

(1919) 10 BOM CK 0013
In the Bombay High Court

Darbar Shri Dolatsingji Surajmali

APPELLANT

Vs

Desai Bavabhai Damubhai

RESPONDENT

Date of Decision : 09-10-1919

Acts Referred:

Gujarat Taluqdars Act, 1888 — Section 30, 5

Citation : (1920) ILR (Bom) 377

Hon'ble Judges : Norman Macleod, C.J;Heaton, J

Bench : Division Bench

Judgement

Heaton, J.—The case we are dealing with relates to one of those Talukdari villages in the Ahmedabad Collectorate which form a part of the estate of the Patri Darbar, and I gather from the judgments that the Patri Darbar is the Talukdar of this particular village, the name of which is Kamijla. It seems that in the year 1907, the Police authorities came to the conclusion that the village establishment of this village of Kamijla was insufficient for Police purposes, and that two pagis ought to be added to that establishment. After correspondence, which it seems has been destroyed, but of which we have evidence in the barnishi of the Government offices, the Patri Darbar did appoint two pagis for this village, and has since paid them at the rate of Rs. 5 a month each. The Patri Darbar is the plaintiff in this case. The defendant is the person who receives an eight annas share of the revenues of the village, but it seems he has never paid any portion of the cost of these two pagis, and the plaintiff wishes to recover from the defendant half their costs. This claim opens up a very wide field of dispute, and there are a great many matters which seem to me to be matters of great difficulty about which I do not propose to say anything at all in this judgment, because the Court of first appeal, the Joint Judge of Ahmedabad, has wrongly disposed of the matter on a preliminary point. So the appeal will have to go back to be re-heard de novo and decided on its merits.

2. The original Court decided in favour of the plaintiff and the defendant appealed. The Judge in appeal was led to suppose that unless it was shown that

the District Magistrate had power to appoint pagis in villages of this kind, the plaintiff's claim must fail. He found that the District Magistrate had not such powers and consequently he allowed the appeal and dismissed the suit.

3. It may be that the Judge was quite right in his assumption that if it was shown that the District Magistrate had not power to appoint pagis, then the plaintiff's claim must fail. I do not, however, at present quite follow why this is so; and I am unable to agree with the Joint Judge that this is shown. The case was dealt with as if the Village Police Act (Bom. Act VIII of 1867) was the law which governed the matter, and I will take it on that basis; although incidentally I may mention that I am not at all certain that the correct law is not to be found in the Gujarat Talukdars' Act (Bom, Act VI of 1888), particularly Sections 5 and 30 of that Act.

4. However, I will now revert to the basis on which the matter is dealt with in the lower Court. The Joint Judge came to the conclusion on a perusal of Bombay Act VIII of 1867, that it was clear that the District Magistrate had no power to appoint pagis. The argument very briefly is as follows. The "Village Police Act provides for the administration of Village Police. It provides specifically for the appointment of Patils. It recognises the existence of a village establishment or village servants, and this village establishment is by Section 9 placed under the control of the Police Patil for the performance of Police duties. It is argued that because there is no specific provision for the appointment of what is called the village establishment, that no appointments to the village establishment are provided for by the Act. As regards vatandar village servants undoubtedly this is correct. The appointment of Vatandar village servants is provided for by the Hereditary Offices Act. Whether the Village. Police Act contemplates appointments of non-vatandars to the village establishment is a matter" which could only be determined, it seems to me,, by reading the Act itself in the light of a knowledge of the organization with which the Act is intended to deal. It seems to me to be as futile to attempt to "construe this Act VIII of 1867 without some, knowledge of the organization to, which it relates, as it would be to attempt to construe; an Act, ,we will say, relating to electricity, without some knowledge of electricity. It is quite conceivable, of course, that the;: organization to which this Bombay Act VIII of 1867, relates is an organization which excludes the appointment to the village establishment of any non-vatandar village servants. If that were so, if the. organization as it existed was an organization of that kind, an organization to which additions in the shape of non-vatandar village servants were prohibited, then no doubt the Act would be read, and rightly read, as conferring no power, indeed, as excluding the power of appointment of village servants of that kind. But, if as a fact the organization did contemplate, and did in practice comprise the appointment of non-vatandar village servants, we will say for the sake of example, by the District Magistrate, then I should unhesitatingly construe the Act as not excluding, but as contemplating, such appointments; for that would come under the head of the administration of the organization. It is, therefore, primarily a question of evidence as to whether the

organization did exclude or did include the appointment of village servants of this kind, that is, non-vatandar village servants. The Joint Judge has , not dealt with it as a matter of evidence. The only evidence relating to the point which has been brought to our notice is a Resolution of the Government, Exhibit 387. This Resolution contains a letter by one of the Commissioners to Government, from which it appears that appointments of non-vatandar village servants were undoubtedly made. The only point which at that time seems to have excited doubt was whether, when such appointments were made for Police purposes, they should be made by the District Superintendent of Police or by the District Magistrate. Therefore such evidence as there is does indicate that the organization of the village was an organization which included the appointment of non-vatandar village servants. Therefore it seems to me that the decision of the Joint Judge was wrong, I cannot accept his interpretation of the Village Police Act, because it is not shown that the organization to which that Act relates is an organization of the kind which the Joint Judge assumed. Such evidence as there is indicates that it was not an organization of that kind. Therefore it seems to me inevitable that the decision of the Joint Judge must be set aside as having been arrived at erroneously on a preliminary point, and that the appeal must be remanded to be dealt with anew. The costs of both Courts will be costs in the appeal.

Norman Macleod, C.J.

5. I agree.