
(1923) 06 BOM CK 0016
In the Bombay High Court

Maharaja of Kolhapur

APPELLANT

Vs

Bala Maharaj

RESPONDENT

Date of Decision : 12-06-1923

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876 — Section 12

Citation : (1924) 26 BOMLR 252

Hon'ble Judges : Viscount Haldane, J;Viscount Cave, J;Phillimore, J;Parmoor, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Viscount Haldane, J.—These are consolidated appeals from a decision of the High Court at Bombay on a question referred to it by the Government of Bombay, u/s 12 of the Bombay Revenue Jurisdiction Act (X of 1876). The question referred was whether the application in or about the year 1864 of the Summary Settlement under Bombay Acts II and VII of 1863 to certain lands then held by Shri Tatya Maharaj, which subsequently devolved on the late Baba Maharaj, was valid and legal. These Acts provided for the settlement of claims to exemption from payment of land revenue and for the guarantee of a title in perpetuity to the holder of the land, his heirs and assigns, without restriction by Government as to adoption, succession or transfer. The Acts applied to holders of land the freedom of which from payment of land revenue had not been the subject of formal adjudication, where the holders had consented to submit the terms and conditions of holding to summary settlement. But the Acts were not to apply where the land was held under treaty or was granted or held as jagir or saranjam, or similar political tenure, which was defined to mean tenure created from or dependent on political considerations, the existence of which was to be determined by the Government.

2. Section 12 of the Bombay Revenue Jurisdiction Act of 1876 gave the Government a general power to refer questions arising in the investigation of claims which, but for the passing of that Act, could have been tried by a Civil

Court to the High Court at Bombay for decision.

3. The circumstances under which the question which has arisen was referred to the High Court were these. Baba Maharaj died in 1897. In 1901 a dispute arose between the second appellant in the present appeals, Shri Bala Maharaj, as claimant to the lands the title to which is in controversy, and the first respondent, Shri Jagannath Maharaj, as to which of them was the validly adopted son of the late Baba Maharaj. Jagannath, who was then a minor, brought a suit in the Court of the First Class Subordinate Judge of Poona against Bala, who claimed to be the properly adopted son, to establish his own title. The special purpose of the suit was to have it determined that Jagannath had been validly adopted by Baba's widow, and that it was consequently impossible for her to make, as she had endeavoured to do, a second adoption of Bala less than two months later. A point relied on by the latter in his written statement was that the approval of His Highness the Maharajah of Kolhapur was necessary to such an adoption, and that such approval not having been given, the earlier adoption was void. In July, 1906, the Subordinate Judge decided in favour of Jagannath, holding that he had been validly adopted as the son of Baba. It was held, as the consequence, that no title or interest in the property of Baba had passed to Bala, and he was restrained by injunction from interfering with Baba's property. The High Court at Bombay reversed this, but the Privy Council, differing, restored the judgment of the Subordinate Judge.

4. To these proceedings the Maharajah, who was no party to them, finally took exception, and he and Bala made representations to the Government of Bombay to the effect that, as the adoption of Jagannath had not received the approval of His Highness, the adoption could have conferred no title to the property of Baba, and that it must go to Bala, whose adoption the Maharajah had approved.

5. The Bombay Government thereupon referred the point raised by this claim to the High Court u/s 12 of the Bombay Revenue Jurisdiction Act of 1876. This section provides, as already stated, that if on the trial or investigation of any suit, claim or objection which but for the passing of the Act might have been entertained by a Civil Court, there arises any question on which the Government desires the decision of the High Court, it may cause a statement to be prepared and refer the question for such decision. But by Section 4 it is provided that no Civil Court is to exercise jurisdiction inter alia in the matter of any claim against the Government relating to lands held under treaty, or to lands granted or held as jagir or saranjam or on other political tenure, or to lands declared by Government, or by any officer duly authorised in that behalf, to be held for service. Unless, therefore, the claim in the case before their Lordships falls within these words, it is said that, as a Civil Court might have exercised jurisdiction, the Government had no power to refer the question which arose to the High Court.

6. Passing for the moment from the consideration of the point as to jurisdiction which arises under tin's section, it will be convenient to refer in the first place to the history of the dispute. This is explained with sufficient accuracy in the

Statement submitted to the High Court by the Government of Bombay when defining the question referred. The history of the events which led to the reference to the High Court appears from the, following abridgment of that Statement.

7. Shri Tatya Maharaj was a grandson of Shri Sidheshwar Maharaj, a learned and saintly man who at some date previous to 1800 was appointed by Chhatrapati Shivaji Maharaj III, the then ruler of Kolhapur, to be his spiritual preceptor. For the maintenance and dignity of the family of Shri Sidheshwar Maharaj hereditary grants of land had been made and hereditary honours, including the hereditary title of "Maharaj", conferred upon him by the said Maharajah of Kolhapur.

8. Upon the death of Shri Sidheshwar Maharaj in 1800, his property originally acquired from the Maharaja of Kolhapur was divided amongst his three sons, Nana and Bhau.

9. Between 1813 and 1821 Bhau Maharaj (Sidheshwar's youngest son) took an active part in Kolhapur politics, being then the Prime Minister of Kolhapur, and rendered valuable services to both the British Government and the Maharaja.

10. Upon the downfall of the Peshwa, Sir Thomas Munro, in 1818, when settling the Southern Mahratha Country which had fallen into the hands of the British Government, returned to Baba Maharaj (Sidheshwar's eldest son) three villages in Chikodi, which were previously held by him, and by sanad dated August 2, 1818, granted to Bhau Maharaj, as "inam dharmadaya," hereditarily three villages and one hamlet. The sanad stated that he was "great, worthy and a well-wisher of the Company's Government. "The villages and hamlet so granted were Kerur, Hebal, Kadapur and Kochari, in the Talukas of Chikodi and Manowlee. This grant was subsequently confirmed on October 24, 1819, by a sanad in the same terms signed by the Honourable Mountstuart Elphinstone.

11. In a letter dated June 28, 1818, addressed to the Honourable Mountstuart Elphinstone, Sir Thomas Munro referred to the above grant (which he was then proposing to make) as "the new jahagir," and in his subsequent report to the same officer on the state of the Southern Mahratha country, dated August 28, 1818, Sir Thomas Munro stated that the villages were given to Bhau Maharaj as a "jahagir.

12. By a private letter dated August 2, 1818, Sir Thomas Munro informed His Highness the Maharaja of Kolhapur that Bhau Maharaj being a particular friend of the Honourable Company, it had been deemed necessary to make him the above grant.

13. On August 2, 1818, Sir Thomas Munro wrote an official letter to His Highness the Maharaja of Kolhapur referring to the above grant and the assistance given by Blum Maharaj, and in a letter dated August 15, 1818, and also addressed to His Highness the Maharaja, the Collector of Dhaiwar also referred to the services of Bhau Maharaj and characterised him as "a very worthy man indeed.

14. On October 25, 1818, His Highness the Maharaja rewarded Bhau Maharaj for his political services by a gift of a lakh of rupees.

15. In 1818 the said Talukas of Chikodi and Manowlee were made over by Sir Thomas Munro to His Highness the Maharaja of Kolhapur subject (inter alia) to the grants made as above stated.

16. In 1821 His Highness the Maharaja of Kolhapur granted to Bhau Maharaj ten villages, several of which were within the said Talukas of Chikodi and Manowlee.

17. On January 24, 1826, a treaty was concluded between the British Government and His Highness the Maharaja of Kolhapur which, after reciting that a treaty had been concluded in 1812 and that certain misunderstandings had arisen, declared, with a view to the removal of such misunderstandings and to the confirmation of the alliance, that the British Government acknowledged that the Districts of Chikodi and Manowlee, which had been transferred to His Highness by a sanad under the signature of Sir Thomas Munro, were ceded to His Highness in full sovereignty, His Highness the Maharaja engaging on his part to respect the rights and privileges of the jamindars, inamdars and watandars of those Districts. The Treaty further declared by Article 7 as follows:-

The Raja of Kolhapur promises to continue to Bhau Maharaj and Baba Maharaj their respective lands agreeably to the Schedule annexed. The guarantee of the British Government to the enjoyment of the above lands and rights shall only continue during the lifetime of the above-mentioned person, but the rights of their descendants as founded on sanad or custom shall not be prejudiced by the cessation of the said guarantee.

18. This Treaty was ratified by the Governor-General in Council on March 10, 1820. The Schedules, a copy of which was sent to Bhau Maharaj, included the villages granted to him by Sir Thomas Munro in 1818 and the villages granted to him by His Highness the Maharajah of Kolhapur in 1821.

19. Nana Maharaj (the second son of Sidheshwar) had died without issue in 1816, leaving a widow. By order dated January 31, 1826, the Sir Collector and Political Agent, Dharwar, dealt with the succession to the share of Sidheshwar's property which came to Nana upon partition after the death of the former. The order laid down that the widow was entitled to enjoy the property during her life but that she had no right to deal with it by way of gift, sale or mortgage; that she was not to make any adoption, and that after her death the property was to go to Baba Maharaj and Bhau Maharaj and their sons. The property was included in the schedule to the Treaty of 1826.

20. A further treaty between the British Government and the Maharaja of Kolhapur was signed on October 28, 1827. The treaty recited the treaty of 1826 and stated that His Highness had uniformly evinced a total disregard of the friendship of the British Government and in violation of the conditions contained in Article 4 of the treaty of 1826 had repeatedly infringed the rights of the

inamdars and watandars of the Talukas of Chikodi and Manowlee, and that it therefore became necessary that His Highness should give back to the British Government the said Talukas "in the same state in which he received them," and that His Highness thereby agreed so to do. Article 3 provided as follows:-

In the 7th Article of the said Treaty the possessions of Bhau Maharaj and Baba Maharaj were guaranteed to them for the terms of their respective lives only (provisions being made that the rights of their descendants, as founded on Fanad or custom, should not be prejudiced by the cessation of the said guarantee). As, however, His Highness has never ceased to annoy and distress these persons by seizing their villages and other property, it has been deemed necessary to extend the guarantee of the British Government to their descendants, and His Highness accordingly engages never to molest them.

21. The Talukas of Chikodi and Manowlee accordingly passed into the possession of the British Government, but the Political Agent raised the question whether Government should retain the whole benefit of Article 2 of the treaty of 1827, which provided that the two Talukas should be given back to the British Government in the same state in which His Highness received them, or whether subsequent grants were to be considered valid, and he submitted a list of inams which according to the strict letter of the treaty might have been resumed, but which he had allowed to remain in the possession of the proprietors. That list included the villages granted to Bhau Maharaj and Baba Maharaj by the Maharaja between 1818 and 1827, while the Talukas were under his sovereignty, and it stated that they were given up "as being included in the Schedule of their possessions guaranteed by the Honourable Company," i. e., the Schedule to the Treaty of 1826. The Government of Bombay, by letter dated May 23, 1828, approved of the Political Agent's proposals and authorised him to carry them into effect.

22. Bhau Maharaj died in 1837, and on January 4, 1838, Government inquired of the Agent for Sardars whether the deceased held any possessions resumable at his death. The Agent replied, on March 3, 1838, that all the possessions held by Bhau Maharaj were guaranteed by the third Article of the treaty of 1827, and that from all the sanads and other documents which he had examined it appeared that all such possessions were hereditary and not resumable at his death. The Agent further reported that Bhau Maharaj left two sons, Huree Hur Pandit (alias Tatyah Maharaj) and Vishwambhur Pundit (alias Dada Maharaj).

23. In 1828 Bhau Maharaj had petitioned Government to be allowed to exchange one of the villages granted to him by Sir Thomas Munro (*supra*) for others situated near Poona, where he usually lived. The exchange was effected (after Bhau Maharaj's death) by sanad dated February 7, 1838, signed by the Principal Collector of Poona, whereby the villages of Vadgaum, Koarlee, Pimpulgaum and Kassgaum (together with other lands) in the Poona District, were granted to Bhau's sons in exchange for Keyroor, one of the villages granted by Sir Thomas Munro.

24. In 1844 the widow of Nana Maharaj, in spite of the order referred to (supra), purported to adopt one Appa, a grandson of Baba Maharaj, but the Government ruled in 1857 that "the consent of the Kolhapur Government not having been obtained to the adoption, and the difficulty of proof as to the consent of Tatya Maharaj to the arrangement are facts which are fatal to the claim of Appa Maharaj.

25. During the years 1851 to 1864, which covered the period of inquiry into the titles to Inam Estates in the districts in question Raoji Maharaj was the representative of the elder branch of the family of Shri Sidheshwar Maharaj and Tatya Maharaj the representative of the younger branch. In 1851 Tatya Maharaj submitted his kaifiat, or written statement, to the Inam Commission, Poona, in winch he stated that the sanads relating to his lands had been scrutinised and signed by Mr. Baber, the Political Agent and Collector at Dharwar, who had also registered the Schedules of possessions and sent the Schedule to him. The Assistant Inam Commissioner afterwards inspected the sanads and returned them.

26. On Tunc 11, 1857, Tatya Maharaj wrote to the Assistant Inam Commissioner, Belgaum, who had culled for the sanads, stating that they had been sent to him. The letter went on to point out that the grants had been enjoyed under the guarantee of the Company's Government and that inquiries had already been held about them many times.

27. In 1859 an inquiry was held as to the succession to the villages in the Poona District which had been exchanged for the villages of Keyroor in 1838 (supra), and the Sub-Assistant Inam Commissioner reported that Tatya Maharaja's (Hurre Hur Pondit's) claim appeared to be firmly based on the recognised competency of the grantor and the guarantee of the British Government under the treaties above referred to. Acting upon such report, the Acting Inam Commissioner decreed that the property "be continued in Inam for so long as there may be in existence any male lineal descendant of Wasudeo Pandit, alias Bhau Maharaj.

28. In 1861 Summary Settlement was being proposed and Tatya Maharaj objected to its application to his possessions on the ground that they were held "under treaty." The Revenue Commissioner, Southern Division, on February 1, 1862, referred to the Government of Bombay for decision under the Summary Settlement Rules XX (Clause C), the question whether Tatya Maharaj held any of his possessions within the dominions of the British Government on political tenure. The Revenue Commissioner was informed in reply by letter dated March 6, 1862, that His Excellency in Council

does not consider that a prima facie, case has been made out for excluding Tatya Maharaj's lands from the benefit of the Summary Settlement on the ground of their being held on political tenure. His Excellency in Council accordingly directs that the terms of the Summary Settlement be offered to Tatya Maharaj. If he

refuses to accept the unassailable title thus offered it will remain for further consideration whether any and what inquiry should be instituted into the title on which he holds the lands.

29. On March 28, 1862, the Collector of Poona wrote to Tatya Maharaj requesting him to state in writing whether he agreed to the Summary Settlement being applied to his Inam holdings in British territory. He replied on March 29, 1862, that since the time of his father the villages and lands had been continued to him through the friendship and favour of Government and this had been communicated in detail to the Agent for Sardars and the Revenue Commissioner, and continued; "In spite of it Government are passing the order and it cannot be helped. I therefore agree to the Summary Settlement being applied to the Inam villages and lands, etc.

30. In June, 1862, Raoji Maharaj and Tatya Maharaj were served jointly by the Collector of Belgaum with formal notice giving them the option of either having the titles to their properties in the Belgaum District inquired into and adjudicated upon or of paying quit rent and navarana and getting an absolute property in the holdings.

31. By letters dated respectively August 14 and 25, 1852, Raoji Maharaj objected to paying quit rent and nazarana on the grounds that the titles had been already investigated by Government officers and that the holdings were guaranteed by treaty. He asked that the notice might be withdrawn.

32. The Summary Settlement Act (Bombay Act II of 1863) was passed on April 9, 1863.

33. On April 10, 1863, the Collector of Belgaum informed Raoji that the Government had ruled that the Inams were not of such a nature as to preclude the application to them of the Summary Settlement Act (*supra*) and that it would therefore be applied.

34. By his reply dated June 10, 1863, Raoji referred to the objections already put forward and stated that he was about to make a submission to Government in the matter.

35. On June 19, 1863, the Collector of Belgaum again wrote to Raoji referring to the decision of Government that the Summary Settlement was applicable to his Inam holdings and informing him that notice had been served and that if he was unwilling to accept the Summary Settlement and desired an investigation into title under Act XI of 1852 he would have to furnish due security.

36. Raoji then, on July 6, 1863, wrote setting out in detail his grounds of objection and submitting a prayer to Government that as the villages were guaranteed the title should not be investigated.

37. On November 2, 1863, the Revenue Commissioner, Southern Division, requested Colonel Etheridge, the Settlement Officer, Southern Division, "to

prepare for submission to Government a comprehensive report indicating all the villages held by the family affected by the Order contained in paragraph 3 of Government letter No. 860, dated March 6, 1862, and stating how the offer of Summary Settlement had been received by the holaers.

38. Colonel Etheridge accordingly wrote to Raoji Maharaj on November 30, 1863, and to Tatya Maharaj on December 2, 1862. As the result of his letters both Raoji and Tatya agreed to accept a Summary Settlement.

39. The Summary Settlement was accordingly applied to all the possessions of Raoji Maharaj and Tatya Maharaj in British India.

40. The Settlement was so applied without reference to or the consent or approval of His Highness the Maharaja of Kolhapur. In 1866, Tatya Maharaj died, and there were various claimants to his estate, one of whom was Baba Maharaj, who claimed to be an adopted son. The then Maharajah of Kolhapur was a minor and the British Government had assumed the administration of the State. The various claimants submitted their claims to British Government and the matter was referred to the Political Agent to report. Upon receipt of his report the Government of Bombay in the Political Department passed a Resolution, No. 2105, dated June 24, 1867, of which the follow-are the material paragraphs:-

(12) The main question being whether the adoption should be recognised by Government, it is necessary first to obtain a clear idea as to the meaning and effect of its recognition by Government.

(13) The recognition of the adoption can have effect merely as regards the right of the adopted son to succeed to the Inam lands, and here it must be mentioned that these lands are situated partly in British territory and partly in Kolhapur territory.

(14) Now the lands in British territory have been included in the Summary Settlement under Bombay Act II of 1863 and the recognition by Government of the heir of the deceased Sirdar can, as regards these lands have no meaning beyond a determination to whom the Government should primarily look for the payment of the nazarana commutation and quit rent due to Government under that Summary Settlement. As for the rights of any persons to succeed to these lands, whether by adoption or otherwise, their recognition by Government can have no effect whatever.

(15) But as regards the holdings within the Kolhapur State, recognition of the adoption by Government would have a distinct legal effect inasmuch as under the laws of that Principality the recognition by the Raja is essential to the validity of the adoption as entitling to continuance of the Inam holdings, and the Government is now in the place of the Raja.

41. The Resolution proceeds to order that the matter should be sent back to the Political Agent for a further report.

42. After receipt of the further report the Government of Bombay passed a final Resolution (No. 3619, dated November 2, 1867) the material parts of which are as follows:-"The Governor in Council considers that the objections put forward by the various petitioners to the adoption of Wassoodeo Pandit (Baba Maharaj) by the late Tatya Maharaj have been satisfactorily disposed of. The adoption should therefore now be recognised on the part of the Kolhapur State..."With reference to paragraph 26 of the Political Agent's report, care should be taken not to sanction any adoptions save from lineal male descendants of Shideshwav Maharaj." (Paragraph 26 of that report dealt with a claim by the widow of a nephew of Tatya Maharaj that the right to adopt an heir rested with her.) This Resolution received the approval of the Secretary of State for India in Council in a despatch dated May 14, 1868.

43. The acknowledged representatives of the family of Shri Sidheshwar Maharaj still bear the honorific title of "Maharaj" and are held in high reverence and esteem by His Highness the Maharaja of Kolhapur.

44. Baba Maharaj died in 1897 possessed of villages and lands both in British India and in Kolhapur, being those mentioned in the schedule aforesaid, the villages and lands in British India being part of those to which Summary Settlement was applied, as before stated. He left a will whereby he appointed five trustees (one of whom declined to act) and directed his widow, Tai Maharaj, in certain events, which happened, to adopt a son. On June 28, 1901, the widow purported to adopt Jagganath, whose adoption was supported by the four trustees who acted but did not receive the approval and sanction of His Highness the Maharajah of Kolhapur. On August 19, 1901, the widow purported to adopt Bala Maharaj, His Highness the Maharajah approved of the latter adoption and sanctioned and recognised it. Jagganath filed a suit for a declaration that his adoption was valid, and it was ultimately decided by the Judicial Committee of the Privy Council in 1914, as already stated, that Jagganath was the validly adopted son of Baba Maharaj.

45. It was stated to the High Court in the present reference that His Highness the Maharajah and Bala Maharaj contended that no adoption which had not received the sanction and approval of His Highness could confer a title to the property in question, and that succession to the same would have to be determined in accordance with the terms of the guarantee in the treaties and the orders of Government based thereon, i. e., the property in question would have to go to Bala Maharaj, whose adoption was sanctioned by His Highness.

46. The High Court held that it had jurisdiction to entertain the reference, and the question referred was accordingly dealt with by Macleod C.J., and Pratt and Fawcett JJ. These learned Judges decided that the lands in question were not held either under treaty or on political tenure, and that the application of the Summary Settlement to the lands in question had been valid.

47. Reverting to the point as to jurisdiction under the Act of 1876, to which their

Lordships have made reference earlier, they think that the High Court held rightly that it had jurisdiction to decide the question referred. This in substance turned on whether there was actually a claim against the Government relating to lands held under treaty, or as saranjam or on other political tenure. The Maharaja of Kolhapur had himself, in their Lordships' opinion, a claim coming within the language of the Act. He was seeking to have it declared that the lands in question were not subject to the Summary Settlement and should therefore go to Bala, whose adoption he had sanctioned. There was accordingly a claim against the Government, jurisdiction as to which under the Act of 1870 was excluded by Section 4, this claim being that the lands were held under treaty or as saranjam or on other political tenure; and as the Maharaja's position and rights on the question of adoption were not affected by the result of the proceedings which were disposed of by the decision of the Privy Council, for to these proceedings he had not been a party, the real question is whether power to answer the question referred to by the Government did not come to the High Court because the case was one of the cases excluded by Section 4. Their Lordships agree with the High Court of Bombay in thinking that the claim in question was one of those excluded by Section 4, and was therefore referable to that Court. They agree also with the conclusion at which the High Court arrived upon the merits.

48. They are of opinion that the nature of the title of Bhau Maharaj was really defined by the sanad of August 2, 1818, and the later confirmatory sanad of October 24, 1819, referred to in the Statement of the question laid before the High Court. In the first of these sanads Sir Thomas Munro, when settling the Southern Mahratha country, which had fallen into the hands of the British Government, granted to Bhau three villages and a hamlet, forming the bulk of the lands in question. The grant was made to Bhau as inam dharmadaya and was to be hereditary. The signification of such a grant is that it was made on grounds of religion, and not on political grounds. Their Lordships agree with the learned Judges of the High Court that the mere fact that in occasional correspondence the grant is referred to as "jagir" or "saranjam," i.e., political, cannot derogate from the effect of the language of the grant itself. They also think that the question whether the tenure was political was one which was for determination by the Government under the provisions of the Interpretation section (16) of the Summary Settlement Act II of 1863, and that, by treating the title as one to which the Act applied, the Government must be taken to have determined that the tenure was not political. It appears, moreover, from a formal letter which was before the High Court, that on March 6, 1862, just before the Summary Settlement Acts were passed, the Governor in Council had determined that no prima facie case had been made out for the exclusion of the lands from the settlement on the ground of their being held on political tenure.

49. Nor do their Lordships think that the lands can be properly said to have been held "under treaty." It is true that the treaty of 1827 referred to in the Statement extended the guarantee of Bhau's title by the British Government to his

descendants. But the correspondence with the Government at the time, also referred to in the Statement, shows that Bhau's original title was not disturbed when action was taken against the Maharajah by the Government. Bhau therefore remained entitled under the terms of the original grant. Their Lordships agree on this point with the view taken of the effect of the treaty of 1827 by the learned Judges of the High Court.

50. As the result of the lands being thus brought under the Act of 1863 they became u/s 2 the "heritable and transferable property of the holders, their heirs and assigns, without restriction as to adoption, collateral succession or transfer" in perpetuity.

51. It was therefore not only competent to the Bombay Government to refer the question they did to the High Court, but the decision given on that question was well founded.

52. Their Lordships will humbly advise His Majesty that the appeals should be dismissed with costs.