(1911) 07 BOM CK 0005

In the Bombay High Court

Case No : First Appeal No. 33 of 1910

Haji Abdulla Haji Sumar APPELLANT

Vs

The Secretary of State for India RESPONDENT

Date of Decision : 17-07-1911

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 3(19)

Citation : (1911) 13 BOMLR 883 : 12 Ind. Cas. 369

Hon'ble Judges : N.G. Chandavarkar, J;Hayward, J

Bench : Division Bench

Judgement

N.G. Chandavarkar, Kt., J.—The question whether the decree of the lower Court is right depends upon the main question argued in this case, whether the village in dispute is not an alienated village within the meaning of Clause (19) of Section 3 of the Bombay Land Revenue Code (Bom. Act V of 1879).

2. The word "alienated" is defined in that Code to mean "transfer, in so far as the rights of Government to payment of the rent or land-revenue are concerned, wholly or partially, to the ownership of any person."

3. The question is whether this village has been transferred to the ownership of the present appellant, so far as the rights of Government to the land-revenue are concerned. That is a question which must be decided upon the proper construction of the howl (Exhibit 24) granted to the appellant''s predecessor-in-title in the year 1844-45.

4. The terms of the howl leave no matter whatever for ambiguity. In dealing with the terms of that document it is necessary to bear in mind that in order to bring a village within the term "alienated," a transfer of the rights of Govern-? /ment must be a transfer of a particular kind, namely, of the {ownership of Government with reference to its rights to land revenue, not all rights of ownership.

5. Now, the word "owner" does not require any definition, because its meaning is quite plain. But if it is necessary to find out the meaning attached to it by the

Legislature, we may usefully refer to the sections of the Transfer of Property Act, where ''transfer'' is pointed out as being either by way of ownership, in which case the transaction amounts to a sale, an out and out assignment, or by way of gift, in which case also it may be by way of ownership. But there are transfers of a more limited character such as transfer by way of mortgage, or lease, or charge. In the present case it is impossible to hold that the rights of Government have been transferred by way of ownership, having regard to the terms of the howl.

6. At the outset the preamble of the howl shows that the village was leased to the grantee for a period of ninety-nine years. It is a lease of the revenues of the village on certain conditions. One of those is "that on the land which had already been under cultivation the grantee should pay RSection 1,135-14-7; and that as to the waste lands, the grantee should bring them all into cultivation within forty years, and on the expiration of that period the full assessment, according to the prevailing usage of the country, should be collected annually from the grantee on such land as might be under cultivation, as well as on such quantity as might remain waste out of the present waste, entered in the public accounts." It is clear that the object of the lease was agricultural ; that Government never parted with their rights, so far as the right to build was concerned. That conclusion is strengthened by the subsequent conditions in the lease. All these conditions refer to agricultural operations and objects. Then the 6th condition is: "It is clearly to be understood that this lease confers no right which Government does not now possess and only such portion of the rights of Government as may be herein specifically granted to the grantee, is hereby granted to you." In other words, wherever the lease is silent about any right, that right must be regarded as not having been granted. Now, the rights as to building are omitted altogether from the lease. There is not a word said about them. The necessary inference from that is that Government reserved to themselves those rights.

7. The 8th condition is also important. That condition runs thus:?"Should a survey be made and a new assessment be introduced in the district, the same will also be done in your village; the land etc., which has been grunted to you free from assessment will, however, remain uninterfered with till the period of exemption has expired, when the rates will be levied." Now, that condition makes it quite clear, even if there had been any ambiguity in the conditions that had gone before, that this village cannot be included in alienated villages, because according to the provisions of the Bombay Land Revenue Code, in the case of an alienated village, Government cannot make a survey or fix an assessment unless they are invited to do so by the alienee; whereas, according to this 8th condition, Government have reserved to themselves the right of making a survey and introducing a new assessment in this village, upon their own initiative, without any invitation from the grantee.

8. And in the 10th condition it is also distinctly stipulated that "if a complaint be made to Government in respect of payments to all Devasthans and Dharmadaya

allowances, then the grantee is to act according to the orders of Government."

9. Then the 12th condition is also significant. "In respect of the above named village," that condition says, "you are to consider yourself as a farmer thereof;" in other words, as a "lessee." It further says, "You are therefore to exercise the authority vested in farmers by Chap. VI of Regulation XVII of 1827 or such as may be hereafter vested in them by any new enactment, shall also be exercised by you, and in the event of your acting contrary to the above said enactments," viz. Regulation XVII of 1827 and any other which may subsequently be passed, "you will be subject to such penalties as are now or may hereafter be provided for by Regulations." That is sufficient to bring the village within the operation of the provisions of the Bombay Land Revenue Code.

10. Then the 16th Clause provides that "for breach of any of the conditions of this lease for which a specific penalty has not been laid down, Government is at liberty to inflict such punishment as may be provided for."

11. The 18th Clause must also be read as having a bearing upon the question which we have to determine. The grantee is prohibited by that condition from either selling or transferring the village in any way whatever, which would mean by way of gift, sale, lease or mortgage, to any other person without the consent of Government. This condition is usual in the kind of transfers known as leases, in which the lessor makes it a term that there shall not be any assignment by the lessee without his consent either in writing or otherwise.

12. Therefore, there cannot be any doubt that this kowl is no more than a lease, that Government parted with their rights as lessors in favour of the grantee as a lessee, and imposed upon him certain conditions. None of those conditions brings the contract within the definition of the term "alienated" village, in Clause 19 of Section 3 of the Bombay Land Revenue Code.

13. For these reasons we are of opinion that the District Judge is right in holding that the plaintiff''s claim must fail.

14. In confirming his decree, however, we wish to make it quite clear that our decision is confined only to the buildings which have been erected, and to the extra assessment which Government have imposed in respect of those buildings, under the provisions of the Bombay Land Revenue Code. This decision does not in any way affect or prejudice such right as the plaintiff or Government may have in respect of the assessment on agricultural land. We express no opinion whatever as to the latter. The plaintiff''s claim, as made in his plaint, and in his pleadings, was entirely confined to the extra assessment levied by Government in virtue of their right, under the provisions of the Bombay Land Revenue Code, to impose that assessment on occupants, who have built upon their respective lands. Our decision, therefore, is confined only to that extra assessment. For these reasons the decree must be confirmed with costs.