

(1971) 09 GUJ CK 0012
In the Gujarat High Court

Case No : Letters Patent Appeal No's. 26 of 1968 and 58 of 1970

Ambee India Pvt. Ltd. and Another

APPELLANT

Vs

Rao Raja Jamirsinhji Dolatsinhji and Another

RESPONDENT

Date of Decision : 23-09-1971

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 69

Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 — Section 10, 2(1)

Citation : AIR 1972 Guj 137

Hon'ble Judges : J.B. Mehta, J;B.K. Mehta, J

Bench : Division Bench

Advocate : A.H. Mehta, in L.P.A. No. 26 of 1968 and G.N. Desai, Govt. Pleader in L.P.A. No. 58 of 1970, for the Appellant; G.N. Desai, Govt. Pleader in L.P.A. No. 26 of 1968, A.H. Mehta in L.P.A. No. 58 of 1970, N.C. Desai and N.R. Oza, for the Respondent

Judgement

J.B. Mehta, J.—The first appeal is filed by the lessee original defendant No. 2 while the second appeal is filed by the State, original defendant No. 1. The plaintiff - respondent in both the cases in the Jagirdar of the concerned suit village. The learned Single Judge had confirmed the decree of the learned Assistant Judge, who had differed from the trial Judge and had allowed the plaintiff's claim for recovery of possession of the suit mine and for an injunction. The entire controversy has centered round the interpretation of the Paravan. Ex. 89, under which the plaintiff was by the then ruler of the Idar State granted two villages Techava and Achral on March 11, 1948. The Bombay Merged Territories and Area (Jagirs Abolition) Act. 1953, came into force on August 1, 1954 and it applied to this merged territory, because meanwhile from 1949 Idar State merged in the State of Bombay. There is no dispute that under the provisions of this Act the competent authority had declared this Jagir of the plaintiff to be a proprietary Jagir. The plaintiff had negotiated lease of China Clay mines in the Jagir Techava but thereafter defendant No. 2 got an order of lease on August 8, 1961 in his favour from the State of Gujarat and executed a lease on October 11,

1961 in favour of the State in respect of the suit China Clav mines. As defendant No. 1, therefore, violated the terms of the agreement of lease which was first entered into with the plaintiff, and the plaintiff's title was denied, the plaintiff terminated the lease of defendant No. 2 by a notice and filed the present suit. That is why both the defendants have taken the plea that the mineral rights belonged to the State and not to the plaintiff. This question can only be resolved by the true interpretation of the Parvana, Ex. 89 is in the following terms:-

"Parvana (Order) No. 14.

Maharaja Dhiraj Shri Maharajaji Himatsinghji Saheb Bahadur Samsthan Idar Hamirsinhji - By Hazur Order No. 2356/- 25.2.1948.

I have given you by way of gift for maintenance (Jivarak) the two villages Techava and Achral. You may enjoy from generation to generation income of the suit villages accruing every year including - Padya Sudh - i.e. all income right from the smallest thing to everything. And you shall continue to serve the State with "Shyam Dharma".

The jurisdiction of the Darbar was to continue for these two villages in respect of issuing commands or orders (Aan) taxation (Dan) and civil and criminal jurisdiction.

Dated 11th March 1948.

Himatsinghji

Maharaja. Samsthan Idar."

2. At the outset it is obvious that this is a grant directly by a sovereign ruler to his brother. Ex. 97 shows that this plaintiff, brother of the ruler, was at that time getting Rs. 200/- as pay and the pay was discontinued after the present grant which was made on March on 11, 1948. While translating the aforesaid grant, the expression "Padya Pan" has been translated not as fallen leaves but in its proper context in conveyancing by using the second meaning which is referred to in Bhagvat Go. Mandal a dictionary of words and phrases in Gujarati at page 5278. The second meaning is "Najivi Chijthi Mandine Sarva Utpana".

Therefore, in the Conveyancing context the aforesaid term would mean that all income which accrued every year from the tow villages including that from the smallest thing and covering everything, was in terms granted. It is true that the expression "Jivarak" has been used which means maintenance but it is equally certain that the grant is no a lifetime grant only to the plaintiff or one creating a life interest only. The purpose may be of maintenance but the operative portion of the grant in terms states at the outset that both the villages were given to the plaintiff by way of gift. To make the whole gift complete, it was further added that all kinds of income arising form the villages of whatever kind was to be enjoyed by the plaintiff and his heirs from generation to generation. The only reservation which was made by the sovereign ruler was in the last clause by

indicating that he was creating a non-jurisdictional estate by reserving to him all sovereign powers of issuing, all sovereign orders, taxation and civil and criminal jurisdiction. Therefore, reservation makes it amply clear that a full non-jurisdictional estate was conferred on the plaintiff. The grant was not merely of the annual produce of the soil of these two villages but of the soil itself. The grant was not of any lesser interest by carving out something but a complete grant conferring full proprietorship in the soil of the two villages by in terms stating, that it was a gift from the sovereign. There was no reservation as regards any kind of revenue which was to accrue from the village, whether agricultural or other revenue from the trees, minerals or anything which was capable of yielding such a recurring annual income, but all income of whatever description was in terms granted. In the face of such a categorical sovereign grant, where not only the proprietorship of the village soil is transferred but where by express words income of all kinds is transferred to the plaintiff, there can hardly be any doubt in the present case that the sovereign did not intend to the plaintiff in the soil of these two villages, including, sub-soil rights.

3. There is ample authority that such a sovereign grant of proprietary interest in the soil where there is no reservation of the sub-soil rights by the sovereign operates as an absolute or complete grant of all rights in the soil including the rights to minerals. In *Secy, of Secretary of State for India Vs. Shantaram Narayan Dabholkar*, , a Division Bench consisting of Shah Ag. C. J. and Fawcett. J. in terms held at page 15 even in the context or any Inam grant that it is not absolutely, necessary that express words referring to mines and minerals must be used. Their Lordships pointed out that in this Presidency generally, the words indicative of rights to mines and minerals were-iala, taru, trina, pashana, nidhi, nikshepa. They were ordinarily used for indicating that all rights in the soil were conveyed. Their Lordships, however held that the absence of such words did not necessarily indicate that such right was reserved to the crown. The grant in question was of the village itself without any reservation to the Government of any kind of right and, therefore, it was held to be a complete grant including the right to mines and mineral in the land. Their Lordships distinguished the line of decisions of the Privy Council where the grants were not from the sovereign but from the Jamindar who was the owner of the soil and who created a tenure or a lease by creating a new estate, reserving reversion to himself, in which case in the absence of express words the right to mines and minerals could not be held to have passed to the lessee or alienee of the tenure land. This was because reversion was reserved to the Jamindar. Further proceedings at page 16, Jenkins. J.'s observations in *Raghunath Roy Marwari v. Raja of Jheria*. AIR 1919 PC 17 were approved, as under:--

"Because at the present day a conveyance in fee simple leaves nothing in the grantor, it does not follow that a lease in perpetuity here has any such result The law of this country does undoubtedly allow of a lease in perpetuity A man who, being owner of land grants a lease in perpetuity carves a subordinate interest out of his own, and does not annihilate own

interest, this result is to be inferred by the use of the word "lease", which implies an interest still remaining in the grantor"

On that basis their Lordships of the Division Bench made out a distinction between a conveyance and a lease and, therefore, the case being of a conveyance, the grant was held to be a complete grant of the village. Fawcett, J. at page 17 even while trying to construe the grant strictly in favour of the Crown held that the deed should be construed held that the deed should be construed on its true meaning. It was pointed out that the document did not of itself indicate, at any rate clearly that it was merely intended that the document did not of itself indicate, at any rate clearly, that it was merely intended that the grantees should have the benefit of a certain amount of produce, as was indicated by certain expressions used in the grants in the various cases before the Privy Council. In the view of the matter, such a proprietary grant without any reservation, even in the absence of the usual words was held to be an absolute grant. This decision is approved by their Lordships in *Navichandra v. Gujarat Revenue Tribunal* AIR 1966 SC 1509 by pointing out that a grant of Inam lands on their true construction can even include the right to mines and mineral products as laid down in the aforesaid decision. In *Spl. Civil Appln. No. 404 of 1961* decided on 22.4.1965 (Guj) the Division Bench consisting of Shelat. C. J. (as he then was) and Bhagwati, J. (as he then was) in terms construed the maintenance grant of a village as an absolute grant of the soil even when there was a restriction on the power of alienation. It was held to be a grant of soil where proprietary interest was transferred without any reservation. This decision has been confirmed by their Lordships in the *State of Gujarat Vs. Kumar Shri Ranjit Singhji Bhavan Singhji and Others*, . Their Lordships in terms pointed out that the restriction on the power of alienation did not limit the absolute title of the grantee in the lands and in things attached thereto. The grantee was therefore, absolute owner of the tak trees which were not reserved by the State, Such a Jagirdar had absolute rights to the land and, therefore, to whatever grew on the land. The underlying principle of these decisions has been clearly explained in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, . It is true that the grant in that case as per the Sanad in question was of the lands comprised in the Mahal of Agori and everything appertaining thereto and, therefore, as a matter of construction the grant was held to be not only of the land but also of everything beneath or within the land. Their Lordships, however, pointed out by relying on the Halsbury's Laws of England, 3rd Edn. Vol. 26 p. 325 that prima facie the owner of a surface of the land is entitled ex jure to everything beneath the land and in the absence of any reservation in the grant minerals necessarily pass with the rights of the surface. In other words, a transfer of the right to the surface conveys right to the minerals underneath unless there is an express or implied reservation in the grant. Their Lordships also followed the decision of Court of Appeal in *Mitchell v. Mosley*. 1914 1 Ch 438 where it was held to be a settled principle that a contract to sell or grant a lease of land would generally include mines quarries and minerals beneath or within it. Their

Lordships pointed out that when the Sanad was executed in favour of the Raja, the Government made over land with all its capabilities to the Raja and merely imposed on him a fixed sum of revenue in lieu of all the rights the Government has as a proprietor of the soil. When neither of the parties knew undiscovered minerals underneath the land and the idea of reservation never entered their minds, it could not be held that there was any implied reservation in the grant. Nor can afterwards a distinction be drawn between the various rights that may exist on the land for the purpose of qualifying the original grant and importing into it what neither party could have imagined. Their Lordship also pointed out that the Bengal Zamindars were always held to own the rights to the sub-soil minerals because they were the proprietors of the soil. Even the Regulation VIII of 1783 recognised these Zamindars to the proprietors of the soil. Their Lordships also pointed out at page 1089 the settled legal position after the decision in *Hari Narain Singh v. Sriram Chadravarti* (1910) 3 Ind App 136 and in *Shashi Bhusan Misra v. Jyoti Prasad Singh Deo*. AIR 1919 SC 191 that when a grant is made by a Zamindar of a tenure at a fixed rent, although the tenure may be permanent, heritable and transferable, minerals would not be held to have formed part of the grant in the absence of express evidence to that effect. Therefore, so far as the grant from the sovereign was concerned, if it was a proprietary grant of the soil as per the settled principles of interpretation it was held that such a grant of soil always carried the rights to sub-soil unless there was a reservation made by the sovereign. That principles could not apply to persons getting a limited tenure from the Zamindar where even though they get permanent heritable and transferable rights, they did not derive sub-soil rights, because when new estate was carved out, the full proprietary interest did not pass to the tenure holder and the sub-soil rights were held to be reserved by the Zamindar in absence of an express inclusion of those sub-soil rights. In *The Lodna Colliery Co. Ltd. Vs. Bhola Nath Roy*, , their Lordships in terms held that the principle of law as stated in *Hari Narain Singh's* case, as aforesaid, and later confirmed in several decisions by the Privy Council including *Shashi Bhusan* case did not apply when the plaintiff's predecessor held the land from the Government itself and not on a subordinate tenure from the Zamindar. These decisions, therefore, amply make it clear that where the grant is not a subordinate tenure from the Zamindar but from the sovereign himself the grant of proprietary interest in the soil in absence of any reservation would always convey the sub-soil rights. In such a case there is no case of carrying out a subordinate interest or a subordinate tenure where any question of reservation could arise. The sovereign having purported to grant full rights in the soil and having not made any reservation to himself the grant of the soil passes even the sub-soil rights.

4. Both Mr. Desai and Mr. Mehta vehemently argued that the presumption which is made seeks to make an implication without any express words and this course could never be adopted while construing sovereign grants. In *The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others*, their Lordships pointed out

that there was no real conflict between the two propositions that a Crown grant should be construed in favour of the Crown and against the grantee and that it makes no difference whether grantor was the Crown or subject as in each case the grant must be constructed on the plain language of the deed. The former proposition was in the nature of a rule of substantive law and its scope was that whereas a transferee from a subject acquires unless contrary appears, all the rights which the transferor has in the property as enacted in Section 8 of the Transfer of Property Act, a grantee from the Crown gets only what is granted by the deed and nothing passes by implication. Their Lordships however clarified that when the grant is embodied in a deed, the question ultimately reduces it self to a determination of what was granted thereunder and, therefore, when the intention of the grantor is to be ascertained from the words of the document because the same words cannot be susceptible of two different meanings, it could make no difference whether they occurred in the grant by the Crown or by the subject. Their Lordships approved observations of Sir John Coleridge in *Lord v. Sydney City Commrs.* (1859) 12 MPC 473, where it was held without differing from the old authority in respect of the Crown grants that upon a question of the meaning of the words, the same rules of common sense and justice must apply, whether the subject-matter of construction be a grant from the Crown, or from a subject; it was always a question of intention to be collected from the language used with reference to the surrounding circumstances. Therefore, it was held that if the words used in a grant by a subject would be effective to pass an interest, then those words must equally be effective to pass the same interest when they occur in a Crown grant. This decision only lays down that while interpreting the Crown grant the substantive rule of law would not be Section 8 of the T. P. Act under which all rights which the transferor had in the property would pass unless he made a reservation but a simple rule that the grantee would keep only what is granted by the deed and nothing passes by implication. Their Lordships, however, were careful to add that while construing the terms of the grant the words would not be susceptible of two different meanings and, therefore, if in a grant by a subject, the words would pass an interest, they would be equally effective to pass the same interest in a Crown grant. Therefore if a subject's proprietary grant would be effective on its plain tenor to pass interest in sub-soil rights in the absence of a specific reservation, the same words conveying proprietary interest would pass an absolute right or complete right in the Crown grant when we try to interpret the terms of the Crown grant on the aforesaid settled principle, we are not trying to imply anything and, therefore, this decision could never be pressed in service by the appellants. In *Raja Rajinder Chand Vs. Sukhi*, their Lordships approved the rules of construction laid down in para 670 at p. 315 of Halsbury's Laws of England. Vol. VII Section 12 (Simond's Edition). Their Lordships did not state all the exceptions which were mentioned in the same para 670. Their Lordships had to construe the Sanad to find out whether it was a grant primarily of land revenue or of other royal rights including the right to all trees. Their Lordship pointed out that it was well settled that the ordinary rule applicable to grants by a subject did not apply to grants made by the

sovereign are to be construed most favourably for the sovereign. Referring to the exceptions their Lordships pointed out that if the intention was obvious a fair and liberal interpretation must be given to the grant to enable it to take effect and the operative part, if plainly expressed, might take effect notwithstanding qualifications in the recitals. In cases where the grant is for valuable consideration, it is construed in favour of the grantee, for the honour of the sovereign; and where two constructions were possible, one valid ought to be preferred for the honour of the sovereign ought to be more regarded than the sovereign's profit. In the present case even if all these principles were applied they do not propound any different principle. The case is clearly falling in the exception where the intention is obvious to make a full gift of the entire two villages by creating a complete non-jurisdictional estate. The only reservation was that the sovereign jurisdictional powers of passing sovereign orders, taxation, civil and criminal jurisdiction were only reserved to the ruler and otherwise it was a complete grant which was in terms stated to operate by way of a gift. It was further clarified that the produce which was granted to the plaintiff was the produce of whatever kind which would arise from the lands of these two villages. That clause could, therefore, clearly cover all kinds of revenue which would arise including the revenue by way of royalty from the minerals. Therefore, the operative part in the present case plainly express the sovereign intention not only to make a complete transfer by way of a gift of the entire proprietary interest in the soil of the two villages but the grant was plainly expressed to cover even right to all kinds of revenue whatsoever, which would include the royalty from the minerals. Therefore, the intention being obvious, a fair and liberal interpretation must be given to enable it to take complete effect. There is no reservation as to the royalty from the minerals and, therefore, the operative part which is plainly expressed must take full effect. Even the other exception must clearly apply if we keep in mind that the sovereign was making a complete gift. Whatever may be the consideration of this gift, a sovereign's gift must be construed in favour of the grantee for the honour of the sovereign. This is not a case where a sovereign was carving out only a limited tenure, reserving something to himself and the grant was not merely out of solicitations by way of any charity. The grantee was his own brother who was even before the grant paid a pay of Rs.200/- and which had admittedly ceased after the grant. As pointed out in the aforesaid passage of Halsbury's Laws of England, there is a further exception as under:--

The grant will also be construed in favour of the subject where it is expressed to be made, not at the solicitation of the latter, but (as is frequently the case) "ex latter, but (as is frequently the case) "ex special gratia, certa scientia, et maro motu regis".

This exception would be clearly attracted to such a case where the sovereign was making this special gift to his own brother with the intention to make a complete gift of the proprietary estate of these two villages without reserving anything in himself so that the grantee could get complete non-jurisdictional estate. In such

a case if we were to cut down the import of the sovereign gift, it would be against all the settled principles without paying regard to the honour of the sovereign. Therefore, the aforesaid principles of constructions could not advance the case of the appellants in the present case.

5. The appellants next vehemently relied upon the decision of the Privy council in *Secy, of State of India v. Srinivas Chariar* AIR 1921 PC 1 . Sir Lawrence Jenkins at page 2 in terms held that the grant in that case was of a village in Inam and the rules of English law as to real property in England would afford to no guidance as to what passed. Such a grant may be no more than an assignment of revenue, and even where it is or includes a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of each case. There is nothing here to suggest that the original grant contained words sometimes employed in Indian documents, where it is the intention that the Inam grant of a village should create such an interest in land as would vest the minerals in the grantee. Nor does the language suggest that any further benefit to the grantee was contemplated or intended than such as might be derived from the ordinary use of the land for the purpose of cultivation. It was not a complete transfer for value of all that was in the grantor; the interest bestowed was merely some thing carved out of his larger interest which still remained in him as a reversion; the grantor was the ruling power, the grantee a Brahman whose assiduous prayers were engaged (sic); a jodi was reserved and the purpose of the grant was to ensure the subsistence of the grantee by the appropriation to his use of the produce of the seasons each year. It was, therefore, held that it did not accord with the scheme of such a grant that any person taking under it should have the power to consume its subject-matter by quarrying operations, even if an interest in land was created. This decision is clearly on the facts of that case where the grant of the Inam was not a full grant and it had carved out something out of his larger interest which still remained in him as a reversion. Therefore, in that context such a grant of the Inam was not held to convey the mineral rights. Even the next decision in the State of Andhra Pradesh Vs. Duvvuru Balarami Reddy, follows the aforesaid decision in *Srinivaschariar* and could hardly help the appellant. Even in that case their Lordships pointed out at page 267 that a case of such Inam grant should be distinguished from the grants to Zamindars which were held to be proprietary grants. Such grant did not carry the sub-soil rights to minerals because the grantee was not the proprietor and full grant was not made to him but the reversion was retained by the grantor. It is this decision which is followed even in the latest decision in *The State of Mysore Vs. Swamy Satyanand Saraswati, Religious Preacher, Raichur* . That was also not a Crown grant conveying proprietary interest in the soil. The Nizam had given the grant to one Navab who had created the lease in question. Therefore, their Lordships at page 1574 applied those principles which their Lordships of the Privy Council had evolved in the context of Zamindars who had proprietary interest in the soil and who created a subordinate interest. In such cases their Lordships held that so far as

the sub-soil rights were concerned, they could only pass to the grantor, if they were conferred as such by the grant or if it could be inferred from the grant that sub-soil rights were also included therein. Their lordships also pointed out that what was to be considered in each case was the purpose for which the lands were leased or an interest created therein with all the clauses which throw any light on the question as to whether the grantor purported to include his rights to the subsoil in the grant when there was no express mention of it. If the lease shows that the purpose of the grant was to allow the user of the surface only it would be wrong to presume that sub-soil rights were also covered thereby. The Patta in that case amply demonstrated that what was in contemplation, of the parties at the time of the grant in 1930 was the cultivation thereof or grazing cattle thereon. The grantor was even careful to reserve the right to fruit-bearing trees. It would be a strange construction to hold that although the grantor expressly excluded such trees from his grant, he must be taken to have parted with his sub-soil rights by implication. Therefore, these decisions which are in the light of such limited grant of tenures which do not convey proprietary interest in the soil, express words would be necessary for passing sub-soil rights. These decisions could not apply to the present case where the grant is not from the Zamindar creating any subordinate tenure or a lease interest reserving something for him but is a proprietary sovereign grant, granting all kinds of revenue from these lands and making no reservation whatever in that connection.

6. Mr. Desai vehemently relied upon the decision in *Darbar Shri Vira Vala Surag Vala, Vadia Vs. The State of Saurashtra (Now Bombay)*, . their Lordships had interpreted the terms of the "Kapal Giras in question where the grant was made to a cadet of the family which enured for his benefit as long as he remained the cadet. In that context their Lordships held that the expression "given as Bhayat" did not indicate the purpose for which the grant was made but described the nature of the tenure. The grant stated in express terms that it was given as Bhayat for permanent enjoyment as Kapal-Giras, which meant that the grant was to a cadet as an appanage and continued from generation to generation as long as any of the descendants of the grantee was alive. But if the grantee ceased to be the younger branch and became the heir apparent by reason of the rule of primogeniture or ceased to be a cadet or Bhayat for any reason whatsoever, then the grant must come to an end. From this Mr. Desai tried to argue that this was also a case of the tenure because it was a Jivarak grant for maintenance given to a cadet. The grant was to continue in the Cadet's family from generation to generation so long as they serve the State with Shyam Dharma. Therefore, this was also a tenure. This construction could hardly help Mr. Desai for the simple reason that every grant has to be construed on its own terms. If the grant on its own terms is a full grant which is to operate as a gift passing proprietary interest in the soil to this cadet giving him all rights of revenue of whatever description without any reservation, the grant is clearly an absolute grant which cannot be sought to be cut down by any kind of implication by inferring that this was a limited tenure which was to come to an end. The grant was a full gift and being

complete and absolute grant, it must be given its full effect. Mr. Desai also relied upon the definition of the term "Jagir" in Section 2(1)(vi) which is in the Widest terms. It means grant by, or recognition as a grant by, the ruling authority for the time being before the merger, of a village, a group of villages or a portion of a village, whether such grant is of the soil or an assignment of land revenue, or both, and includes villages groups or portions of villages, (a) held in the merged territories or merged areas on tenure commonly known as Jiwai Jagir or on tenure known by any similar name. It is difficult to conceive how this definition helps Mr. Desai. The term "jagir" is of the widest connotation. In case of certain known tenures like Jiwai Jagir which is specified in Section 2(1)(vi)(a), there is specific inclusion because the tenure is a known tenure. In other cases substantive definition of Jagir is wide enough to cover grant or its recognition as grant by ruling authority before merger of a village or a portion of a village irrespective of the fact whether the grant is of the soil or an assignment of land revenue or both. The present Jagir is not a Jiwai Jagir as such which would fall in the definition of Section 2(1)(ix), which is held by the holder thereof for the purpose of his maintenance. Even though "Jivarak" was used to indicate that the grant was contemplated for the purpose of maintenance of the plaintiff so far as his descendants are concerned, it was not a Jiwai Jagir at all. The grant was a complete grant which was to avail to the plaintiff and his heirs from generation to generation. Therefore, the purposes which is recited in the grant could never cut down the operative terms of the grant itself which expressly state that the grant in question was to operate as a full gift.

7. Finally, both Mr. Desai and Mr. Mehta tried to construe the grant in question on its plain terms as not conveying full rights in the soil. They emphasise first the terms Jivarak by stating that it was only a maintenance grant, which aspect we have already dealt with. They further emphasise the fact that this was a mere gift or a grant without any value. It is hardly material when the present grant in terms makes it clear that the intention of the sovereign was to make a full gift of the two villages, for sovereign's honour, whether it was a grant by way of valuable consideration received in a sale or in such full gift, it must be given full effect. Besides, as we have earlier stated, we cannot say that this was a grant which was without any consideration. The third aspect which was emphasized was the use of the expression Padya Pan which as we have pointed out earlier in such a conveyancing context must be interpreted not as fallen leaves but as conveying all kinds of revenue whatever and which would clearly convey royalty for minerals. The fourth ground which was advanced was that the grant was to hold good from generation to generation and so long as the grantee continues to serve with Shyam Dharma. That was not however a reservation clause at all. Every sovereign when he makes a grant which is to hold good not for the lifetime but in perpetuity from generation to generation would always expect that the grantees or their heirs to continue to serve the State with Shyam Dharma. That is not in any manner reservation of the sovereign rights which in any manner derogates from the complete absolute grant by providing a clause of forfeiture or

resumption of this grant. It was also emphasized that the income from the grant was recurring income assign form year to year and, therefore, such right could never carry the right to consume corpus itself. The right to the corpus was not given by this clause but by the earlier clause, and this clause only enumerated the further right that the grantee was to get all kinds of revenue which arose from year to year. Therefore, instead of this being a limitation showing that the grant was only of the produce, it clinched all doubts as to the nature of the grant being of the proprietary interest in the soil itself including sub-soil rights. Finally, the reservation clause as regards the sovereign jurisdiction was sought to be relied upon which can hardly help the appellants, because every sovereign when he creates such non-jurisdictional estate would always reserve sovereign rights of issuing commands, power of taxation and his civil and criminal jurisdiction. That however cannot derogate from the full proprietary grant as far as a non-jurisdictional estate is concerned, which is conveyed to the grantee. Mr. Mehta had no doubt argued that the expression Dan would include even such royalty from the minerals. The expression "Dan" in the context in which it is used is only referable to the sovereign power of taxation. In this context it can never refer to the royalty from minerals which is only a kind of revenue from this non-agricultural use of this land. The sovereign's tax statutes would however always be applicable. Section 10 of the Act in terms makes it clear that nothing in this Act or any other law for the time being in force, shall be deemed to affect the rights of any Jagirdar subsisting on the appointed date of mines or mineral products in a Jagir village granted or recognised under any contract, grant or law for the time being in force or by custom or usage. Even when the Jagirdar is made occupant under the Act. Section 69 of the Bombay Land Revenue Code in terms reserved right of the Government to mines and mineral products, only subject to the proviso that nothing shall be deemed to affect subsisting rights of the occupant in such mines and minerals. Therefore, both the statutory provisions make it clear that the declaration of the state ownership of land in the Code is subject to these rights of this occupant in the mineral rights because of his proprietorship of the soil. That however does not affect the taxation power of the State, if any. Therefore, no ground whatever has been made out which would justify any interference in this appeal as the learned Single Judge rightly construed EX. 89 as an absolute or full grant of the soil of the two villages to the plaintiff, which necessarily carried sub-oil rights to the minerals. In that view of the matter, these appeals must fail and must be dismissed with costs.

8. Appeal dismissed.