

(1969) 03 GUJ CK 0008
In the Gujarat High Court

Dinshawji Bamanji Dalal and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 20-03-1969

Acts Referred:

Bombay Taluqdari Tenure Abolition Act, 1949 — Section 16, 16, 5(1), 5(1), 5A(1)

Citation : (1970) 11 GLR 193

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

Bench : Single Bench

Judgement

J.B. Mehta, J.—The petitioners grantee of the three disputed lands challenge in this petition under Article 227 the final order of the Gujarat Revenue Tribunal, dated March 30, 1963, by which the Revenue Tribunal has dismissed the appeal of the petitioners in the inquiry u/s 37(2) of the Land Revenue Code hereinafter referred to as "the Code" on the ground that the petitioners' right in relation to mines and minerals in these lands were extinguished by the Bombay Talukdari Tenure Abolition Act, 1949, which came into force from August 15, 1950. The petitioners are the heirs of one Dr. Bamanji Dalai in whose favour the then Collector of Panch Mahals acting as administrator of the Talukdari estates made the grant of the lands in question by a deed of grant dated September 30, 1908. On the abolition of the Taluqdari Tenure by the said Act, records of rights were prepared. The petitioners challenge these entries as their rights as per the said grant in respect of the mines and mineral rights for these three lands S. No. 1/2, 5-114 of village Rustampura were not entered in the column of other rights. A formal inquiry was, therefore, held u/s 37(2) of the Code. The Mamlatdar disallowed this claim by the order, dated August 23, 1957. After the Prant Officer dismissed the appeal, and the Collector also dismissed a further appeal the matter was first remanded to the Collector by the order of the Gujarat Revenue Tribunal dated December 15, 1961. Thereafter the Collector by the order, dated September 8, 1962, recognised their rights to cut timber for certain lands but as the right of the petitioners in respect of mines and minerals was held to be extinguished, the petitioners filed an appeal before the Revenue Tribunal. The

Revenue Tribunal has also dismissed this appeal by the impugned order, dated September 30, 1963, and, therefore, the petitioners have filed the present petition.

2. There is no dispute as to the terms of the grant. The Revenue Tribunal has reproduced the material Clause 17 of the deed of grant as under:

Subject to the rights of His Majesty and to any law or rules of Government for the time being in force relating to mines or mineral products and the working and searching for the same the Grantee shall be entitled to work and search for the mines and mineral products in these lands But the Grantee shall pay to the Grantor a sum equal to 21% of the royalties from time to time payable by the Grantee to the British Government in addition to the annual assessments payable under the provisions hereinbefore contained such sum to be ascertained in the manner herein after mentioned

The only material question which the Tribunal considered was that on the abolition of the Talukdari tenure, these rights were extinguished and were not saved and on that ground the Tribunal had disallowed the claim of the petitioner in respect of these rights mentioned in Clause 17 for the three lands.

3. u/s 3 of the Act with effect from the date the Act came into force--

(i) the talukdari tenure shall wherever it prevails be deemed to have been abolished; and

(ii) save as expressly provided by or under the provisions of this Act, all the incidents of the said tenure attaching to any land comprised in a talukdari estate shall be deemed to have been extinguished.

Section 5(1)(b) provides that subject to the provisions of Sub-section (2), a taluqdari holding any taluqdari land shall be deemed to be an occupant within the meaning of the Code or any other law for the time being in force. Section 5A(1) provides under:

Notwithstanding anything contained in Section 5, a permanent tenant in possession of any taluqdari land, and also an inferior holder holding such land on payment of annual assessment only, shall be deemed to be occupants within the meaning of the Code in respect of such land in their possession and shall be primarily liable to the State Government for the payment of land revenue due in respect of such land, and shall be entitled to all the rights and shall be liable to all the obligations in respect of such land as occupants

The proviso (b) provides that such inferior holder shall be entitled to the rights of an occupant in respect of such land on payment to the taluqdar of the occupancy price equivalent to two multiple of the assessment fixed for such land and for the extinguishment or modification of any rights of the taluqdari, including the right of reversion in the land, of a further sum equivalent to such assessment. u/s 6 all public roads etc, and all standing and flowing water, all unbuilt village site lands,

and all waste lands and all uncultivated land (excluding the lands used for building or other non-agricultural purposes) which are not situate within the limits of Vantas belonging to a taluqdar in a taluqdari estate shall except in so far as any rights of any person other than the taluqdar be established in and over the same and except as may otherwise be provided by any law for the time being in force, vest in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the Government, and all rights held by a taluqdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the Commissioner to dispose them of as he deems fit, subject always to the rights of the public or of individuals legally subsisting. The Explanation provides for the purposes of this section that the land shall be deemed to be cultivated, if it has not been cultivated for a continuous period of three years immediately before the date on which this Act comes into force. Section 7(1) provides for compensation to the taluqdars for extinguishment of rights under the preceding section. Section 14(1) is a residuary section which provides that if any person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in any land other than those in respect of which provision for the payment of compensation has been made u/s 7 and if such person proves that such extinguishment or modification amounts to transference to public ownership of such land or any right in or over such land, such person may apply to the Collector for compensation on or before the 31st day of March 1952. Section 16 then provides that subject to the provisions of the Act, the provisions of the Code apply and are hereby declared to apply to all taluqdari lands subject to the modifications specified in Schedule 1. The principal modification in Schedule 1, which is material for our purpose, is one in Section 69 of the Code so that Section 69 of the Code now runs as under:

The right of the Government to mines and mineral products in all unalienated lands is and is hereby declared to be expressly reserved. Provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant of such land in respect of such mines or mineral products.

Thereafter Section 17 repeals enactments mentioned in Schedule II, including the Gujarat Taluqdars' Act, 1968. The proviso saves in clause (a) the validity, invalidity, effect or consequence of any alienation of or any incumbrance created on a taluqdari land or of anything already done or suffered to be done under the said enactments before the date of the commencement of the Act, (b) any obligation or liability already incurred or accrued before such date; (c) and any declaration made or any agreement recognised,...under the provisions of any of the enactments hereby repealed.

4. From the aforesaid scheme of the Act it is clear that u/s 3 with effect from the date on which the Act comes into force the Taluqdari tenure stands abolished and all the incidents of the Taluqdari tenure are deemed to have been extinguished, except to the extent that express provision is made under this Act by any other

provision. We have, therefore, to see whether any other provision of the Act saves any such right. Sections 5(1) and 5A(1) provide that the Taluqdar holding taluqdari land or any inferior holder holding such land shall be deemed to be an occupant who shall be liable for payment of land revenue and who shall be entitled to all the rights as occupant. It should be kept in mind that Sections 5(1) and 5A(1) apply to all kinds of taluqdari lands. The expression "any taluqdari lands" is of the widest import which include all land, whether it was waste, cultivated, forest land, stony mines land or any other kind of land. In case of all these lands the taluqdar holding land or a permanent tenant in possession of inferior holder holding land on payment of annual assessment is made occupant either u/s 5 or 5A. We are not concerned with the case of any permanent occupant as those petitioners grantees would be inferior holders from the Ex-taluqdar. Another specific section of the Act is Section 6 which deals with only specific properties, by in terms providing the expression "such property", in which all rights of the taluqdars are deemed to have been completely extinguished and such properties vest in the State Government. In contradistinction with Sections 5(1) and 5A(1) where any taluqdari land has been mentioned, the legislature in Section 6 mentions only public roads, rivers beds etc. and all unbuilt village site lands, all waste lands, all uncultivated lands, other than lands used for buildings or for non-agricultural purposes in a taluqdari estate. Therefore, only a limited kind of properties mentioned in Section 6 are made to vest in the Government, in which all the rights of the taluqdar are extinguished and the taluqdar's right is one of only compensation in terms of Section 7(1). Section 7(1) also emphasises this concept by providing the right of compensation of the taluqdar for extinguishment of rights u/s 6. The Explanation to Section 6 makes it clear that it creates a fiction for only those lands which remained uncultivated for three years and, therefore, the expression "uncultivated land" would apply to those lands which have that characteristic of being "capable of cultivation" and which remained uncultivated. Even the exclusion of lands, used for building or other non-agricultural purposes, makes it clear that all taluqdari lands are not sought to be covered u/s 6, but only those which are specified in Section 6. Therefore, only waste lands or uncultivated lands which are not used for building or other non-agricultural purpose would only vest in the State Government and only, in such properties the rights of the taluqdar can be completely extinguished, except for the limited compensation u/s 7. For other kinds of lands Section 5(1) and Section 5A(1) would completely apply where the rights of the taluqdars or permanent tenants or inferior holders are specifically saved to become occupants. Therefore, such lands which do not vest in the State as being waste lands and uncultivated lands but which are mineral lands where there would be no question of any cultivation, would even come under the specified saving as to occupancy u/s 5(1) or 5A(1). These being express provisions even when the taluqdar tenure is abolished u/s 3, these specific rights would be saved. Therefore, from the aforesaid scheme it is abundantly clear that mineral rights in such mines lands which are so valuable lands and which though unfit for cultivation could" never fall under the definition

of waste lands or uncultivated lands have not been made to vest in the State u/s 6 and still a provision is made to save the rights by creating occupancy rights u/s 5(1) or 5A(1). This intention is further sought to be clarified by Section 16 itself which provides that the provisions of the Code shall apply and are hereby declared to apply to all taluqdari lands with the modifications in Schedule I. This application of the Code is made subject to the provisions of the Act. Therefore, if the rights of the occupants in all such lands are recognised so that their proprietary rights in respect of the use and appropriation of mines and minerals survive, the rights of those occupants would not be affected by the application of the Code in any manner whatsoever. In fact, even in Section 69 itself this saving is clearly provided even when the right of the Government to mines and mineral products in all taluqdari lands is declared to be expressly reserved by stating that nothing in Section 69 shall be deemed to effect any subsisting rights of any occupant of such land in respect of such mines or mineral products. In the present case, the effect which was sought to be achieved by the modification of Section 69 of the Code in its application to the taluqdar lands u/s 16 of the Act was already achieved by recognition of the sovereign right of the State to mines and mineral products by the terms of the covenant of the grant itself in Clause 17. Even then the right of the occupants, taluqdar or inferior holder to search and appropriate minerals in these lands would be clearly saved as subsisting rights of such occupants in respect of mines and mineral products subject to the sovereign right and the law in force. That is why even Section 17, when it repealed Gujarat Taluqdari Act, 1968, saved whatever was done under the previous enactment and whatever liability or obligation has incurred or any agreement duly arrived at as was done in this case by the act of the administrator by this solemn grant in favour of the petitioners' father. Therefore, on a complete reading of the entire scheme of the Act we find no provision which extinguished the rights of these grantees to exploit and appropriate mines and minerals, subject to the sovereign right to recover royalty as provided in Clause 17 of the deed. These lands were not sought to be vested in the State u/s 6 and in fact, the rights in these lands were completely saved by granting occupancy of these lands u/s 5(1) and 5A(1) to the taluqdar or inferior holder concerned and, therefore, these express provision would clearly save all the numeral rights notwithstanding the abolition of taluqdari tenure u/s 3.

5. Mr. Nanavati, however, vehemently argued that the lower revenue authorities had arrived at a finding of fact that these lands were waste or uncultivated lands and it was not open to this Court to interfere with the said finding. Mr. Nanavati in this connection pointed out that the Mamlatdar had mentioned that these lands were waste and uncultivated lands as no cultivation was done and the Collector has even assumed this fact. He could not point out anything in this connection from the Tribunal's order. Merely because these lower authorities call these lands waste or uncultivated lands on a complete misconception of the meaning of the relevant terms by their assumption of these facts, the lands do not alter their legal character and on the basis of such a misconceived

assumption no such argument can be advanced that this was a finding of fact. In a group of Special Civil Applications Nos. 570,629 and 634 of 1963 and 283 to 285 and 287 to 309 of 1966 decided by me on November 5, 1968,¹ I have pointed out that the meaning of the term "waste" is in its original sense in which it has been used in Section 6.1 have relied upon a decision of the Supreme Court in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, where their Lordships of the Supreme Court held in the context of Section 17(1) or (4) of the Land Acquisition Act, 1894, that the word "waste" would mean, "land which is unfit for cultivation or habitation, desolate and barren land, with little or no vegetation thereon". It would not cover forest land even though it was incapable of cultivation. In the subsequent decision in *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*,² the Supreme Court pointed out that the lands were of different kinds; waste land, desert land, pasture land, meadow land, grass land, wood land, marshy land, hilly land etc. and arable land. Thus, it was obvious that "waste lands" would not exhaust the category of land incapable of cultivation. Waste lands in the original sense of vastus would emphasise the contrast with the grass lands or lands for buildings or wood lands, marshy lands, hilly lands etc. If the lands were used for such building purpose or such other non-agricultural purpose, as in the case of stony lands or marshy lands or wood lands, even though they might be incapable of cultivation, they were capable being put to other use, and they would not be waste lands. I also relied upon the decision of our Court by the Division Bench consisting of Shelat C.J. (as he then was) and myself 5 G.L.R. 924. At page 932 we construed the expression "waste lands" to mean lands which are desolate, deserted, uninhabited and uncultivated and a building site land would not be regarded as waste land simply because it was not put to any present use. Therefore, I interpreted in the light of these decisions the term "waste land" and held that the test to be applied for holding land to be "waste land" was not that it was incapable of cultivation but that it was unfit for any use, so that the term "waste" was confined to its original sense of deserted, uncultivable waste, and in that view of the matter, the valuable grass lands were not held to be waste lands. Therefore, this question is already concluded and it is not open to Mr. Mankad to urge that such useful lands which would yield manganese and other minerals which could be mined would be covered in the expression "waste or uncultivated lands". Even though they answer the description of being unfit for cultivation would be very useful land which could never be treated as "waste lands" and being incapable of any cultivation they could never fall even in the category of uncultivated land, which must have the characteristic of being fit for cultivation. Therefore, on this unwarranted assumption that these lands are waste or uncultivated land and that they vest u/s 6 in the Government, we cannot prove in this case when admittedly the question was of the rights of the mines and minerals.

6. Besides in the aforesaid decisions I have also followed the decision of the Maharashtra High Court by the Division Bench of Chainani C.J. and Gokhale J., dated January 21, 1965 in 67 BL.R. 281 on the other part of the reasoning. The

Maharashtra High Court had harmoniously construed Sections 5 and 7 of the corresponding Personal Inams Abolition Act, corresponding to our Sections 5 and 6, and had held that the grass land of which the concerned Talukdar or Inamdar had become occupant did not vest in the State. Because in the principle of harmonious construction, Section 5(1) must have an overriding effect as it expressly recognised to limited extent some rights of the Talukdar or Inamdar while the tenure was abolished under the relevant section. On a parity of reasoning, in the present case also on a harmonious construction of Sections 5 and 6, so far as such lands are concerned of mines and minerals and which could be used for taking out minerals Section 5 would prevail as against Section 6 and these rights of the relevant occupants would be saved. That is made clear even when Section 16 applies the Code to the provisions of the Act and even the modified Section 69 of the Land Revenue Code also enacts an express proviso to save all full subsisting rights of these occupants, as to mines and minerals.

7. Finally Mr. Nanavati argued that these rights would not be subsisting rights because no mines were working at present and no such use for getting mines or minerals was done. It is wholly immaterial whether the land is at present put to such use. What is material is its potential capacity. The petitioners only wanted those rights to be recognised subject to the sovereign rights or the law in force. The Revenue Tribunal, however, on a plain misconstruction of the entire relevant scheme of the Act came to the conclusion that these rights were extinguished under the Act and they were not saved and on that limited ground rejected the petitioners' claim. This is a patent error of law by committing which the Tribunal has declined to hear and determine the matter in accordance with law and has thereby declined to exercise its jurisdiction to hear and determine this appeal in accordance with law.

8. Mr. Nanavati also argued that this was the matter within the jurisdiction of the Tribunal as it had the power to determine these questions. There was no question of any collateral or jurisdictional facts and the Tribunal did not lack jurisdiction. Mr. Nanavati also pointed out that on a question of law the Tribunal had complete jurisdiction to decide rightly or wrongly and merely because its conclusion was not acceptable to this Court it could not be held to be a patent error of law especially when the matter would be capable of two reasonably possible views. This question has been very well considered by His Lordship Bose J. in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, . At page 428 their Lordships considered the contention that the legislature intended the decision of these tribunals to be final on "all" matters, whether of fact or of law, and that accordingly they could not be said to commit an error of law when, acting within the ambit of their jurisdiction, they decided and laid down what the law was, for in that sphere their decisions were absolute, as absolute as the decisions of the Supreme Court in its own sphere. Therefore, it was contended that the only question that was left open for examination under Article 226 in the case of an Election Tribunal was whether it acted within the scope of its jurisdiction. In repelling this contention His Lordship Bose J. in terms held that

the jurisdiction which Articles 226 and 136 entitles the High Courts and the Supreme Court to examine the decisions of all the tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is "visa-vis" all other Courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. It is the same approach as in the case of collateral or preliminary jurisdictional facts, in the sphere of law applied by the inferior Courts and Tribunals, when their erroneous conclusion as to what the law is treated only as a tentative conclusion. Just as the inferior Court or tribunal cannot usurp jurisdiction by wrongly affirming a collateral or jurisdictional fact, it cannot equally exceed its jurisdiction by wrongly affirming what is the law it has to administer. In both cases, such a collateral question is always subject to review by the High Court in its extra-ordinary jurisdiction. In the oft-quoted words of Farewell L.J. in *R. v. Shoreditch Assessment Committee* (1910) 2 K.B. 859 , "subjection in this respect to the High Court is a necessary and inseparable incident to all Tribunals of limited jurisdiction; for it is a contradiction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such point as its own will and pleasure such a tribunal would be autocratic, not limited-and it is immaterial, whether the decision of the inferior tribunal on the existence or non-existence of its own jurisdiction is founded on law or fact. "Any other construction would have made the decisions of inferior Courts or tribunals even as to what the law is completely absolute. That could never had been intended by the legislature when it invested the High Courts with the powers of superintendence both over the inferior Courts and tribunals so as to lay down the law of the land. Therefore, when the question is as to what is the meaning to be given to the legal language, the inferior Courts and tribunals could only arrive at tentative conclusion and their decision could never be final, for otherwise different Courts and tribunals would come to totally opposite conclusions, and it would be a pure gamble for the citizen as to the decision he would get at the hands of these inferior Courts and tribunals. Such a system would be completely destructive of an uniform system of administration of justice under a rule of law, which is intended to prevail, so that two similarly situated citizens are not discriminated but are equally treated in view of the guarantee of equality before law enshrined in our Article 14 of the Constitution. Therefore, the same reasons which made Lord Esher M.R. to hold that the decisions of the inferior Courts and tribunals on jurisdictional or collateral issues were tentative, by holding that the legislature could never have intended that the limited tribunal could determine its own limits so that it can transgress at its

sweet will and pleasure those limits, made our Supreme Court also, to extend that principle even to such erroneous conclusions of law, so that the jurisdictional control could be invoked by keeping these inferior Courts and tribunals within the bounds of law by securing an uniform administration of justice according to law. That is why in all such cases where such misconstruction of law vitiates the conclusion of the inferior Courts or tribunals, so that it can be said that the Tribunal's conclusion was wholly unwarranted if it was properly instructed as to the relevant law which it had to administer, the error is treated as a patent error of law, which can be interfered with in this extraordinary jurisdiction of the High Court. This is also an error which goes to the root and the tribunal in such cases must be held to have heard and determined the matter not in accordance with law or having declined "jurisdiction" in the limited sense of want of authority. In that view of the matter, the order of the Revenue Tribunal suffers from a patent error of law as it proceeds on the assumption that these mines and mineral rights are extinguished by the Act. This assumption being wholly unjustified, the Tribunal has not heard and disposed of the appeal in accordance with law and having failed to exercise the jurisdiction, the matter must go back to the Tribunal to decide this appeal in the light of the above observations.

In the result this petition is allowed and the order of the Tribunal is quashed. The Tribunal shall now decide the appeal in accordance with law in the light of these observations.