

(1930) 08 BOM CK 0003
In the Bombay High Court

Dattatraya Waman Rajguru	Vs	APPELLANT
Secretary of State		RESPONDENT

Date of Decision : 28-08-1930

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876 — Section 11, 4(a)

Citation : AIR 1931 Bom 212

Hon'ble Judges : Patkar, J; Baker, J

Bench : Full Bench

Judgement

Patkar, J.—These appeals relate to suits which have arisen out of the commutation of the kulkarni watans in 1914. The plaintiffs are the persons with whose consent the kulkarni watans were commuted or their representatives or cosharers, and it is alleged in each case that the consent was not freely given and was duo to coercion on the part of Government and that there was no investigation u/s 73, Watan Act. and therefore the orders of commutation were illegal. The plaintiffs ask for a declaration that they are entitled to officiate as watandar kulkarnis and a permanent injunction against the defendant restraining him from doing anything which would affect the rights of the plaintiffs in the kulkarni watans.

2. The defendant the Secretary of State denied the several allegations made in the plaint and contended that the suits were barred u/s 4(a) and Section 11, Bombay Revenue Jurisdiction Act and were also barred under Articles 14, 44, 91 and 120, Lim. Act and raised other technical defences.

3. Three preliminary issues wore raised, and the learned District Judge held that the jurisdiction of the civil Court Was barred u/s 4(a), Revenue Jurisdiction Act 10 of 1876.

4. It is urged on behalf of the appellants that the orders for commutation were illegal and void on the ground of want of investigation u/s 73, Watan Act, and also on the ground that the consent of the holder of the watan was not a free

consent and therefore Section 4(a). Bombay Revenue Jurisdiction Act, would not be applicable and further that the Revenue Jurisdiction Act was ultra vires.

5. It is urged behalf of the appellants that the Revenue Jurisdiction Act is ultra vires on the ground that the acts of State of which the municipal Courts of British India are debarred from taking cognizance are acts done in the exercise of sovereign powers which do not profess to be justified by municipal law and reliance is placed on the decision in the case of *The Secretary of State v. Hari Bhanji* [1882] 5 Mad. 273, and that Section 4(a); Bombay Revenue Jurisdiction Act, was invalidly enacted as it deprived the subject of the right to sue the Government which existed as against the East India Company prior to 1858, and reliance has been placed on the decision in *Secretary of State v. Moment* [1913] 40 Cal. 891. The question has been considered in *Revenue v. Secretary of State* [1919] 54 I.C. 129 where it was held that the Bombay Revenue Jurisdiction Act was not ultra vires of the Government of India inasmuch as a claim like the plaintiff's relating to the watandar patil could not have been brought in the ordinary civil. Courts against the East India Company by virtue of the preamble to Act 11 of 1852. In that case the appellant was not able to satisfy the Court that he could, have sued the East India Company claiming the relief which he asked for in the suit and reference was made to the preamble to Act 11 of 1852 which excepted claims against Government on account of inams from the cognizance of civil Courts. Regn. 29 of 1827, Section 6, Clause (2), exempts the claims on account of inams from the jurisdiction of the civil Courts. According to the decision in the case of *Krishnarav Ganesh v. Rangrav* [1882] 5 Mad. 273, "inam" is described at p. (6) "a gift, a benefaction, in general a gift by a superior to an inferior," and the inams originating from the State have been divided into two principal kinds first those which are denominated chakaria, and held on the condition, of performing some office or service or discharging some obligation or trust or which if the duty or trust to be fulfilled be charitable or religious are frequently described as khairat and secondly those which are unencumbered by any such burden, condition or liability and at p. 11, watans, annexed to civil hereditary offices are described as inams. In *Raghojirao Saheb v. Lakshmanrao Saheb* [1912] 36 Bom. 639 it was held that

the latter term, namely "inam" is one of mere generic significance, applicable to a Government grant as a whole,

and that the rights in the Bombay Presidency are dealt with comprehensively and as covered not by one name but by all or at least many, of the names applicable to land and revenue rights, as inams, saranjams, watans etc.

6. Not only in the preamble to Act 11 of 1852 is there a reference to the exemption of civil suits relating to inams from the jurisdiction of the civil Courts, but Schedule B, Clause 8 of the Act refers to hereditary offices which are useful to the community and not to the State and provision 5 refers to hereditary offices for service performed to the State including the service watans of kulkarnis, which are exempted from the provisions of Rule 8. As the hereditary

service watans of desais, sardesais, nadgaudas deshpanandes, patels, kulkarnis and mahars are referred to in provision 5, Rule 8 it would follow that unless they were included in the inams dealt with by Act 11 of 1852, there would hardly have been any reference to them in provision 5, Rule 8. It therefore follows that service watans of kulkarnis were considered to be inams and under Regn. 29 of 1927, Section 6, Clause (2), the jurisdiction of the civil Courts in respect of the watans was taken away against the East India Company prior to 1858. Reference may also be made to Phadnis" Watan Act, Introduction, pp. 29 and 31. I think therefore that the Revenue Jurisdiction Act is not shown to be ultra vires of the legislature.

7. It is further urged that as there was an allegation in the plaints that there was no investigation u/s 73, Act 3 of 1874, the orders for commutation were illegal according to the decision in the case of Bhikaji Lakshman v. Secretary of State AIR 1925 Bom. 865 where it was held that an order for commutation of the right of kulkarni service passed by the Collector without following the provisions of Section 73 was invalid and a suit for a declaration that such an order is ultra vires is riot barred u/s 4(a), Revenue Jurisdiction Act. In all the cases before us it is not disputed, that there was the consent of the registered watandar and an order passed u/s 73, Watan Act. The authority of the case of Bhikaji Lakshman v. Secretary of State AIR 1925 Bom. 865 is weakened by the decision of the Full Bench in Gangadhar v. Vishnu AIR 1929 Bom. 368 and the decision of Fawcett, J. in Secretary of State v. Yello Ramchandra AIR 1928 Bom. 215 Fawcett, J. observes:

Section 73 of the Act covers not only the case of orders directing a commutation of a watan but various other questions such as determining the custom of the watan as to service and what persons should be registered as representative watandars. In those cases disputes might arise, and do in fact ordinarily arise and the section has therefore been drawn so as to require a proper investigation and a proper decision with reasons.

8. And with regard to the giving of reasons it is observed that where an order is made by the Collector with the consent required by Section 15, there is no necessity for a lengthy or clear statement of reasons and that in constructing Section 73 it is necessary to observe the general principle that rules of procedure are the handmaid of substantive law and should be made to serve and are intended to secure the proper administration of justice and it is essential that they should be made to serve and be subordinate to that purpose. It is difficult to understand what investigation could have been made by the District Deputy Collector who had to pass an order for commutation according to Section 15, Watan Act, when there was the consent of the holder of the watan. An inquiry would ordinarily be necessary when an individual holder of the watan wishes to effect a commutation u/s 15, Watan Act, but where the Government have adopted a general policy of commutation of kulkarni watans, the necessity of an inquiry or investigation, after the consent of the holder of the watan, is not

evident. There being no allegation in any of the cases based on the want of consent, or want of any order in pursuance of such consent, I do not think it necessary to send the case down for recording a formal finding that there was an order passed by the District Deputy Collector in pursuance of the consent given by the holder of the watan. Under Clause (4), Section 15, "holder" includes any person dealt with as representative of the persons beneficially interested or entered as such in the Government records at the time of the settlement. The consents given in all the cases are not alleged to have been given by any person other than the representative watandars for the time being, and therefore the holders of the watans. In one case, Appeal No. 230 of 1928, the consent was given by Yamuna bai as guardian of the plaintiff, who was a minor in the year 1914. Assuming the case of Bhikaji Luxman v. The Secretary of State AIR 1925 Bom. 865 was correctly decided, the consent in that case was given by Laxmibai who was registered as the sole representative watandar and the plaintiffs were the sons of Laxman who were represented by their guardian Sitabai; and Laxmibai, who gave the consent, was not the guardian of the plaintiffs minors in that case. In Appeal No. 230 Yamunabai is the "guardian" of the plaintiff, and under the definition of guardian in Section 4 and Section 37, Yamunabai as guardian could exercise all powers and perform all duties conferred and imposed by the Act. It was held in the recent decision of. The Full Bench in Gangadhar v. Vishnu AIR 1929 Bom. 368 that the cash allowance belongs solely to the representative watandar and is not joint family property, and that the cash allowance is a matter between the Government and the representative watandar, and that no other person in the family has a right, vested or other, to the allowance. I think therefore that there is no necessity to send the case down for an enquiry on the point as to whether the provisions of Section 73 were carried out. The suits would therefore be barred by Section 4(a), Bombay Revenue Jurisdiction Act.

9. It is further stated that the case ought to be remanded for considering the question whether the consents given by the registered watandars were free consents or whether they were induced by undue influence as alleged in the plaints. The allegations in all the suits appear to be stereotyped, and no particulars are given as to the way in which the undue influence was exercised. In Damodar Krishna v. Secretary of State [1919] 44 Bom. 261 similar claims were rejected on the ground that the rule of pleading laid down in Order 6, Rule 4, was not observed. In Lingo Raoji v. Secretary of State AIR 1928 Bom. 201 Fawcett, J., observed that the Contract Act itself in Section 1 excepts the provisions of any statute which is not repealed by the Act, and that the general provisions of the Contract Act cannot supersede the provisions of a special later enactment. It would have been better if the learned District Judge had gone into the facts and considered the evidence relating to the allegation of undue influence as regards the consents by the holders of the watans; but it appears that the allegations are identical and it is not likely that if there was any substance in those allegations the suits would not have been, brought

immediately or within a reasonable time to set aside the orders. The orders complained of were passed in the year 1914 and the present suits were brought in 1926. The plaintiffs' argument that the cases ought to be remanded to the lower Court for a finding on the allegation as to undue influence appears to be technically correct, but I do not think it necessary to remand the case for that purpose as the suits are bound to fail on the point argued by the learned Government Pleader that all the suits are barred by limitation. The learned Government Pleader relied on Articles 14, 91 and 120, Lim. Act. Taking the article which provides the longest period, namely Article 120, Lim. Act, the suit of the plaintiffs would be barred after the lapse of six years from the year 1914. The plaintiffs are either the registered holders themselves or the representatives or co-sharers of the watandars, and the cause of action is stated as having arisen in the year 1914. The suits therefore would be barred under Article 120, the article most favorable to the plaintiffs in all these cases.

10. It is urged on behalf of the appellants, that some of the plaintiffs are minors, but u/s 9, Lim. Act, the time having; once begun to run during the lifetime of the holder, no, subsequent disability or inability to sue would stop the running of the limitation. The suits therefore ought to have been brought within six years either by the registered holders or those claiming under them for a declaration sought in the present cases in opposition to the commutation orders in the year 1914.

11. It is said that some of the plaintiffs came to know of the fact of the alleged want of free consent only recently. But the holders of the watans must have known if the allegation is true that their consents were obtained by undue influence at the time when their consents were so obtained. The suits not having been brought within six years from the date of the order are in my opinion beyond time.

12. On these grounds, I would confirm the decrees of the lower Court and dismiss all the appeals with costs.

Baker, J.

13. This group of about forty appeals arises from suits brought in the District Court, Poona, to set aside the commutation of kulkarni watans in the Poona District made in 1914. In that year Government decided to do away with the system of kulkarnis in the Dekkhan and to replace them by talatis and u/s 14, Bombay Hereditary Offices Act, a commutation of kulkarni service watans was effected. This gave rise to a very large number of suits in all the districts effected. Most of these suits and the appeals arising there from were disposed of many years ago but for some reason which is not at present clear to me the suits in the Poona District were brought in 1925, i.e., twelve years after the commutation had been effected and therefore prima facie all these suits would be barred by limitation. That however is a question which was not gone into in the lower Court and would have to be separately considered in each case some of the plaintiffs being minors at the date of the commutation.

14. The suits were all decided in one judgment on two preliminary issues:

Whether the jurisdiction of the Court is barred by Section 4(a) and Section 11, Bombay Revenue Jurisdiction Act

and

Whether the provisions of the said Act are legal or ultra virus.

15. The remaining two preliminary issues as to limitation and the validity of the notices u/s 80, Civil P.C., were not decided, the suits being dismissed on the ground that they were barred under the Bombay Revenue Jurisdiction Act, and that Act was intra vires.

16. The suits all being for a declaration that the orders of commutation were illegal and invalid and the rights of the various plaintiffs in the said kulkarni watans remained unaffected and they are entitled to officiate as watandar kulkarnis and for an injunction against the Secretary of State to prevent him from doing anything which would alter or modify or in any way affect the character and tenure and incidents of the kulkarni watan of the plaintiff are clearly suits falling u/s 4, Bombay Revenue Jurisdiction Act, 10 of 1876, which ousts the jurisdiction of the Court in regard to claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act 3 of 1874 or any other law for the time being in force or claims to perform the duties of any such officer or in respect of any injury caused by exclusion from such office or service or suits to set aside or avoid any order and the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorized in that behalf. The present suits are claims against Government relating to property belonging to the office of hereditary officers appointed under Bombay Act 3 of 1874. They are also claims to perform the duties of such officer and are in respect of an injury caused by exclusion from such office and are further suits to set aside or avoid orders passed u/s 15, Bombay Hereditary Offices Act, 3 of 1874. While it cannot be contended that the suits are not of this nature it is sought to exclude them from the operation of the Bombay Revenue Jurisdiction Act by arguing that there are not sufficient materials before the Court to show that the consent given was a free consent and that it is not open to the Court to decide the cases on general principles without going into the facts and it is further contended that no order can be passed u/s 15, Watan Act, unless a proper inquiry is held u/s 73 of the same Act, the provisions of which are imperative. That section directs an investigation recorded in writing with proper opportunity afforded for the hearing of claims and the production of evidence.

17. In the absence of evidence it is unnecessary to make any reference to the improbability of persons whose consent was not a free consent waiting for twelve years before taking any steps nor is it clear what knowledge those of the plaintiffs who were minors at the date of the commutation can have had of the circumstance & under which their fathers gave their consent but so far as

regards the inquiry necessary u/s 73, Watan Act, it may be pointed out that in these cases the commutation was made under the general orders of Government and consequently the same considerations would apply to each and every watan. In the case of an individual watandar desiring to commute his liability to service u/s 15, it would no doubt be necessary to inquire into the circumstances which led him to adopt this attitude but where as in the present case the reasons for the commutation are the policy of Government, it is not clear to me what inquiry the Collector could have made in each individual case beyond what he has done. The proceedings in each case have been put in, except in one case, First Appeal No. 225, and in that in the plaint it is admitted that there was an application u/s 15 followed by an order. The learned Government Pleader has satisfied us that in all the other cases the proceedings are on the record. They consist only of the application in writing by the holder of the watan to be relieved from service on the conditions mentioned in the application, and the order of the Collector thereon, in which the names of the holders of the watan as entered in the watan registers and their shares are given, and they are declared to be relieved in perpetuity of their liability to perform service on payment to them of a certain amount. It is not suggested that any evidence was tendered and refused, or that any claims were put forward by other persons than the representative watandars, and it is not alleged that the representative watandar was not the person with whom the settlement was made.

18. The word "holder" is defined in Clause (4), Section 15, and lie is the person with whom the settlement is to be made, such settlement being binding Under Clause (3) both upon Government and the holder of the watan and his heirs and successors. All the 1 resent suits relate to cash allowances and not to watan land. Those cash allowances are the property of the representative watandar and are not family property. This is made clear by Gangdhar v. Vishnu (7) and at p. 051 (of 31 B.L.B.) it is stated:

?confining our observations expressly to this cash allowance from Government and not necessarily to other species of watan property?. The allowance from its inception was a matter between two parties and two parties only Government on the one hand and the representative watandar chosen by them on the other and except that the selection was confined by law to the watandar family of which undoubtedly the plaintiffs respondents arc members, no other person in the family has a right, vested or other, to the allowance. If in 1914 Government on the1 one hand gave up their right to the service and the officiating kulkarni gave up two thirds of that allowance, such an agreement was one which u/s 15 of the Act it was perfectly competent for them to make.

19. No question therefore arises of the allowance being a family property in which the sons had a vested interest by birth and which could not be alienated. The representative watandar was competent under the Watan Act to commute the services, and in view of the circumstances under which the commutation was effected, I see no reason to suppose that the provisions of Section 73, Watan

Act, as regards the inquiry to be made were not complied with. In this connexion I may refer to the remarks of Fawcett, J., in *Secy, of State v. Yello Ramchandra* AIR 1928 Bom. 215 in which it was held that the words "commutation accepted" were sufficient. In the present case the proceedings were in a fuller form, as already mentioned at p. 6 of this judgment. In these circumstances, I am of opinion that the suits are barred by Section 4, Bombay Revenue Jurisdiction Act, and that it would not be competent for the Court to go into the question of the consent, which, as I have already said, was not raised until 12 years after the commutation. The case of *Bhikaji Laxman v. Secy, of State* AIR 1925 Bom. 865, relied on by the learned Counsel for the appellant, is not on all fours with these cases, as the consent there was given by a person who was held by the High Court not to be competent to give it not being the "holder" as defined in Clause (4), Section 15, Watan Act. And in this connexion it may be remarked that in First Appeal No. 230 the consent was given by the plaintiff's mother as his guardian. No point was taken in that case in the plaint that the widow could not give her consent, and in view of Section 4, Watan Act, which defines "guardian," read with Section 37, which confers on the guardian the right to exorcise all powers and perform all duties conferred and imposed by the Act, the consent in this case is equally binding. It has next been argued that the Bombay Revenue Jurisdiction Act is ultravires of the legislature. This is an old argument which has many times been raised, and so far as this Court is concerned, is disposed of by *Rachangauda v. Secy, of State* [1919] 54 I.C. 129. I need not repeat in detail the arguments which are put forward on this point, which briefly are that the effect of the Government of India Act, 1858, Section 65, was to debar the Government of India from passing any Act which can prevent a subject from suing the Secretary of State in Council in a civil Court in any case in which he could have similarly sued the old East India Company. Under the Bombay Regn. 29 of 1827, Section 6, Clause (2), claims against Government regarding inams were excluded, and they were similarly excluded by the preamble to Act 11 of 1852. I am of opinion that watans are included in inams: vide Phadnis's Watan Act, Introduction, pp. 29 and 31, and Prov. 5, Section 8, Schedule B, Act 11 of 1852, which deals with the service watans of desais, sardesais. nadgaudas, deshpanandes, patels, kulkarnis, mhars, talavaras, which seems to show that the service watans are regarded as falling under the Act. In any case *Rachangauda v. Secy. of State* [1919] 54 I.C. 129 is binding on us, but I have no doubt that the Bombay Revenue Jurisdiction Act is not ultra vires, and though the provisions of that Act have been frequently before the Privy Council, it has never, so far as I am aware, been suggested there that the Act is ultra vires.

20. I may add on the question of the consent of the representative watandars being obtained by misrepresentation and coercion that particulars are not given in the plaints, and I may refer to the remarks in *Damodar Krishna v. Secy. of State* [1919] 44 Bom. 261, where in similar cases from Nasik it was held that the plaints did not observe the rule of pleading laid down in Order 6, Rule 4.

21. I have not dealt with the question of limitation. Prima facie all the suits

appear to be time barred as the very longest period of limitation would be six years under Article 120, and these suits are filed at the expiry of 12 years from the date of the order.

22. I agree therefore that all the appeals should be dismissed with costs.