

(1998) 08 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 25419 of 1995

Smt. Indira Bai and Another

APPELLANT

Vs

The Tahsildar and Others

RESPONDENT

Date of Decision : 13-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Evidence Act, 1872 — Section 114 (e)

Karnataka Village Offices Abolition Act, 1961 — Section 3, 4, 5, 6

Citation : (1999) ILR (Kar) 204 : (1999) 6 KarLJ 330

Hon'ble Judges : B.N. Mallickarjuna, J

Bench : Single Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Government Advocate, Sri K.S. Savanur and Smt. Padmavathi, for the Respondent

Judgement

1. In this writ petition under Articles 226 and 227 of the Constitution of India, petitioners who are mother and son have sought for quashing the order of respondent 2-Additional District Judge, Dharwad dated June 21, 1995 in M/A. No. 320 of 1991, Annexure-C is the order and Annexure-D is the copy of the decree in appeal. In that appeal u/s 3 of the Karnataka Village Offices Abolition Act, 1961 (hereinafter referred to as "the Act"), respondents 3 and 4 challenged the correctness of the order of respondent 1-Tahsildar, Hubli Taluk, Hubli dated 28-5-1991 in WPA:CR-4 of 1990-91 purported to have been made in exercise of Section 6 of the Act, regrating 33-01 acres of land comprised in 5 Survey Numbers 519-A, 519-B, 520, 535/2-B and 536 of Koliwad Village in favour of Narayana Ramachandra Patil, husband of 1st petitioner and father of 2nd petitioner and respondents 5 and 6.

By the impugned order dated June 21, 1995 respondent 2 allowed the appeal, set aside the order of respondent 1 dated 28-5-1991 and further directed respondent 1 to regrant the land in question in favour of respondents 3 and 4. Hence this petition.

2. Heard the learned Counsel for the parties and also the learned Government Pleader.

3. This case has a long history and in order to appreciate the rival contentions urged before me, I feel it desirable and necessary to narrate the said history in detail. -

4. Undisputably, land ad-measuring 33-01 acres comprised in 5 survey numbers of Koliwad Village is a watan property managed and controlled under the provisions of the Bombay Hereditary Offices Act, 1874 generally described as Watan Act, Bombay Act 3 of 1974 before it came to be repealed by Act, 1961 (Mysore Act No. 14 of 1961), which came into force on 1-2-1963. One Ramachandra Virupaksha Patil, father-in-law of first petitioner and paternal grandfather of second petitioner was the watandar. It would appear that he contracted certain debts from the Co-operative society and therefore the society instituted proceedings to recover the said amount in the Court of Subordinate Judge at Hubli and the suit came to be decreed in O.S. No. 1263-17/31. The society sued out the decree and in execution of the decree the above said land was put into sale by auction. It would appear that respondents 3 and 4 herein purchased the property in Court auction held on May 28, 1937. The sale certificate was registered in the office of the Sub-Registrar, Hubli on 23-7-1937, it is stated that sanction was accorded by Assistant Collector, III Division, Dharwad in HGRSR(H) 171, dated 1-6-1938 and the same came to be confirmed on 23-7-1938 (Annexures-R1 and R2). The other material now available on record would also reveal that after the sale was confirmed in the name of respondents 3 and 4 and their mother Krishna Bai, they were put in possession of the property on 22-7-1940 and they continued to be in possession of the property as purchasers of the property in the auction held in execution of the decree. Purchasers made an application for change of khata and mutation entry was made in their behalf on September 10, 1940. Nothing appears to have been done in the matter thereafter till about the year 1985.

5. Ramachandra Virupaksha Patil died on 2-2-1952 leaving behind him his only legal heir Narayana Ramachandra Patil, father of 2nd petitioner who died on 19-9-1993. What would reveal from the records is that nothing appears to have been done either by Ramachandra Virupaksha Patil during his lifetime or after his death by his son Narayana Ramachandra Patil nor the authority either under the Act of 1874 or under the Act of 1961 in regard to the property in dispute till about the year 1991, even though there was an application by respondent 3 for regrant under the Act in the year 1970.

It would only appear that on 11-11-1985 (see Annexure-R7) Narayana Ramachandra Patil made an application to the Village Accountant for deleting the name of Krishna Bai and respondents 3 and 4 from the revenue records and to enter his name. Accordingly, entry appears to have been made in the revenue records without notice to the other side. Respondents 3 and 4 challenged the legality and correctness of making such entry before the Assistant Commissioner,

Dharwad Sub-Division, Dharwad in RTS:AP:147:85-86. Assistant Commissioner, it is stated, after hearing the parties, by order dated February 9, 1987 (Annexure-R3) directed to delete the name of Narayana Ramachandra Patil and to enter the name of respondents 3 and 4. This order dated 9-2-1987 was challenged by Narayana Ramachandra Patil before this Court under Article 227 of the Constitution of India in W.P. No. 4499 of 1988. Learned Single Judge by order dated 10-4-1990 allowed the said writ petition giving liberty to the parties to settle the matter in the suit pending in Civil Court. It may be noted here that on 5-2-1987 Narayana Ramachandra Patil instituted O.S. No. 31 of 1987 in the Court of Prl. Civil Judge, Hubli against these respondents 3 and 4 and one another Shivarama Ramachandra Patil for declaration that he and defendant 3 therein are the owners and in possession of the property, consequently sought for permanent injunction (Annexure-R4 is the copy of the decree in the suit). Respondents 3 and 4 challenged the order in W.A. No. 1228 of 1990 and the Division Bench by order dated June 19, 1990 (Annexure-R5 is the copy of the judgment) directed that the rights of the parties be ultimately worked out by the Civil Court and further directed the Prl. Civil Judge, Hubli to dispose of the suit on or before 31-10-1990. It is also made clear that the order in the writ petition will be subject to the final decision in the civil proceedings.

6. On 31-10-1990 original suit O.S. No. 31 of 1987 filed by Narayana Ramachandra Patil (husband of first petitioner and father of 2nd petitioner) was dismissed. Aggrieved by the said judgment and decree plaintiff viz., Narayana Ramachandra Patil challenged it in regular first appeal before this Court in RFA No. 205 of 1991. On 11-11-1991 Division Bench of this Court dismissed the appeal holding that there is overwhelming evidence to conclude that respondents 3 and 4 continued to be in possession of the property from 22-7-1940 being the purchasers of the said property in auction held in execution of the decree.

It is pertinent to note here that for the first time after the disposal of the suit Narayana Ramachandra Patil on 18-1-1991 made an application before the Tahsildar, Hubli seeking regrant of the lands measuring 31-01 acres. Tahsildar, by order dated 28-5-1991 regranted the land in his favour. Respondents 3 and 4 being aggrieved by the said order of regrant appealed before the District and Sessions Judge, Dharwad sitting at Hubli in M.A. 320 of 1991 as provided u/s 3 of the Act 1961. That appeal was pending when the regular first appeal came to be dismissed on 11-11-1991, Therefore, Division Bench while dismissing the appeal made it clear that anything said in the course of the judgment regarding the title to the suit property shall not be construed as affecting the rights of the parties in the regrant proceedings which is pending in appeal before the learned District Judge. Respondent 2-District Judge, by the order impugned dated 21-6-1995 set aside the order of regrant and directed the Tahsildar to regrant the land in favour of respondents 3 and 4. This order is under challenge in this writ petition.

7. Respondent 2 while setting aside the order of regrant has said that there is no

application of mind and no valid reasons are assigned in regranteeing the lands in favour of Narayana Ramachandra Patil. Secondly, purchase of land in Court auction in 1937 having not been challenged for over five decades and having allowed the purchasers to be in possession of the property, petitioners being the legal representatives of the deceased Narayana Ramachandra Patil are not entitled to question the sale. Thirdly, it is held that respondents 3 and 4 being in continuous possession of the property for over 40 years from the date of sale have perfected their title to the property by law of prescription/adverse possession. Lastly, it is said that the sale in the year 1937 having been certified by the Assistant Commissioner, sale in favour of respondents 3 and 4 has become absolute and therefore they being the Authorized holders are entitled to regrant u/s 3 of the Act.

8. Learned Counsel appearing for the parties took me through every piece of documents, argued the matter elaborately and cited certain authorities in support of their arguments. I shall advert to some of those decisions at the appropriate time since I feel it not necessary to refer to all those decisions cited at the Bar though a mention of those decisions would be made.

9. In view of the rival contentions, points that would arise for determination are:

(1) Whether the properties in dispute continued to be watan properties and were available for regrant in the year 1991 even though they were sold in auction in the year 1937 in execution of the decree against the watandar to recover the decretal amount?

(2) Whether respondent 2-Additional District Judge is right in holding that respondents 3 and 4 have perfected their title to the property by law of adverse possession?

(3) Is the direction by respondent 2 to regrant the land in favour of respondents 3 and 4 bad and needs to be set aside?

10. Point No. 1:

It is undisputed that respondents 3 and 4 purchased the property on 28-5-1937 in the auction held in execution of the decree. Annexures-R1 and R2 produced along with the statement of objections by respondents 3 and 4 clearly demonstrate that the sale certificate was registered on 23-7-1937. Further, it reveals that sanction was accorded by the Assistant Collector in HGRSR(H) 171, dated 1-6-1938 and the sale was confirmed on 23-7-1938. Original watandar Ramachandra Virupaksha Patil paternal grandfather of 2nd petitioner died on 2-2-1952. I find from the copy of the judgment in RFA No. 205 of 1991 that an application filed by the said watandar in the Civil Court under the Bombay Agriculturists Debt Relief Act contending that it was not a sale but it was only a mortgage that has been negatived by the order of the authority dated 27-2-1954. He did not challenge the sale before any other authority/forum till his death. His son Narayana Ramachandra Patil does not question the said order nor

the sale nor does he take any action thereafter either under the Bombay Hereditary Offices Act, 1874 or under the Mysore Village Offices Abolition Act, 1961 at any time between 1-2-1963 and 18-1-1991. He dies on 19-9-1993.

11. Narayana Ramachandra Patil being unsuccessful in the suit O.S. No. 31 of 1987 for declaration of their title and permanent injunction, appealed before this Court in RFA No. 205 of 1991. It is pertinent to note that Narayana Ramachandra Patil who claimed to be the owner of the property along with defendant 3 in the suit viz., Shivarama Ramachandra Patil did not make defendant 3 a party in the application he filed before the Tahsildar for regrant on 18-1-1991, he claimed the property for himself. The petitioners have not stated in the petition that Shivarama son of Ramachandra Patil was also a co-owner of the property.

It would be necessary to refer to certain observations made by the Division Bench in the appeal which demonstrates that respondents 3 and 4 continued to be in possession of the property right from 22-7-1940 till the disposal of the appeal. Respondents 3 and 4 now state in the statement of objections that they were wrongfully dispossessed in the year 1995 (may be after the change of khata pursuant to the application by the deceased Narayana on 11-11-1985). The observation in the appeal RFA No. 205 of 1991 reads thus:

"There is enough documentary evidence on record which go to show that possession of the suit property pursuant to auction sale was delivered to the father of defendants 1 and 2. Auction sale was held on 28-5-1937. It was confirmed and possession of the suit schedule property was delivered on 22-7-1940 to the father of defendants 1 and 2.

...

Therefore, taking into consideration all these aspects of the matter and also several documentary evidence which go to show that from 22-7-1940 the father of defendants 1 and 2 and after his death defendants 1 and 2 have remained in possession of the suit property; the Trial Court held that Ex. P. 12 was not proved and possession of the plaintiff was also not proved. In view of what is stated above, we are of the view that the findings recorded by the Trial Court that Ex. P. 12 is not proved and the possession of the plaintiff of the suit property is not proved are correct".

This finding binds petitioners who are claiming right in the property through the deceased Narayana Ramachandra Patil.

12. Lands comprised in five survey numbers in dispute are in the District of Dharwad which was in the State of Bombay till the reorganisation of States in the year 1956, they were watan properties. The law that prevailed governing the watan properties is the Bombay Hereditary Offices Act, 1874 which was in force till 1-2-1963. This was repealed by Mysore Village Offices Abolition Act, 1961 (as it was originally called), with effect from 1-2-1963. Dharwad district is now in the State of Karnataka. Sri Jayakumar S. Patil, learned Counsel for the petitioners

contended that absolute sale of watan lands was prohibited under the Bombay Hereditary Offices Act, 1874, hereinafter referred to as the "Watan Act", and therefore sale of the lands in dispute in favour of respondents 3 and 4 did not in any way affect the right, title and interest, the deceased watandar had in the property. Sub-section (1) of Section 5 of Watan Act reads thus:

"5(1) Without the sanction of (the (State) Government), it shall not be competent-

(a) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof or any interest therein, to or for the benefit of any person who is not a watandar of the same watan;

(b) to a representative watandar to mortgage, charge, lease or alienate any right with which he is invested, as such, under this Act".

A plain reading of sub-section (1) of Section 5 makes it clear that absolute sale of watan property was prohibited in the absence of sanction by the Government. Watandar could mortgage, charge, alienate or lease only for a period during the term of his natural life. Sri Jayakumar Patil argued that since the Court sale did not have the sanction, Narayana Ramachandra Patil son of the original watandar continued to have interest in the property after the death of his father viz., from 2-2-1952. The question therefore is whether there was sanction to the Court sale held in the year 1937. Sri Patil further contended that sanction order having not been produced, it cannot be said that the sale in the year 1937 was with the sanction of the Government.

Sri Savanur, learned Counsel for respondents 3 and 4 argued that at no point of time this point was raised by the petitioners or their ancestors and on the other hand in a given case and in view of Section 114(e) of the Evidence Act, sanction has to be presumed and more importantly in view of the date of sanction being mentioned in the sale certificate (Annexures-R1 and R2). He therefore contended that there is such sanction and as such sale in favour of respondents 3 and 4 is valid. Sri Savanur, in support of his arguments, invited my attention to the decision of the Privy Council in *Kandappa Bapurao Desai v Lingappa Ramachandra Desai*. In that case, watandar viz, elder brother Rayappa and his younger brother Mallappa had given a joint statement before the Collector stating that the khata concerning watan property may be changed in the name of younger brother Mallappa as Rayappa was incapable of managing the property as he had incurred huge amount of debts. Both of them died leaving no male issues. Rayappa died on 23-11- 1914 and Mallappa died on 16-4-1917. Rayappa left behind him two widows and the senior widow adopted one Lingappa as the son of Rayappa in the year 1927. Lingappa brought the suit for recovery of the property from Kandappa whom possession had been given as Court of Wards. In that situation, dispute arose whether the transfer from Rayappa to Mallappa u/s 5 of Watan Act was with the sanction of the authority. It would be appropriate to refer to the relevant observation of the Privy Council which reads thus:

"15. It was further contended by the respondent that the transfer from Rayappa to Mallappa was illegal u/s 5, Watan Act, which provides that without the sanction of the Government it shall not be competent to a Watandar to alienate for a period beyond the term of his natural life, any watan or any part thereof, or any interest therein to or for the benefit of any person who is not a watandar of the same watan. It is said that since the property in this case was subject to the rule of lineal primogeniture Rayappa was the only watandar and Mallappa had no more than a spes successionis and for that proposition reliance was placed on *Chinava v Bhimangauda*, 21 Bom. 787 and *Tarabai Shrinivas Naik Guttal Vs. Murtacharya Anantacharya*, . The answer to this argument is that the Collector did sanction the alienation and at this distance of time their Lordships must presume that the Collector had authority on behalf of Government so to do, a presumption made the more readily because this point was not pleaded, nor debated in the Courts in India, and, if it had been, evidence on the subject might have been adduced".

(emphasis supplied)

Similar is the situation in the instant case. I have said earlier, neither the original watandar Ramachandra Virupaksha Patil nor his son Narayana Ramachandra Patil at any time after the sale raised this question and challenged the sale in any Court of law contending that it is bad, there being no sanction u/s 5 of the Watan Act. Ramachandra died on 2-2-1952, Narayana Ramachandra Patil died on 19-9-1993. Narayana makes an application before the Revenue Inspector for change of khata only on 11-11-1985 and there is absolutely no material whatsoever worth the name on record to show that before that date Narayana raised any objection regarding the sale in favour of respondents 3 and 4 before any authority.

13. Mysore Village Offices Abolition Act, 1961 which came into force with effect from 1-2-1963 abolished all village offices in the State of Karnataka and provided for resumption of lands attached to village office. Section 4 of the Act provided for resumption subject to regrant under Sections 5 and 6 of the Act. Section 5 provides for regrant of the land in favour of the holder of village office, Section 6 provides for regrant of the land in favour of the Authorized holder. Section 7 as it stood before the amendment in 1978 empowered the authority to evict the person in unauthorized occupation and the proviso to sub-section (1) of Section 7 provided for regrant of the land in favour of the unauthorized occupant under certain circumstances. However, by amendment in the year 1978 it debarred regrant of land in favour of unauthorized occupant but provided for regrant either in favour of the holder of the office and if the holder of the office was not available to regrant in accordance with the Land Grant Rules then prevailed. In the instant case, there is no application by the watandar viz., holder of the village office or successor of the holder of the village office for regrant of the land till 18-9-1991. The authority under the Act has also not initiated action as provided u/s 7 of the Act. On the other hand, there is enough material on record

to indicate that respondents 3 and 4 in the year 1970 made an application for regrant of said lands. Annexure-R9 is the notice dated 12-11-1970 and Annexure-R10 is the notice dated 19-11-1971. Both the notices are issued to respondent 3 by the Tahsildar, Hubli. A plain reading of it would make it clear that respondents 3 and 4 made an application for regrant of the land. The law as it stood on that date provided for regrant of the land to persons in possession even assuming for a moment that respondents 3 and 4 were unauthorized occupants. Section 7 as it stood before and after amendment in the year 1978 reads thus:

"Before Amendment:

After Amendment:

7. Eviction of unauthorized holder and regrant to him in certain circumstances of land resumed u/s 4. -- (1) Where any land resumed under clause (3) of Section 4 is in possession of an unauthorized holder, such unauthorized holder shall be summarily evicted therefrom by the Deputy Commissioner, in accordance with the provisions of the Code:

7. Eviction of unauthorized holders, etc.-- (1) Where any land resumed under clause (3) of Section 4 is in the possession of an unauthorized holder, such unauthorized holder shall be summarily evicted therefrom and the land shall be taken possession of by the Deputy Commissioner in accordance with law:

Provided that where in the case of any unauthorized holder, the Deputy Commissioner after enquiry is of opinion that in view of the investment made by such holder in the development of the land or in the non-agricultural use of the land or for any other reason, the eviction of such holder from the land will involve under hardship on him, he shall regrant the land to such holder on payment of such amount and subject to sub-section (3) of Section 5 on such terms and conditions as the State Government, may determine.

Provided that no such summary eviction shall be made except after giving the person affected a reasonable opportunity of making representation.

(2) A land which is not regranted under sub-section (1) shall be disposed of in accordance with the provisions of the Code and the rules and orders made thereunder applicable to the disposal of unoccupied unalienated land.

(2) Any order of eviction passed under sub-section (1) shall be final and shall not be questioned in any Court of law and no injunction shall be granted in any Court in respect of any proceeding taken or about to be taken by the Deputy Commissioner in pursuance of the power conferred by sub-section (1).

(3) The land from which an unauthorized holder is evicted under sub-section (1) shall,--

(a) if it was granted or continued in respect of or annexed to an inferior village office be regranted to the holder of such village office,

(b) in other cases be disposed of in accordance with the law applicable to the disposal of unoccupied unalienated lands".

14. It is interesting to note that in the instant case, no action is taken even by the authority u/s 7 after the Act came into force on 1-2-1963 to evict respondents 3 and 4 from the lands in dispute. No action is taken by the Tahsildar at least after the petitioners' ancestor made an application on 11-11-1985 for change of khata. The authorities could have considered the application of respondents 3 and 4 in the year 1970 and could have evicted them if they were really unauthorized occupants, and not entitled to regrant. This would also demonstrate in the circumstances of the case that the authority did not take any action u/s 7 as it stood before amendment or after the amendment till the year 1981 as they recognised respondents 3 and 4 as persons in rightful possession of the property.

Therefore, in those circumstances, the Appellate Judge (respondent 2) was right in holding that the sale in favour of respondents 3 and 4 having not been challenged before any appropriate authority for over decades, it has become absolute. The properties therefore were not available in the year 1981 for regrant in favour of holder of village office or his successor.

15. Point No. 2:--

The Appellate Judge (respondent 2) also holds that respondents 3 and 4 have perfected their title by law of adverse possession being in possession of the property for over 40 years right from 1940. Sri Jayakumar S. Patil, learned Counsel for the petitioners argued that the learned Judge committed an error in not relying on the decision of the Supreme Court in *Raja Rameshwar Rao and Another v Raja Govind Rao*. Sri Savanur, learned Counsel for respondents 3 and 4 on the other hand contends that the said finding cannot be faulted for the reason that the facts and circumstances came up for consideration before the Apex Court in *Rameshwar Rao's case*, supra, are clearly distinguishable from the facts and circumstances of the present case. He also relied on the decision of the Bombay High Court in *Swamirao Shrinivas Parvatikar v Bhimabai Padappa Desai*. I find merit in this argument.

In the case of *Raja Rameshwar Rao*, supra, village had been granted to the ancestor of Harinarayan alias Raja Nemiwant Bahadur by the Nizam in 1787. On the death of the said Raja Harinarayan the village was conferred by another sanad on his son Raja Govind Narayan in 1811. Ever since then the village was continued in possession of the descendants of Raja Govind Narayan. In 1817 Raja Govind Narayan granted this village on Tahud (towards lease) to Raja Rama Krishna Rao, ancestor of the defendants. The lease was for fixed sum per year in favour of the appellants ancestors, no term was mentioned in the kowl as to its duration. In that situation, Court held that where the grant is continued in a family from generation to generation, each grantee holds it for his life, the limitation against any one grantee starts to run from the date of title arose. Sri

Jayakumar S. Patil, relying on this ratio of decision argued that when once Ramachandra Virupaksha Patil, paternal grandfather of 2nd petitioner died on 2-2-1952, fresh period of limitation started in the case of Narayan Ramachandra Patil, father of 2nd petitioner. Karnataka Act, 1961 came into force on 1-2-1963 by which time 12 years had not lapsed and therefore respondents 3 and 4 cannot claim title by law of adverse possession. The facts and circumstances came up for consideration in the case of Raja Rameshwar Rao are clearly distinguishable. In the instant case, I have said that the sale was with the sanction of the Government, no action was taken under the Act, 1961 by the authority after 1-2-1963, respondents 3 and 4 continued to be in possession of the property uninterruptedly and thus the facts of the present case are clearly distinguishable.

In the case relied on by Sri Savanur, viz., in Swamirao's case, supra, property involved was watan property, it belonged to the family of Bhimabai, plaintiff in the suit. Bhujanga Rao, father-in-law of Bhimabai granted the lands in inam to Srinivas Rao, ancestor of plaintiff Swamirao. Bhujanga Rao died in the year 1870 and after his death his widow confirmed the grant, the grantee remained in possession. Litigation started between Swamirao and Padappa son of Bhujanga Rao, it went upto the Privy Council, it held that all alienations made in favour of Swamirao were void against Bhujanga Rao's son and that the latter had a right to succeed to the lands as watandar. This was in the year 1900, Swamirao continued in possession till 1906 when Padappa died. On Padappa's death, his widow Bhimabai became watandar but Swamirao continued to be in possession of the land till 1917 when he was forcibly dispossessed. On July 22, 1924 Swamirao filed a suit to recover possession of the land from Bhimabai and others. Trial Court decreed the suit. But in appeal, District Judge reversed the said judgment and decree, and dismissed the suit by taking the view that possession of Swamirao after the death of Padappa in 1906 had not ripened into adverse possession against Padappa's widow who took possession in 1917. In appeal before the High Court, his Lordship Justice Baker reversed the judgment in appeal and restored the judgment and decree of the Trial Court. It is useful to refer to the observation, which reads thus:

"The point which has been raised in the present case is, therefore, directly covered by Rama v Shamrao, and therefore adverse possession which began in 1900, although it did not become complete by twelve years" adverse possession at the date of the death of Padappa in 1906, must yet be taken into account in computing the period of adverse possession, and there will be no stopping of the running of the time by reason of the death of Padappa in 1906. The result is that between 1905 and 1917 the plaintiff Swamirao has acquired a title by adverse possession to the lands in dispute, even though they are watan lands, as is shown by Tuka v Ganu and Rama v Shamrao. At the time the learned District Judge delivered his judgment, the case of Tuka had not been decided".

(emphasis supplied)

16. In the instant case, respondents 3 and 4 purchased the properties in auction

in the year 1937, continue to be in possession till about the year 1985 if not till 1991 uninterruptedly and openly to the knowledge of the real owner and his successor (in this case holder of the village office). No action is taken to evict them by any authority after 1-2-1963. The expression "adverse possession" means a hostile possession, that is the possession which is in denial of the title of the true owner. It must be adequate in extent to show that it was possession adverse to the real owner. Respondents 3 and 4 continues to be in possession for over 40 years commencing from 1940 openly to the knowledge of the then village officer and thereafter with the knowledge of the authority under the Act. Thus, it is shown that the possession with respondents 3 and 4 is hostile and under a claim or colour of title, actual, open, notorious, exclusive and continuous and it was for a required period of time openly to the knowledge of all concerned.

In this context, I may usefully refer to the decision of the Supreme Court in *Kshitish Chandra Bose v Commissioner of Ranchi*. In that case, plaintiff sought for declaration of his title and recovery of possession and also permanent injunction restraining the defendant municipality from disturbing his possession over plot No. 1735. There was no serious attempt for over 45 years by the municipality to evict the plaintiff, knowing fully well that he was asserting hostile title against the municipality in respect of the land. Plaintiffs suit was decreed at the first instance and that was confirmed in appeal. However, in second appeal that was set aside. But the Apex Court, dealing with the matter holds:

"If a person asserts a hostile title even to a tank which, as claimed by the municipality, belonged to it and despite the hostile assertion of title no steps were taken by the owner (namely, the municipality in this case), to evict the trespasser, his title by prescription would be complete after thirty years".

In the instant case, as I have pointed out earlier, the then holder of the village office or after his death his successor initiated no action to evict respondents 3 and 4, either under the Bombay Hereditary Offices Act, 1874 or under the Act 1961. Even the authority under the Act, 1961 did not take any action after the Act came into force on 1-2-1963. They did not take any action even after the applications by respondents 3 and 4 in the year 1970 seeking regrant, no action is taken under the Act even after an application is made by the ancestor of the petitioners in 1985 for change of khata. Further, no serious attempt was made by any one to evict them at any time after 1940 till 1985 on the ground that their possession is unauthorized, I have also held that the sanction required u/s 5 of the Watan Act for the sale of the property has to be presumed in the facts and circumstances of the case. Therefore, in the circumstances, finding of the Appellate Judge viz., respondent 2 on the question of adverse possession cannot also be faulted.

17. Point No. 3:

Sub-section (b) of sub-section (1) of Section 2 of the Act, 1961 defines the expression "Authorized Holder" and the definition reads thus:

"(b) "Authorized holder" means a person in whose favour a land granted or continued in respect of, or annexed to a village office by the State or a part thereof has been validly alienated permanently, whether by sale, gift, partition or otherwise, under the existing law relating to such village offices?

(emphasis supplied)

Section 6 of the Act provides for regrant of the land in favour of the Authorized holder. Learned District Judge (respondent 2) holds that in view of the sale in the year 1937 being confirmed in the same year and in view of the fact that respondents 3 and 4 continued to be in uninterrupted possession for over decades, there should be regrant in their favour. I have said, sanction required u/s 5 of Watan Act, has to be presumed in the facts and circumstances of the case. The other finding that respondents 3 and 4 have established their title by being in continuous uninterrupted possession for over 40 years openly to the knowledge of the concerned and adverse to the interest of the owner, not being faulted, it is rather difficult to find fault with the direction in the impugned order, to the Tahsildar to regrant the land in favour of respondents 3 and 4.

18. Sri Jayakumar S. Patil, learned Counsel for the appellants invited my attention to the decision of this Court in *Lakshmana Gowda v State of Karnataka and Others* and also the Full Bench decision of this Court in *Syed Bhasheer Ahamed and Others v State of Karnataka*. In *Lakshmana Gowda's* case, *supra*, it is held that the alienee of service inam land from its holder or Authorized holder did not get any title if the alienation had taken place prior to the coming into force of the Principal Act. What was considered by the Full Bench in *Syed Bhasheer Ahamed's* case, *supra* is the alienation of inam lands between 1-2-1963 and 7-9-1978. In the instant case, it is held that there was sanction under the then existing law viz., u/s 5 of the Watan Act and therefore sale in Court auction is not hit by the provisions of the Watan Act. Secondly, the original watandar died on 2-2-1952 after 15 years of sale in favour of respondents 3 and 4, they were in possession openly to the knowledge of the owner and adverse to his interest over a period of 12 years. It is also held that the purchasers being in possession for over 40 years, there being no serious attempt from any quarter to evict them from possession of the land, their title to the lands in dispute is established. Therefore, petitioners cannot seek any assistance from the above said decisions and also from the other two decisions cited viz., *Annaji Narayan Deshpande v Venkatrao Sidrao Deshpande* and *Vithaldas Bhagwandas Dubbar v Shriniwasrao Nageshrao Nadgouda*.

Sri Savanur, learned Counsel argued that the person acquiring watan property would become watandar, no matter whether he holds watan office or not. He relied on the decision of the Full Bench of Bombay High Court in *Vijayasingrao Balasaheb Shinde Desai v Janardanrao Narayanrao Shinde Desai and Others*. In elaborating, he submitted that respondents 3 and 4 having purchased the property through Court auction which belonged to a watandar and having remained in possession for over 12 years openly to their knowledge and adverse

to their interest, whatever interest the purchasers have acquired under the said purchase has become absolute and they are the watandars. He also relied on two other decisions reported in Annaji Narayan's case, supra and Narayan Raghunath Kulkarni v Krishnaji Govind Kulkarni and Others . His further contention is that respondents 3 and 4 having become watandars are entitled to regrant under the Act 1961. I find no need to elaborate on this point in view of the reasons hereinabove stated exhaustively.

19. In the result and for the reasons hereinabove stated on Points 1 to 3, petitioners fail. Accordingly, this writ petition is dismissed. In the circumstances of the case, I direct each party to bear their own costs.