

(1965) 07 GUJ CK 0004
In the Gujarat High Court

Saved Mohmed Baquir-El-Edroos

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision : 20-07-1965

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 53
Bombay Personal Inams Abolition Act, 1952 — Section 2, 3, 3, 3(2)
Bombay Public Trusts Act, 1950 — Section 80

Citation : (1966) 7 GLR 217

Hon'ble Judges : M.U. Shah, J;J.B. Mehta, J

Bench : Division Bench

Judgement

J.B. Mehta, J.—This appeal raises a short question whether the grant of village Umraj in Broach District was a personal Inam or an Inam held by the religious institution known as Edroos Durgah at Broach, hereinafter referred to as "the Durgah".

2. The plaintiff as the Sajjadnsihin of the Durgah filed the present suit on the ground that the said grant of village Umraj, being an Inam held by a religious or charitable institution, was exempted from the Bombay Personal Inams Abolition Act, 1952; hereinafter referred to as "the Act" and also from the provisions of the Bombay Land Tenures Abolition (Recovery of Records) Act, 1953, and on that basis asked for consequential reliefs so that the said two Acts might not be enforced in respect of the said religious institution.

3. The case of the plaintiff, briefly stated, was as under:

The plaintiff belonged to the family which goes under the name of Edroos. The ancestors of the plaintiff claim a direct descent from Hazarat Imam Ali, the son-in-law and the cousin of the prophet Hazarat Saiyedina Mahomed. Twelfth in descent from Hazarat Imam Ali was Hazarat Saiyedina Alvi who shifted from Mecca to Tarima in Arabia and had established a Sajjadgi or a seat for imparting religious instructions there. Twenty-seventh in descent from Hazarat Imam Ali was Shaikhus Shaikh who came over to India from Tarima and settled at

Ahmedabad and established a Sajjadgi at Ahmedabad, leaving his son Abdulla in charge of the Sajjadgi Gadi at Tarima. The said Shaikhus Shaikh had a second son Ahmed and his grand son Mahomed. The second son Ahmed shifted to Broach, while the grand son Mahomed shifted to Surat and established his Sajjadgi there. All these three persons were regarded as great saints and what we are concerned is with the saint Ahmed. As he had a large following, the grant of the village Umraj seems to have been made to the said saint Ahmed who settled at Broach. At these three Sajjadgis, Ahmedabad, Broach and Surat, on the death of those three saints, Mausoleums were erected at those three places to commemorate their lives and Khankhas were continued to be maintained at all the three places for imparting religious teachings to the followers. In the beginning, the Sajjadgis were managed by sending deputies from Tarima, but in course of time all the three Rouzas at Ahmedabad, Broach and Surat came under the management of one and the same Sajjadnishin who had his permanent seat at Surat. It is the case of the plaintiff that after the death of saint Ahmed in 1610 A.D., the grant of village Umraj was confirmed from time to time by Moghul Emperors, and the said grant in favour of the Durgah was recognised by the East India Company and by the British Government after it took over the territory from the East India Company. Under the various Farmans or Sanads issued from time to time from the Moghuls or in the time of the British Government, it is the plaintiff's case that the grant of the village Umraj was for the Durgah and it was not a personal grant to the Sajjadnishin. Even the spiritual office of the Sajjadnishin was not hereditary even though it always continued to remain in Edroos family, but it was by an appointment by the previous Sajjadnishin which was known as Tauliatnama. Further, it was the case of the plaintiff that by mistake only the said grant was entered as a personal Inam of the Sajjadni shin of the Durgah at Broach in the Alienation Register, maintained u/s 53 of the Bombay Land Revenue Code, while in fact, the said village always remained, a Wakf property and was recognised as such in the earlier litigations, the decisions in which were reported in ILR 13 Bom. 535 Bom.39 L.R. 277. However, after the Act came into force with effect from 1st August 1953, the State of Bombay is said to have taken advantage of the entry in the Alienation Register as personal Inam and on that basis the Act was sought to be applied to the plaintiff. As the plaintiff was sought to be made liable to pay assessment under the Act and was required to produce the records, the plaintiff gave a statutory notice and filed the present suit on the basis that the said two Acts were not applicable to the Inam of the village Umraj in question which was held by the said religious institution and was clearly exempt u/s 3 of the Act and claimed the consequential reliefs on that basis. The State contended that the grant of the village by the Moghuls was not to the Durgah and that the said grant was never confirmed by the British Government and that the Alienation Register had entered the said Inam as personal Inam and so it was a personal property of the Sajjadnishin. There was therefore, no substance in the claim advanced by the plaintiff u/s 3 of the Act. It was also contended that the question, whether the grant in question was a personal Inam or not, could not be decided by the Civil Court and that in any

case, the Court had no jurisdiction to entertain the plaintiff's suit. The trial Court came to the conclusion that the original grant was proved to have been made personally to said Ahmed in whose memory Rouza at Broach came into existence and it was further proved that after the death of the said saint, the grant was confirmed from time to time by the Moghuls in favour of the Sajjadnishin of the Rouza by various Faramans. It, however, came to conclusion that the British Government was proved only to have recognised the grant as personal Inam to the Sajjadnishin and, therefore, the plaintiff's claim for exemption u/s 3 of the Act was not maintainable. It further held that in these circumstances the question whether it was a personal Inam or not could not be decided by the Civil Court. It was further held that by virtue of Section 80 of the Bombay Public Trusts Act, 1950, the Court could not decide whether the grant of the village Umraj in question was of the nature of a Devasthan Inam or a personal Inam. In view of these conclusions the trial Court dismissed the plaintiff's suit and the plaintiff has, therefore, filed the present appeal.

4. At the outset the learned Assistant Government Pleader, Mr. Desai, raised two preliminary contentions:

- (1) that the Civil Court had no jurisdiction to decide whether the grant of the village in question was a personal Inam or not in view of Section 2 of the Act, and
- (2) that in any case the question, whether the Inam in question was in the nature of Devasthan Inam or not, could only be decided by the Charity Commissioner and the Civil Court had no jurisdiction by reason of Section 80 of the Bombay Public Trusts Act, 1950.

5. In order to appreciate the first contention of Mr. Desai it would be proper to consider the scheme of the Bombay Personal Inams Abolition Act, 1952. It is an Act to abolish personal Inams in the State of Bombay as its preamble indicates. u/s 4 of the Act, notwithstanding anything contained in any usage, settlement, grant, Sanad or order or a decree or order of a Court or any law for the time being in force, with effect from and on the appointed date, all personal inams are deemed to have been extinguished and save as expressly provided by or under the provisions of the Act, all rights legally subsisting on the said date in respect of such personal inams shall also be deemed to have been extinguished. u/s 5(1) all Inam villages or Inam lands are made liable to the payment of land revenue in accordance with the provisions of the Land Revenue Code and the rules made thereunder. u/s 2(1)(d) inam village" or inam land" has been defined to mean a village or a portion of a village or land as the case may be, held by a person under a personal Inam. "Personal Inam" is defined u/s 2(1)(e) as under:

(e) "personal Inam" means

- (i) a grant of a village, portion of a village, land or total or partial exemption from the payment of land revenue entered as personal Inam in the alienation register kept u/s 53 of the Code.

(ii) a grant of money or land revenue including anything payable as a cash allowance on the part of the State Government in respect of any right, privilege, prerequisite or office and entered as class I, II, III, IV or V in the records kept under the rules made under the Pensions Act, 1871.

Explanation : I provides as under:

If any question arises whether any grant is a personal Inam, such question shall be referred to the State Government and the decision of State Government shall be final and the entry, if any, in respect of such grant in the alienation register kept u/s 53 of the Code shall be deemed to have been amended accordingly.

Section 3, however, provides that nothing in the Act shall apply to (2) Devasthan Inams or Inams held by religious or charitable Institutions. The Explanation provides that for the purpose of this section Devasthan or Dharmadaya Inams granted or recognised by the ruling authority for the time being for a religious or charitable institution and entered as such in the alienation register kept u/s 53 of the Code or in the records kept under the rules made under the Pensions Act, 1871 would be inams held by religious or charitable institutions. From this scheme of the Act it is clear that it is intended only to abolish personal Inams in the State of Bombay. It does not affect in any manner whatsoever the other Inams mentioned in Section 3 like Saranjams, jahagirs or inams held by religious or charitable institutions. The liability under Sections 4 and 5, therefore, would be attracted on abolition of only a personal Inam. Similarly, the other Act, viz., The Bombay Land Tenures Abolition (Recovery of Records) Act, 1953, would also apply only to those tenures which had been abolished. If the Inam in question was entitled to an exemption u/s 3(2) as an Inam held by a religious or charitable institution viz., the Durgah, it would not be covered by any of the two Acts in question and the State Government cannot impose any liability on the plaintiff under the said Acts. The question in short, therefore, which is involved in this appeal is whether the Inam in question is a personal Inam as defined in Section 2(1)(e) or whether it is an exempted Inam falling in u/s 3(2) as Devasthan Inam or Inam held by a religious or charitable institution. Such a question, on which rests the entire applicability of the Act, cannot be said to be one which is excluded from the Civil Court's jurisdiction under the provisions of the Act. Mr. Desai strongly relies on explanation I to Section 2(1) of the Act which is an Explanation to the definition of the term "personal Inam" in Section 2(1)(e) and which provides that where any question arises whether any grant is a personal Inam, such a question shall be referred to the State Government and the decision of the State Government shall be final and the entry, if any, in respect of such grant in the alienation register kept u/s 3, shall be deemed to have been amended accordingly. The question before us is not whether the Inam in question is a personal Inam, but quite a different question whether the said Inam is an exempted Inam u/s 3(2) of the Act. Section 3 starts with a non-obstante clause to the effect that nothing in the Act shall apply to (2) Devasthan Inams or Inams held by religious or charitable institutions. The question is,

therefore, one of an exemption and we cannot agree with Mr. Desai that such a question is outside the scope of the jurisdiction of the civil Court. In a suit of this nature the only question required to be decided is whether the Act applies to the Inam in question or not. Mr. Desai further argued that the exemption entry in Section 3(2) is restricted in its scope by the words of the Explanation and, therefore, unless Devasthan or Dharmadaya Inam granted or recognised by a religious or charitable institution was entered as such in the alienation register u/s 53 of the Code, it could not be exempted under the Act. Mr. Desai tried to read the exemption entry in Section 3(2) as if the exemption was confined only to Inams for religious or charitable institution which were entered as such in the alienation register. Mr. Desai is treating the Explanation as if it were a qualifying clause which would limit the entire scope of the main clause. The scope of the exemption extends to all Devasthan Inams or Inams held by religious or charitable institutions. The Explanation, however, does not deal with Devasthan Inams. It only clarifies all doubts by clarifying the meaning of the term "Inams held by religious or charitable institutions". The emphasis of the Explanation is on the aspect that the Inam granted or recognised is one for a religious or charitable institution. It may be a property belonging to a deity, Devasthan or temple or property held by any person whatsoever. If the grant is made or recognised by the ruling authority to such a person for the benefit of a religious or charitable institution and if in the alienation register the Inam is entered as such, it always falls within the expression "Inam held by a religious or charitable institution". The Explanation would not restrict in any manner the wide scope of the exemption contemplated in Section 3(2) which would clearly apply where the original grant was not lost and was available and the said grant was clearly a dedication for some religious or charitable institution. Even if the entry in the alienation register might be in the name of an individual and not in the name of any Devasthan, the exemption would still be attracted to such a case. What is covered under the Act is only "personal Inam", while an Inam for the benefit of a religious or charitable institution or a Devasthan is completely excluded from the scope of the Act. We, therefore, do not find any substance in the objection of Mr. Desai that a Civil Court had no jurisdiction to decide whether the exemption clause u/s 3(2) was or was not attracted.

6. Mr. Desai then took up his next objection as regards the bar of Section 80 of the Bombay Public Trusts Act, 1950, hereinafter referred to as "the Trusts Act". Section 2(13) of the Trusts Act defines a public trust as an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, a dharmada, or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860. u/s 18 of the Trusts Act, all public trusts have to be registered on the application of the trustees for the registration. Section 19 provides for the inquiry for registration of a public trust by the Deputy or Assistant Charity Commissioner, on receipt of the application u/s 18 or on his own motion, for the purpose of

ascertaining (1) whether a trust exists and whether such a trust is a public trust, and (2) whether any property is the property of such trust. Section 68 provides for the duties, functions and powers of the Deputy or Assistant Charity Commissioner for the purposes of the said Act and under Clause (b) powers to hold an inquiry u/s 19 for the purposes mentioned therein are specified. Section 79(1) provides that any question whether or not a trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided under the Act. Sub-clause (2) provides that the decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall unless set aside by the decision of the Court on application u/s 72 or of the High Court in appeal be final and conclusive. Section 80 which bars the jurisdiction of the Court runs as under:

Save as expressly provided in this Act, no civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act or in respect of which the decision or order of such officer or authority has been made final and conclusive.

6.1. Mr. Desai, therefore, argued that the question contemplated in Section 19(1) and (2) and to the decision of which a finality was given u/s 79 was as to whether or not a trust exists and such a trust is a public trust. The combined effect of Sections 79 and 80 would be to exclude from the civil Court's jurisdiction only those questions which are to be decided by or under the Trusts Act by the officers or the authorities constituted there-under. u/s 68 also the authorities are invested with powers and functions for the purposes of the Act. In the present case no question has arisen under the Trusts Act about the registration of any public trust either u/s 18 or u/s 19 which has to be decided by the authorities constituted under the Trusts Act. The simple question before us is as regards the vires of the State Government when it tries to proceed against an Inam property which the plaintiff claims to be an Inam which is exempted under the Act. Whether the Inam is a personal Inam or an exempted Inam is the only question which has to be decided by the Civil Court in order to consider the question of applicability of the two Acts in question and the said question is completely outside the scope of the Trusts Act. There is, therefore, no substance in the contention that there was any bar of Section 80 of the Trusts Act to the present suit.

7. Turning now to the main question in dispute on merits, it is true that in the municipal Courts of a succeeding sovereign a citizen can enforce only those rights which are recognised by the succeeding sovereign. The lower Court, however, has come to the conclusion that the original grant which was proved to have been made in the time of the Moghul Emperors and which was even recognised by the East India Company as well as the British Government has been subsequently restricted in its scope by the entry in the alienation register. The trial Court has thereby made the entry in the alienation register which would

have only presumptive value conclusive and has ignored the actual evidence of the grant. It is not disputed by the learned Assistant Government Pleader that the three original Sanads which are produced on the record of this case show that the original grant was a dedication for the religious or charitable institution, viz. Durgah and was not a personal grant in favour of the Sajjadnishin. The Sanad evidencing the original grant to the saint Ahmed is not actually on record but in the time of the Emperor Aurangzeb, it appears from Ex. 78, a document dated 27th November 1646 A.D. which is in Persian and whose translation in English is at Ex. 148, that Emperor Aurangzeb had assigned the village Umraj in the Broach District for the expenses of the sacred Rouza (Mausoleum) of the Lord Sayed Ahmed Edroos. Thereafter, we have another document, Ex. 79, whose translation appears at Ex. 150 which again recognised the said Sanad in the Farman of Emperor Shah Alamgir, where it is in terms mentioned that Umraj had been settled for the expenses of the holy Rouza of the Lord Saint Sayed Ahmed Edroos. This document is of year 1664-65 A.D. One more ancient document is at Ex. 195, the English translation of which is at Ex. 174, of the year corresponding to 1720 A.D. and which is a Farman in the name of the Emperor Zafar Shah in which it is mentioned that the two villages Orma and Umraj have been settled on the Mausoleum Edroos of which Sayed Zainul Abedin, the son of Sayed Ahmed was a trustee. The said grant was conferred, according to the Zimin i.e. as per the endorsement of the grant. In respect of Umraj village it is stated in the endorsement that the said village was granted for the expenses of the Mausoleum of Sayed Ahmed Edroos, while the grant for the Orma village was for the Mausoleum of Sayed Mahomed Edroos. These three documents show that the original grant by the Moghul Emperors had been for the holy shrine or Mausoleum of saint Sayed Ahmed Edroos and was not intended to be a personal gift to the Sajjadnishin. In terms it was mentioned that the village had been settled for meeting the expenses of the Mausoleum of saint Sayed Ahmed Edroos. On the original Sanad Ex. 78 granted by Moghul Emperor Aurangzeb, there are endorsements showing that it was first produced before the East India Company on 23rd September 1776 and that the grant of the village Umraj under it was recognised as valid by the East India Company on 27th January 1777. After the advent of the Britishers it appears from Chapter VIII of the Bombay Gazetteer of the Broach District that Broach was taken over by the British Government in or about the year 1803 and was made collectorate in 1805 and Mr. William Steadman was appointed as Collector and one Mr. Prendergast was appointed as Judge and Magistrate of the district. Both of them were appointed as Commissioners for Broach for making inquiries in respect of certain grants. From a letter addressed by those Commissioners on 25th August 1805 to the President and Governor - in - Council in Bombay at Ex. 201 it appears that those Commissioners had found that Umraj village was a gift of Alamgir to the descendants of Saint Ahmed Edroos for the expenses of the shrine and the ceremonies of that saint at Broach. Thereafter the Summary Settlement Act came in force for the Gujarat region in 1863. It appears that Sajjadnishin Sayed Hasan Edroos at the time did not choose to take advantage of the Summary

Settlement Act and an inquiry was made by the Inam Commission independently of the provisions of that Act. It also appears that the Revenue Commissioner at Ahmedabad had submitted a report No. 3773, dated 2nd November 1863, as a result of which the Government of Bombay passed a resolution at Ex. 190 dated 13th November 1865 and communicated the same to Sajjadnishin Sayed Hasan Edroos as per letter Ex. 82 by the Sub-Collector dated 12th January 1866. The said resolution mentioned in para 3 that it appeared that the village had been granted on a hereditary and permanent tenure to the ancestors of Sayed Hasan Edroos and that this title had been fully acknowledged by the British Government and that, therefore, the cash allowance of Rs. 700/- was in the form of a part assessment of the quit rent payable from the village. Thereafter in para 4 it was in terms ordered that under those circumstances the village should be continued according to the terms of the original grant. It was further provided that as there appeared to have been no attempt at fraud or concealment with respect to the cash allowance, it should be continued to the petitioner Sayed Hasan Edroos during his life time and thereafter an inquiry should be instituted as to how it should be disposed off after his death. Whatever might be the position in respect of the cash allowance, the document Ex. 190 leaves no room for doubt that the British Government had in terms recognised the grant of the village Umraj according to the terms of the original grant. Mr. Desai vehemently contended that the recitals in Clauses 3 and 4 should be read together and its effect would be that only a limited grant was recognised by the British Government. We cannot agree with Mr. Desai in this interpretation of the Government resolution Ex. 190. Para 3 only mentioned the circumstances which were taken into consideration while making a final order as per Clause 4 of the resolution that the grant of the village should be continued according to the terms of the original grant. It was only as regards the cash allowance that a further enquiry was contemplated. Thus, even after the British Government came on the scene, the grant of the Umraj village has been recognised only in terms of the original grant by the Mughals, the nature of which we have already examined as per three documents already considered by us. The trial Court was, therefore, right in holding that terms of the original grant left no doubt that the grant was made for meeting the expenses of the Durgah and was clearly an Inam held by a religious or charitable institution. We, however, cannot agree with the lower Court that there was any subsequent alteration when the grant came to be recognised by the British Government. The entry in the Inam Register could not change the nature of the original grant. The entry in the Inam register would afford evidence if the original grant had been lost, but it could not take the place of the actual evidence furnished by the terms of the original grant which had been made or recognised from time to time by the various sovereigns. We have not before us the original Inam Patrak. The original entry in the alienation register appears to be at Ex. 191 and its extracts are found at Exs. 99 and 101. In the alienation register maintained u/s 53 of the Bombay Land Revenue Code in col. 3 the name of the alienee at that time was shown to be of one Sayed Jin Shahed Valde Hasan Shahed Edroos and the class of alienation in col. 4 was shown to be

Class II Personal Inam and the duration of the tenure in col. 11 as to whether continuable permanently or hereditarily, it was shown to be permanent (enfranchised or private property). Mr. Desai laid great emphasis on this entry in the Inam Register. He pointed out the relevant form prescribed under the rules wherein Devasthan Inams are shown to fall in class III. Mr. Desai also referred to a passage from Joglekar's Alienation Manual, 1st Edition, 1921, at page 111 wherein in para 134 it is mentioned as under:

(2) In the case of Personal Devasthan Inams the grant was made together with "water, trees, grass, wood, stone, treasure and hidden material". These words conveyed an ownership of the soil. The title conveyed in both cases the same, except that, in the case of Personal Inams, the land is declared to be private property, and in the case of Devasthan Inams it is declared to be endowment or Devasthan property.

He, therefore, argued that this entry was conclusive as to the character of the personal Inam. There would have been some force in Mr. Desai's contention if the terms of the original grant were not available or lost and we had to invoke the doctrine of lost grant. In *C. Periaswami Goundan and Others Vs. Sundaresa Iyer and Others*, the Supreme Court stated the scope of the doctrine of lost grant. It was held that the said doctrine of lost grant with its limitations had been succinctly explained by the Judicial Committee in *Sankarnarayana Pillayan v. Hindu Religious Endowments Boards, Madras* ILR (1948) Mad. 585 at pp. 605-606, wherein it had been observed:

The presumption, it was stated, of an origin in some lawful title which the Courts have some often readily made in order to support possessory rights long and quietly enjoyed, arises where no actual proof of title is forthcoming, and the rule has to be resorted to because of the failure of actual evidence. In the present case, where there is ample and convincing proof, the nature of the grant, the object of the endowment and the capacity of the persons claiming the user and enjoyment, the rule can hardly have any application.

The said principle had been accepted by the Supreme Court in *Anglo-french Textile Co. Ltd. Vs. Commissioner of Income Tax, Madras*, It was, therefore, held that the said principle could only be invoked where there would be no acceptable evidence of the terms of the grant. As regards the evidentiary value of the recitals in the Inam Register, the Supreme Court further pointed out at page 519 by referring to the observations of the Judicial Committee in *Arunachallam Chetti v. Venkata Chalapathi Guruswamigal* AIR 1919 P.C. 62, that such a report would not displace actual and authentic evidence in individual cases, yet when such was not available, the Court could not fail to attach the utmost importance as part of the history of the property, to the information set fourth in the Inam Register. In the present case, as we have already mentioned, the terms are available of the original grant as they were made or recognised from time to time, right upto the stage when the British Government arrived on the scene and so there is no necessity to fall back upon the entry in the Inam Register which had only the

presumptive value and which could not displace the actual evidence of the terms of the original grant.

8. Mr. Desai finally contended, reverting to his original contention, that looking to the Explanation to Section 3 of the Act the entry in the alienation register was conclusive as regards the nature of the alienation. We cannot agree with this interpretation of Mr. Desai. We have already held that the Explanation only clarified all doubts as to the meaning of the expression "inam" held by a religious or charitable institution. If the Inam was granted or recognised by the ruling authority for a religious or charitable institution and it was so entered in the alienation register, it would always fall within the scope of that expression. That does not mean that the Explanation is exhaustive as to the scope of the original exemption entry. Besides, the entry Ex. 99, is really in the name of Sajjadnishin and it further recites that the alienation is of a permanent nature. We have to consider the scope of the exemption as u/s 3, which starts with a non-obstante clause, it would be open to us to consider that such an entry was in substance and effect in the name of Sajjadnishin on behalf of a religious or charitable institution which he represented. We, therefore, come to the conclusion that the plaintiff had succeeded in proving that the grant of the village Umraj was an Inam held by a religious or charitable institution and was clearly exempted u/s 3 of the Act. On this finding, the plaintiff must succeed.

9. In the result, this appeal is allowed. The decree of the lower Court is set aside and we pass a decree in favour of the plaintiff declaring that the grant of the village Umraj was an Inam exempted u/s 3 of the Act and an injunction is issued against the defendant and its agents and servants from enforcing the provisions of the two Acts in question against the said property held by the plaintiff as Sajjadnishin, and in particular, from enforcing any liability of assessment under the Act or taking possession of the records and of the lands on the footing that the Inam in question had been abolished by the Act. The defendant to pay costs of the plaintiff all throughout.