

(1927) 02 BOM CK 0010
In the Bombay High Court
Case No : First Appeal No. 113 of 1925

Gangadhar Balvant Oke

APPELLANT

Vs

The Collector of Nasik

RESPONDENT

Date of Decision : 22-02-1927

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 52

Citation : AIR 1927 Bom 462 : (1927) 29 BOMLR 909 : 103 Ind. Cas. 249

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Fawcett, J.—This is a suit relating to the village of Pimpalgaon-Bahula in the Nasik District. The plaintiff sues for a declaration against the Secretary of State that he has the right of receiving the income of two survey numbers in the village, Nos. 103 and 106, which are described as waste pasture land, and for a permanent injunction restraining the defendant from taking the income of the suit lands. His suit has been dismissed by the District Judge of Nasik and he appeals from that decision. Undoubtedly, the plaintiff has certain Inam rights in this village. The main dispute is as to the extent of those rights. I think the case really rests in a narrow compass. The plaintiff's case is based upon a Sanad that was issued to him, under Bombay Act II of 1863, in 1893. The contention is that, whatever may have been his rights under a certain adjudication by the Inam Commissioner in 1860, he has by virtue of that Sanad full Inam rights in this village, subject to the restriction that the ordinary land revenue from the village has to be divided between him and Government in the proportions laid down by the Inam Commissioner's decision. On the other hand, the contention put forward for the Secretary of State is that that Sanad in no way affects the decision of the Inam Commissioner, except that it extends the right of succession by the limited male descent that was allowed by the Inam Commissioner's decision to the larger rights of succession that are mentioned in Bombay Act II of

1868, This, in my opinion, covers the main question which arises.

2. The decision of the Assistant Inam Commissioner was confirmed on appeal by the Inam Commissioner. That decision had, under Act XI of 1852, a final effect by virtue of the provisions of rule No. 2 of Schedule A to that Act. Under that rule, the proceedings of the Inam Commissioner were subject only to modification, reversal or annulment by the Governor of Bombay in Council, whose orders in every case were declared to be final. It has been ruled in *Ramrav Govindrao v. Secretary of State* ILR (1909) 34 Bom. 232, 11 Bom. L.R. 1333 that this also implies the finality of the Inam Commissioner's order, if there has been no such modification, etc., by the Governor. That being so, we have to consider what was the effect of the issue of the Sanad in 1893. There is some evidence to show that in fact the Sanad of 1893 was not the first Sanad that was issued under the Act of 1863, and that another Sanad had been issued in about the year 1872. For instance, Exhibit 43, an extract from the Land Alienation Register of 1887-88, mentions that an entry in the Sanad which had been issued seemed to be erroneous, and that the matter of correcting it was under correspondence. That would clearly imply that a Sanad had been actually issued. Also there are some statements in a petition made by the plaintiff that confirm that supposition. But there is nothing in the evidence which suggests that that particular Sanad was in any way different to the Sanad that was subsequently issued, except that, possibly, the area of pot Inam entered in that Sanad was shown as 210 acres and 10 gunthas instead of the 210 acres and 11 gunthas that are shown in the Sanad, Exhibit 45. Therefore, the question, whether or not there was a previous Sanad, does not really affect the case.

3. The Sanad itself states that it was issued with reference to the provisions of Section 4 and Section 16, Clause (B) of Bombay Act II of 1863; and therefore in considering the circumstances under which this particular grant was made, it is first, in my opinion, essential to see exactly what Section 4 of the Act contemplated being done. The preamble to the Act makes it perfectly clear that the Act was passed mainly to provide for the final adjustment, summarily, of unsettled claims to exemption from the payment of land-revenue; and that is also a matter of history, because there is plenty of evidence that the Act was mainly due to the delay that had taken place in adjudications by the Inam Commission under the previous Act XI of 1852. Accordingly, Section 2 of the Act provides for the case of persons whose title to exemption had not already been formally adjudicated, and provides for the lands being virtually granted as private property in perpetuity subject to certain annual payments to Government. Those payments were, in ordinary circumstances, first, a fixed annual *Nazarana* of one anna in the rupee of assessment, and, secondly, a quit-rent equal to one-fourth of the assessment. Certain rules were laid down for ascertaining the amount of assessment on which those annual payments should be calculated. Then we come to Section 4, which deals with the other ease of lands held partially or wholly exempt from the payment of land-revenue and already formally adjudicated to be so continuable hereditarily in perpetuity. In

that case, it seems clear that the section contemplated a variation of the formal adjudication only in respect of one particular matter, namely, the devolution of the lands so exempt from payment of land-revenue not only to the actual descendants of the holder, to whom inheritance may have been limited by the terms of the adjudication, but also to all his legal successors by inheritance, including heirs by collateral succession and heirs by adoption, and their assigns. That is made clear, in my opinion, by the first paragraph of the section. The second paragraph is also on the same basis. It abrogates the right of Government or its officers to question the title to possession or to exemption from the payment of land-revenue on a particular ground, and that ground is that the person in possession does not belong to the family to which title was restricted by the adjudication. Thus, take the case of the plaintiff himself. He was adopted into this family. Under the adjudication of the Inam Commissioner, he would have had no title whatever to hold this land exempt from the payment of land-revenue, but by virtue of the provisions of this Section 4, he became entitled to them as heritable and transferable property in the ordinary way. Then we come to the third paragraph, and that provides for what is probably the consideration for this extended right of devolution. It says that the lands in question are henceforth to be held subject to the payment to Government of an annual Nazarana calculated at the rate of one anna for each rupee of assessment of the land, and that that Nazarana is to be in addition to the partial assessment, if any, ordered by the terms of the formal adjudication under which the land has been declared to be continuable. It will be seen that the payment that is to be given is considerably less than the payment that has to be given u/s 2. It provides for the Nazarana at the rate of one anna in the rupee, but it omits the liability to pay a portion of the quit-rent equal to one-fourth of the assessment. That supports the view I take of this section, because if it had been intended that the Sanad u/s 4 should have the same effect as a Sanad u/s 2, then why should less payment be taken in a case u/s 4 than is required in a case u/s 2 ? The Sanad, as I have already mentioned, refers to Clause (B) of Section 16, which says that "the word "lands" shall, for the purposes of this Act, be understood to include villages, portions of villages, shares of the revenues thereof, and landed estate of every description." That definition is in some ways more extensive than what the word "lands" would ordinarily imply; in another direction it is restricted. So far as the word "lands" can cover a whole village, it has an extensive meaning. On the other hand, so far as that word can be used merely to cover shares of the revenue of lands, it has a restricted meaning. Therefore, in the present case, though the Inamdar under the Inam Commissioner's decision had only a right to a share in the land-revenues of the village, this definition makes Section 4 applicable, although what was in issue were not actual lands, but merely a share in the revenues of those lands.

4. Those being the circumstances under which the Sanad was issued, I certainly think the presumption would be that the Collector of Nasik, who issued it, intended to carry out what is contemplated by this Section 4, and that some

clear evidence would be necessary to establish that he had any intention, such as is alleged by the plaintiff, of deviating from the decision of the Inam Commissioner to a greater extent than that section authorized him to do. No doubt, if the language of the Sanad is such that that is the clear construction that must be put upon the words actually used, then, of course, it must be held that, whatever may have been contemplated, by the provisions of Section 4, the Collector, in fact, did purport to confer a greater estate upon the grantee. In that case the question might arise as to how far his act, in going beyond what he was authorized to do by the provisions of Section 4 of Bombay Act II of 1863, should be held to bind the Secretary of State. That, however, is a question which, in my opinion, need not be considered in the present case, because I am not satisfied that the Sanad does really confer anything more than what is contemplated by Section 4 of the Act. No doubt, there are expressions which support the contentions that have been put before us. It starts, for instance, by saying "whereas the village of Mouje Pimplegaon-Bahula is held as a hereditary Inam," and it does contain in the main declaration the words "the said village shall be continued for ever by the British Government as the private property of the persons who shall, from time to time, be its lawful holders." On the other hand, the first expression in the preamble is qualified by the words "under the authority of the British Government as shown below," and in the description of the present holder of the village, the area of the village and the deduction that had to be made, there is inserted a sub-column headed "authority for hereditary continuance," in which is put "Inam Commissioner's letter No. 620 of March 31, 1859." That is a reference to the decision of the Assistant Inam Commissioner, which was confirmed on appeal by the Inam Commissioner. It is noteworthy that that particular column does not appear in the ordinary form of a Sanad that is granted u/s 2 of Bombay Act II of 1863. In that case the columns are merely :- name of the holder, area of the village, assessment of the village, and the various deductions. That will be seen, for instance, from the form given in Appendix B to Joglekar's Alienation Manual at p. 63. Therefore, there is some significance to be attached to the mention of this authority, and that significance detracts very considerably from the wide expressions that are otherwise used. Then again, the declaration that I have mentioned also contains a qualification that the village is to be continued for ever "under Section 4 and Section 16, Clause (B)," of the Act of 1868, and the reference to Section 4, in my construction of it, does very seriously qualify what otherwise the words used might be held to grant. It, in effect, says that the continuance of the village there mentioned is a continuance of the kind mentioned in Section 4 of the Act. This construction is further supported, in my opinion, by the first condition that is contained in the Sanad, namely, that the "said holders shall continue faithful, subjects of the British Government, and shall pay to the same a fixed annual sum of Rs. 22-14-0 as Nazarana in addition to any Judi or other tax heretofore payable." That is in accordance with the provisions of Section 4 of the Act. It provides for the payment of the fixed annual Nazarana at one anna in the rupee of the assessment. On the other hand, it contains no provisions for the payment

of Chauthai or quit-rent such as would have to be made, if the grant was one of the kind coming u/s 2 of the Act. Mr. Patwardhan's contention that the amount shown in the column "Amount payable to British Government as Judi or other tax,"-Rs. 289-14-7-was settled by the Sanad as a fixed payment, instead of any amount that might be payable according to fluctuating conditions, is, in my opinion, entirely opposed to the language of the Sanad and to other evidence in the case. If it had been intended that Judi should be a fixed future payment, then why is it not entered in the first condition ? In the case of Sanads issued u/s 2, the first condition contains a place for entering not only the Nazarana, but also the settled Chauthai; see the same form in Joglekar's Alienation Manual at p. 64. If, therefore, the Collector had intended anything of the kind, it is extraordinary that he did not show this amount of Rs. 289 odd in the first condition. Again, in the part of the Sanad just above the executing clause it is said: "In consideration of the fulfilment of which conditions, the said village of Pimplegaon-Bahula shall be continued for ever, without increase of land tax or Nazarana over the said fixed amount, and without objection or question on the part of the Government as to the rights of any lawful holders thereof, whether such rights shall have accrued by inheritance, adoption, assignment or otherwise." That is the same thing as in the form u/s 2 of the Act, but " the said fixed amount" that is there referred to is clearly the said fixed amount of Rs. 22-14-0, and not any other amount such as the sum of Rs. 289-14-7 mentioned in the descriptive details of the village.

5. I have referred to there being other evidence, and in particular I would mention Exhibit 43, the extract from the Land Alienation Register, which distinctly says that the amount of Rs. 289-14-7, shown in column 16 as the amount of Judi payable to Government, fluctuates every year. That is shown to be correct by some of the Tharavbands, that have been put in, where it varies according to the actual amount of revenue collected. The first condition, therefore, which requires the Nazarana to be "in addition to any Judi or other tax heretofore payable", implies that that fluctuating amount should be paid as well as the fixed Nazarana. In my opinion, there is nothing substantial to support the contention that is put before us that the Sanad altered the terms of the adjudication, apart from the point about the devolution that I have already mentioned; and if this is so, the main basis of the plaintiff's case goes out.

6. I do not agree with what the District Judge has said in paragraph 8 of the judgment, namely, that "if the Sanad is considered by itself alone, there is no doubt that the lands in the village vest in the grantee." That is a conclusion for which he gives no reasons, and which seems to have been arrived at without properly considering the provisions of Section 4 and Clause B of Section 16 of Act II of 1863.

7. In my opinion, it is not material to consider in detail what was the previous practice in the village. It appears that prior to the adjudication, and probably, even some years after it, the revenue obtained by letting out lands for grazing in

this village was not brought into the divisible revenues of the village. It goes to show that the Inamdar took the whole amount of that revenue and it was not divided in the proportions laid down by the adjudication of the Inam Commissioner. On the other hand, from about the year 1872, it seems clear that this particular revenue has been, in fact, divided according to the adjudication of the Inam Commissioner. If the Sanad could properly be construed in the way that the plaintiff suggests it should be, then I do not think that this practice would suffice to deprive him of his rights under the Sanad, unless it were shown that there had been adverse possession of Government to an extent that would defeat his claim. Again, I do not think we can go behind the Inam Commissioner's adjudication. That adjudication is expressed in a very clear and decisive manner, which is quoted in paragraph 10 of the District Judge's judgment, namely, "The Assistant Inam Commissioner accordingly decrees that only the Jahagir ammal of mouja Pimpalgon-Bahula, in the Taluka Nasik, of the Ahmednagar Collectorate, calculated at Rs. 55-11-0 per cent. of the net revenue of the village, after deducting the rights of hakdars, ancient Inamdars and authorized village expenses be continued in Inam, and that the remaining ammals now held by the claimant be at once resumed as khalsa." That is just as effective as a decree of a civil Court : and it is, in my opinion, irrelevant to go into the question whether this particular revenue would come under the head of ammals that were resumed, or not. It certainly does come under the description of net revenue of the village.

8. No doubt, in the ordinary case where there is an Inamdar who has sole inam rights over a village, it has been frequently held that he has right to dispose of the uncultivated land, and if he gets any extra revenue from that source, he is entitled to appropriate it, while Government, in fact, can only recover the authorized assessment. But in applying that particular rule to the case of a Sharakati dumala village such as this is, it is to be remembered that the plaintiff is not in the position of a sole Inamdar. Practically he shares the inam rights with Government, and therefore, the case is not on the same footing as if this was an ordinary Inam village. That this difference is a material one is, for instance shown by the provisions of Section 216 of the Bombay Land Revenue Code, which lays down that, whereas the provisions of Chapters VIII to X of the Code about surveys in villages are not to be applied to any alienated village except for specified purposes, yet the provisions of those Chapters shall be applicable, among other cases, to alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount belongs to Government. That is a category of cases which covers this particular village, and the ordinary rule in such cases is that the land-revenue is first collected by the village officers and then divided between the Inamdar and Government in the proper proportion. See, for instance, the rulings referred to in paragraph 170 at p. 142 of Joglekar's Alienation Manual. I am willing to concede that before, or even some time after, the adjudication of the Inam Commissioner that particular rule may not have been followed. In fact, there is evidence that

the Inamdar used to sell these lands by auction and appropriate the produce. But the practice was altered in later years, and the Government have assumed the right to auction these lands.

9. If this were an ordinary Inam village, it might legitimately be contended that, in any case, Government could not recover more than the assessment fixed on these lands. But, in the present case, I think that that contention fails. The lands, Exhibit No. 38, are shown in the village form No. 1 as "Government waste land," That, of course, is not a description which can be said to bind the plaintiff and I discard it. But the form also shows some other facts which are useful in considering this question. The total area of Survey No. 103 is 28 acres and 25 gunthas. Out of that area 8 acres and 11 gunthas have been assessed as cultivable land, the assessment thereon in the year 1916-17, according to this form, is the amount of Rs. 4-6-0. The remaining area of ? 0 acres and 14 gunthas is shown as uncultivable and unassessed. Similarly, in the case of Survey No. 106 the total area is 25 acres and 37 gunthas, of which 11 acres and 21 gunthas are assessed as cultivable land at the sum of Rs. 6-4-0, and the rest of the land, namely, 14 acres and 6 gunthas is shown as uncultivable and unassessed land. Therefore, there has been in these particular numbers a clear demarcation of the cultivable from the uncultivable land; and it is the revenue from the latter with which we are concerned, Supposing that this was a Government village, the Collector could auction the right to pasturage of these particular portions of the survey numbers, and the revenue so accruing would be credited to Government. That is, for instance, covered by Rule 38 of the former Land Revenue Code Rules given at p. 407 of Sathe's Land Revenue Code, and that is authorized by the provisions of Section 52 of the Land Bombay Revenue Code. In the present case Government are, no doubt, entitled only to the assessment in regard to the particular portions of the land, on which that assessment has been fixed. But I do not think that, in the particular circumstances of this case, it can be said that Government's right under the Inam Commissioner's adjudication is restricted only to that assessment, seeing that there are specified portions of the land on which assessment has not, in fact, been fixed, and in respect of which this extra revenue is obtained. This extra revenue is in fact part of the landrevenue of the village. It is all along so shown in the Tharavbands and there is no case here for saying that the adjudication does not cover that particular revenue.

10. Therefore, in my opinion, the plaintiff's case for the declaration and injunction that he seeks, has not been made out, and I would dismiss the appeal with costs,

Patkar, J.

11. The question in this case is whether the lands in suit, Survey Nos. 103 and 106, are the properties of the plaintiff and not liable to a contribution to Government in respect of the income of these lands. There was a settlement with regard to this inam village of Pimpalgaon-Bahula after the decision of the Inam

Commissioner. On March 31, 1859, the Assistant Inam Commissioner decreed that only the jahagir ammal of mauja Pimpalgaon-Bahula in the Taluka Nasik, calculated at Rs. 55-11-0 per cent. of the net revenue of the village, after deducting the rights of hakdars and ancient inamdars and authorized village expenses, to be continued in inam, and that the remaining animals now held by the claimant were to be resumed as khalsa. The decision of the Assistant Inam Commissioner was confirmed by the Inam Commissioner on June 30, 1860. It appears that a Sanad was issued to the ancestor of the present plaintiff in the year 1872 but the Sanad is not on the record of this case. In the subsequent Tharavbands for the years 1873-74, 1874-75 and 1892-93, Exhibits 40, 39 and 41, the income of the plaint lands was entered with that of the rest of the village and was divided between the plaintiff and the defendant in the proportions fixed by the Inam Commissioner. The fact that these Tharavbands bear the signatures of the plaintiff's predecessors-in-title would prove the knowledge and acquiescence of the signatories. The Sanad, Exhibit 45, dated March 18, 1893, was issued under Sections 4 and 16(B) of Bombay Act II of 1863. The first condition of the Sanad is that "the said holders shall continue faithful subjects of the British Government, and shall pay to the same a fixed annual sum of Rs. 22-14-0 as nazarana in addition to any judi or other tax heretofore payable." The amount of the nazarana is fixed at Rs. 22-14-0 but the amount of the judi and other taxes is said to be as "heretofore payable." This is in accordance with Section 4 of Bombay Act II of 1863, according to which the amount of the nazarana is fixed and the amount of the judi is in accordance with the settlement which has been already arrived at. The amount of Rs. 289-14-7, mentioned in the Sanad, Exhibit 45, is not a fixed amount according to the Sanad. If the amount of Rs. 289-14-7 had "been a fixed amount according to the Sanad, it would have excluded the right of Government to claim anything over that amount and would necessarily exclude their right of claiming a share in the income of the lauds in suit. The amount of Rs. 289-14-7 is taken from the Alienation Register, Exhibit 43, which shows that the amount is fluctuating every year. The plaintiff has not shown that Survey Nos. 103 and 106 belong to him otherwise than as an Inamdar. The fact that the lands are not entered in the name of the Inamdar in the revenue records may not be conclusive proof of any absence of right in him, but it raises the presumption that the plaintiff is not entitled to these lands otherwise than as an Inamdar of the village. In Exhibit 38 the lands are entered as "Government waste". and in the Record of Rights these lands are not entered in the name of the plaintiff" but are described as forming part of Kuran. The plaintiff" has led no other evidence to show that he is entitled to the income of this village otherwise than as an Inamdar, and on his behalf it is argued that the plaintiff is entitled to the income of these lands as Inamdar on the ground that he is entitled to bring into cultivation other waste lands and to retain the produce of the lands which he brings into cultivation. The lands, Survey Nos. 103 and 106, have not been brought into cultivation by the present plaintiff. In *Ramchandra v. Venkatrao* ILR (1882) 6 Bom. 598 it was held that an Inamdar was entitled to deal with unoccupied lands for the purposes of revenue

because he is entitled to realise as much revenue as he can and not because he has a grant of the soil of unoccupied lands. The village in suit is a Sharakati Inam village and Government are entitled to a share of the, revenue. In the case of Vishvanath v. Mahadaji ILR (1879) 3 Bom. 147 the Inamdar's right to enclose a piece of land used as pasture land by the villagers was negatived. The plaintiff's rights to the lands in suit are restricted to his rights as an Inamdar, According to the decision of the Inam Commissioner, the plaintiff is entitled to Rs. 55-11-0 per cent. of the revenue of the village and the Government are entitled to the remaining portion, namely, 44-5-0 per cent. of the revenue. The decision of the Inam Commissioner is final as regards the land and interests concerned in the decision : Ramrav Govindrao v. Secretary of State ILR (1909) 34 Bom. 232, 11 Bom. L.R. 1333 and Vasudev Pandit v. The Collector of Puna (1873) 10 B.H.C.R. 471. It is not shown that the decision of the Inam Commissioner has been modified either by any order of the Governor of Bombay in Council under Rule 2 of Schedule A of Act XI of 1852 or by the Sanad granted under Bombay Act II of 1868. If the Sanad had been issued u/s 2 of Bombay Act II of 1863, different considerations would prevail. The Sanad is issued in this case u/s 4 of Bombay Act II of 1863, and the amount of Judi mentioned as being payable to Government is not a fixed amount. The plaintiff has not shown that he is exclusively entitled to retain the income of the lands in Survey Nos. 103 and 106. In fact, Government have been recovering the income of the plaint land for the last twenty-five years, and the plaintiff has admitted in his evidence that he has not seen any record after 1873-74 showing that Government were not given a share of the income of the plaint lands realised by the Inamdars. I think, therefore, that the decision of the Inam Commissioner is not in any way modified by the Sanad which has been granted to the plaintiff in the year 1893, and both under the decision of the Inam Commissioner and the Sanad, Exhibit 45, the plaintiff has not shown that he is entitled to exclude Government from participation in the income of the lauds, Survey Nos. 103 and 106.

12. I, therefore, agree that the decision of the lower Court should be confirmed and the appeal should be dismissed with costs.