
(1928) 02 BOM CK 0027

In the Bombay High Court

Case No : Second Appeals No. 851 of 1925

Kishanlal Ratanlal Daphtary

APPELLANT

Vs

Janmejaya Chhabildas

RESPONDENT

Date of Decision : 15-02-1928

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 217, 45, 48

Citation : (1928) 30 BOMLR 992

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

Bench : Division Bench

Judgement

Patkar, J.—[His Lordship, after setting out the facts of the case as above, proceeded.] It is urged on behalf of the appellant that the introduction of the survey in the village would not affect the right of the plaintiff as a Sutidar, that the defendants had not the right of increasing the money valuation of the grain rental, that the defendants have failed to prove that there was any relation of landlord and tenant as alleged by him, and that the levy of increased assessment was not justifiable in the absence of any contract and was not authorized under the provisions of the Bombay Land Revenue Code.

2. It is argued on behalf of the respondents that the finding of the learned Joint Judge that the lauds in suit were Suti is erroneous on the evidence in the case, and even if the plaintiff was a Sutidar of the lands in suit, the tenure would subsist so long as the lands remained rice lands, and the tenure created essentially for the purpose of cultivation would come to an end on putting the lands to a non-agricultural use u/s 48 of the Bombay Land Revenue Code, and that in any event, the plaintiff cannot complain of the excess levied from him, as it is not shown by the plaintiff that the present assessment is in excess of the money valuation of the grain rental fixed on the lands.

3. The first question, therefore, arising in the case is whether the plaintiff has proved that the lands were held on a Suti tenure Under Regulation I of 1808. It is urged that the lands came in to the possession of the plaintiff's predecessor-in-

title in the year 1887, and no evidence is led to prove that the lands were in the possession of the plaintiff's predecessor-in-title in the year 1808 when the Regulation I of 1808 came into force, and reference is made to Campbell's "Bombay Gazetteer," Thana, Vol. XIII, Part II, page 532, where it is stated that people still speak of rice land held under the survey tenure as Suti, and Sutidar is used with the same meaning as khatedar or survey occupant. It is further urged that in Exhibits 72 and 80 the lands are not described as Suti, but i. e., like Suti, and no reference is made to the Sutidar in the defendants' kowl, Exhibit 50. The defendants admit that they as Idiots have no record relating to the village prior to 1898, and it would be difficult for the plaintiff to prove that his predecessors-in-title held the lands on the Suti tenure since before 1808 in the absence of any record in the possession of the defendants. The plaintiff has proved his occupancy up to the year 1867. The defendants specifically alleged that the lands were let to the plaintiff's predecessor-in-title after the grant of 1831, but there is no reliable evidence in support of the defendants' allegation. There is no satisfactory evidence, therefore, of the commencement of the interest of the predecessors of the plaintiff in these lands. The khot admitted that the plaintiff was the owner of the lands subject to payment of assessment, and that he had no power to evict him so long as the assessment was paid. Exhibit 72, the assessment receipt book, contains entries which clearly show that a portion of the lands in suit was assessed as kharip paddy land. Rs. 6-2-7 is the assessment on Bagayat land and Rs. 6-6-5 is on account of kharip paddy land according to Suti which was assessed according to the grain rental of eight faras out of the dhop jara of twelve faras, and the grain rental was commuted into money at Rs. 20 per mudha. The assessment of Rs. 13-5-6 has been invariably paid by the plaintiff and his predecessors-in-title up to the year 1919. We, therefore, accept the finding of fact arrived at by the learned Joint Judge that the plaintiff has proved that he is a Sutidar in respect of the lands which are held by him on a tenure referred to in Regulation I of 1808.

4. The next question is whether the assesment of the lands fixed in the year 1808 is parmanent and whether the tenure created in 1808 came to an end by reason of the change in the use of the land for non-agricultural purposes u/s 48 of the Bombay Land Revenue Code, and whether the plaintiff is bound to pay the increased assessment according to the survey settlement in the year 1915. u/s 217 of the Land Revenue Code, when a survey settlement has been introduced under the provisions of Section 216, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as holders of lands in unalienated villages have, or are affected by, under the provisions of the Land Revenue Code, and all the provisions of the Act relating to holders of lands in unalienated villages shall be applicable, so far as may be, to them. It is urged on behalf of the respondents that the assessment on the lands may be varied without any disturbance of the proprietary rights as held in *The Collector of Thana v. Dadabhai Bomanjim* and that there must be strict proof of the right in

derogation of the inherent right of the Sovereign to assess, and reliance is placed on the case of *Shapurji Jivanji v. The Collector of Bombay* I.L.R (1876) Bom. 352,:

5. Section 217 does not take away pre-existing rights. In *Lakshuman v. Govind* I.L.R (1885) Bom. 483, it was held that the effect of Section 52 of the Bombay Land Revenue Code is to give the Collector the discretion to fix the assessment; and the effect of Section 217 of the Code is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages, but that neither section takes away any legal right which an occupancy tenant may have acquired independently of his bare status as an occupancy tenant liable to pay land revenue according to survey rates.

6. The question, therefore, in this case is whether the plaintiff had any pre-existing rights in respect of his holding. Section 45 of the Land Revenue Code would not apply to the present case, as the lands in this case are not wholly exempted under the provisions of any special contract with Government or any law for the time being in force. Section 52 which applies to lands which are not wholly exempt from payment of land revenue contains the proviso that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights. The plaintiff has, therefore, to prove that the lands in suit are partially exempt from land revenue, or that the liability of the lands in suit to payment of land revenue is subject to special conditions or restrictions.

7. It would be necessary, therefore, to refer to the provisions of Regulation I of 1808, which gives a historical account of the revenue administration of Salsette under the Portuguese Government relating to permanent cultivators of the rice lands which consisted of three classes : (1) the Shilotri or Serrotore tenure (2) the Ardhul tenure, and (3) the Mudha tenure or the Tocca system. We are concerned in this case with the third tenure, namely, the Mudha tenure or the Tocca system. The tenure as embodied in Regulation I of 1808 has been fully described in the case of *The Collector of Thana v. Dadabhai Bomanji* I.L.R (1876) Bom. 352, and in the case of *Harischandra Pandurang v. Sorabji Jehangir Framji* (1897) P.J. 444 In the latter case Mudha Kunbis have been treated as Sutidare. On perusal of Sections 5, 23, 36 (Clause 14), and 43, it would be clear that the Sutidars were in possession of more land than the demp-jara or the rice assessment which they paid according to the actual measurements, and u/s 24, for removing all doubts, it was considered advisable to signify to the ryots that the perpetual possession of the property held by their forefathers would be secured to them by written deeds, as long as they continued to pay the rent to be settled for their respective local extent of cultivation. On May 1, 1801, the Government of Bombay signified their acquiescence in the principle of the arrangement and declared that the cultivators thenceforward were to be the full

proprietors of their respective tenures (Section 41), and shortly afterwards the Governor-in-Council issued a proclamation (Section 43), by which it was made known that to ameliorate their situations by rendering the ryots perpetual proprietors of the soil under a very moderate and fixed rent payable to the Government, formal grants would be issued. Section 31 of the Regulation describes the Kunbis as the hereditary proprietors of their respective occupancies, under such rules and restrictions as the Government of Bombay might judge proper to prescribe for the security of the public revenue, the principle of which was to continue, in the manner thereafter noticed, to rate the fixed demp-jara part of the rental in grain instead of money. On perusal of Sections 41, 43, Clause (3) (of the stipulations of the deed recited in the proclamation), and 45 (Clauses (1) and (2)), it is clear that there was a permanent settlement of the lands, and the grain rental was forever fixed. The grain assessment was to be considered invariable to the present possessors and their posterity, and it was never to be changed or enhanced, whatever may be the quantity, description or value of the produce of the soil, the increase or the augmentation of the value of which would, therefore, be the unincumbered reward of the industry and good management of each proprietor. The grain rental was, therefore, forever fixed subject to the then commutation at the rate of twenty rupees per mudha, which was to remain in force for the next ten years, and continued to be liable to like future decennial fluctuations, reserving to the cultivators the option to deliver at all times the fixed number of mudhas of paddy instead of money, in the event of their deeming it to be in any year overvalued.

8. The Sutidara, therefore, under the Regulation, would be liable to pay forever the grain rental subject to any alteration in decennial valuation by Government. There has been no subsequent decennial valuation of the grain rental by Government. It is urged on behalf of the respondents that Government should be considered to have put a valuation on the grain rental by reason of: the survey, and unless the plaintiff shows that the assessment now levied on the land exceeded the market value of the grain rental, he had no cause of action. u/s 41 of Regulation I of 1808, the stipulated grain assessment was commuted at twenty rupees per mudha, and it was to remain unvaried for the next ten years and was to continue subject to future decennial valuation. There has been no decennial valuation for the whole of Salsette, and the survey settlement cannot be considered to be equivalent to decennial valuation referred to in Section 41 of Regulation I of 1808. This view is in accordance with *Harischandra Pandurang v. Sorabji Jehangir Framji* (1897) P.J. 444 where it was held that Government had precluded itself from in any way altering the assessment of the Sutidars, and the only right it had then reserved to itself was the right to vary the commutation rate decennially. We think, therefore, that the khot had no right under Clauses (7) and (8) of his kowl to increase the assessment fixed on the land, and that the only right which the khot had was to request the Government decennially to fix the money valuation for the grain rental. The peculiarity of the Moorah or Suti tenure was that a rough estimate was made as to the yield of a field by measure

of Moorahs or Faras irrespective of the actual area of the land, and the grain rental was reduced from one-half to one-third of the estimated produce and fixed forever. The survey settlement would, on the other hand, fix the rate of assessment on the actual area of the land. It is mere accident that the survey assessment fixed on the land does not exceed the market value of the grain rental. The plaintiff is entitled to hold the land at the fixed grain rental and on payment of the commutation value first fixed till there is variation in the commutation value by Government. If the commutation value be varied by Government, the Sutidar would have to pay according to the altered commutation rate, and would be entitled u/s 41 to deliver at all times the fixed number of Moorahs of paddy instead of money in the event of his deeming it in any year overvalued. It is clear, therefore, that the plaintiff has proved under the proviso to Section 52 that the liability of the land in suit to payment of land revenue is subject to special conditions and restrictions.

9. The next question is whether the plaintiff has lost the right to the tenure by reason of the change in the use of the land. It is urged on behalf of the defendants that the lands must be considered to have come into the possession of the plaintiff's pre-decessor-in-title for cultivation as rice land, and having regard to the fixed grain rental leviable on the land, it must be considered that the tenure was to last so long as the land was used for agricultural purposes, and that the tenure came to an end by virtue of the act of the holder in putting the land to non-agricultural purposes, and that the restriction to enhancement of rent would disappear by reason of Section 48 of the Bombay Land Revenue Code. It is further urged that the oarts, to which the ruling in *The Collector of Thana v. Dadabhai Bomanji* I.L.R (1876) Bom. 352 applied, were regulated by Section 40, Clause (5), by which the assessment was fixed without further plea or deduction in the whole measured extent, however occupied. The words "however occupied" in Clause (5) of Section 40 refer to occupation by wells, tanks, houses and unproductive spots referred to in Clause (3), and do not refer to the use of the land for agricultural or building purposes. Under the Marhatta Government, the practice of taxing the oarts at seventeen and fifteen rupees per bega was subject to the deduction of twenty-five per cent, for the ground occupied by wells, tanks, houses and unproductive spots, The oarts rated at Rs. 17 per bigha were to be assessed under this regulation at the rate of fifteen rupees per bega without further plea or deduction in the whole measured extent, however occupied, and those rated at the rate of fifteen rupees were to be assessed at the rate of eight rupees and a half per bega without further plea or deduction in the whole measured extent, however occupied, Under the third clause of the deed referred to in the proclamation set out in Section 43 of the Regulation, the amount of grain assessment was to be considered invariable to the present possessors and their posterity, and was never to be changed or enhanced, whatever may be the quantity, description or value of the produce of the soil, the increase or augmentation of the value of which was, therefore, to be the unincumbered reward of the industry and good management of each

proprietor. The grain rental was, therefore, fixed irrespective of the actual produce of the soil. It appears that the Sutidars did not accept the deeds mentioned in the proclamation, but the omission to take the deeds offered by the proclamation in h, 43 would not affect the rights recognised by the Regulation. See *The Collector of Thana v. Dadabhai Bomanji* (pp. 365, 366). There is no provision in Regulation I of 1808 which entailed the forfeiture of the tenure in case the land was used for a non-agricultural purpose. It was not till the passing of the Bombay Act I of 1865 that the provision in that direction was enacted by Section 35 of that Act. But Section 35 of Bombay Act I of 1865 related to Government land, that is, land belonging to Government, and not to lands of private individuals who had proprietary rights in the soil, See *The Collector of Thana v. Dadabhai Bomanji* (p. 360). We are not concerned in this case with the right of Government to impose building fines on the lands of Sutidars to which Regulation I of 1808 applies. In the absence of any condition in Regulation I of 1808 entailing forfeiture of the tenure created by that Regulation on account of the change in the use of the land, I am not prepared to hold that the tenure of the plaintiff came to an end by reason of the change in the use of the land.

10. It appears that in the year 1867, the buildings on the land existed, and Rs. 13-5-6 only have been invariably levied by the Khot up to 1918. Further, the assessment fixed by the survey on the lands in suit is fixed not in relation to its use for building purposes, but has been fixed with reference to its use as agricultural land, and as I have already held that the assessment on the lands in suit was a fixed grain rental liable to variation by a decennial valuation, the grain rental was, therefore, fixed, and only the commutation rate was liable to variation by Government. There is no evidence in this case that there was any variation of the commutation rate fixed by Government. Reliance was placed on behalf of the respondents on the case of *Waman v. Vinayak* (1879) P.J. 429, where it was held that the word Sutidar may be taken to be equivalent to the term mirasi in tin Decan and a person holding lands as Sutidar was not liable to enhancement of land assessment nor to ejection so long as he paid the customary assessment, and it was urged that the case was sent down to consider the rate of assessments which was leviable by the custom of the country. The terms of Regulation I of 1808 were not discussed in that case. It appears, however, from the decision in the same case when it came to the High Court after remand (*Vinayak v. Waman* (1880) P.J. 336) that the plaintiff in that case could not demand from his Suti tenants under Regulation I of 1808 more than one-third of the produce of their lands.

11. We think, therefore, that the plaintiff has established that he is a Sutidar of the lands in suit to which Regulation I of 1808 applies, that the lands in suit are subject to a perpetual fixed grain rental which was commuted into money payment at the rate of twenty rupees per mudha and continued to be invariable until there was a decennial valuation changing the commutation rate by Government, that the tenure has not come to an end by reason of the change in the use of the lands, and that the rates fixed by the survey assessment do not

amount to the decennial valuation contemplated in Section 41 of Regulation I of 1808. We think, therefore, that the assessment of Rs. 29-9-10 which was in excess of the assessment of Rs. 13-5-6 which has been levied invariably from the year 1867 was illegally recovered.

12. We would, therefore, reverse the decrees of both the lower Courts and allow the plaintiff's claim with costs throughout on the respondents.

Baker, J.

13. This case is one of some importance and is stated to be a test case, and the facts will have to be dealt with at some length.

14. The plaintiff, who is the holder of a plot in the alienated village of Chincholi in Salsette brought a suit against the defendants who are the present lessees of the village, for a declaration that they are not entitled to recover from him more than Rs. 13-5-6 a year in respect of his land which he claims to hold on a Suti tenure at a fixed and invariable assessment, and to recover excess payments.

15. The plaintiff's cause of action arose from the fact that the survey settlement of the village was made in 1915-16 when the assessment payable by him was increased to Rs. 29-9-10. The defendants denied that the plaintiff held his land on a Suti tenure and said that the land had been given to the plaintiff's predecessors by their predecessors-in-title, not on fixed rent. They claimed to be owners of the soil of the village and contended that the survey settlement was sanctioned by Government in 1918 and that the plaintiff was bound to pay the rates fixed by that settlement. They also pleaded that Government was a necessary party and raised other contentions with which we are not now concerned.

16. The First Class Subordinate Judge of Thana found that the plaintiff was not precluded by Section 4(b) of the Bombay Revenue Jurisdiction Act from contending that the application of the survey settlement to his lands was against law. He held that if the plaintiff had proved that he held the lands on the Suti tenure his assessment was not liable to be increased, but that he failed to prove that he was a Sutidar and that the Khot (defendants) had a right to raise the assessment with the consent of Government, which was obtained in the case, and he consequently dismissed the suit. I do not refer to the questions of estoppel, etc., raised in the first Court as they do not form the subject of the present appeal.

17. On appeal by the plaintiff the Joint Judge of Thana found that the plaintiff held his land on the Suti tenure but that he was nevertheless bound to pay the enhanced assessment. His reasons were:

That the suti tenure was created specially for the purpose of cultivation and the land in suit has been converted into a building site. Therefore the tenure created essentially for the purposes of cultivation would ipso facto come to an end by the act of the holder himself. The restriction to enhancement of assessment would

thereafter disappear and the principle of Section 48, Land Revenue Code, via., that land assessed with reference to one use shall on change of that use be liable to be assessed with reference to the altered use notwithstanding that the term of the first assessment has not expired would come into play.

18. His final conclusion is as follows :?

I, therefore, hold, firstly that the old rates which were fixed in perpetuity were so fixed with reference to the agricultural use of the land (using that expression in its broadest significance) and, therefore, when the land ceased to be used for agriculture and was converted into a site for suburban residences they ceased to be binding on Government and became liable to be revised under is, 48 of the Land Revenue Code. Even if that be not so, then, secondly, under the Suti tenure itself the fixity applied in case of the rice land to the grain rental and not to its commuted money value which was liable to revision at the discretion of Government.

19. The enhanced assessment is not in excess of the market rates of the fixed grain rental of eight Faras of paddy plus Rs. 6-2-7 the fixed money rent of the Bagayat portion of the land. Hence the increase is not excessive. The Joint Judge, therefore, dismissed the appeal. The plaintiff makes this second appeal.

20. This case involves questions of importance and it should be understood that the decision is based on the particular facts appearing in this case. Government are not a party to this suit and no finding in this case would be binding on them with regard to their right to introduce a survey settlement into any village and to enhance the rates accordingly.

21. We are here concerned with a dispute between the lessee of a village described (incorrectly) as a khot and his tenant. The case turns entirely on the interpretation of Bombay Regulation I of 1808 and the lease to the defendants' predecessors in 1831. The Regulation refers to a state of affairs which has long since passed away. We have been supplied with a compilation containing the Regulation of 1808 and other information regarding the alienated villages in Salsette and I shall throughout refer to the pages of that compilation.

22. The village of Chincholi with certain other villages was leased by Government in the year 1831 to Laxman Harischandraji and the defendants are his successors-in-title. The plaintiff, who is a Bombay solicitor, claims to be the successor-in-title of a person who was in possession of the land in suit prior to the defendants' lease. It is immaterial for the purposes of this case whether the defendants are the grantees of the soil or the alienees of the royal share of the revenue. The lease is at page 34 of the typed record and we are concerned with Clauses (7) and (8) at page 41. Clause (7) states :~

(7). The rights of any persons which they may have gob to lands or any item in the said village are to remain unaffected by this lease. And it is clearly to be understood that this lease does not confer on you any right to any items to which

Government have at present no right. And that you shall have power only with regard to those items to which Government have right and which are stated and given to you in this lease.

23. The effect of this clause is to safeguard rights already existing before the lease and, therefore, persons already holding land on special tenures in the village are unaffected by the lease. This is an ordinary clause in leases and grants. If it is found that the plaintiff's predecessors-in-title were already in possession of the land in suit under a special tenure before the lease, those rights are unaffected by it.

24. Clause 8 recites :?

(8). You are to protect ryots well. You are to behave towards ryots in a friendly way and you are not to trouble them in any way. You are not to increase the customary Government dues existing without Government order, and you are not to alter without order the Vahiwat (practice) which is going on with respect to each item in the village given to you.

25. It has been contended that though Government may have the right to introduce new survey rates the Khot has no right to do so. But in the present case the survey settlement has been introduced by Government at the request of the Khot and, therefore, the permission of Government must be assumed to have been given, It is not the case that the Khot raised the rates of assessment without consulting Government.

26. Two points arise for determination in this case:?

1. Whether the plaintiff holds his lands under the Suti tenure ?

2. If so, whether the assessment leviable from him can be increased on the introduction of the Survey Settlement?

27. As regards the first point the lower appellate Court has found that the plaintiff holds his lands on the Suti tenure and that his predecessors-in-title were on the land before the lease. This finding goes to the root of the whole case, and if it be regarded as a finding of fact it cannot be challenged in second appeal.

28. The learned Counsel, who has so ably argued the case for the respondents in supporting the decree on the grounds decided against him, has challenged the finding on the ground that the learned Joint Judge has proceeded mainly on a presumption and that the burden of proof has been wrongly thrown on his clients to prove that they or rather their predecessors let the land to the plaintiff's predecessor after the lease. Now when all the available evidence is on record the question of the burden of proof is of minor importance. We are dealing here with matters of ancient history. It is nearly 100 years since the lease was granted and the property has changed hands since then. Oral evidence is obviously out of the question and the documentary evidence is very scanty.

29. I think perhaps the learned Judge of the first appellate Court was thinking of

Section 83 of the Bombay Land Revenue Code when he uses the word presumption on page 6, line 56, of his judgment.

30. I have no hesitation in holding that his view is correct. The evidence which supports it is set out at pages 5 and 6 of the print. It is as follows :?

31. The plaintiff has traced his title back to the year 1867. The village books which should be with the Khot are not available prior to 1898 and are stated to have been destroyed. It is admitted that this land has been held from the earliest period to which its history could be carried, on permanent occupancy and not any time on annual or ordinary tenancy and that the Khot has no power to evict the occupant as long as he pays his assessment. The defendants have no evidence to prove that they or their predecessors-in-title let the land to the plaintiff's predecessors.

32. The strongest circumstance, however, is the manner in which the assessment is calculated in the receipt books. This is fully set out at page 6 of the judgment and need not be repeated here. It is an archaic and obsolete form in accordance with the Bombay Regulation I of 1808 and is fully explained by the Joint Judge, The references to Savai Sut, Dhep Moorahs and the commutation of the Government share of the paddy at Rs. 20 per Moorah leave no doubt that this land is held on the Suti tenure, and the word Suti is actually used in the entry (Kharip paddy-land according to Suti field Mai No. 14 Dhep Moorah &c.)

33. In these circumstances I am of opinion that the lower appellate Court was right in finding that the plaintiff's predecessors held this land under the Suti tenure before the grant of the village to the defendants' predecessors.

34. This being so the plaintiff is protected in two ways: first under Clause (7) of the lease his rights remain unaffected by the lease, secondly, u/s 52, Clause (2), of the Bombay Land Revenue Code, which states that in the case of land, the liability of which to payment of land revenue is subject to special conditions or restrictions respect shall he had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting according to the nature of the said rights.

35. The next question is what are the rights of the holders under the Suti tenure? This brings me to the consideration of Regulation 1 of 1808. This is a very long Regulation and is set out in the compilation already referred to at p. 28, Section 99. It is not necessary to go into the details. It is sufficient to give the clauses which are material to the present case. The object of the Regulation has been considered in *The Collector of Thana v. Dadabhai Bomanji* I.L.R (1876) Bom. 352 which was the case of an oart, At page 50 of the compilation we find the proclamation issued to the inhabitants of Salsette, Clause XLIII.

36. In the first clause of the proclamation the Governor-in-Council announces his determination to make the inhabitants of Salsette perpetual proprietors of the soil they now occupy under a very moderate and fixed rent payable to

Government, Deeds are to be issued to them accordingly. Clause 3 states that each deed will contain the following stipulation, viz.,

1st.?A fixed and permanent proprietary right in the soil, with liberty of selling, mortgaging, and bequeathing to the full extent of former notifications, and subject only to a fixed revenue payable to Government.

2nd.?Fixes the grain assessment and its cash equivalent, the latter being fixed for 10 years,

3rd.?[This is a very important clause and it runs as follows] ;?"The amount of grain assessment specified in each deed of property will be considered invariable to the present possessors and their posterity, and is never to be changed or enhanced, whatever may be the quantity, description of value of the produce of the soil, the increase or augmentation of the value of which will, therefore, be the unincumbered reward of the industry and good management of each proprietor.

37. Clause XLIV is the form of the deed referred to in the proclamation, It contains a clause that the holder, subject to the payment of the above mentioned quantity of batty (paddy), may convert the said ground or such part or parts thereof as he may think fit to the cultivation of any other species of produce whatsoever.

38. In clause XLV it is stated that it would now rest with the inhabitants to render their lands as much more productive as their means and industry might gradually extend to, without fearing any addition to the quit-rent now to be established and to be forever fixed. In the said portion of the clause the word used is permanent settlement.

39. In view of the wording of this proclamation which states that the amount of grain assessment is never to be changed or enhanced it is clear that the persons to whom this proclamation is addressed are entitled to hold their lands on payment of a fixed grain assessment, the only right reserved by Government being that of making a decennial valuation of the cash equivalent for the paddy. This is a right which admittedly has never been exercised in the one hundred and twenty years which have elapsed since the settlement. The introduction of the survey settlement is not a revision of the cash equivalent of the grain assessment. The revised assessment of this land is calculated on a different basis and though it may not exceed the present market value of the grain assessment it is not in accordance with the provisions of the proclamation, This point was considered in *Harischandra v. Sorabji* (1897) P.J. where this Court held that after this lapse of time it is doubtful if Government would now revise the cash value of the grain assessment. In any case they have not done so in the present instance and the defendant cannot take advantage of this provision.

40. This disposes of the second reason given by the learned Joint Judge. As a matter of fact the inhabitants of Salsette did not accept the deeds offered by

Government but this point has been considered in *The Collector of Thana v. Dadabhai Bomanji* I.L.R (1876) Bom. 352. and no stress is laid in arguments on this point. As a matter of history the arrangements indicated in the proclamation came into force and the fixed grain assessment was accepted from the holders of the land in accordance with the proclamation.

41. The other reason on which the Joint Judge based his judgment is one which has been adopted in arguments. It is argued that if the plaintiff appeals to the proclamation he must abide by its terms.

42. The object of the proclamation was the increase of cultivation and if the land is converted into building land the plaintiff has not performed his part of the contract and cannot take advantage of the proclamation.

43. It is to be observed that we are not in this case concerned with a building fine or with an alteration in the assessment consequent on the land having been converted to non-agricultural uses. The revised assessment on this land was fixed on the basis of the land being agricultural land, and not on its being used for building purposes.

44. Of course at the time the proclamation was issued the possibility of lands in Salsette being occupied by suburban residences was not within the contemplation of Government, but I can find no words in the proclamation indicating that the grant would be revoked on the holder's failure to observe any conditions, save only the payment of the fixed rental.

45. I may go further and say that the proclamation contemplates a variation in the quantity, quality and description of the produce of the land.

46. In Clause (3) the words are "the amount of grain assessment is never to be changed or enhanced whatever may be the quantity, description or value of the produce of the soil" and as has already been pointed out the holder is at liberty to cultivate the soil in any manner he pleases.

47. In the present case part of the land is admittedly occupied by fruit trees and in view of the very wide terms of the proclamation, I am of opinion that that is a sufficient compliance with the terms of the proclamation. Flowers and grass are as much the produce of the soil as rice, and the upkeep of a garden or a grass lawn is cultivation.

48. The proclamation makes no provision for forfeiture on the cessation of cultivation and I have very grave doubt whether the tenure could be determined on that score, even if the land were completely covered with buildings, which is not the case here. However, as a portion of the land is actually under cultivation that question does not arise.

49. In these circumstances I do not agree with the view taken by the learned Judge of the Court below that the tenure created essentially for the purpose of cultivation has ipso facto come to an end by the act of the holder himself. When

it is held that the land is held on Suti tenure the terms of the proclamation come into force. These terms are as clear as possible and amount to a permanent settlement, an expression actually used in the proclamation.

50. The plaintiff is, therefore, entitled to hold the land on payment of a fixed grain rental converted into cash at the rate of Rs. 20 per Moorah for white batty (i.e. husked rice) and Rs. 16 per Moorah for unhusked. Although the cash equivalent for rice is liable to be revised at decennial periods, this has never been done for 120 years.

51. I am, therefore, of opinion that the decree of the lower appellate Court should be reversed and the plaintiff granted the declaration sought with costs throughout from the defendants.

52. The decree will be :?It is declared that the plaintiff is entitled to hold the land in suit at a fixed assessment of Rs. 18-5-6 per year and that the defendants are not entitled to recover any amount in excess from him, and that the plaintiff is entitled to the refund of Rs. 49-3-0, the excess amount recovered from him, together with costs in all the Courts from the defendants.