

(1955) 11 BOM CK 0016

In the Bombay High Court

Case No : Special Civil Application No. 1276 of 1955

Harshadrai N. Desai

APPELLANT

Vs

Collector of Surat and Another

RESPONDENT

Date of Decision : 02-11-1955

Acts Referred:

Bombay Personal Inams Abolition Act, 1952 — Section 4

Citation : AIR 1956 Bom 170

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : M.C. Bhandare, instructed by Mehta Laljee and Co., Attorneys, for the Appellant; V.S. Desai, Asst. Govt. Pleader for Govt. Pleader, for the Respondent

Judgement

Chagla, C.J.—The petitioner is an Inamdar of the Inam village known as Khurvel in the Chikhli Taluka, Surat District. On 27-11-1822 the Government of India granted a sanad to one Ferozshah Dhunji shah in respect of six villages of which the village of Khurvel was one. On 27-5-1918 one Dullabhaj Haribhai Desai purchased the right, title and interest of Perozshah in this village of Khurvel and the petitioner is the descendant of Dullabhaj.

The Personal Inams Abolition Act of 1952 came into force on 13-6-1953- By this Act all personal inams were extinguished including the exemption granted to any person from payment of land revenue. But Section 4 of the Act provided that where the amount of exemption was or exceeded Rs. 5,000/- the inam was to be extinguished from 1-8-1953 and in other cases from 1-8-1955._

The State of Bombay took the view that the petitioner's inam was extinguished from 1-8-1953. The petitioner's contention was that the sanad with regard to the village of Khurvel exempted him from payment of land revenue In a sum which is less than Rs. 5,000/- and therefore under the provisions of the Act his inam could only be extinguished on 1-8-1955 and not from 1-3-1953. As the State refused to accept this contention, the petitioner has come before us.

2. It may be pointed out that in the correspondence between the first respondent, the Collector of Surat, and the petitioner, the attitude taken up by the Collector was that inasmuch as the land revenue payable in respect of the six villages exceeded Rs. 5,000/- and as the sanad was in respect of the six villages, the petitioner was not entitled to the exemption provided with regard to payment of land revenue which was less than Rs. 5,000/-.

That contention is obviously untenable in view of the decisions of this Court, because it is not disputed that as far as the petitioner is concerned he is only interested in the village of Khurvel and the petitioner's share in the land revenue which he is exempted from paying is Rs. 734-9-0.

Realising this position the Collector, when he came to make an affidavit in answer to the petition, has taken up an entirely different attitude and his contention is that the sanad granted to Ferozshah Dhunjishah when properly construed amounts to a grant of the soil and not an exemption from payment of land revenue, and he contends that if this is a grant of the soil of the village then the petitioner's case cannot fall u/s 4(ii)(b). Therefore, the question that we have to address ourselves to is as to what is the true construction of the sanad which was granted to Perozshah.

3. The sanad bestows upon Perozshah the undermentioned six villages in the Sirkar of Surat of the present total annual revenue to the Company's Government of Rs. 11,416/- in Jaghir as maintenance to him and his heirs general in perpetuity from the beginning of the month of September 1822 and what is strongly urged by Mr. Desai on behalf of the State of Bombay is that these are words of the conveyance and what is conveyed is the villages and therefore the grant is the grant of the soil.

But this bestowal of the villages is upon certain conditions and the conditions are mentioned, and those conditions are that Perozshah shall during his life enjoy and derive the entire produce of the jamabundy collection of the said village be they more or less and after the demise of the said Perozshah the heirs of Perozshah shall render to Government two-thirds of whatever may be collected from the aforesaid villages and the heirs shall themselves enjoy the other one-third.

Now, the sanad must be construed as a whole and when we read the sanad as a whole it is clear that what was given to Perozshah was the entire produce of the Jamabundy collection of the village. The produce of the village was not given to him and even with regard to his heirs what they got under the sanad was one-third of the land revenue.

One would naturally expect, if this was a grant of the soil, a fuller description of the villages, the rights in land, in water, in mines etc. But except for a bald description of the villages, nothing else is mentioned in the sanad, and what is emphasised is that the grantee, so long as he is alive, shall get the whole of the land revenue and after him his successors will get one-third of the land revenue.

In our opinion, the sanad does not purport to bestow upon Perozshah the important right of the grant in the soil of the village but merely exemption from land revenue.

4. The position in this petition is rather strange because the petitioner wants us to construe the grant in favour of the Crown and Mr. Desai who appears for the State wants us to construe the grant in favour of the subject.

This unusual position rarely arises, but the ordinary canon of construction in construing grants like this is that the grant must be construed in favour of the grantor and when the grantor is the Crown the Court must carefully consider whether the Crown has divested itself of all its rights in the soil of the villages which were being bestowed upon the grantee.

We would require much clearer words than are to be found in this sanad in order to come to the conclusion that what Perozshah got was not merely exemption from payment of land revenue but a right in the soil of the villages. In -- "Amrit Vaman v. Hari Qovind" AIR 1920 Bom 41 (A), Shah and Hayward JJ. have pointed out that the words ordinarily used to indicate a grant of the soil are "water, grass, wood stones, mines and hidden treasures". These words are conspicuous by their absence in tills grant.

5. Mr. Desai has relied on a decision of the Privy Council in AIR 1929 34 (Privy Council) . There the Sanad which their Lordships were construing was In entirely different terms. The operative part of the Sanad was :

"The aforesaid villages of Juhu and Vile-parle in the island of Salsette are hereby assigned to you and your heirs in perpetuity from the year A.D. 1847-48. The particulars of the cultivation etc., founded on the Jamabandy of 1842-3 and the conditions of the grant are as follows:.."

Then there was a minute description of the villages, the boundaries and the various lands from which revenue was levied. Parts of the lands were held by ryots or sutklars and the other parts were not so held and there was a specific provision that if the grantee brought his lands which were not held by sutidars under cultivation he was bound to pay assessment.

It was on a consideration of all these factors that the Privy Council came to the conclusion that what the grantee obtained was not merely exemption from payment of land revenue which was calculated in the sanad, but he was granted a right in the soil of the villages. The land revenue was merely calculated there to indicate what benefit the grantee was getting by the grant of the villages. But the whole scheme of the Sanad clearly showed that the grantee became the owner of the villages and had a much larger interest than merely an interest in the land revenue.

In the Sanad before us, as we have already pointed out, there is no description of the villages; there is no suggestion that the grantee is entitled to any other rights except the right of exemption from payment of land revenue. Therefore,

the terms of the Sanad which the Privy Council were construing in -- "Bomanji v. Secy, of State (B)", are not analogous to the Sanad which we have to construe before us.

In matters of construction one case is rarely of assistance in another case. Each Sanad must be construed according to its own terms, and we are satisfied on the language used by the grantor in this Sanad that the grantor did not grant to Perozshah any right in the soil of the villages but only gave him the right of exemption from payment of land revenue. Mr. Desai concedes that if this is our view of the Sanad, then the petitioner must succeed and he is entitled to the order prayed for in the petition.

6. We therefore make an order in terms of prayers (a) (i) and (a) (ii) of the petition. The respondents must pay the costs of the petitioner.

7. Order accordingly.