occupancy rights in his favour u/s 6 of the said Act. It is, therefore, clear to us that in view of the order of the Tahsildar, dated January 4, 1967 rejecting the application of the respondent No. 1 on merits, the present application filed by the respondent No. 1 on February 16 is barred by the principles analogous to res judicata. In our opinion, the Tahsildar by his order dated August 30, 1969 has rightly rejected the application filed by the respondent No. 1 on February 16, 1967. The appellate authority in our judgment has completely overlooked this legal position and has erroneously set aside the order passed by the Tahsildar on August 30, 1969."

Relying on sub-section (4) of section 2-A, Kurdukar, J., has rightly held that the order passed by the Tahsildar on merits is binding upon the parties so long as the same is neither varied nor set aside by the Appellate Authority. We find that in this case also the order of the Tahsildar was challenged in appeal by respondent No. 2 before the Deputy Collector and thereafter before the Commissioner, Aurangabad, and the order was not varied. Thus, on the principle of res judicata also, the order passed in favour of the petitioners giving them occupancy rights cannot be disturbed.

8. The learned Counsel for the petitioners relied upon a decision reported in 1975 Mh.L.J. 367, Rangnath v. Doult Rao and others. No doubt, the decision is in respect of the scheme and provisions of the Inam Abolition Act. However, the facts in that case are absolutely different and therefore, the ratio of that case cannot be relied upon by the learned Counsel for the petitioners in this case.

9. In the result, the petition must succeed. The impugned order passed by the Additional Commissioner, Aurangabad, dated 16-12-1980 in Case No. 1976-WTN-App-8 (Exhibit "D") is quashed. The order passed by the Deputy Collector dated

29-12-1975 in File No. 74-E-HIA-5 (Exhibit "B") is also quashed. It is our view that lands in question are not exempted under the provisions of the Hyderabad Abolition of Inams and Cash Grants Act, 1954, and the lands are covered by the provisions of that Act. The petitioners are therefore, entitled to be granted the occupancy rights u/s 6 of the Inam Abolition Act as admittedly they were tenants on the appointed date. The petition is, therefore, allowed. Rule made absolute. However, there will be no order as to costs.