

(1965) 07 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 757 of 1961

Baxi Mir Vahiduddinkhan

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 30-07-1965

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 2(5)
Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 — Section 1(1), 12, 14, 14(1), 14(2)
Constitution of India, 1950 — Article 14, 19, 19(1), 31, 31(1)
Jagir Abolition Act — Section 3
Land Acquisition Act, 1894 — Section 23(1), 24
States Merger (Governors Provinces) Order, 1949 — Section 7

Citation : AIR 1966 Guj 149

Hon'ble Judges : J.M. Shelat, C.J.;S. Sarela, J

Bench : Division Bench

Advocate : A.M. Joshi, for the Appellant; B.R. Shah, Asst. Govt. Pleader and K.L. Talsania, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Shelat, C.J.—This is a petition for a writ of certiorari to quash and set aside the order of the Gujarat Revenue Tribunal dated February 27, 1951 which held that the claim for compensation filed by the petitioner in respect of the extinguishment of a grant in his favour fell u/s 15 of the Bombay Merged Territories and Miscellaneous Alienations Abolition Act, 1955, (hereinafter referred to as the Miscellaneous Alienations Abolition Act) and for a mandamus directing the State of Gujarat to continue to pay to the petitioner and his descendants the sum of Rs. 12,522 annually, and, in the alternative, for a mandamus directing the State of Gujarat to pay to the petitioner as compensation the amount of Rs. 4,17,400, being the capitalised value of the said grant of Rs. 12,522 which came to be extinguished u/s 4 of the aforesaid Act.

2. The petitioner is the descendant of one Mir Nazmuddinkhan who was the

cousin of the Nawab of Surat and the Baxi of his forces in or about the year 1800 A.D. It appears from the documents filed by the petitioner that in 1776, the then Nawab granted Muglai Hak or assigned revenue in favour of the said Nazmuddinkhan in respect of certain villages situate in the present Gandevi and Chorashi Talukas and certain other villages. On May 12, 1800 a compact and a convention was made between the said Nawab and the East India Company to which the said Nazmuddinkhan affixed his seal by way of allegation whereunder the administration and management of the city of Surat and the territories, places and other dependancies thereof was delivered over to the Company. By a Sanad dated June 22, 1800 signed by Jonathan Duncan, the then Governor of Bombay, the Company agreed to pay to the said Nazmuddinkhan and his descendants a sum of Rs. 24,000 in Broach rupees payable in quarterly instalments, besides an amount of Rs. 6,000 per annum payable during his lifetime. We are told by Mr. Joshi, who appears for the petitioner, that the petitioner is not able to trace the original Sanad and has, therefore, produced a copy of a translation thereof. The copy translation is the one which the petitioner produced from his records before the Deputy Collector, Navsari, along with his application for compensation. We find, however, that this translation differs in certain particulars from a translation which was produced in an earlier litigation which went up to the Privy Council and of which the extracts are quoted in the Privy Council decision in *Gulabdas v. Collector of Surat* ILR (1879) Bom 186. Though the differences in the two translations are not very material, we propose to rely on the Sanad as reproduced by R.N. Joglekar in his *Alienation Manual*, (1921 Edition) at page 238. The Sanad, as found in that volume, after reciting the aforesaid compact and convention, provides as follows:

"And for as much as under these circumstances it hath become expedient to make a suitable provision for the said Nejimeddin Khan Bahadoor and his family who are near relations to and descendants from the same paternal stock as the Nawab of Surat. It hath accordingly been settled by the Honourable Jonathan Duncan, Governor of Bombay that the said Nejimeddin and his descendants shall receive from the company inclusive of the valued income of the Jahagir now in his possession as per specification thereof according to the undermentioned particulars, a stipend to be paid by quarterly instalments of twenty-four thousand rupees per annum to commence from the 16th of May or 21st of Jilehj of the respective year aforesaid and that should it become necessary for the company to resume any or all of the Jahagirs in question for the purpose of making an exchange thereof or otherwise the amount of their pargana valuation shall be made good in cash; besides which, as a particular mark of the Government's favourable opinion of and respect for the character of the said aforesaid Nejemeddin Khan Sufdar-ul-Moolk Bahadoor he is to receive during his life the further sum of six thousand rupees per annum payable also in the like quarterly payments from the company's treasury."

The Sanad shows that the Company confirmed the jagirs granted by the Nawab in respect of the aforesaid land revenues of the villages situated in Gandevi and

Chorashi Talukas set out therein and aggregating in all to Rs. 16,264-4-0. The circumstances referred to in the Sanad in respect of which it was considered expedient to issue the Sanad confirming the said jagirs were the fact of the said Baxi being a near relation of the then Nawab and the assistance which he had rendered to the Company in the making of the said compact and convention.

3. The said sum of Rs. 24,000, when converted into Company rupees, was sold at Rs. 22,406 which consisted of three items, (1) Rs. 12,522 to be paid per year as Muglai Hak from the land revenues of the said villages situated in Gandevi Mahal, (2) Rs. 2,592-2-10 to be paid yearly as Muglai Hak from the land revenue of certain villages situated in Chorashi Mahal, and (3) Rs. 7,290-15-0 as political pension to be paid from the Company's treasury at Surat in the form of a monthly allowance of Rs. 607-9-0. Over and above these three sums aggregating to Rs. 22,405, the Baxi was also to be paid Rs. 6,000 a year for life as a pension as a particular mark of the favourable opinion of the Company's Government and the respect for the character of the said Baxi. In this petition, we are concerned only with the grant of Rs. 12,522 payable as aforesaid in lieu of the land revenue of what may be called the Gandevi villages forming part of the original jagirs granted to the Baxi in the year 1776.

4. In accordance with the Sanad, the three aforesaid grants were paid by the Company from its treasury at Surat. It appears that in 1817, a treaty was made between the Company and the Gaekwar of Baroda, under which there was an exchange of certain territories, and these villages in the Gandevi Mahal amongst other villages came to be ceded to the Gaekwar. Consequently, the system of payment of the aforesaid sum of Rs. 12,522 was changed. The system of payment in respect of the said amount of Rs. 12,522 followed then was that the Gaekwar was to pay from out of the land revenue of these villages Rs. 12,522 in the British Residency at Baroda who used to transmit that amount to the Collector of Surat, and the Collector in his turn used to pay that amount to the descendant for the time being of the said Nazmuddinkhan. This practice of payment was adopted because though the aforesaid villages in Gandevi Mahal were ceded to the Gaekwar, the amount of Rs. 12,522 was chargeable on the land revenue of those villages and the payment of Rs. 12,522 was continued under the guarantee of the Company. This system of payment continued until 1948 when, after the passing of the Independence Act of 1947, the Residency at Baroda was abolished. For a while payment was made directly to the then descendant of the Baxi by the Mahalkari at Gandevi. But after the merger of Baroda, which took place on August 1, 1949, this amount was paid to the petitioner's father as the descendant of the said Baxi until his death in 1951 by the Government of Bombay through the Mahalkari, Gandevi, and thereafter to the petitioner until 1955.

5. As part of the narration of facts, it is necessary to state that on or about June 13, 1873, one Fatima-ul-Nissa Begum, the person till then entitled to the said payment, died, and the question of her successor. Mir Azimuddinkhan, the great

grand-father of the present petitioner, arose The Baroda Government claimed the right to decide the question of succession and also claimed that if it was held that said Azimuddinkhan was not a direct descendant of the original grantee, the grant would lapse. The question was whether Azimuddinkhan who was the lineal descendant of the daughter of the first grantee, the said Nazmuddinkhan, could claim to be a successor to the aforesaid Muglai Hak and pensionary allowances. Certain correspondence ensued between the respective Governments of Baroda and Bombay and ultimately, the Governor General in Council negated the claim of the Baroda Government to decide the question of succession and held that the said Azimuddinkhan was entitled to the grants as the descendant of the original grantee. This view was upheld by the Secretary of State for India by his letter dated January 23, 1879 to the Governor General of India in Council. As this letter throws some light on some of the contentions raised on behalf of the petitioner, we think it necessary to quote few extracts therefrom. The letter designates the aforesaid grant as "the Bakshi's Muglai." and then proceeds to state:

"The payment in question, which is charged upon certain villages of the Baroda State, was assigned to the Bakshi about the year 1775 by his blood relation the Nawab of Sural, and was confirmed to him and his descendants by Sanad from the Governor of Bombay in the acquisition of Surat and its dependencies by the East India Company in the year 1800.

The Government of Baroda has, of late years, asserted a claim to adjudicate upon the question of succession to the payment, and a right to the reversion to it in the contingency of failure of representatives of the original grantee..... I agree with Your Excellency-in-Council and with the Government of Bombay in thinking that the claim put forward on behalf of the Baroda Government is inadmissible. I am of opinion that the treaty of 1817, which has been quoted in support of it, must be read as a whole with its annexures, and that the Muglai payments aggregating to Rs. 76,763-1 2, which are referred to in Schedule C, were the only payments of the kind intended by Article V to be assigned to the Gaekwar in exchange for the territorial cession to be made by him. It is admitted that the Bakshi's Mugalai of Rs. 13,277. which or its equivalent, had been guaranteed to him by Governor "Duncan's Sanad, did not form any part of the total sum of Rs. 75,763-1-2 entered in the Schedule under that head; and, putting out the consideration of the reversionary right of the British Government, I cannot think that if it had been intended either to leave the payment in future to the discretion of the Gaekwar, or to substitute a Baroda for a British guarantee, a change so materially affecting the interests of the Bakshi and his descendants would have been made tacitly.

Although no claim on the part of the Baroda State to an interest in the Bakshi's Mugalai can be allowed. I concur with you in opinion that its direct collection by the persons entitled to it is not desirable I approve, therefore, of the orders which you have passed, under which the amount will be paid from the Baroda Treasury to the Indian Government, and by it to the Bakshi for the time being"

It will be noticed that the reversionary right of the British Government which has been mentioned in this letter clearly refers to the right of the Government to resume the grant as provided in the Sanad. It is, therefore, clear that though the villages in Gandevi Mahal in question were ceded to the Gaekwar of Baroda and the payment of Rs. 12,522 from out of the revenue of those villages was payable by the Gaekwar, the Government still claimed to have the right of resuming the said grant conferred by the said Sanad. Apart from that consideration, this letter clearly shows that when Gandevi Mahal was ceded to the Gaekwar by the treaty of 1817, certain Muglai Haks set out in the schedule thereto were also transferred, but the Muglai Hak and the pensionary allowances granted to the said Baxi under the said Sanad were not transferred to the Gaekwar. The position was that though the payment was to be continued to be made out of and in lieu of the land revenues of Gandevi villages then ceded to the Gaekwar, the payment was to be made under the British guarantee and therefore the Gaekwar had to pay the said amount to the British Resident who transmitted it to the Collector of Surat and the latter paid it to the then descendant of the original grantee.

6. The facts which thus emerge from the Sanad of 1800 and the other documents referred to above are that in 1776, the said Nazmuddin-khan was the recipient of the Muglai Hak in respect of Gandevi villages by way of a grant from the Nawab. In 1800, when the administration of Surat was taken over by the Company, in consideration of the assistance given by the said Nazmuddinkhan and in consideration of the fact of his being a near blood relation of the Nawab, the grant was either confirmed by or a fresh grant was made under the said Sanad and the Company agreed to pay the sum of Rs. 12,522, that being the income of the Muglai Hak in respect of the said Gandevi villages assigned by the Nawab. In 1817, when these villages were ceded to the Gaekwar, the British guarantee for the payment of the amount of Rs. 12,522 was continued, the arrangement then made being that the Gaekwar was to pay that amount to the British Resident at Baroda who was to remit that amount to the Collector at Surat. There was thus no direct connection between the descendants of the original grantee and the Gaekwar and these descendants were to look to the British Government for the payment and not to the Gaekwar, though payment was to be made from the revenue of the said villages and in lieu of that revenue, which under the grant of 1776, was receivable from these villages by the said Baxi and his descendants.

7. It appears from the correspondence. Exhibit B to the petition, that two questions arose soon after 1948, (1) as to how on the abolition of the office of the Resident of Baroda was the payment to be made, and (2) since the death of the said Fatma-ul-Nissa, no mutations were made to bring her successor on record and the payments were made by the Collector, Surat, to the persons from amongst the family who claimed to be the descendant in 1948. In 1949, the then Government of Baroda ordered that the amount of Rs. 12,622 should be transferred to the Gandevi treasury and should be paid directly to the party concerned. Regarding the mutations, it directed that it would be open to the

future Government to prescribe rules of mutation as regards the same and the payment of the Muglai Hak The Col-lector Surat, submitted these questions to the Bombay Government after the merger of Baroda, and the Government of Bombay then issued the following resolution dated October 24-25. 1950, "Sanction is accorded to the continuance of the payment of Muglai Hak of Rs. 12,522 per annum to Shri Baxi Mir Tegbarkhan Baxi Mir Sadruddin Khan of Surat from the Gandevi Mahal Sub-Treasury The payment of the Hak should be made after effecting necessary mutations and regular inquiry should be held therefor. "

8. In 1952, the State of Bombay enacted the Bombay Personal Inams Abolition Act 1952. The amount of Rs. 2,5922-10 received so far as Muglai Hak in respect of the villages situated in Chorashi Taluka was thereupon stopped The political pension of Rs. 7.290 15-0 per year was however continued and is still being paid to the petitioner from the treasury at Surat. In 1955, the Bombay State enacted the Miscellaneous Alienations Abolition Act, 1956, and that Act came into force as from August 1, 1955. On the passing of this Act, the Mahalkari, Gandevi, by his letter dated July 25, 1966, informed the petitioner that the aforesaid Act had abolished his right to receive the payment of Rs. 12,522 and further informed him that he was at liberty, if he so desired, to apply for compensation on or before July 31, 1956. It seems that even before the receipt of that letter, the petitioner had already applied for compensation by his application dated July 13, 1956. By that application, the petitioner claimed (a) Rs. 4,14,400 as compensation, that amount being the capitalised value of the grant of Rs. 12,622 at three per cent per hundred u/s 18 of the Miscellaneous Alienations Abolition Act, and (b) in the alternative, Rs. 87,654 being seven limes the amount of Rs. 12,622 and Rs. 3,29,746 u/s 18. In the application, the petitioner split up the aforesaid amount of Rs. 22,405-1-10 as follows :

I. Rs. 12,522 --per year known as the Baroda Muglai Hak. received every year from the Collector of Surat, who used to receive the same amount from the Baroda State through the Resident of Baroda and thereafter through the Agent, Western India States; II. Rs. 2,592-2-10 --paid yearly in the month of May from the Chorasi Taluka Treasury in Surat District as Muglai Hak; III. Rs. 7,290-16 -0 --per year by monthly political pension of Rs. 607-9-3 paid from the Huzur Treasury. Surat

After tracing the history of the payments, the Sanad of 1800 and the circumstances in which it was issued, the petitioner claimed that:

"Looking to the nature of the grant under which I am receiving the said payments it is clear that these payments were in lieu of the properties belonging to the then Baxi Mir Nazmuddinkhan in whose time the said Sanad was granted. The terms of the Sanad are very clear when they state that the payment is to be continued permanently from generation to generation So if the Government wants to resume the capital of my annual income of the Baroda Muglai Hak, then they must give me the proper capita) value for that which according to me should be Rs. 4,17,400 (Rupees four lacs Seventeen thousand four hundred

only) "

The District Deputy Collector who enquired into this application, by his order dated June 25, 1968 awarded Rs. 87,654. being seven times the Hak amount of Rs. 12,522 u/s 15(1)(i) of the Act as the allowance was hereditary and not subject to any cut or deduction at the time of succession. He negated the petitioner's contention that Section 18 applied to his claim on the ground that the provisions of Section 18 applied to rights other than those dealt with u/s 15 and that, as the rights abolished by the Act clearly fell u/s 15, Section 18 did not apply. The petitioner filed an appeal from this order u/s 20 of the Act before the Revenue Tribunal, and the Revenue Tribunal, by its order dated February 27, 1961 rejected the appeal and confirmed the order of the District Deputy Collector. This petition is directed against these orders.

9. Before we proceed further, it becomes first necessary to ascertain from the provisions of the Sanad the true nature of the grant made thereunder. After reciting the circumstances in which it was issued, the Sanad inter alia provides that:

"It hath accordingly been settled by the Honourable Jonathan Duncan Governor of Bombay that the said Ncjimeddin and his descendants shall receive from the company inclusive of the valued income of the Jahagir now in his possession as per specification thereof according to the undermentioned particulars, a stipend to be paid by quarterly instalments of twenty-four thousand rupees per annum" etc. The Sanad also provides:

"And that should it become necessary from any unforeseen occurrence or other cause for the company to resume the aforesaid jageers for the purpose (the words "for the purpose" appear to be a typographical error; they should be "the income") of Jagheers shall be made good in cash to the said Nazmuddinkhan and his descendants "

These two clauses in the Sanad amply establish (1) that though the cash grant was henceforth to be paid, the amount of Rs. 24,000 included in the land revenue of the villages in Gandevis Mahal, and that out of Rs. 24,000, Rs. 12,522 was the land revenue of these villages, and (2) though the Sanad designated the payment of Rs. 24,000 as a stipend, the jagir granted in 1776 by the Nawab to the Raxj was not terminated nor resumed, and was continued and recognised. The only difference that occurred was that instead of the grantee collecting the Muglai Hak assigned to him, the Company was to pay cash equivalent to the land revenue recoverable from those villages, namely, Rs. 12,522. It is, however, clear from the Sanad that the jagir was regranted, or at any rate, recognised by the Company, for otherwise it would not have been necessary to provide for the payment of income of these villages as and by way of compensation should the Company decide to resume the jagir in future. This can also be seen from the decision of the Privy Council in ILR (1879) Bom 186 (PC) (supra) where this very Sanad came up for consideration. The Privy Council in construing it, observed

that the company not only recognised but even extended the original grant by the Sanad. The appellant in that case was the representative of the mortgage claiming his right under a mortgage of 1921 executed by Moinoodin the grand son of the original grantee, under which he assigned to the mortgagee-Bank certain villages mentioned in the Sanad. The question was whether such an alienation was binding on the successors of the mortgagor. It was urged on behalf of the representative of the mortgagee that the Sanad 1800 confirmed the jagir which was hereditary and that therefore Moinoodin had the right to alienate the rights thereunder. On a construction of the Sanad, the Privy Council repelled that contention and held that the grant was not hereditary but that the descendants of the original grantee would take the jagir for life only. But the Privy Council added that the jagir, on the death of the descendant for the time being, would be continued to his successor according to the custom unless the jagir was resumed. That question is not before us for, it is nobody's case that the jagir has at any time been resumed, and it has been accepted by all the authorities below that it has descended from descendant to descendant find throughout the long period from 1800 and onwards payment has been regularly made until 1955. The question which we have to consider is about the nature of the grant and not whether the grant was hereditary or not, for, it has been assumed by the authorities that it was and have, therefore, applied Section 15(1) (i) of the Act. As regards that question, the observations made by the Privy Council at pages 189 and 191 of the report are important. At p. 189, the Privy Council took note, while construing the Sanad, of a minute made by Governor, Duncan remarking that the terms of the Sanad were in accordance with that minute. That minute, as quoted at page 189 of the report, was as follows:

"Besides these official advantages, the Buckshee had for many years past been in the possession of various jaghirs; that his relations, the Nawabs of Surat, at different times (but all above 20 years ago), alienated in his favour from various parts of the Mogullae or assigned revenues on the neighbouring paraganas for the support of the Nawabship, in like manner as they have (as far as depended on them) done to various other individuals. These estates or assignments, which the Buckshee appeared to be very desirous of retaining, amount yearly, according to the valuations expressed in the paragona or of grants to Rs. 16,810, respecting which the present Nawab declared, on being separately consulted, that he considered them as having from the original grants and the length of possession become the Buckshee's property; on all which grounds I have settled that, including the said jaghirs, the Buckshee shall receive from the Company an annual stipend of Rs. 30,000, to be continued to his children and family after his decease at the reduced rate of Rs. 24,000, with a clause inserted in the grant in conformity to the instructions to that effect from the most noble the Governor General in Council; that in event of its becoming expedient for Government to resume the jaghirs the parties shall be satisfied to receive their value of produce from the Treasury in like manner with the residue of their pension."

From this minute and the terms of the Sanad, the Privy Council at page 191 of the report observed that the main object of the grant was to secure a pension of Rs. 24,000 per annum to the Baxi family. "A portion of that pension is to be paid out of the revenues of certain mehals constituting the jaghir stated in the schedule; the proceeds of the jaghir are thus in effect but a part of the pension." If it is thus clear that though the payment under the Sanad was termed a stipend or a pension for the maintenance of the Baxi and his descendants, part of the amount, namely, Rs. 12,522, was payable from the land revenue of the Gandevi villages which till then was receivable by the grantee, and thus the amount was chargeable on the land revenue of these villages. This position has been clarified by the Privy Council at page 192 of the report where it is observed:

"It should be borne in mind that the pre-sent is not the case of the State merely granting a jaghir, and declaring that that grant shall be hereditary, but it is a grant of a jaghir accompanied with the grant of a pension, under circumstances which indicate that the intention was that the grant of the jagir and the grant of the pension should be subject to the same conditions." Even the correspondence between the Government of Bombay and the Government of India and the Secretary of State for India, which ensued on the claim of the Baroda Government to adjudicate the question of succession, shows that all throughout the Sanad was interpreted by the authorities as a grant of Muglai Hak in respect of the villages in Gandevi Mahal and a pension, namely, of Rs. 7,000 and odd.

10. The question then is, whether the pre-sent case falls within the purview of the Miscellaneous Alienations Abolition Act, 1955. Sub-section (1) of Section 1 of the Act provides that the Act would extend to the merged territories in the pre-reorganisation State of Bombay, excluding the transferred territories. Section 2 provides for certain definitions, and "alienation" has been defined there as meaning a grant or recognition as a grant (I) of a village, portion of a village or land to any person, whether such grant be of soil with or without exemption from payment of land revenue or of assignment of the whole or a share of land revenue thereof ...(III) of cash allowance or allowance in kind to any person by whatever name called by the ruling authority for the time being before merger or by the State Government after merger, and includes..... etc. Whether, therefore, the Sanad is treated as a recognition of a grant or the grant of an assignment of land revenue or a grant of cash allowance, it would still be alienation within this definition and therefore, prima facie, it can be said that the Act would apply to the present grant.

11. The next question is, which of the provisions of the Act would apply for the purpose of compensation? Chapter III of the Act deals with compensation and its award, and Section 14 in that chapter provides that (1) in the case of an alienation consisting of assignment of the whole or part of the land revenue of any land or village, if the alienation was continuable as hereditary without being subjected to any deduction or cut at the time of each succession, a sum equal to seven times the amount of such land revenue, (2) If the alienation was

continuable as hereditary but subject to a deduction or cut at the time of each succession, a sum equal to five times the amount of such land revenue, and (3) if the alienation was continuable for the life time of the alienee, a sum equal to three times the amount of such land revenue, shall be paid to the alienee as compensation for the abolition of the alienation Sub-section (2) of Section 14 provides that the amount of land revenue shall be the amount received or due to the alienee on account of assignment of land revenue for the year immediately preceding the appointed date. Section 15 provides that in the case of an alienation consisting of a cash allowance or allowance in kind, the alienee shall be paid (i) seven times the amount of the cash allowance or the value of the allowance in kind, as the case may be, if the alienation was hereditary without being subjected to deduction or cut at the time of each succession; (ii) five times the amount of the cash allowance or the value of the allowance in kind, as the case may be, if the alienation was hereditary but subject to a deduction or cut at the time of each succession; or (iii) three times the amount of cash allowance or the value of the allowance in kind, as the case may be, if the alienation was continuable for the life-time of the alienee. Section 18 provides that if any person is aggrieved by the provisions of the Act as abolishing, extinguishing or modifying any of his rights to, or interest in, property and if compensation for such abolition, extinguishment or modification has not been provided for in the provisions of the Act, such person may apply to the Collector for compensation, and the Collector, after holding a formal enquiry, should make an award determining the compensation in the manner and according to the method provided for in Sub-section (1) of Section 28 and Section 24 of the Land Acquisition Act, 1894. As already stated, out of the amount of Rs. 24,000 payable per year under the Sanad, Rs. 12,500 represented the land revenue of the Gandevi villages which was so far collected and appropriated by the said Baxi. By including that amount in the sum of Rs. 24,000, the Sanad recognised the right of the grantee to the land revenue of the Gandevi villages. The treaty, under which these villages were ceded to Baroda, transferred the liability to Baroda and thus the Gaekwar of Baroda took these villages subject to the condition that the land revenue of these villages was payable to the grantee and his descendants. It would thus seem that the proper section which would apply would be Section 14(1) (i) and not Section 16 which has been applied by the Deputy Collector and the Tribunal. But whether it is Section 14 or Section 15 which applies, it would not make any difference, because the grant having been accepted as hereditary and without being subject to any deduction or cut at the time of each succession, compensation under both the sections is the same, namely, seven times the amount of the grant. Since, in our view, the grant falls u/s 2(1)(i)(1), namely, assignment of land revenue, and a provision for compensation therefore is to be found in Section 14, Section 18 would have no application. We may observe at this stage that no argument was advanced, and in fact Mr. Joshi conceded that he could not advance any argument, that the applicability of this section is excluded u/s 3(f) or that it would be the Jagir Abolition Act of 1953 which would apply, for, no such averment has been made in

the petition. Consequently, the only contention which Mr. Joshi put forward was that if the grant fell under the definition of the expression "alienation" u/s 2. it would be Section 18 which would apply and not Section 14 or Section 15. That contention, however, cannot be accepted as, in our view, the proper section which would apply would be Section 14 which makes provision for compensation for an alienation which is, in our view, an assignment of land revenue of the villages situated in Gandevi Mahat. This conclusion is borne out by the fact that the Sanad clearly states that the villages in the Gandevi Mahal were the jagir villages and until the year 1800 were in the possession of the said Baxi. The Sanad also provides that the right granted to the Baxi was the Muglai Hak which, according to Joglekar's Alienation Manual and Wilson's Glossary. 1940. at page 545, means a branch of the revenues of the Nawab of Surat. distinct from those of which the Marathas exacted the Chauth. Muglai Hak thus means assigned revenue after deducting therefrom the chauth, i.e. one-fourth thereof payable to the Marathas. As already stated, the Privy Council interpreted the Sanad also as a jagir and a pension, and the notes made by the revenue authorities forming part of Exhibit B to the petition also have treated the grant of Rs. 24,000 as including "the present amount of Rs. 12,522 which was charged upon certain villages of Baroda State assigned to the Baxi about the year 1776 as Muglai Hak." The resolution issued by the Government of Bombay dated October 24/25, 1950 also characterises the grant as Muglai Hak payable annually and finally, the decision of the Government of Bombay dated March 10, 1879, on the claim by the Baroda State to adjudicate upon the question of succession to this grant, treats the grant not as a pension or a stipend but as the "Bakshi's Muglai." Finally, the letter of the Secretary of State dated January 23, 1879, already referred to, in express terms stated that the payment in question was charged upon certain villages of Baroda State. That grant was assigned to the Baxi about the year 1776 or 1778 A. D. by the Nawab of Surat and was confirmed to him and his descendants by the aforesaid Sanad of the year 1800. Thus, all throughout the long period from the year 1800 and onwards, the right to receive the amount of Rs. 12,522 has been treated not as a mere pension or a stipend or a cash allowance, but as Muglai Hak having a charge upon the Gandevi villages ceded in 1817 to the Baroda State. It is also seen from Gulabdas's case ILR (1879) Bom 186 (PC) (supra) that Moinoodin referred to therein had executed a mortgage of which the subject matter was some of these villages. It is significant that no contention was raised in that suit that he could not create such a mortgage, the only contention there being that such a mortgage was not binding upon his successors, as each descendant of the said Baxi was to enjoy the said grant for his life-time only. The result of this discussion, therefore, is that the grant in question being an assignment of land revenue of the Gandevi villages in question, it would be an alienation within the meaning of Section 2(1)(i)(I) of the Act and therefore the proper section that would be applicable for the purposes of compensation would be Section 14(1)(i).

12. But Mr Joshi has raised contentions of a wider character to which we must

now address ourselves These contentions were (1) that the State Legislature was not competent to pass an enactment extinguishing a grant which was the liability of the Union Government (2) that the extinguishment of the rights under the said grant amounted to an encroachment upon the fundamental right to hold property conferred under Article 19(1)(f) and, unless shown to be a reasonable restriction, Section 4 of the impugned Act would be invalid, and (3) that the effect of the Act was deprivation of property without fixing adequate compensation and was, therefore, violative of Article 31(1) and Article 19(1)(f). The argument was that the Sanad amounted to a stipend or a pension in terms of money and therefore the grant under the Sanad had nothing to do with the land or land revenue and the Act extinguishing the rights to such a pension would not fall under any of the entries in List II or III of the Seventh Schedule to the Constitution and was, therefore, beyond the legislative competence of the State Legislature We do not agree with this contention, for in our view the impugned legislation falls fairly and squarely within entries 18 and 45 of the State List, Entry 18 is in the following terms:

"Land, that is to say rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents: transfer and alienation of agricultural land; land improvement and agricultural loans colonization "

Entry 45 runs as follows:

"Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues " Under Article 31A, no law, notwithstanding anything contained in Article 31, providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31; provided that if such a law is made by the State Legislature, it was reserved for the President's consideration and has received his assent. There is no dispute that the Act was so reserved and has duly received the assent of the President, Clause (2) of Article 31A as it existed before the Constitution (Seventeenth Amendment) Act, 1964, applies in the present case, and that clause, as it then stood, provided that for the purposes of Article 31A:

"(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant... etc. (b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue."

Since, in our view, the grant in question amounted to a jagir, it would constitute an "estate" within the meaning of clause (2) of Article 31A. But apart from that,

the existing law relating to land tenures in force in the Slate would be the Bombay Land Revenue Code. 1879 Section 2(5) of that Code defines "estate" as meaning any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same Clause (4) of that section defines "land" as including the benefits to arise out of land, and also shares in or charges on the revenue or rent of villages or other defined portions of territory. A share or a charge on the revenue of a village or villages or other defined portions of territory would amount to land and such a share or charge on land revenue being an interest in such land, such interest would amount to an "estate" within the meaning of the Code. As already pointed out, quite apart from the definition of an "estate" in Section 2 of the Code, the Sanad of 1800 itself treats and designates the grant thereunder as a jagir and a pension and provides in express terms that should that jagir be resumed in future on account of some unforeseen occurrence, the grantee and his descendants were to be entitled to, as and by way of compensation, the income of the village in question. It is thus clear that though the grant was payable in cash, it was not and cannot be regarded as a mere stipend or pension, as contended by Mr Joshi. But was Muglai Hak reduced in terms of cash payment which was charged on the land revenue of these villages and was therefore a benefit or interest in those lands. Therefore, the grant and the rights thereunder would clearly fall under the definition of "land" and "estate" in Clauses (4) and (5) of Section 2 of the Land Revenue Code. The grant being thus directly relatable to the land revenue of the villages in Gandevi Mahal, an enactment dealing with it and extinguishing the rights thereunder would properly fall under entry 18 and in any event under entry 45 of List II of the Seventh Schedule. A similar question arose in *Amarsarjit Singh Vs. The State of Punjab*, where the Punjab Resumption of Jagirs Act 39 of 1957 came under challenge, and one of the grounds of the challenge being that it did not fall under any of the entries in the State List. The holders of Cis-sutlej jagirs in that case became the rulers of certain territories when they took possession of them by conquest in 1763. In 1809, the British established their suzerainty over them and declared that the territories of the rulers who died without heirs would escheat to them in 1846. The British Government deprived them of the police jurisdiction and the power to levy customs, and in 1849 all their sovereign functions were deprived of. In 1852, the British took over the collection of revenue for the jagir lands. The rules for settlement of revenue were made by them, and the actual settlement and collection of revenue were made under their authority, and out of the collections the jagirdars were paid their share. The Supreme Court held that as the jagirdars had sunk to the position of subjects on that date, the payment of revenues to them by the British Government could only be on the basis of an implied grant to them. The Act denoted "jagir" *inter alia* as meaning any assignment of land revenue made by or on behalf of the State Government, or any grant of money made or continued by or on behalf of the State Government which purported to be or was expressed to be payable out of the land revenue. After dealing with the question whether the impugned Act fell under entry 18 and entry 15 in the State List the Supreme Court observed that

the subject matter of the legislation in question was the resumption of jagirs. It further observed that though a contention was raised in the petition that that was not a topic within the competence of the State Legislature, as there was no such entry in List II In the Seventh Schedule, no argument was advanced in support of it, and clearly it could not be, as Legislation on resumption of jagirs was one relating to lands, and land revenue and would clearly fall under Entries 18 and 45 of List II. The Supreme Court also observed that so long as the lands were within the State of Punjab, the State Legislature had full competence to enact a law providing for their resumption under entries 18 and 45. In this connection, it would be useful to note that Baden Powell, in his *Land System in British India* (1892 Edition) Volume I, pp 97 to 99 as quoted in *Sri Ram Narain Medhi Vs. The State of Bombay*, treats an alienation or an assignment of land revenue of an estate or a tract of country in favour of a person for some specific object or for services to be rendered in future, as a land tenure. That being the position, both on the nature of the grant and on the authority of *Amarsarjit Singh Vs. The State of Punjab*, the impugned Act must be held to be falling under Entries 18 and 45 of the State List. Consequently, the contention on this part of the argument cannot be upheld.

13. The second part of the argument, namely, that the liability of payment under the *aid Sanad* was that of the Government of India, has, in our view, equally no force. It is clear from the documents referred to earlier that until the merger of the Baroda State on August 1, 1949, the liability to pay the sum of Rs. 12,522 was of the Baroda Government. On merger and on the territories of Baroda State, including the Gandevi Mahal, having fallen under the administration of the State of Bombay, the land revenue of the Gandevi villages became part of the consolidated fund of the State of Bombay and the obligation to pay out of the land revenue the sum of Rs. 12,522 devolved upon the State of Bombay. It was therefore that the State of Bombay, by its resolution dated October 24-25, 1960, carried out the mutation entry in the name of the petitioner's father and paid, from 1949 and onwards, the aforesaid sum of Rs. 12,522 to the petitioner's father till 1951 and, on his death in that year, to the petitioner. The obligation, therefore, to make that payment was an obligation of the State of Bombay and not of the Union. Mr. Joshi, however, relied on the States Merger (Governors Provinces) Order, 1949, and particularly on Section 7 thereof. That section, however, has no application in this case, for, it deals with the liability which may have been incurred by the Dominion Government while the governance of the merged territory was with the Dominion Government. The obligation to pay Rs. 12,522 obviously is not a liability, contemplated by Section 7 and the Order of 1949, therefore, has no application or relevance. Equally unsustainable is the contention that since it was the Secretary of State for India who ultimately decided the question of succession of Azimuddin, the liability to pay the grant was that of the Government of India. But it will be seen that the decision that Azimuddin was the original descendant was made by the Government of Bombay but as the question involved was between a State, i.e. the State of Baroda, and

the paramount power, it would be the Governor-General as the Crown's Representative who would have the jurisdiction to decide it. His decision, as we have already seen, was confirmed by the Secretary of State for India. That decision, we may repeat, was that under the Sanad, the Baxi and his descendants were entitled to Muglai Hak in respect of the villages in Gandevi Mahal and that that grant was a charge on the revenues of those villages. Obviously whichever authority became entitled to the land revenue of those villages must take it subject to that charge and therefore on and after the merger the State of Bombay became liable, as was the Government of India before the merger to pay the said grant.

14. The next argument was that the impugned Act was invalid under Article 13 as it amounted to deprivation of property and fell therefore under Article 31(1). It may at once be stated that the Act is not shielded by Article 31B for the impugned enactment is not in the List in the Ninth Schedule. Mr Inshi's argument was that it was also not covered by Article 31A as the right in question was not a right in an estate. We have, however, already held that the rights which are extinguished by the impugned Act are rights in or relating to an estate within the meaning of the Land Revenue Code and, therefore, the impugned legislation falls under Article 31A and not under Article 31(1). In our view, the present case falls under Clause (2) of Article 31A and, particularly, under Sub-clause (b) of that clause, as the grant in question amounts to an assignment of land revenue and the rights thereunder pertain to land revenue, and, as already stated, constitute land tenure. We are fortified in this view by the decision in *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, where, after reviewing its previous decisions, the Supreme Court held that after the Fourth Amendment Act, 1955, the decision in *The State of Bombay Vs. Bhanji Munji and Another*, would not hold the field and that Article 31 as amended in 1955 must be said to be dealing with two subjects, under clause (2) with deprivation of property and under clause (1) with compulsory acquisition or requisition. Dealing with Article 31(1), the Supreme Court held that Article 19(1)(f) and Article 31(1) dealt with the same subject, namely, property. Article 31(1) enabled the State to make a law to deprive a person of his property. Such a law would infringe the fundamental right given under Article 19(1)(f) and therefore any such law made under Article 31(1) would be subject to Article 19(1)(f) and could not be sustained unless it was protected by clause (5) of Article 19, i.e. only if it amounted to a reasonable restriction. Considering next Article 31A, the Supreme Court at page 1087 of the report observed that Sub-clause (a) of Article 31A(1) enabled the State to acquire any estate or any rights therein or to extinguish or modify any such rights. "Estate" is defined in clause (2) (a) to have the same meaning as that expression or its local equivalent has in the existing law relating to land tenure in force in that area, and by an inclusive definition it takes in any jagir, mam or maufi or other similar grant and in the States of Madras and Kerala any janmam rights. Clause (2) (b) defines the expression "rights", in relation to an estate, to include any rights vesting in a tenure-holder,

raiyal, etc., and any rights and privileges in respect of land revenue. If an estate so defined by the Act is acquired by the State, no law enabling the State to acquire any such estate can be questioned as inconsistent with the rights conferred by Articles 14, 19 or 31 of the Constitution. So too, any law extinguishing or modifying any such rights mentioned in Clause (1) (a) and defined in Clause (2) (b) cannot be questioned on the said grounds. The Supreme Court observed that the broad contention that a law regulating inter se the rights of a proprietor in his estate and the junior members of his family was also covered by the wide phraseology used in clause (2)(b) might appear to be plausible, but that argument could not be sustained if that clause was read along with the other provisions of Article 31A. The definition of an "estate" referred to an existing law relating to land tenures in a particular area. Indicating thereby that the Article was concerned only with the land tenure described as an "estate". The inclusive definition of the rights of such estate also enumerated the rights vested in the proprietor and his subordinate tenure-holders. The last clause in the definition, namely, that those rights also included the rights or privileges in respect of land revenue, emphasised the fact that the Article was concerned with land tenure. It was therefore, manifest that the Article dealt with a tenure called "estate" and provided for its acquisition or the extinguishment or modification of the rights of the landholder or the various subordinate tenure holders in respect of their rights in relation to the estate. The contrary view would enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform. It would also enable the State to compel a proprietor to divide his properties, though self-acquired, between himself and other members of his family or create interest therein, in favour of persons other than tenants who had none before. Such acts had no relation to land-tenures and they were purely acts of expropriation of a citizen's property without any reference to agrarian reform. Article 31A deprived citizens of their fundamental rights and such an article could not be extended by interpretation to over-reach the object implicit in the article. These observations clearly show that the impugned Act is a legislation which falls under Article 31A and not under Article 31(1) and therefore no question of the reasonableness of restriction would arise as it would if it were to fall under Article 31(1), nor can it be challenged under Article 31 on the ground of inadequacy of compensation. We may observe in this connection that it cannot be gainsaid that the extinguishment of rights under an assignment of land revenue in favour of an individual would not only lessen the burden on public exchequer but would also advance the cause of rural economy and bring about uniformity in the land revenue administration and thus such an enactment must be said to be one of which the object and purpose is agrarian reform. Doing away with a land tenure under which an alienee comes between the State and the occupant would necessarily mean establishing a direct connection between the State and the occupant. Such an enactment would be in line with the policy of extinguishing several such land tenures, and an enactment such as the impugned Act forms but a part of a scheme or plan of fostering an agricultural economy followed in various states during the last decade or more.

That being the position, it is not, in our view, open to the petitioner to challenge the validity of the impugned Act under Article 13 on the ground that it infringes any of the rights conferred by Articles 14, 19 and 31.

15. There now remains the last argument of Mr. Joshi and that was that the impugned Act has the effect of resumption of the grant conferred by the Sanad and that, therefore, the petitioner was entitled to and the State Government was bound to pay compensation as provided therein, i.e. to pay the income of the villages in perpetuity. This contention cannot be accepted at least on two grounds, (1) that what the Act does is to extinguish the rights granted under the Sanad de hors the Sanad and does not resume the grant, and (2) that it cannot be seriously argued that the Sanad precludes the State from exercising its legislative power and enacting a law extinguishing thereby the rights created thereunder. The concept of resumption is entirely different from that of extinguishment, for, in the former one takes back what was given and in the latter there is no such taking back. It simply puts the rights to an end. A similar contention was in fact urged in *Rangildas Varajdas Khandwala Vs. Collector of Surat and Others*, where it was urged that in view of Article 294(b) of the Constitution and in view of the fact that the holder was given a Sanad when his inam was recognised, it was not open to the State to enact a law which would in any way vary the terms of the Sanad. The Supreme Court rejected that contention stating that an argument based on the immutability of Sanads could not possibly be sustained.

16. These were all the contentions urged by Mr. Joshi on behalf of the petitioner. In our view, they cannot be accepted and the result, therefore, is that the petition fails. Rule discharged with costs.