
(1912) 01 BOM CK 0006
In the Bombay High Court
Case No : First Appeal No. 215 of 1910

Sapurlo Sabshetti

APPELLANT

Vs

The Secretary of State

RESPONDENT

Date of Decision : 23-01-1912

Acts Referred:

Citation : (1912) 14 BOMLR 414

Hon'ble Judges : N.G. Chandavarkar, J;Batchelor, J

Bench : Division Bench

Judgement

Chandavarkar, J.—There were only two points urged by the learned Counsel in support of this appeal in his opening address, first, that there was a valid contract as between the Government and the plaintiff, who is the appellant, in consequence of his application to the Commissioner to purchase this land, and the acceptance by him of the conditions which were imposed by the Commissioner in consequence of that offer. It was urged that after the Commissioner had accepted the plaintiff's proposal to purchase this land by receipt of the money, it was not competent to Government to rescind the Commissioner's order, because, it was said, the acceptance vested the title in the appellant. It is not necessary to go at length into the reasons for disallowing this argument, because the learned Counsel has himself given it up in his rejoinder.

2. It is clear, from the provisions of the Land Revenue Code, and from the correspondence which passed between the different officers of Government, at the time the proposal of the plaintiff to purchase this land was considered, that the Commissioner was acting u/s 60 of the Land Revenue Code, and that there was a Resolution of Government, at that time in force, which required that in respect of land of this description the Commissioner, and the Collector could sell it only after obtaining the sanction of Government. Plainly upon the facts this was Railway land, not required just then for Railway purposes, and therefore, according to the evidence of Exhibit 44 the Commissioner could not dispose of it,

in the way he did, without obtaining the sanction of Government.

3. The point on which the learned Counsel has laid special emphasis is his second argument; it is this. He urges : If the plaintiff has not acquired any title in virtue of the Commissioner's order, he has a right to fall back upon his old Kabulayat (Exhibit 15). Under that Kabulayat the occupancy had been granted to him by the Collector subject only to this condition that it should be competent to Government to resume the land whenever it should be required for Government purposes, i. e., for Railway or other purposes. It is urged that the sale of the land to defendant No. 2, a private individual, is not such a purpose.

4. Now, the correspondence which had passed before the Kabulayat, Exhibit 15, was executed makes it clear that what was intended by the contracting parties was that the land was to be resumed by Government whenever it was required by them for Railway or other purposes. The words in Exhibit 15 no doubt enlarge those terms, because in Exhibit 15 it is stipulated that the Government could resume the land whenever they liked, for their purpose, either for a Railway or other Government purpose. These words are not to be found in the previous correspondence upon the subject. But even assuming that these words embodied the terms agreed upon, they are consistent with what was the real contract between the parties. The words in Exhibit 15 on which Mr. Weldon has laid so much stress do not mean more than that Government as proprietors of the land could resume it whenever they required it for their proprietary purposes. Any other construction would be inconsistent with the conditions of the tenure on which this land was held at the time by the plaintiff. This land was not held under the Kabulayat, Exhibit 15, on the ordinary rayatwari tenure, because it was not subject to the thirty years' settlement. Government still remained the proprietors of the land, like any private owner, and were not merely the State entitled only to the assessment and having the right to enhance that assessment at the end of the usual period of the thirty years' settlement. They were full proprietors who could deal with the land in any way they liked like any private owner. They granted this land under the terms of the Kabulayat Exhibit 15. They dealt with the plaintiff like any ordinary proprietor with this difference the provisions of the Land Revenue Code, and the Rules under it, applied to the case so far as they could apply the provisions of the Land Revenue Code and the Kabulayat did not take away the proprietary title of Government.

5. If, then, Government were proprietors, V purposes must be construed as meaning the poses of Government as the State proprietor, purposes which Government alone were entitled to prescribe in the exercise of their discretionary powers.

6. On these grounds, I think, the decree must be confirmed with costs. There must be separate sets of costs.

Batchelor, J.

7. I agree. It seems to me that so far as concerns the Commissioner's order of

October 1906, upon which reliance was placed for the appellant, the appellant can get no advantage from that order seeing that it was first suspended by Government and then finally annulled under the power vested in Government for that purpose by Section 211 of the Land Revenue Code. It may be added that no Kabulayat was given to the appellant in order to vest in him any right of occupancy. As to the old Kabulayat (Exhibit 15), that must be read and interpreted by the light of the appellant's application (Exhibit 36) upon which it was based, and by the light of the local officers' reports and decisions connected therewith. So reading it, it appears to me quite clear that the manuscript phrase added to the margin of this Kabulayat means only that the appellant undertook to surrender this land whenever Government in their discretion required him to do so.