(1925) 09 BOM CK 0021

In the Bombay High Court

Jinabhai Nathabhai Rashia APPELLANT

Vs

Collector and T.S. Officer RESPONDENT

Date of Decision : 02-09-1925

Acts Referred:
Gujarat Taluqdars Act, 1888 — Section 33(2)

Citation : AIR 1926 Bom 325

Hon'ble Judges : Macleod, C.J;Coyajee, J

Bench : Full Bench

Judgement

Macleod, C.J.—The plaintiff sued to recover the sum of Rs. 57-4-9 which the defendant''s officers wore alleged to have unjustly and unlawfully levied from him on September 22, 1920, and to have a permanent injunction restraining the defendant in future from recovering either by himself or through his officers; any amount in excess of what lie had been paying for the land in his possession. The first question was whether the plaintiff as a tenant of the suit land was a permanent tenant of the taluqdar of Dehwan at a fixed rent or a tenant at will. It can hardly be disputed that the Judge was right in holding that the plaintiff failed to prove anything in the nature of a permanent tenancy.

2. The next question then was whether the arrears of rent which had been recovered by the defendant were illegally recovered under powers not possessed by the defendant who was a Taluqdari Settlement Officer. Section 111 of the Land Revenue Code has been incorporated in Section 33 of the Gujarat Taluqdars Act VI of 1888 and now runs as follows:

In the event of any taluqdar''s estate coming under the temporary management; of Government officers, it shall be lawful for the Collector, Taluqdari Settlement Offices, or other officer appointed by Government in this behalf, subject, in any case, to which it applies, to the proviso to Section 29 of the Gujarat Taiuctdars Act 1888, to let out the lands thereof at rates determined by means of a survey settlement or at such other fixed rates as he may deem to be reasonable, and to sell the occupancy of unoccupied lands by auction, and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands not comprised within a taluqdar''s estate, so far as such rules may be applicable and for so long as the said, estate shall be under the management of Government officers.

3. It would appear that that section gives complete powers to a Government officer in the temporary management of a taluqdar''s estate to manage the revenue in the same way as the Collector would manage the revenue of an unalienated village. The contention is-that in this case the payments exacted from the plaintiff were payments of rent and not land revenue, and that u/s 150 of the Land Revenue Code only arrears of land revenue could be recovered by the process mentioned in that section. There is no definition of the term "land revenue" in the Land Revenue Code, although in the Bombay Revenue Jurisdiction Act which was passed three years before the Land Revenue Code, "land revenue" is defined as meaning

all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any parson on account of any land held by or vested in him, and any cess or rate authorized by Government under the provisions of any law for the time being in force.

4. It seems to me that we cannot restrict the meaning of the term "land revenue" in Section 150 to one particular kind of land revenue, that is to say, assessment, so that, if any other kind of revenue from land is payable to Government by any person on account of any land held by or vested in him, and he falls into arrears in the payment of such revenue, it cannot be recovered from him u/s 150. But in any event the words of Section 33 of the Gajarat Taluqdars Act are wide enough to give the Collector full powers of management for the collection of revenue in the same way as the Collector enjoys for the management of unalienated land.

5. It would certainly be a very strange thing if the Taluqdari Settlement Officer in charge of the talukdar''s estate should have to proceed by the ordinary process of the civil Courts before he could recover the arrears of revenue. A reference my be made to Section 86 by which

superior holders shall upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land revenue payable to them by inferior holders, or by co-sharers in their holdings under the same rules, except that contained in Section 137 and in the same manner as prescribed in Chapter XI for the realization of land revenue by Government.

6. It would be still more remarkable if, when a superior holder is entitled to get such assistance from the Collector, the Collector himself when in charge of a taluqdari estate had not the same powers for the recovery of arrears of revenue duo from persons by whom lands within the taluqdar''s estate are held.

7. Reference may also be made to Daluchand v. Gulabbhai [1916] 18 Bom. L.R. 323 in which it was held by Mr. Justice Heaton that the provisions of the Land Revenue Code would apply in cases where a taluqdar''s estate came under the temporary management of a Government officer, so that he would be empowered thereunder to attach and recover all arrears. In that case the arrears to be recovered wore arrears of assessment, hut the ratio decidendi that Section 33 gave the Collector the same powers which he had under the Land Revenue Code to recover assessment, would apply to this case, so that, in my opinion, the Collector had power to enforce the payment of arrears of revenue. I think that the judgment if the Court below is right and the appeal must be dismissed with costs.

Coyajee, J.

8. I agree. By Section 33(2) of the Gujarat Taluqdars Act 1888, it is enacted that the provisions of the Bombay Land Revenue Code, when applied to any estate to which that Act extends shall be subject to the following modification, namely : - (e) for Section 111 the following section shall be deemed to be substituted, viz.:

Section 111. In the event of any taluqdar''s estate coming under the temporary management of Government officers, it shall be lawful for the Collector, Taluqdari Settlement Officer, or other officer appointed by Government in this behalf...to let out the lands thereof at rates determined by means of a survey-settlement or at such other fixed rates as he may deem to be reasonable, and to sell the occupancy of unoccupied lands by auction, and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lauds not comprised within a taluqdar''s estate so far as such rules may be applicable.

9. In my opinion the expression "rules for the management of unalienated lands" occurring in that section, what ever else it may mean, includes the relevant provisions of the Bombay Land Revenue Code. Section 111, as thus substituted, provides for the revenue management of taluqdari estates, which may be temporarily under Government management. It does not say that the powers of the Taluqdari Settlement Officer during his management are only those possessed by the taluqdar himself before the management begins. He is expressly empowered to let out the lands of the estate at such fixed rates as he might deem to be reasonable, to sell the occupancy of unoccupied lands by auction

and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands

10. He is, in my judgment, empowered, when necessary, to take action -under Sections 150, 152 and 154 of the Land Revenue Code. This construction is in consonance both with the object and the provisions of the Gujarat Taluqdars Act. The object apparently is that the management should be conducted expeditiously and economically within the legal rights possessed by the Collector or the Taluqdari Settlement Officer as, the case may be.

11. In this case a detailed survey was introduced in the village of Goura where the lands in suit are situated, in the year 1912, some time after the Government management began. All the holdings were then treated as tenancies at will. This led to the institution of Suit No. 22 of 1913 as a test case,, in which Dola Jita and another asked for a declaration that their holdings were; held by them on permanent tenure and that they were not liable to ejectment while they paid the Salami. The suit failed both in the District Court and, on appeal, in the High Court. Thereafter the notice, Exhibit 40, was served on the plaintiff in this case in December 1918. On his failing to comply with it, the Taluqdari Settlement Officer adopted the measures of which the plaintiff now complains.

12. In my opinion, the conclusions arrived at by the trial Judge are right; and I would add that in the trial Court the; defendant''s counsel stated that his client had no intention of evicting the plaintiff and, therefore, the Judge did nod consider the third issue in the case.

