

(1958) 12 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No's. 26, 27, 28 and 29 of 1958

Darbar Shri Meramwala Bhayawala

APPELLANT

Vs

Bai Shri Valbai Sadul

RESPONDENT

Date of Decision : 10-12-1958

Acts Referred:

Evidence Act, 1872 — Section 65

Citation : (1959) 61 BOMLR 939

Hon'ble Judges : S.T. Desai, J;Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Patel, J.—These four Special Civil Applications arise out of proceedings under the Barkhali Tenure Abolition Act of 1951. The tenants made four separate applications for occupancy certificates under the provisions of this Act, alleging that they were the tenants of the Barkhalidar Bai Valbai, and that under the provisions of the Act, they were entitled to occupancy certificates on payment of compensation provided under the Act. First, when these applications were made, the present applicant was not made a party to the proceedings. In his absence, the Mamlatdar dealing with these applications, made an order in favour of the tenants. The applicant filed an appeal to the Collector, and because he was not a party and an order was made in his absence in all these proceedings, the proceedings were remanded for retrial. Thereafter, after a finding was received, there was a further remand and it is after that remand that the matters came before the Deputy Collector in appeal and before the Revenue Tribunal in revision. It is from the order of the Tribunal dismissing the revision application of the applicant that the present petitions have been filed.

2. The contentions of the respective parties appear to be that Valbai alleged that she was a Barkhalidar in so far as these lands were assigned to her by the Talukdar while it is the case of the applicant that the lands were not given to her but they were given to her husband only for his life. It also appears that his

contention was that even there, there was no grant of land but merely of the income of the properties, and after the death of the husband, this was being continued until Valbai left the place and went to Bampur in 1950. According to him, therefore, in any case, on and from that date, the lands reverted to the original grantor. He, therefore, contended that she could not be held to be a Barkhalidar nor were the tenants entitled to occupancy certificates under the Barkhali Abolition Act.

3. After the remand, the Mamlatdar held, as shown by his order dated June 28, 1957, on a consideration of the evidence, that Bai Valbai had not proved that she was a Barkhalidar. He, therefore, dismissed the applications. When the matter went before the Deputy Collector, he went into the evidence, as he should have done, and after considering the entire evidence, came to the conclusion that it was proved these lands were held by Valbai in Jiwai and they continued to be so held upto Samvat 2006. He also held that since 1950 the income was not paid to Valbai, but he said that as the Talukdar could not make any change in the nature of grant of land after the Revenue Orders 41/49 and 2/50 coming into force and could not resume the lands and amalgamate the same with his own lands in any manner, mere non-payment of the income after 1950 made no difference. In the result, he reversed the decision of the Mamlatdar and ordered that occupancy certificates should be issued to the tenants. In revision, the Tribunal, after considering the whole evidence while agreeing with the finding of the Deputy Collector, held that the question was one of fact and was not assailable before the Tribunal. It, therefore, dismissed the applications.

4. In these applications, the first ground that has been made before us by Mr. Hathi is that it was an error on the part of the Collector and the Tribunal to have considered this question afresh, because, according to him, at the time when the matter was remanded to the Mamlatdar by the Collector by his first order, the direction was that only the Lekh had to be proved, if it could be proved, with due regard to the provisions of Section 65 of the Indian Evidence Act. He says that it was not open to them to consider the whole question again. This contention has no substance. A reference to the order of remand dated December 26, 1956, shows that after summarising the arguments made by the learned advocate appearing before the Collector, he remanded the case for recording whatever evidence respondent No. 2 Bai Valbai may desire to adduce for proving that this grant was of Barkhali nature and directed him to take the same into consideration and hear both parties and give a fresh decision. Right or wrong, that order was made and is binding on the parties, and that being so, if after the decision of the Mamlatdar when the matter came up afresh before the Deputy Collector, he went into the merits of the question and decided those facts for himself, it cannot be said that he had gone beyond his powers or beyond the order of remand which was made previously.

5. It is argued that the grant was merely a grant as Jiwai, and being in its nature unalienable and unhereditary, it would not be covered by the definition of

"Barkhalidar" under the Saurashtra Barkhali Abolition Act of 1951. Before referring to the relevant provision of this section it is desirable to consider the conditions in Saurashtra, which necessitated the enactment of that provision. It appears, at the opening of the 19th century all landed proprietors in Kathiawar from the Chief to the subordinate Girassia were in possession and exercise of: uncontrolled power over the people of their Estates. It was in these circumstances that Col. Walker effected a permanent settlement of the tributes in 1807 and 1808. Many small proprietors, who freed themselves from the control of the superior States, were treated as separate tributaries and enjoyed that position after the Settlement. A few others were treated as subordinate Girasdars to one or the other principal Chiefs and were included in the tribute arrangement made with their lords.

6. It appears that there was a system of Girasdares in existence at the time of the Settlement and continued thereafter. The word "Girasdar" had a definite connotation and that term included Talukdars, Bhagdars, Mulgirassias and Bhayatss, who were considered to be landholders and had proprietary rights over their estates, big or small. There was another kind of tenure which was known as that of Barkhalidars. This term included within its fold Inamdars, Jiwaidars, Dharmada or Kherati grantees and holders of service tenures such as Chakariyats and Pasaitas and they were entitled to the usufructs of the Land granted to them. "Barkhalidar" means a person holding land, who was in independent enjoyment of the, produce and had not to carry the produce to the common Khala for being apportioned between the superior holder and himself.

7. It also appears from the accounts given by Col. Walker and decisions in Giras cases that the smallest Talukdar was as independent in the enjoyment of this estate as the biggest Chief. The classification of the full-powered States, semi-judisdictional States and non-judisdictional States and Talukas did not affect the natural autonomy in the land revenue administration and enjoyment of their landed possession. It also appears that the proprietary rights of the Subordinate Girasdars were not only recognised but also safeguarded. It also appears that subject to the payment of the tribute and various contributions referred to above, as the case may be, and subject also to the performance of various political and social obligations, a necessary consequence of the feudal system, Talukdars, Bhagdars, Mulgirassias and Bhayats, meaning thereby the subordinate Girassdas, were entirely free in the administration and enjoyment of their lands.

8. The second category of landholders, the Barkhalidars, had evidently no proprietary rights in the estates. The lands were granted, for enjoyment of usufructs either by the Paramount Power or the independent Chiefs or the subordinate Girassdas. This included Inamdars, Jiwaidars, and Dharmada which included Kherati grantees and holders of service tenures. Some of the principal States of Kathiawar had their Alienation Settlement Rules and the interests and the respective obligations of all grantees were defined in accordance with those rules. It, however, does appear that in a far larger number of States and Estates

there were no such rules. It also appears that the most common feature of these grants was that they were returnable, by the grantor at will, though in actual practice grants were resumed under exceptional circumstances only, and it appeared these grants were, by their very nature, resumable. Jiwai grants were made for the maintenance of the grantees. These grants were also made as "Hathgharna" grants to daughters at the time of marriage. Some of these grants ended with the life time of the grantees, while in some cases they were continued to the heirs of the grantees. It may also be mentioned that the subordinate Girassias were not entitled freely to make grants as they chose. They were free to make grants according to custom or usage or in due consideration of service rendered; even so they were not free to fritter away their resources. In some cases, if the grants were unreasonable, they were liable to be modified by the Paramount Power.

9. In almost, all these landed estates only a very small quantity of the estates were actually cultivated by the landholders themselves, whether they were Girassias or Barkhalidars, The condition of tenants was very miserable and far from satisfactory. It was,, therefore, thought necessary to abolish these classes of tenures and make the tenant the direct occupant under the Government. The Commission that was appointed collected certain statistics and it appears that the percentage of Girasdar landholders whose holdings were less than 80 acres was 72.7 per cent, those who held between 80 and 800 acres was 21.4 per cent, and those who held more than 800 acres was about 2.9 per cent. it appears, therefore, that the Barkhalidars even of the subordinate Girassias could not have been too many, because small holders could not have made any sub-grants.

10. It is in this background that we must consider the provisions of the Barkhali Abolition Act and the Saurashtra Land Reforms Act, 1951. The Land Reforms Act was intended to deal with the Girasdars. It provided for their abolition and it also provided for land which would be allowable to a Girasdar for his personal cultivation. It was provided that if he had reserved any land for Gharkhed on or before a particular date, he was entitled to the reserved land. For the purpose of allotment of Gharkhed land the Girasdars were divided into the classes, A, B, and C, and provision was made for different acreage to be allotted to each class in proportion to his holding. Occupancy rights were given to the tenants on the land of a Girasdar.

11. The Barkhali Abolition Act dealt with the Barkhalidars. The word "Barkhalidar" has been defined in Section 2 as follows:?

(i) "Barkhalidar" means a person who, holds a tenure as Barkhalidar, Jiwaidar, Chakariyat, Kherati, or Dharmada and includes?

(a) any person who has been granted any such tenure;

The rest of the section is not relevant for the purpose of this case. Section 8 makes a provision for allotment of land for personal cultivation. It clearly brings out the distinction between a Barkhalidar whose tenure was heritable and

alienable and one whose tenure was inalienable and for life. It provides For allotment of land to a Barkhalidar in whose estate agricultural land is equal to two economic holdings or less and who is not a Chakariyat, Dharamada Institution or Jiwaitdar for life. Section 18 makes a provision for payment of cash annuity to Barkhalidar and appears to be in the nature of a rehabilitation grant in proportion to their holdings. It is also provided that in the case of a widow or a Hathgharna grantee, the payment was to be continued for the lifetime of the holder, since these grants were generally for the life of a grantee.

12. In these sections no distinction has been made between grantees of independent State or estate and subordinate Girasdar and none could have been apparently intended as it would lead to manifest injustice and contrary to the purpose for which the Acts were enacted. The Legislature must be presumed to have known the meanings of the different terms that they have employed, and the provisions in the sections leave no room for doubt that for the purposes of Barkhali Abolition Act even limited grants by a subordinate Girassia were included. A remedial statute cannot be cut down in its effect by limitation not imposed by the Legislature. There is, therefore, no substance in the contention raised by Mr. Hathi that the grant was not covered by the definition of "Barkhalidar" in the Barkhali Abolition Act and, therefore, was not subject to it.

13. Mr. Hathi has also relied on a decision of this Court in Khan Shri Nizam Mahomad Khanji Fais Mahomad Khanji v. The State of Bombay (1957) Civil Special Application No. 12 of 1958, decided by M.C. Shah and Shelat, JJ., on February 19, 1957 (Unrep.), wherein lands were given by a subordinate estateholder to Usmanbakhte Saheb for her pocket expenses under an agreement which also provided that in case the income of the village fell short of the sum of Rs. 2,500 a year, the grantor had to make good the amount. The tenants of the village had made applications for occupancy certificates. The tribunals below had granted those applications. It was held by the High Court that the grant to Usmanbakhte Saheb was not covered by the then Alienation and Settlement Rules of the Junagadh State and was, therefore, not covered by the definition of "Barkhali Land" of the Junagadh Land Revenue Code. It was also held that the grant was given to her for her maintenance for life in which she had not heritable or alienable rights and that no tenure as a Jiwaitdar was created in her favour, the lands remaining as Giras lands for all the time, and therefore she would not fall under the definition of "Barkhalidar" in the Barkhali Abolition Act. The Court relied on Section 2(13) of the Land Reforms Act, which defined the word "Estate" to mean all land of whatever description or undivided share thereof held by a Girasdar. It seems doubtful that merely because, for the purpose of computation of Gharkhed land to a Girasdar a grant of such a nature may be included in his holding, it must necessarily follow as a corollary that it could not fall within the definition of the Barkhali land in the other Act. No limitations of any kind are contained in the statute itself. In this case as held by the Deputy Collector and the Tribunal, the grant was given to the husband of Valbai and was continued to her. No limitations of any kind have been proved. The applicant is a Talukdar and

he must necessarily have his record and they would have shown the actual nature of the grant. But none has been produced. Therefore, the decision referred to is clearly distinguishable and this case does not fall within the ratio of that case. In our judgment these lands are covered by the Barkhali Abolition Act and the tenants are entitled to the certificates.

14. A further argument has been made by learned Counsel that since the land was not in possession of Valbai at least from 1950, the Act would not be applicable to this land. It appears from the judgment of the Tribunals below that Valbai became a widow at a very young age. It also appears that even during the life time of the husband of Valbai, the manager of the estate was managing these lands in the name of her husband, and as shown by the receipts, after her husband's death, the lands continued to be managed in the name of Valbai. It may be, as pointed out by the learned Counsel, that since 1950, the income has not been paid. Even so, it cannot be said that the rights which she had in this property came to be extinguished merely by non-payment of the income by the manager to her. There is no order of resumption in this case. Even if it were permissible to resume the land, there being no order of resumption, merely because there is non-payment of income, it cannot be inferred that she was not in possession of the property. Possession in this case all along had been her husband's and thereafter hers. The property has been managed in their names by the manager of the estate.

15. The second answer to this argument is that after the merger agreement, the over-riding sovereign powers became vested in the State and they could not be exercised by the applicant. It is no doubt true that his proprietary rights are kept intact, but it cannot mean that it included a right of resuming lands once granted to others. The right of resumption was a right of the sovereign power, and the Girasdars being virtually independent exercised their power, if they did, only as sovereigns, whatever may be the limitations on their sovereignty, Even if, therefore, in this case there had been any resumption order, it could not have been valid. The present contention also must, therefore, fail.

16. The applications fail and are dismissed with costs.