
(1943) 07 BOM CK 0009

In the Bombay High Court

Case No : Second Appeal No's. 378, 379 and 380 of 1940

Parshottam Chhaganlal

APPELLANT

Vs

Kuberdas Hargovandas

RESPONDENT

Date of Decision : 29-07-1943

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 48, 66

Citation : (1944) 46 BOMLR 607

Hon'ble Judges : Lokur, J

Bench : Single Bench

Judgement

Lokur, J.—These three appeals arise out of the three suits filed by the landholders of the inam village Shahijpur Bogha against the inamdar of that village for a declaration that they are entitled to hold their respective lands in dispute as vechan salami lands subject to the payment of salami only and not liable to the levy of altered assessment or fine for being put to non-agricultural use and for an injunction restraining the inamdar from recovering any such altered assessment or fine from them. The trial Court decreed their claim, but the lower appellate Court set aside the decrees and dismissed the suits.

2. The lands involved in these three appeals are Survey Nos. 2|4, 46|3 and 1|1 respectively. They were put to non-agricultural use in 1919 by the construction of buildings on them, but the inamdar did not claim to levy altered assessment or fine and continued to recover only the salami as fixed at the survey settlement of 1912. These lands were purchased by the respective plaintiffs for Rs. 800 in 1925, for Rs. 2,975 in 1913 and Rs. 6,500 in 1933 respectively. In all the three sale deeds the lands were described as the ancestral vechan salami lands of the respective vendors. The present inamdar Kuberdas purchased the village on November 18, 1930, for Rs. 59,999 and began to put forward various claims to increase the income of the village. In 1934 he moved the Collector to fix the non-agricultural assessment and fine leviable on the three lands in suit under Sections 48 and 66 of the Bombay Land Revenue Code. Accordingly the Collector

ordered that Rs. 552-11-0 should be levied as altered assessment for the years 1926-27 to 1933-34 and Rs. 165 as fine on survey No. 2/4, Rs. 566-8-0 as altered assessment for the same years and a fine of Rs. 170 on survey No. 46/3 and an altered assessment at the rate of Rs. 26-4-0 per year and a fine of Rs. 26-4-0 on survey No. 111. This led to the institution of these three suits by the purchasers of those lands.

3. The first question raised in these suits is whether the inamdar is a grantee of the soil or only of the royal share of the revenue of the village. I have held in the companion appeals that he is a grantee of the soil on evidence similar to that adduced in these three suits. But it is urged that at any rate the salami lands must not have been included in the grant. This contention is based on the Inam Commissioner's sanad of 1864. In the Crop Register of that year (Samvat 1920) the total area of the lands in the village was shown as 2,015 bighas and 15 vasas, but according to the sanad the area granted was 1,593 bighas and 15 vasas. The sanad, however, purports to confirm the grant of the whole village in inam. A scrutiny of the Crop Register shows that the total of 2,015 bighas and 15 vasas was made up of 1,463 bighas fully assessed (talpat sarkari), 132 bighas paying only quit rent (salami) and 420 bighas and 14 vasas not liable to pay any assessment (nakra). This shows that the area given in the sanad did not include that of the lands wholly exempt from assessment, but it did include the salami lands. The appellants' contention that the lands in suit were not included in the sanad is, therefore, not tenable.

4. This, however, does not satisfactorily solve the question of the nature of the tenure of the lands in suit which it is necessary to determine before the inamdar's claim to altered assessment and building fine can be upheld. There is no evidence as to when or on what tenure these lands were granted to the predecessors of their present holders. It can, however, be clearly seen from the Crop Registers that they were used for agricultural purposes and were liable to pay only salami equal to one-third of the assessment. It further appears from the Crop Registers that the assessment was not fixed according to the survey numbers but according to the area under cultivation. Thus the ordinary holders were required to pay an assessment or rent at the rate of Re. 1-2-0 per bigha of the area under cultivation, while the lands in suit were charged salami at the rate of only six annas per bigha. The learned District Judge has observed that the salami was increased from time to time until it was settled at the survey settlement of 1912, but this can be easily accounted for since the area under cultivation came to be extended from time to time. But the rate of the salami was not altered. Even at the survey settlement of 1912 the judi was fixed at nearly one-third of the assessment and the rest was remitted. At that time the assessment and the salami came to be settled for each survey number, whether cultivated or not.

5. Section 48(2) of the Bombay Land Revenue Code, 1879, provides that where land assessed for use for any purpose is used for any other purpose, the

assessment fixed upon such land shall be liable to be altered and fixed at a different rate by such authority and subject to such rules as may be prescribed. Section 65 provides that if any occupant wishes to use his holding or any part thereof for any other purpose, the Collector's permission shall in the first place be applied for by the occupant, and that when any such land is thus permitted to be used for any purpose unconnected with agriculture, it shall be lawful for the Collector to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of Section 48. Section 66 provides that if any such land be so used without the permission of the Collector being first obtained, the occupant shall be liable to be summarily evicted from the land and shall also be liable to pay in addition to the assessment such fine as the Collector may direct. An "occupant", to whom only Sections 65 and 66 apply, is denned in Section 3(16) as meaning "a holder in occupation of unalienated land other than a tenant." Hence Sections 65 and 66 in terms apply to unalienated lands only. Similarly u/s 214(1) (d), referred to in Section 48(4), the Provincial Government is empowered to make rules prescribing the purpose for which unalienated land liable to the payment of land revenue may or may not be used and regulating the grant of permission to use agricultural land for non-agricultural purposes. It is clear that no such rules can be made in respect of alienated lands. Section 217 provides that when a survey settlement has been introduced into an alienated village 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 land in unalienated villages have or are affected by, under the provisions of the Act, and all the provisions of the Act relating to holders of land in unalienated villages shall be applicable, so far as may be, to them.

6. Admittedly survey settlement has been introduced in Sahijpur Bogha and, therefore, prima facie Section 217 would make the provisions of Sections 48, 65 and 66 applicable to the lands in suit. But Section 218 provides that nothing in the Act, which applies in terms to unalienated land or to the holders of unalienated land only, shall be deemed to affect alienated land, or the rights of holders of alienated land. Evidently, therefore, Sections 65 and 66 and the rules framed u/s 214(1) (d) do not apply to alienated lands in an unalienated village. Rules 92 to 98 of the Land Revenue Rules, 1921, deal with the alteration of assessment in surveyed and settled alienated villages and Rule 97 makes it clear that nothing in Rules 92 to 95 shall be deemed to apply to lands which are alienated lands apart from the alienation of the village in which they are situated, nor alienated lands in the possession of and occupied in person by the holder or holders of an alienated village.

7. The question whether Section 65 applies to lands in an alienated village arose recently in *Bai Kaba Vs. Ramniklal Sunderlal Inamdar*, . There the holder of a land in the inam village of Mithipur who was held to be a permanent tenant by reason of the presumption u/s 83 of the Land Revenue Code, had leased the land for the purpose of constructing a cotton mill. The inamdar then sued for

possession of the land or in the alternative for an injunction restraining the use of the land for a non-agricultural purpose. It was contended that the village itself being alienated, the land was alienated land and that by virtue of Section 2.18, Section 65 did not apply to it. Assuming that the land was an alienated land, the learned Chief Justice observed (p. 747):-

I do not find it easy to reconcile the provisions of Section 217 and Section 218, but I think the problem is solved by a reference to Section 88 of the Code, which provides that it shall be lawful for the Commissioner at any time to issue a commission to any holder of alienated lands, conferring upon him certain powers in respect of the lands specified in such commission, and amongst the powers which may be conferred is the right to exercise the powers of a Collector under Sections 65 and 66. So that it is clear that the Legislature considered that the powers of a Collector u/s 65 would or might apply to alienated land.

8. Then after referring to Rule 94 which provides for an application to the Collector for permission and the procedure to be followed by him, he held that the holder of land in an alienated village, though a permanent tenant, was not entitled to use the land for non-agricultural purpose without the Collector's permission. I respectfully agree with that view. In Section 3(20) "alienated" is defined as meaning "transferred in so far as the rights of the Provincial Government to payment of the rent or land revenue are concerned, wholly or partially, to the ownership of any person." The village is undoubtedly "alienated", because the rights of the Provincial Government to payment of land revenue are transferred to the inamdar. *The Secretary of State For India Vs. Faredoon Jijibhai Divecha*, . But it cannot be said that every land in such village is "alienated", unless the Provincial Government has transferred its rights to the payment of assessment to its holder before the grant of the village to the inamdar. This is clear from Rule 97 which speaks of "lands which are alienated lands apart from the alienation of the village in which they are situated and alienated lands in the possession of the holder of the alienated village." As correctly described in the marginal note to that rule, the former is called "kadim" land and the latter "sheri" land. It is only to such lands in an alienated village that Sections 48, 65 and 66 do not apply.

9. The appellants have not been able to show that the lands in suit are their kadim lands, that is to say, granted to them by Government before the village was granted to the inamdar. They rely upon the description of the lands as "vechan salami" from ancient times and their partial exemption from assessment. According to Wilson's Glossary, "salami" means "a fee levied annually on the holders of rent free tenures as a quit rent" and "vechan salami" means "a land subject to quit rent," whereas "vechan nakra" means "a land wholly exempt from tax". According to Robertson's Glossary "vechania" means "a land that has been sold,-a tenure under which much of the alienated land is held". This does not necessarily mean that such lands were alienated by Government before the grant of the village. They may be the inamdar's sheri lands which were

subsequently alienated by the inamdar himself. In that case they are not kadim lands, and they ceased to be sheri lands in the possession of or occupied by the holder of the alienated village. Hence the exemption given by r.,97 is not available to such lands.

10. This does not completely dispose of the point in dispute. Section 217 says that the provisions of the Act relating to holders of land in alienated villages shall be applicable to holders of land in unalienated villages, but only "as far as may be". This has been interpreted to mean that the provisions of that section do not affect the contractual relations arising before the introduction of the survey settlement. Thus in *Lakshman v. Govind* (1903) ILR 28 Bom. 74 : s.c. 5 Bom. L.R. 694, in dealing with the contention with reference to Sections 52 and 217, Mr. Justice Chandavarkar observed as follows (p. 80):-

The effect of the first is to give the Collector the discretion to fix the assessment; the effect of the second is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages. But 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 the land revenue according to survey rates.

11. In *Suryajirao Ganpatrao Jahagirdar Vs. Sidhanath Dhonddeo Garud*, , where the jahgirdar of an alienated village had entered into a contract with his tenants granting not only fixity of tenure but also fixity of rent, it was held that the provisions of Section 217 did not enable him to avoid his contractual liability and enforce against his permanent tenants the payment of assessment levied on occupancy tenants. The same view was taken in *Nilaji v. Nagindas* (1932) 35 Bom. L.R. 150.

12. The appellants having failed to prove that the lands in dispute are kadim inam, it is for them to show on what terms they were granted by the inamdar. From the fact that before the survey settlement salami was levied according to the area cultivated it can be safely inferred that they were granted for agricultural purposes. It is equally clear that they were liable to pay only quit rent and the rest of the assessment was agreed to be remitted. Thus the contract may be taken to include the remission of all the assessment in excess of the salami. At the survey settlement of 1912 both the assessment and the salami were settled. u/s 48 and the rules framed u/s 214 (1)(d) the Collector can alter the assessment. That does not mean that an additional assessment is to be levied. In Section 65 (last paragraph) and Section 66 this altered assessment is correctly described as "new assessment." As observed by the Privy Council in *Bomanji Ardeshir v. Secretary of State for India* ILR (1928) 53 Bom. 230 : 31 Bom. L.R. 256 s.c.

The Act of 1879 by Section 48 does not provide for an additional assessment; it only provides for an altered assessment to be imposed according to rules. Once the building assessment is imposed the old agricultural assessment has gone for

ever.

13. Thus the altered assessment is a substitute for the assessment fixed at the survey settlement and not an addition to it. But the inamdar is presumed to have agreed to remit all assessment in excess of the settled salami. There is no provision in the Act to enhance the salami. Hence, even if the Collector were to alter the assessment under the provisions of Section 48 and the rules, the inamdar cannot recover more than the settled salami. To use the language of Mr. Justice Pratt in *Damodar Mahadev Bhonde Vs. Kashinath Sadashiv*, the alteration in the assessment is legal, but the inamdar, by the terms of the grant, is precluded from levying anything beyond the salami.

14. The case of the levy of a building fine under Sections 65 and 66 stands on a different footing. As I have already pointed out, and as held in *Bai Kaba v. Ramniklal Sunderlal* (supra) the lands in these suits are not exempt from the application of Section 65. Hence the holders must take the permission of the Collector before using them for non-agricultural purposes. Building fine is not assessment, but is either a royalty for permission or is a penalty for building without the necessary permission. According to Sections 65 and 66 the holder is liable to pay the fine " in addition to the new assessment that may be leviable under the provisions of Section 48 ". According to Rule 99 no fine is ordinarily imposed if the permission of the Collector is taken beforehand. But if the permission is not taken, then the Collector can impose a fine u/s 66. The limit of the, fine is prescribed by Rule 100 as ten times the altered assessment. The Collector has to fix the altered assessment in order to determine the maximum of the fine that can be levied, and the holders who construct buildings, whether with or without the permission of the Collector, cannot, in the absence of a contract to the contrary, escape their liability to pay the fine imposed either u/s 65 or 66. It is true that in *Damodar v. Kastinath* (supra) the inamdars were held not entitled to recover even the building fine. But that was by reason of the terms of the miraspatras which they had passed to the holders. In those miraspatras the inamdars had not only stipulated expressly that they would recover no more than the assessment imposed at the survey less the amount remitted, but had agreed that they would not molest the holders any further. It was in this connection that Mr. Justice Pratt observed (p. 1045):

...though the fine is legal yet the Inamdar by the terms of his grant to them is precluded from levying it.

15. No such agreement is proved in this case. Nor can it be inferred from the mere fact that the assessment in excess of the salami is agreed to be remitted. Hence the imposition of the fine under Sections 65 and 66 is legal and the inamdar is not precluded by any contract from levying it.

16. The appeals are, therefore, partially allowed and the decrees of the trial Court are restored with regard to the altered assessment only. But the plaintiffs' claims in regard to the building fines are rejected. In view of this result I order

the parties to bear their own costs throughout.