

(1918) 12 BOM CK 0017
In the Bombay High Court
Case No : First Appeal No. 219 of 1913

Krishnaji Ganesh Kulkarni

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 03-12-1918

Acts Referred:

Citation : AIR 1919 Bom 122 : (1919) 21 BOMLR 376 : 51 Ind. Cas. 228

Hon'ble Judges : Shah, J; Basil Scott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basil Scott, C.J.—The plaintiff in this case sued for a declaration that he was a British subject, alleging that he was a resident of Lohakur in the Pachapur Taluka in Dharwar Subha, a village which was in the Peshwa's dominions until 1818 when it was annexed by the British Government and included in the District or Subha of Dharwar. He alleges that, on the 3rd of April 1820, the revenues of the village were assigned to the then Chief of Kurundwad (the ancestor of the second defendant), but the village itself remained in British possession through a misconception of the grant or through oversight or negligence and breach of duty and without any reasonable cause whatever. British authorities ceased to exercise their supreme authority over the village, a course which was blindly followed until now with the result that the Chief of Kurundwad began to exercise sovereign control over the village to the detriment of the plaintiff's rights and privileges of a British subject. The plaintiff had asserted these rights by asking unsuccessfully for a Tagai loan from the Collector of Dharwar and the Commissioner, Southern Division, and for a license for gun-powder and fuses from the District Magistrate of Dharwar. On both occasions the Government of Bombay upheld the decisions of the local officers who had refused the requests on the ground that Lohakur was not in the Dharwar District. The Collector also declined to enquire into the rights of the British Government over Lohakur. Hence the present suit for a declaration that Lohakur being situate in the District of

Dharwar, the plaintiff as a resident and a Kadim Watandar and Inamdar thereof is a British subject. He also prays for a perpetual injunction restraining defendant No. 2 from doing any act of interfering with such rights and privileges of the plaintiff.

2. The suit is instituted against the Secretary of State for India in Council and the Ruling Chief of Kurundwad The Patwardhans, the family to which the second defendant belongs are a Brahmin family which rose to power in the time of the Peshwas and had attained an influence in the Southern Mahratha country which led to a jealous interference on the part of the Peshwas prior to 1812. The Patwardhans in various branches held large Jahageers on condition of supplying troops for the Mahratha Confederacy, and in 1812 the differences arising between them and the Peshwas resulted in the intervention of the East India Company by whose influence articles of agreement were entered into in 1812 between the Poona Government and the Patwardhans.

3. In 1817, the Peshwa's Government at Poona came to an end with the battle of Kirkee and the East India Company assumed control of the territories theretofore subject to the Peshwa. The territorial acquisitions of the East India Company resulting from the fall of the Peshwas extended southwards beyond Dharwar, and in 1818 as an administrative measure. the application of the Regulations theretofore in force within the territories of the East India Company was extended by General Munro for the purpose of governing the territory round about Dharwar which he was occupying, but there was no legislative extension of statutory enactments to the Southern Mahratha country until Regulation VII of 1830. At first the British district in the Southern Mahratha country was associated with the name of Dharwar, but subsequently the Dharwar Zillah was broken up into Dharwar and Belgaum. But there is no evidence in the case that the village of Lohakur, of which the plaintiff claims to be a Kadim Inamdar, holding a Kulkarniki Vatan, was included in the Belgaum District, as carved out from the Dharwar District, or in the Dharwar District as originally administered by the East India Company. The village is situated towards the north of the Belgaum District as it now exists, and is very close to Shedbal. Shedbal was a Jahageer given by the Peshwa to Ganpatrao, one of the Kurundwad family, in 1812. It appears now to have lapsed to the British Government. Lohakur lies slightly to the north of Shedbal, and there is no evidence that it was ever administered by the British Government. Its history is connected with the history of the Kurundwad family in its relations with the British Government immediately after the fall of the Peshwas.

4. In West's Memoir of the States of the Southern Mahratha country at page 38 is to be found an extract from the despatch of the Secretary to the Governor-General dated the 14th July 1818 to Mr. Mount Stuart Elphinstone expressing the views entertained by Lord Hastings as to the general policy to be adopted towards the Southern Mahratha Chiefs, in which it is stated that his Lordship has no design of introducing into the territories of the Jahageerdars our system of

administration in any of its branches. His Lordship conceives the British Government, however, to be entitled to require the establishment by the Jahageerdars themselves of such an internal course of management as by maintaining the peace of their own districts shall prevent them from becoming dangerous to the tranquillity of the neighboring possessions of the Government.

5. The terms proposed by the East India Company are set out on p. 142 and the following pages of West's Memoir Appendix. The 5th clause of those terms states that "the confirmation under the guarantee of the British Government, of all lands held under the authority of the Peshwa, was irrevocably pledged to you, as long as you should continue to perform the duties of allegiance, fidelity and attachment. A similar clause is introduced into the present agreement." The first part of this clause referred to in the agreement of 1812 arranged by the East India Company between the Peshwa and the Patwardhans, and on p. 146 of the Appendix the 7th term of the agreement proposed on behalf of the Governor-General is: "You are responsible for the good Government of your Jahageers and for the protection of the people. As long as the administration of justice and of Police shall be well conducted, the Government will not interfere in the management."

6. The terms finally granted by the East India Company are to be found on page 280 of the 7th Volume of Aitchison's Treaties. Article 9 is : "You will attend to the prosperity of the riots of your Jahageer, to the strict administration of justice, and the effectual suppression of robberies, murders, arsons, and other crimes. The Government will not enquire into every complaint that may arise in your Jahageer." Article 11 is:

"If any offenders from your Jahageer lands shall come into those of the Government, you will represent the affair, and they shall on enquiry be delivered up to you." That agreement or treaty was signed at Gulgulee on the Krishna on the 6th June 1819.

7. On the following day Mr. Mount Stuart Elphinstone addressed the Secretary to the Governor-General a letter in which he quotes from a document of 1818 as explaining the principle of the agreement which had just been signed with the Patwardhans. It runs as follows (see West's Memoir, Appendix, page 173): "These Jahageerdars must, by our agreement with them, continue to be governed according to the terms of Pandharpur, which are founded on the ancient customs of the Mahratha Empire. They must therefore have the entire management of their own Jahageers, including the power of life and death, and must not be interfered with by Government, unless in case of very flagrant abuse of power or long continuance of gross misgovernment."

8. In para 12 of the same letter Mr. Elphinstone observes: "The only general rules that I would suggest for the future regarding the Chiefs are that no alterations regarding the police, the customs, the mints, and similar branches of the administration of the Jahageers which may be thought to affect the interests

of Government may be attempted without the free consent of the Jahageerdars", and in para. 12, as well as in para. 13 and other paragraphs of his letter he refers repeatedly to the Jahageerdars as the Chiefs.

9. So far then as the Jahageers of the Kurundwad family are concerned it is quite evident that sovereign power and full and complete jurisdiction, civil and criminal, in their territories was conferred upon them by the British Government by the settlement of 1819.

10. The village of Lohakur which, as I have said, is not indicated in any document referred to in this case as forming part of the British territory known as the Subha of Dharwar, appears to have been ceded by the East India Company to the Jahageerdar according to the arrangements which were maturing during the years 1818 and 1819. It appears that two villages of Sampgaum and Bagewadi which had belonged to the Kurundwad family had been seized by another Chief, the Chief of Kittur, and had not been returned by him. In a report by General Munro to Mr. Mount Stuart Elphinstone on the 28th August 1818, cited at pages 36 and 37 of West's Memoir it is stated: "The Patwardhans are the only great Jahageerdars with whom an arrangement has not yet been made; but as they are to receive and not to give, no difficulty is likely to be met with beyond what may arise from their discussions among themselves respecting their several shares of the additional allowances in money and land which may be granted by Government. I have not stated to their Vakeels the amount proposed to be given, but they are desirous that, whatever it may be, the division should be left to be made among themselves. The Tasgaum, Chinchnee, and Kurundwad Chiefs, from the disposition they showed at an early period to quit the Peshwa, are entitled to a greater proportion than the others, and it will therefore be necessary that we make the distribution, unless they themselves express a desire that it should be made without our interference. Two lacs of rupees will, I think, be sufficient to satisfy all their expectations. This sum will be made up by a remission of the Daishmook fees paid to the Sirkar, by a transfer of such Sirkar villages as are insulated among the lands of the Patwardhans, and by making over a part of Rastia's resumed Jahageer on the north bank of the Kristna.

11. On the 16th August 1819 Mr. Mount Stuart Elphinstone wrote to Mr. W. Chaplin acquainting him with the arrangement which he thought most expedient for completing the grant of land of which hopes had been held out so long to the Patwardhans. The land ought, he conceived, to be granted as personal Tainat, and the amount to be awarded in the shape of land to Keshavrao of Kurundwad was stated to be Rs. 30,000. (See West's Memoir, Appendix, page 184). This was a reduction from the sum originally proposed to be awarded to Keshavrao of Kurundwad in the shape of land. (See page 147 of West's Appendix, where Keshavrao of Kurundwad was set down as to receive Rs. 40,000 including indemnity for Sampgaum and Bagewadi, the two villages which had been seized by the Chief of Kittur).

12. In his letter of the 16th August 1819, Clause. 7, (West's Memoir, App., p. 185) Mr. Elphinstone said : "The grant of Rs. 30,000 to Keshew Row and Rs. 20,000 to Gunput Row Konair is a compensation for Sampgaum and Bagewadi, to which the family is fairly entitled. Rs. 10,000 additional is granted to Keshew Rao as the elder branch, who has lost considerably by the partition to which in strictness Gunput Row had no claim, although the Peshwa's Sanad is now a bar to any question of his title (that refers to the partition under which Shedbal was given by the Peshwa to Ganpatrao in 1812). It may be stated to Gunput Row that as Sampgaum and Bagewadi were never given up to him by the Peshwa, it would perhaps be strict justice to leave those districts with Keshew Row; that in granting him a share therefore the Government feels itself compelled to make a compensation to Keshew Row by a grant of Rs. 10,000 Tainat."

13. In Clause 8 it is said : "These grants ought of course to be made in such a manner as to consolidate the Jahageers of the Patwardhans. It is particularly desirable that their lands should be as little mixed as possible with those of the Raja of Satara, and any villages you may find it necessary to give up for that purpose can be made up by giving villages to the Raja in the sequestered Jahageers of Rastia and Gokla."

14. The only documents forthcoming which relate explicitly to the village of Lohakur are Exhs. 25, 26 and 27. Exhibit 25 is a statement of account showing how the Rs. 30,000 is to be made up by the grant of land to Keshavrao. It is dated the 8th January 1820, and one of the items is Rs. 5,527-6-0 for "detached villages," or as General Munro had called them "insulated villages" in the Taluka of Pachapur in the principal division of which one is Lohakur yielding a revenue gross of Rs. 912-13-0. The Yadi concludes with the words that "the release deeds of those villages may be forwarded." The account was revised on the 3rd April 1820 by the Yadi, Exh. 26, and there was a further Yadi revising the account in respect of the village of Lohakur in the same year which is exhibited as No. 27. We have not got the release deeds of the village contemplated in Exh. 25.

15. It is, however, certain that the Kurundwad Chiefs of the Senior Branch descended from Keshavrao have administered the Lohakur village for close upon a hundred years as part of his estate or Jahageer or State whichever expression may be deemed most suitable, and they have administered it as sovereign Chiefs. Their sovereignty has been recognised by an agreement with the Government of India in the year 1886, (see page 223 of Aitchison's Treaties, Vol. VII), whereby the Kurundwad State ceded to the British Government full jurisdiction, short of sovereign rights, over "the lands within the State then occupied, or which may thereafter be occupied, by the railways comprised in the Southern Mahratta Railway system." As indicative of the status of the Patwardhan

16. Jahageerdars since the taking over of the territories of the East India Company by the Crown I may refer to the Adoption Sanad granted to the Patwardhans in 1862, page 285 of Aitchison Vol. VII which states that: "Her Majesty being desirous that the Governments of the several Princes and Chiefs of

India who now govern their own territories should be perpetuated, and that the representation and dignity of their houses should be continued; in fulfillment of this desire this Sanad is given to you to convey to you the assurance that, on failure of natural heirs, the British Government will recognize and confirm any adoption of a successor made by yourself or by any future Chief of your State that may be in accordance with Hindu Law and the customs of your race. Be assured that nothing shall disturb the engagement thus made to you so long as your house is loyal to the Crown and faithful to the conditions of the treaties, grants or engagements which record its obligations to the British Government."

17. So much for the history of the Kurundwad State and the connection of the village of Lohakur with that State It is contended on behalf of the plaintiff that although the East India Company may have thought that it was ceding the village of Lohakur to the Kurundwad State, it had no power to cede territory without the sanction of Parliament, and that Parliament's sanction was not obtained, and therefore the cession is of no avail and presumably the argument would be that there is a resultant return to the British Government of the village of Lohakur, and if must, therefore, be taken to be part of the Dharwar Collectorate for the purposes of the suit although the Collectorate of Belgaum intervenes between Lohakur and Dharwar. The argument is founded upon the dictum in *Damodar Gordhan v. Ganesh Devram* (1873) 10 B.H.C.R. 37, which was dissented from or disapproved of by the Privy Council on appeal in the judgment in (1876) L.R. 3 I.A. 102 (Privy Council) . As pointed out by counsel for the respondent the Bombay High Court in the judgment in *Damodar Gordhan's* case overlooked the Charter of the East India Company dated 1758 which provides that "The East India Company" shall and may, by any treaty or treaties of peace, made or to be made between them, or any of their officers, servants or agents employed on their behalf, and any of the Indian Princes or Governments, cede, restore, or dispose of any fortresses districts or territories acquired by conquest from any of the said Indian Princes or Governments, and which shall be acquired by conquest in time coming."

18. So far as it is material for the purpose of this case the power so conferred upon the East India Company may be said not to have been interfered with by any of the Regulating Acts, namely, 13 of Geo. III, Clause 63 and 24 of Geo. III, Clause 25. The 15th section of the latter Act empowered the Board of Commissioners for the better government of the East Indies, if they considered the subject-matter of their deliberations concerning the levying of war or making of peace, or treating or negotiating with any of the Princes or States in India required secrecy, to send secret orders and instructions to the secret committee of the Court of Directors who shall thereupon transmit their orders according to the tenor of the said orders and instructions of the said Board to the respective governments and presidencies in India and that the said governments and presidencies shall pay a faithful obedience to the orders and instructions so conveyed to them. It is not suggested that any secret orders or instructions or any orders or instructions of any kind were sent to the Governor-General to

prevent the cession of territory as part of the peace treaties with the Mahratha Confederacy in the years 1818 to 1820.

19. It follows from what has been said as to the powers and status of the Kurundwad Jahageerdars that they are Ruling Chiefs and cannot be sued without the consent of the Governor* General which has not been obtained in this case. The suit, therefore, against the second defendant is bad on that account, and it is unnecessary to go into the question whether the suit is also bad on the ground that they are Sirdars and cannot be sued in any Court except in the Court of the Agent to the Sirdars. It appears to us that no cause of action has arisen to the plaintiff against the defendant No. 1 or the defendant No 2 on account of the refusal by the Collector of Dharwar to grant him what he asks as stated in the plaint. We are of opinion that all the issues found by the learned District Judge have been correctly found and that the suit has been rightly dismissed. We, therefore, affirm the decree and dismiss the appeal with costs. Separate sets of costs.

Shah, J.

20. I concur.