
(1966) 09 GUJ CK 0018
In the Gujarat High Court

Shah Rayshi Hansraj

APPELLANT

Vs

Shah Khimji Mulji and Others

RESPONDENT

Date of Decision : 22-09-1966

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 37(2), 37(2), 61

Citation : (1968) 9 GLR 453

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Judgement

P.N. Bhagwati, J.—The Short question which arises for determination in this petition is as what is the scope and ambit of the jurisdiction conferred on a Collector or Survey Officer u/s 37 Sub-section (2) of the Bombay Land Revenue Code, 1879. The determination of the question depends primarily on the construction of Section 37 Sub-section (2), but it is also necessary to refer to one or two other provisions of the Code for the purpose of arriving at the correct construction of Section 37 Sub-section (2). I will presently refer to the relevant provision of the Code having a bearing on the determination of the question but before I do so, it would be convenient to set out briefly the facts giving rise to the petition. The dispute in the petition relates to an open plot of land called Varandi situate in village Kundroli, Taluka Mundra, District Kutch. This plot of land was called Varandi as it was enclosed on all four sides and at all material times it belonged to the first respondent. In or about 1955 a village Planning Scheme was undertaken by the Government in Kundroli and under the Scheme certain area on the western side of Kundroli was laid out into plots with public roads. The open enclosed lands belonging to several persons including the Varandi belonging to the first respondent were comprised in this area and the Government, therefore, decided to give to each of those persons in exchange for the open enclosed land belonging to him a plot forming part of the Scheme at a nominal price of Rs. 1-8-0 per square yard without holding public auction. The first respondent accordingly made an application dated 6th August 1955 to the Mamlatdar for allotment of a plot in exchange of the Varandi belonging to him.

The first respondent of course wanted allotment of the plot without payment of any price, but that was not possible since the decision of the Government was to give plots only on payment of Rs1-8-0 per square yard to persons whose open enclosed lands were comprised in the Scheme. One Jivraj Khimji, the son of the first respondent, therefore, approached the Mamlatdar on 23rd May 1956 and intimated to the Mamlatdar that the first respondent was prepared to accept a plot in exchange for the Varandi belonging to him on payment of Rs. 1-8-0 per square yard and a statement made by him to that effect was recorded by the Mamlatdar. He also stated in the statement that on the plot being sold to the first respondent, the first respondent would pay up the price of the same and remove the wall or fence enclosing the Varandi and hand it over to the Government for forming part of the public road. It appears that a certain portion of the Varandi was required for the purpose of a public road of 25 feet width which was laid out under the Scheme and hence the reference to the public road in the statement given by Jivraj Khimji. Pursuant to the statement of Jivraj Khimji the Deputy Collector granted the application of the first respondent and sold one of the plots being plot No. 8 of the first respondent at the rate of Rs. 1-8-0 per square yard. The first respondent removed the fence enclosing the Varandi and handed over possession of the Varandi to the Government and the Government in its turn handed over possession of plot No. 8 to the first respondent. Out of the land forming part of the Varandi, a portion admeasuring 100 square yards was thereafter merged by the Government in the public road of 25 feet width and that portion became a part of the public road. The first respondent however made an encroachment upon the land of the Varandi by putting up a fence and the Mamlatdar was therefore constrained to issue a notice dated 20th June 1957 calling upon the first respondent to remove the encroachment since it obstructed the public road and pointing out that if he did not remove the encroachment, the sale of plot No. 8 would be cancelled. The first respondent by his reply dated 1st July 1957 falsely alleged that he was not aware of any statement having been given by his son to the Mamlatdar on 23rd May 1956 and that even if any such statement was given, it was not binding upon him and he was, therefore, not bound to keep the Varandi open for the public road. He also pointed out in the said letter that the sale of plot No. 8 to him was unconditional and the Mamlatdar was, therefore, not entitled to cancel the same on the ground that he had failed to keep the Varandi open. Though this reply was given by the first respondent to the Mamlatdar, the first respondent, according to the petitioner, removed the encroachment and no action was, therefore, taken by the Mamlatdar. But sometime thereafter the first respondent again encroached upon the portion of the Varandi which formed part of the public road by putting up a fence around it with the result that the width of the public road was reduced from 25 feet to 4 feet. Now the petitioner had his land abutting immediately on the public road and he was, therefore, affected by the reduction in the width of the public road. The petitioner consequently made an application dated 2nd July 1958 to the Deputy Collector pointing out that the first respondent had made an encroachment on a portion of the public road as a result of which he was prevented from carrying

building materials for the purpose of making construction on his plot and the first respondent should, therefore, be directed to remove the obstruction caused by such encroachment. The application was sent by the Deputy Collector to the Mamlatdar for inquiry and since the first respondent disputed the title of the Government to the Varandi and claimed that the Varandi continued to be of the ownership of the first respondent, the Mamlatdar initiated a formal inquiry u/s 37(2) by issuing notice to the first respondent. The Mamlatdar also issued notice to the first respondent u/s 61 calling upon the first respondent to show cause why he should not be summarily evicted from the portion of the Varandi unauthorisedly occupied by him. The Mamlatdar after holding an inquiry passed an order dated 27th November 1958 holding that the Varandi was of Government ownership and did not belong to the first respondent and since the first respondent had encroached on 100 square yards of Varandi land forming part of the public road, the first respondent should be directed to vacate the encroached land as also to pay non-agricultural cess of Rs. 1 and fine of Rs. 20/-. The order passed by the Mamlatdar was thus an order u/s 37 Sub-section (2) and Section 61. The first respondent being aggrieved by the order of the Mamlatdar preferred an appeal to the Deputy Collector but the Deputy Collector took the same view as the Mamlatdar and dismissed the appeal. The matter was taken in further appeal to the Collector but that appeal also met with the same fate. The first respondent thereupon preferred a still further appeal to the Revenue Tribunal. At the hearing of the appeal before the Revenue Tribunal a new contention was urged on behalf of the first respondent and that contention was that the inquiry held by the Mamlatdar was not within the scope and ambit of his jurisdiction u/s 37(2) and the order made by the Mamlatdar was, therefore, null and void and consequently the appellate orders made by the Deputy Collector and the Collector were also a nullity and the proceedings in the inquiry were without jurisdiction. This contention found favour with the Revenue Tribunal and by an order dated 11th September 1962 the Revenue Tribunal held that the inquiry contemplated by Section 37 Sub-section (2) was an inquiry in regard to the ownership of property which prima facie vested in the Government under the provisions of Section 37 Sub-section (1) and the words of Section 37 Sub-section (2) were not so wide as to confer a summary power on the Revenue Officer of the Government to adjudicate upon a contractual dispute between the Government and a private citizen and the present inquiry was, therefore, outside the scope and ambit of Section 37 Sub-section (2). The Revenue Tribunal accordingly allowed the appeal and set aside the orders passed by the Mamlatdar, the Deputy Collector and the Collector. The petitioner thereupon preferred the present petition challenging the validity of this view taken by the Revenue Tribunal.

2. The main contention urged by Mr. K.N. Mankad, learned advocate appearing on behalf of the petitioner, in support of the petition was that the inquiry instituted by the Mamlatdar on the application of the petitioner dated 2nd July 1958 was an inquiry within the jurisdiction of the Mamlatdar u/s 37 Sub-section

(2) and Section 61 and the Revenue Tribunal was in error in taking the view that the inquiry was outside the scope and ambit of Section 37 Sub-section (2) and was, therefore, beyond the jurisdiction of the Mamlatdar. The Revenue Tribunal, he submitted, ought to have gone into the merits of the dispute as to whether the first respondent was the owner of the Varandi land or the Varandi land belonged to the Government and the Revenue Tribunal in declining to go into that question had wrongly refused to exercise jurisdiction which it unquestionably possessed. The validity of this contention was disputed by Mr. R.H. Daru, learned advocate appearing on behalf of the first respondent, but in addition he also urged that the petitioner had no locus standi to maintain the petition and the petition was, therefore, liable to be dismissed on that ground alone without an examination of the merits of the contention urged on behalf of the petitioner. The argument in regard to this preliminary objection was that the dispute relating to the Varandi land was a dispute between the Government and the first respondent and, therefore, if the Revenue Tribunal erroneously took the view that the determination of the dispute did not fall within Section 37 Sub-section (2) and the inquiry instituted by the Mamlatdar was without jurisdiction, the only party affected by the view taken by the Revenue Tribunal was the Government and the Government could consequently maintain a petition for correcting the view of the Revenue Tribunal, but the petitioner had no right to maintain such petition since he was not affected by the view taken by the Revenue Tribunal. Now in order to determine this preliminary objection, it is necessary to notice the circumstances under which the inquiry culminating in the filing of the petition came to be instituted by the Mamlatdar. The inquiry was instituted by the Mamlatdar on the application of the petitioner and the case of the petitioner in the application was and it is clear from the record that was the case adopted by the Government that the Varandi land was given over by the first respondent to the Government since it was comprised in the Scheme and a part of it was to be laid out in a public road of 25 feet width and in exchange for the Varandi land, the Government handed over to the first respondent plot No. 8 at a nominal rate of Rs. 1-8-0 per square yard without holding a public auction. The Varandi land, according to the petitioner and the Government, thus became the property of the Government and 100 square yards out of it was merged into a public road of 25 feet width and became part of such public road. The petitioner alleged that the first respondent bad wrongfully and unauthorisedly encroached on the said 100 square yards of Varandi land forming part of the public road by putting up a fence around it and he prayed in the application that the first respondent should be directed to remove the encroachment so made by him. The order sought in the application was, therefore, an order u/s 61 and the inquiry required to be held by the Mamlatdar was an inquiry u/s 61 but since the first respondent laid a claim to be the owner of the Varandi land as against the Government, the Mamlatdar also initiated an inquiry u/s 37 Sub-section (2) for the purpose of deciding such claim. The inquiry which was thus Initiated by the Mamlatdar was an inquiry both u/s 37 Sub-section (2) and Section 61 and this inquiry was instituted by the Mamlatdar on the application of the petitioner and the

application was made by the petitioner because he was affected by the encroachment made by the first respondent in that the encroachment reduced the width of the public road from 25 feet to 4 feet and not only obstructed the petitioner in the beneficial enjoyment of his land but also prevented him from carrying building materials to his land for the purpose of putting up a construction on it. The petitioner was, therefore, vitally interested in the decision of the inquiry and he actually appeared at the hearing of the inquiry in order to establish that the Varandi land was Government land and the first respondent had wrongfully and unauthorisedly encroached on the same and obstructed a part of the public road. The Mamlatdar accepted the contention of the petitioner and held u/s 37 Sub-section (2) that the Varandi land was Government land and since the first respondent had wrongfully and un-authorisedly encroached on 100 square yards of Varandi land forming part of the public road, the Mamlatdar made an order u/s 61 directing the first respondent to remove the encroachment made by him and to pay cess and fine under that section. The petitioner thus succeeded before the Mamlatdar and obtained the relief prayed for by him in the application. The first respondent thereupon carried the matter in appeal to the Deputy Collector and in the appeal the petitioner was joined as a party respondent and the appeal was contested by the petitioner. The petitioner again succeeded and the appeal was dismissed. Then followed another appeal to the Collector to which also the petitioner was joined as a respondent and this appeal was also contested by the petitioner and it met with the same fate as the previous appeal. The first respondent thereupon took the matter in revision to the Revenue Tribunal and in this Revision Application also the petitioner was joined as a respondent. The petitioner actually appeared at the hearing of the Revision Application before the Revenue Tribunal and submitted that the order made by the Mamlatdar and confirmed by the Deputy Collector and the Collector should be maintained but the Revenue Tribunal took the view that the inquiry was outside the scope and ambit of Section 37 Sub-section (2) and set aside the orders of the Mamlatdar, the Deputy Collector and the Collector rejecting the submission of the petitioner. The petitioner was, therefore, clearly a person aggrieved by the decision of the Revenue Tribunal and if there were any higher Tribunal having appellate or revisional jurisdiction against the Revenue Tribunal, the petitioner would have been entitled to approach such higher tribunal. It is now well-settled by the observations of Lord Esher M.R. in *In re Lamb, Ex pane Board of Trade* (1894) 2 Q.B.D. 805 which observations were quoted with approval by Mahajan J., as he then was, in *Ebrahim Aboobakar v. Custodian General of Evacuee Property* (1952) 3 S.C.R. 695 at page 706 that "any person who makes an application to a Court for a decision, or any person who is brought before a Court to submit to a decision, is, if the decision goes against him, thereby a "person aggrieved" by that decision". The petitioner being an aggrieved person was, therefore, entitled to maintain the present petition challenging the decision of the Revenue Tribunal. It is of course true that the rival claims to title to the Varandi land were as between the Government and the first respondent and the petitioner did not claim any title to the Varandi land in

himself but that does not make any difference to the question of maintainability of the petition for the claim of title to the Varandi land on behalf of the Government was made by the petitioner and the petitioner was interested in the acceptance of that claim by the Mamlatdar. If the claim was accepted the petitioner would have the full and unobstructed use of the entire public road of 25 feet width but on the other hand if the claim was rejected, the width of the public road would be reduced from 25 feet to 4 feet and the petitioner would be deprived of the use of the entire 25 feet width of the public road and would be considerably affected in the beneficial enjoyment of his land. The petitioner had, therefore, a vital interest in asserting the claim and in securing acceptance of the claim by the Mamlatdar and if the Revenue Tribunal took the view that the Mamlatdar had no jurisdiction to investigate the claim and to order removal of the encroachment made by the first respondent of the claim was found to be well-founded, the petitioner was certainly entitled to maintain the petition for the purpose of correcting the view taken by the Revenue Tribunal.

2.1 That takes me to the main contention urged on behalf of the petitioner in support of the petition and that is as to whether the inquiry which was instituted by the Mamlatdar on the application of the petitioner was within the scope and ambit of his jurisdiction. Now it must be remembered that the inquiry which was instituted by the Mamlatdar was an inquiry both u/s 37 Sub-section (2) and Section 61. The Mamlatdar was moved by the petitioner to take action u/s 61 since according to the petitioner the Varandi land was Government land and the first respondent had wrongfully and unauthorisedly made an encroachment on the same and the Mamlatdar was competent to take such action u/s 61 if the allegations of the petitioner in the application were correct. But the first respondent made a claim to be the owner of the Varandi land against the Government and it was, therefore, necessary to decide such claim before action could be taken u/s 61 and the Mamlatdar therefore, initiated an inquiry u/s 37 Sub-section (2) for the purpose of deciding such claim. The question is whether the Mamlatdar had jurisdiction u/s 37 Sub-section (2) to hold such inquiry or to put it differently, whether such inquiry was within the scope and ambit of Section 37 Sub-section (2). Now in order to understand the true scope and meaning of Sub-section (2) to Section 37, it is necessary to refer to Sub-section (1) of Section 37 for it is an elementary principle of construction that no provision of a statute should be construed in isolation but it must be read in the context of the other provisions so as to make a consistent and harmonious enactment of the whole statute. Section 37 Sub-section (1) provides:

All public roads, lanes and paths and all lands wherever situated, which are not the property of individuals; or of aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established, In or over the same are and hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of the Government.

Section 37 Sub-section (2) then proceeds to enact:

Where any property or any right in or over any property is claimed by or on behalf of the Government or by any person as against the Government, it shall be lawful for the Collector or a survey officer, after formal inquiry of which due notice has been given, to pass an order deciding the claim.

Section 37 Sub-section (3) provides for institution of a suit in a Civil Court for setting aside an order passed under Sub-section (1) or Sub-section (2) of Section 37 or claiming relief inconsistent with such order and the provision it enacts is:

Any suit Instituted in any Civil Court after the expiration of one year from the date of any order passed under Sub-section (1) or Sub-section (2), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to Section 204, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under Sub-section (2) the plaintiff has had due notice of such order.

Those provisions clearly show that u/s 37 Sub-section (1) all public roads, lanes and paths etc. including all lands wherever situated, which are not the property of individuals, or of aggregates of persons legally capable of holding property, are the property of the Government. If in respect of any property or any right in or over any property, any dispute arises as to whether such property or right in or over property, belongs to the Government or to any other person, the dispute can be resolved in a summary manner by the Collector or survey officer u/s 37 Sub-section (2). Such property or right in or over property may be claimed by the Government or by some one on behalf of the Government or it may be claimed by any person as against the Government and in such case the Collector or survey officer can after giving due notice and holding a formal inquiry pass an order deciding such claim u/s 37 Sub-section (2). Such order would by its very nature be a summary order and a party aggrieved by such order can institute a suit in a Civil Court u/s 37 Sub-section (3) for setting aside such order or for relief inconsistent with such order within a period of one year from the date of such order. And if any such suit is instituted, the decision of the Civil Court in such suit would supersede such order and govern the determination of the dispute. But whatever be the nature or character of the order which may be passed, the Collector or survey officer has undoubted jurisdiction u/s 37 Sub-section (2) to initiate an inquiry for the purpose of deciding a claim which may be made by or on behalf of the Government in respect of any property or any right in or over property or a claim which may be made by any person as against the Government in respect of any property or any right in or over property. There is nothing in the language of Section 37 Sub-section (2) or any of the other sub-sections of section 37 which would justify the interpretation that an Inquiry can be held u/s 37 Sub-section (2) only where the property in respect of which the inquiry is made prima facie vests in the Government u/s 37 Sub-section (1).

There are no words in Section 37 Sub-section (2) limiting the applicability of that provision to a case where the claim is made in respect of property prima facie vesting in the Government. The claim which is contemplated by Section 37 Sub-section (2) is a claim "to any property or any right in or over any property" made by or on behalf of the Government or by any person as against the Government. The property or right in or over property in respect of which the claim is made need not be property or right in or over property prima facie vesting in the Government. To accept the view which has been taken by the Revenue Tribunal would be to add words in Section 37 Sub-section (2) which are not there. Here in the present case the Varandi land was claimed by the first respondent as against the Government or looking at the matter from another point of view, the Varandi land was claimed by the Government or by the petitioner on behalf of the Government and the Mamlatdar had, therefore, clearly jurisdiction u/s 37 Sub-section (2) to initiate an inquiry for the purpose of deciding such claim. The decision of the Mamlatdar and on the matter being carried in appeal, the decision of the final appellate authority would certainly be liable to be challenged by the aggrieved party by instituting a suit in a civil Court within one year from the date of such decision u/s 37 Sub-section (3) but the Mamlatdar unquestionably possessed the jurisdiction to decide such claim and the inquiry instituted by the Mamlatdar was, therefore, within the scope and ambit of Section 37 Sub-section (2). As a matter of fact the principal inquiry instituted by the Mamlatdar was u/s 61 but since a claim to the Varandi land was made by the first respondent as against the Government, an inquiry u/s 37 Sub-section (2) was also simultaneously instituted by the Mamlatdar for the purpose of deciding such claim. The Revenue Tribunal was, therefore, clearly in error in taking the view that the inquiry instituted by the Mamlatdar on the application of the first respondent was outside the scope and ambit of Section 37 Sub-section (2) and was beyond the jurisdiction of the Mamlatdar. The order passed by the Revenue Tribunal will, therefore, have to be set aside and the appeal will have to be remanded to the Revenue Tribunal for hearing and final disposal on merits.

3. I therefore, allow the petition and make the rule, absolute by issuing a writ of certiorari quashing and setting aside the order of the Revenue Tribunal. The Revenue Tribunal will proceed to hear and dispose of the appeal.