

(1961) 11 OHC CK 0002

In the Orissa High Court

Case No : Second Appeal No. 76 of 1959

Naran Bandhu Balliar Singh

APPELLANT

Vs

Lokenath Santra and Others

RESPONDENT

Date of Decision : 22-11-1961

Acts Referred:

Citation : AIR 1962 Ori 132

Hon'ble Judges : R.L. Narasimham, C.J;R.K. Das, J

Bench : Division Bench

Advocate : G.K. Misra, S.C. Mohapatra and R.N. Sinha, for the Appellant; B.K. Pal and D.P. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.—This is an appeal from the appellate judgment of the Additional Subordinate Judge, Purl, reversing the judgment of the Munsif of Khurda and decreeing the plaintiff's suit for declaration of title and recovery of possession of the suit properties which consists of R. S. holding No. 431 of mouza Atri and R. S. holding No. 418 of mouza Bhagmari having a total area of 6.433 acres. The disputed properties were recorded as Dalai Jagir in the Settlement papers. The plaintiff's case was that the Jagir had been granted to one of his ancestors by the independent Hindu Kings of Orissa long before the advent of the British, that it was heritable and that the properties were all along in the possession of the plaintiff's family from generation to generation. It was admitted however, that some services were required to be rendered to the State. But it was contended that though the properties were thus burdened with service, nevertheless, they were heritable and that if the service was not performed the only right that the State had was to assess the properties to lull rent.

2. The admitted recorded Jagirdar was the plaintiff's adoptive father Harekrushna Santra. Sometime in 1951 the revenue officials of Khurda after due enquiry held that on account of his age and his addiction to opium Harekrushna

was unable to discharge his duties and that he therefore relinquished his office. Thereupon, on the report of the Tahsildar the then Sub-divisional Officer of Khurda, Sri Burney by his order dated the 2nd October, 1951 (Ext. C) directed that the defendant--who is none else but the daughter's son of Harekrushna--be appointed as the holder of the Dalai Jagir in preference to the plaintiff who was his adopted son. In pursuance of this order, the defendant took over the duties of the Dalai and also obtained possession of the properties. Harekrushna died on the 11th March, 1953, and thereupon the plaintiff again applied to the revenue officials (Ext. C (1)) for being appointed as Dalai in his father's place. But the Sub-divisional Officer in his recommendation to the Collector dated the 10th June, 1954 pointed out that the defendant was working satisfactorily as Dalai ever since his appointment by Sri Burney in 1951, that the plaintiff had become old and diseased and unfit for the post, and that therefore there was no necessity to reconsider the orders passed by Sri Burney.

The then Collector Sri S.C. Patro accepted this recommendation, by his Order dated 24th November, 1951. Sometime in 1954, on the abolition of the zamindari system, the jagir was abolished, and the lands were settled on a ryoti basis with the defendant whose name was also recorded in the Current Settlement proceedings. The plaintiff therefore brought the suit under appeal for a declaration that the entire resumption proceedings of 1951 and 1954 were invalid and inoperative, that his heritable interest in the properties could not be extinguished by these proceedings and that he was not entitled to recover possession of the properties and for other consequential reliefs.

3. The defendant's main contention was that the Dalai Jagir was not heritable property, but that so long as the incumbent was discharging the duties of a Dalai he was entitled to possess the properties and that when the defendant was appointed Dalai on the 2nd October 1951 he came into possession, but subsequently after the abolition of the Jagir the same properties were settled with him on an, occupancy raiyati basis by the Government.

4. Thus, the main question in controversy is regarding the nature of the Dalai Jagir. The broad distinction between the two main classes of rent free service tenures which was first pointed out in *Alexander John Forbes v. Meer Mahomed Taqee*, 13 Moo Ind App 438, has been reiterated in several subsequent decisions, including that reported to AIR 1949 31 (Orissa) , and the subsequent Special Bench decision reported in *Brajasundar Deb Vs. Binode Rout and Others*, . It is well settled that if the land was originally granted burdened with service, prima facie that grant will not be resumable. But if the original grant was merely that of an office, to be remunerated by the use of certain lands such a grant will be resumable when the incumbent ceases to perform the duties of that office. In respect of the former class of grants all that the State would be entitled to would be to assess the lands to full rent when the incumbent ceased to perform the service but his interest in the property could not be taken away.

5. Here there is no direct evidence about the origin of the grant. Apart from a

vague statement that the jagir was being possessed by the plaintiff's ancestors from generation to generation, from the time of the Hindu Kings of Orissa, the plaintiff has led no evidence to show the terms of the original grant with a view to enable this court to decide whether the jagir was a grant of land burdened with service, or else whether it was originally a grant of office, to be remunerated by the use of certain lands. Mr. Pal for the respondents however relied mainly on some observations in old settlement Reports regarding the origin of the jagir.

6. The earliest public record available on the subject is the Report of Mr. Ewer, Commissioner, dated 13th May, 1813 to the Government of Bengal regarding the general State of Orissa. In paragraph 171 of that Report it was stated as follows :

"Under the Government of its native Princes nearly the whole of Khurda was parcelled out into jagirs, the holders of which were bound by the terms of their tenure to perform certain services whether of a private or public nature about the person and court of the Rajah, besides paying a light quit rent in cowries, denominated tunkees, or to supply certain proportions of grain, cloth etc. for his public wardrobe and household expenditure. Amongst these jagirdars the most numerous and important classes were of course the hereditary military chiefs of Dolbeheras, their subordinate officers, the Dulaees, who, each residing in his gurd or mud hovel, surrounded by a stockade, a dence of bamboos, a mud wall or often by no enclosures at all--yet dignified under the name of fort--commanded the services of a number of paiks and was ready at all times to obey the orders of the Raja."

The aforesaid passage has some bearing on the historical origin of the Dalai Jagir as a military tenure but it does not very much help in deciding which of the two classes of service tenures it belongs to.

On 17th October, 1819 one Mr. Forrester, in his report regarding the Settlement of Khurda notes as follows : (see paras 86-68)

"I have already mentioned my intention of proposing some small augmentation to the jagirs of the dulbeheras and some dulaees. One object of this is to remedy the inequality with which these reserved jagirs were distributed at the first settlement and I think it advisable not only as a matter of justice but as being the likely means of keeping them quiet, and securing their assistance in the Police of their gurhs which can hardly fail to be of considerable use.

The jagirs allowed thus to them will after all be but a small portion of what they held in the Raja's time and I can see no objection to declaring both their office and jagirs liable to resumption in the event of any criminal misconduct or gross negligence in police being proved against them."

It may be noticed that here the settlement officer makes it absolutely clear that the jagir was merely a grant of office to be remunerated by the use of lands by saying that for negligence or misconduct both the office and the jagir were resumable. The Commissioner of Cuttack while forwarding this report to

Government in his letter dated 26th October, 1819 supported this recommendation in the following terms: (see paragraph 11);--

"The respectable footing also on which it is now proposed to place their former sirdars, the bulbeheras and some of the dulaees will afford further security for the future maintenance of the public peace. The propositions contained in Mr. Forrester's Report for enlarging and confirming the jagirs of dolbeheras and certain of the dulaees appear to the Commissioner quite judicious and he recommends strongly that they be adopted for the reasons assigned by that gentleman."

The Governor General in Council also accepted this suggestion in his letter No. 8 dated the 24th December, 1819 to the Secretary to the Commissioner in the following terms (paragraph 24) :

"The suggestion for improving the condition of the Dulbeheras and some of Dulaees appears entirely judicious and His Lordship in Council will expect to receive hereafter the statement which Mr. Forrester promises to furnish of the jagir lands held by these persons and of the proposed increase to be granted to them."

It was in pursuance of this order that sometime in 1822 grants of dalai jagirs were made to several persons in Khurda Khasmahal. These have been referred to Wilkinson's Settlement Report dated the 24th October, 1836, in paragraph 14, as follows :

"Dulaees are subordinate to Dulbeheras but commanded a number of Paiks. Some were stationed at the guruh whilst others were posted in the villages attached to it. Those who were thought to have any influence have been allowed to engage for their villages, and pay either to the heads of the guruh direct or direct to the Tahasildar. All have some jagir lands which were given to them under the order of Government dated the 1st August, 1822. But those under engagements have had something additional given to them for their increased trouble and responsibility. Under the Rajahs these men performed military service and now they are expected to aid in the apprehension of robbers and preservation of peace."

The above passage shows that the British Government made grants of dalai jagirs sometime in 1822, and that one of the main and important functions of the Dalai was to apprehend robbers and preserve peace. But it also does not help in clearing the ambiguity about the nature of the jagir. But it seems fairly clear that whatever might have been the position during the time of the Hindu Rajahs, the British Government while granting these jagirs in 1822 made it absolutely clear that it was a grant of office and lands both of which were resumable either for misconduct or negligence on the part of the jagirdar.

7. This question however came up for careful consideration before Mr. W. C. Taylor in 1879. In his Settlement Report of that year, known as the Rate Report,

the relationship between the Dalai jagirdar on the one hand, and the Government on the other was fully examined and he summarised his conclusions as follows : (para 83--part II)

"Clause I: The Jagirs are and always were purely service tenures liable to resumption for misconduct.

Clause II: On resumption of the office and jagir for misconduct, both earn be granted to a new man or otherwise disposed of purely at the pleasure of the Government.

Clause III: The office of Dulbehera and dulaee (and also of khandayat, Bisoy and Nayak) is generally hereditary, pending good conduct, and descends usually from, father to son.

Clause IV : The office of Dulbehera or dulaee etc. and the jagir lands appertaining thereto are not divisible amongst heirs, neither are they in any way alienable by the incumbent.

(Clauses V to XII are not material)

Clause XIII : Dulbeheras, dulaees, bisoyis and nayaks have no proprietary rights in their jagir-lands.

Clause XIV: All Dulbeheras, dulaees and other service jagir lands in Khurda are absolutely the property of the Government both by ancient and modern custom, and such lands can now be dealt with as may seem most expedient to Government.

(Clauses XV and XVI are not necessary)

Clause XVII: In cases where Dulbeheras and dulaees (and Khandayats, Bisoyis and Nayaks) who are holding jagirs for police service only are not required any longer for that or any other service, they may be allowed to commute their service tenures for ryoti holdings with full rights of Occupancy and alienation on engaging for their jagir lands at full ryoti rates of rent subject however to a limit as to area."

The aforesaid conclusions of the Settlement Officer were accepted by Government as will be clear from the following extracts in the subsequent Settlement Report of Khurda of 1886--see Survey and Settlement Report of Khurda Estate, Part II, paragraphs 318 and 319:

""All such lands are recorded as Chakaran jagir and are at the absolute disposal of Government. The incumbents are liable, on dismissal for misconduct, to lose the land which can be granted to others appointed in their places.

The holders of such chakaran jagirs have no power to alienate any portion of the lands, so long as they remain in service jagirs."

8. The above extracts of Mr. Taylor's Report thus confirm the view taken by Mr.

Forrester in 1819 that the jagir was essentially a grant of office to be remunerated by the use of certain lands. The lands are at the disposal of the Government, the incumbent of the office was liable to removal for misconduct and the lands were re-granted to his successor in office to be selected by Government. It is true that, ordinarily the hereditary principle of giving preference to the son of the previous Dalai was followed. But no such hereditary right, as such, to succeed to the office, was recognised. If, as now contended by Mr. Pal, the grant was really of lands burdened with service, the only right which the Government would have in the event of the incumbent ceasing to perform service, will be to assess the lands to full rent and they will not have the right to evict the incumbent from them or to grant the same to his successor in office. But the express mention in the Settlement Report (in the passage last quoted) of the right of Government to dispose of the lands at its discretion after removal of the holder for misconduct, is wholly inconsistent with a grant of the nature as urged by Mr. Pal.

9. I now take up the Khurda Settlement Report of the year 1897-98. Dalai jagirs are described in paragraph 249 of that report in the following terms :

"Dalai Jagirs--These are chakaran rent free grants in which no occupancy rights can accrue. They are enjoyed by the head-men of the native military or paiks, who are now chiefly used on revenue, works. Escort of treasure, summoning of tenants, guarding of tents of Government Officers on tour, and the carriage of official orders form their chief duties."

In paragraph 250 there is a discussion of the question of abolition of these jagirs, but the Government ultimately decided not to abolish them on the ground that such abolition would not only be unpopular but may entail additional expenditure to Government. While examining the financial implication of such abolition, Government calculated the approximate rent that would have been payable by these jagirdars if the lands had been settled on a ryoti basis after assessment of full rental. Mr. Pal relied on these observations and urged that they showed that Government were themselves conscious of that fact that the only right of Government was to assess the jagirs to full rent if the jagirdars failed to perform their duties. I do not think such a conclusion follows from the discussions contained in paragraph 250 of the Settlement Report of Khurda of 1897-98. In the previous settlement Report Government had made, it clear that the jagirdars have no proprietary interest in the lands, that the lands were at the absolute disposal of the Government and that the holder of the office of Dalai for the time being alone would be permitted to possess the lands subject to satisfactory service. Even in the Settlement Report of 1897-98 this aspect was reiterated by saying that no occupancy right can accrue in these lands. This shows that the jagirdars had no interest in the lands and they cannot claim that on payment of full rent they acquired non resumable rights over the same. It is true that in many instances in the past Government abolished the Dalai jagirs at several places, in Khurda and had settled the lands on ryoti basis with the holder of the

office after assessing them to full rent. But until such assessment and settlement is made the lands are at the disposal of Government and no jagirdar can claim any right to the same.

10. No other document bearing on this question has been proved by the plaintiff. I must therefore hold that the plaintiffs family had no hereditary right over the disputed property so long as it remained jagir. It was on this basis that Sri Burney on 2nd October, 1951 appointed the defendant as Jagirdar as the plaintiff's father on account of his age was unable to discharge the duties of his office. It is true that in a previous dispute between the plaintiff and his father sometime in 1945 there was an agreement that the disputed properties would remain with the plaintiff after the death of his adoptive father, but such an agreement would not be binding on the State, having regard to the nature of the jagir as fully discussed above. The Settlement of the jagir lands with the defendant by Sri Burney in 1951 was confirmed when the old jagirdar Harekrushna Santra died sometime in 1953 (Ext. C-1). The plaintiff again laid claim to the property but the revenue authorities refused to recognise his claim holding, apart from other reasons--that the plaintiff was old and diseased and was unfit for the post.

11. With the abolition of jagirs in 1954 the lands came under the absolute disposal of Government, but they settled them on ryoti basis with the defendant after assessing the full rent on the same. From the date of such settlement the defendant acquired the status of an occupancy ryot and his right cannot be extinguished except in accordance with law.

12. The plaintiff's title to the property must therefore be held to have been not established. He staked his claim entirely on the alleged hereditary right to the property and not on the basis of any fresh settlement made with him by the Government after the death of his father.

13. For these reasons I allow the appeal, set aside the judgment and decree of the lower appellate court and dismiss the plaintiff's suit. But as the original plaintiff is dead I do not think in the circumstances of this case his legal Representatives should be saddled with costs. Both parties will therefore bear their own costs throughout.

R.K. Das, J.

14. I agree.