

(1978) 11 GUJ CK 0021
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Thakor Dolatsinh Jivansinh

RESPONDENT

Date of Decision : 24-11-1978

Acts Referred:

Bombay Taluqdari Tenure Abolition Act, 1949 — Section 5, 5, 6, 6 , 7

Citation : AIR 1979 Guj 129 : (1979) 1 GLR 346

Hon'ble Judges : B.J. Divan, C.J;S.B. Majmudar, J;D.A. Desai, J

Bench : Full Bench

Judgement

A.D. Desai, J.—The question involved is one of interpretation of Sections 5 and 6 of the Bombay Taluqdari Tenure Abolition Act, 1949 (hereinafter referred to as the Act), which came into force on August 15, 1950. The question is common in all these appeals and, therefore, it can be disposed of by this common judgment.

2. The relevant facts shortly stated are that the lands in dispute formed part of the former Vaghpur Taluqdari Estate. The respondents are the original plaintiffs and their case was that the suit lands were given to them as tenants for cultivation in May 1947 and the day on which the Act came into force, they held the suit lands as tenants. On the Act coming into force, an inquiry u/s 37 of the Bombay Land Revenue Code (hereinafter referred to as the Code) was undertaken by the Mamlatdar, who held that the relation of the plaintiffs with the Taluqdar was that of landlord and tenant since May 1947 and, therefore, the suit lands did not vest in the State Government u/s 6 of the Act. The Collector, to whom the Mamlatdar forwarded the papers, in exercise of his suo motu powers revised the order and held that even though the plaintiffs held the land as tenants from the Taluqdar, yet as the suit lands remained uncultivated for three years continuously immediately before the Act came into force, the said lands vested in the State Government u/s 6 of the Act subject to the plaintiff's rights as tenants. Being dissatisfied with this order of the Collector, the plaintiffs preferred revision applications before the Gujarat Revenue Tribunal and the order of the Collector was upheld by the said Tribunal. Being aggrieved by the said

order of the Tribunal the plaintiffs preferred Special Civil Application No. 372 of 1971 in this Court under Article 227 of the Constitution, but the said application was also dismissed. Thereafter the Talati Vaghpur issued notice dated July 19, 1967 u/s 135 of the Code informing the plaintiffs that mutation in terms of the final order would be made after 30 days and the plaintiffs might file their objections if any to the said mutation within the stipulated period. By the notice the plaintiffs were also intimated that u/s 6 of the Act, the suit survey numbers would not be held by the Taluqdars and if the plaintiffs paid rent to the Government, they would be considered as tenants of the suit lands. The plaintiffs contested the mutation entry stating that the suit lands had not Vested in the Government, that they were not liable to pay the rent to the Government as they had become owners of the land under the Bombay Tenancy and Agricultural Lands Act, etc. That the plaintiff thereafter filed civil suits for declarations that they were in possession of the suit lands for 3 years prior to the coming into force of the Act, that Section 6 of the Act was not applicable, that they had become the owners of the suit land, and that Talati of Prantij had no right to make the mutation as per notice dated July 19, 1967 and prayed for consequential relief of injunction at the State and its officers restraining them from enforcing the notice dated July 19, 1967. The trial Court dismissed the suits and in appeals to the District Court, the decrees of the trial Court were confirmed. Being aggrieved by the said decrees second appeals were filed in this Court and the learned Single Judge reversed the decrees of the Courts below and decreed the suits of the plaintiffs holding that Section 6 of the Act applied to public property and uncultivated or unoccupied lands in possession of the Taluqdar would be covered by Section 5 and not by Section 6 of the Act. The suit lands were in lawful possession of the Taluqdar through the tenants. Therefore, the Taluqdar was the holder of the suit lands and Section 5 of the Act would be attracted as the said section applies to specified properties mentioned therein. Section 6 of the Act was subject to Section 5 of the Act. For taking this view the learned Single Judge relied on his previous decision in Dinshawji Bamanji Dalai and Ors. v. State of Gujarat and Anr. 11 G.L.R. 193, and the decision in Ambabai Janhavibai v. State of Maharashtra 67 B.L.R. 291, wherein the Court construed similar provisions of the Bombay Personal Inams Abolition Act, 1953. Against this decision of the Single Judge these Letters Patent Appeals are held and they came for hearing before the Bench consisting of D.P. Desai J. and myself and in view of conflict of decisions the Letters Patent Appeals have been referred to the Full Bench.

3. Sections 5 and 6 of the Act read as under:

5. (1): Subject to the provisions of Sub-section (2)-

(a) All taluqdari lands are and shall be liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder, and

(b) a taluqdar holding any taluqdari land or a cadet of a taluqdar's family holding any taluqdari land hereditarily for the purpose of maintenance, immediately

before the coming into force of this Act," shall he deemed to be an occupant within the meaning of the Code or any other law for the time being in force.

(2): Nothing in Sub-section (1) shall be deemed to affect-

(b) the right of any person to pay jama only under any agreement or settlement recognised u/s 23 or under a declaration made u/s 22 of the Taluqdars" Act so long as such agreement, settlement or declaration remains in force and provisions of this Act.

6. All public roads, (sic) and paths, the bridges, ditches, dikes and fences, on, or, beside, the same, the bed of the sea and of harbours, creeks below high water courses, and all standing and flowing water, all unbuilt village site lands, all waste lands and all uncultivated lands (excluding lands used for building or other non-agricultural purposes), which are not situate within the limits of the want as belonging to a taluqdar in a taluqdari estate shall except in so far as any rights of any person other than the taluqdar may be established in and over the same and except as may otherwise be provided by any law for the time being in force, vest in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the Government and all rights held by a taluqdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special order of the Commissioner to dispose them of as he deems fit. Subject always to the rights of way and of other rights of the public or of individuals legally subsisting.

The sections or the similar provisions came for interpretation before this Court for more than once. Second Appeal No. 756 of 1960 (The State of Bombay v. Vora Ibrahim Akbarali) was decided on February 17, 23 & 24, 1965, by Divan J. (as he then was). The learned Judge had to consider similar provisions of Sections 5 and 8 of the Jagirs Abolition Act. The learned Judge held that u/s 8 of the Jagirs Abolition Act, all waste lands and all uncultivated lands situated within the Jagirdari villages vested in" the Government and under the explanation to the said section a land shall be deemed to be uncultivated if it had not been cultivated for a continuous period of 3 years immediately before the appointed day. Section 5(1) of the said Act referred to possession but it did not necessarily contemplate that such land even though in actual possession of the Jagirdar was cultivated by him. The concept of Section 5(1) (b) was the concept of possession rather than cultivation. In order to construe Section 8 and to give full effect to it, the two provisions of Sections 5 (1)(b) and 8 must be reconciled and in view, of the provisions of Section 8, it was clear that any land which happened to be uncultivated within the meaning of the explanation and in whoso ever"s possession vested in the State Government and the rights of the, Jagirdar in such lands would become extinguished even though such lands, may be in actual possession of the Jagirdar. The test for the purpose of, Section 8 was cultivation and not possession. J.M. Sheth J. in Second Appeal; No. 796 of 1960 (The State of Bombay v. Vaghela Vajesang and Ors.) decided on October 24, 1968, took the same view as Divan J. of the provisions of Section 6 of the Bombay Taluqdari

Tenure Abolition Act. The learned Judge held that Section 6 dealt with a question as to what lands would vest in the State. The different categories of properties specified in Section 6 of the Act, if they were not situated within the limits of Wantas belonging to a Taluqdar in a Taluqdari Estate were to vest in the State Government and rights held by a Taluqdar in such properties were to be deemed to have been extinguished. The words "all uncultivated lands" were of very wide import. If the lands were uncultivated, they formed one category of the properties which vest in the State and the rights of the Taluqdar in such property were deemed to be extinguished. In the case of *State of Gujarat v. Ambalal Mangaldas Patel* 11 G.L.R. 202, V.R. Shah J. interpreted similar provisions of Sections 5 and 8 of the Bombay Merged Territories and Areas (Jagir Abolition) Act as under:

The question, therefore, that arises for decision by me is which of the two provisions of law would prevail in the circumstances of this case. The Legislature, after abolishing a Jagir proceeds to substitute an alternative arrangement in place of the one abolished. By Section 4, it makes all provisions of Land Revenue Code and rules thereunder which relate to unalienated lands applicable to the Jagir land and makes such lands liable to payment of land revenue. Therefore, a Jagir village is substituted by an unalienated village liable to pay land revenue. Next the Legislature proceeds to lay down as to what lands can form the subject matter of occupancy rights and who can become occupant of those lands. This is provided for in Sections 5 and 6. At the same time, the Legislature proceeds to lay down what lands would vest in it -thereby indicating as to what lands cannot form the subject matter of an occupancy. These lands are specified in Section 8 of the Act. Except unbuilt village site lands, waste land and uncultivated lands, all other kinds of property mentioned in Section 8, are such that they are useful to public generally or to a section of the public. The three items of property just mentioned above are not of any present use to any one-this, is indicated because the lands are either unbuilt, waste or uncultivated. It may be that they may be useful to individuals in future; but at the time of abolition of Jagir, no one derived any benefit out of it. The Legislature may well have, thought to acquire them also with a view to grant them to such persons as would make immediate use of it. Section 8, therefore, concerns itself with such items as are, or are capable of being used for general public benefit. In respect of these items, the Legislature has indicated its mind that, on abolition of Jagir, they should vest in Government. It is, therefore, clear that the Legislature has expressed a clear " indication as to what should be done after the abolition of Jagir in respect of the properties mentioned in Section 8 of the Jagirs Abolition Act. To the extent that Section 8 would over-lap Section 5, the provisions of Section 8 should prevail as they deal specifically which specific items of land unlike the provisions of Section 5 which deal generally with all kinds of properties.

The learned Judge followed the judgment of Divan J. in second appeal referred to herein above.

4. The Division Bench of Bombay High Court in the case of Rangji-Idas Varajdas Khandwala v. The Collector of Surat 59 B.L.R. 527, had to construe similar provisions contained in Sections 5 and 7 of the Bombay Personal Inams Abolition Act, 1953. The question before the Court was whether an uncultivated land on which there was a building vested in the Government u/s 7 of the said Act. Section 7 of the Bombay Personal Inam Abolition Act so far relevant provided as under:

7. All public roads, lanes and paths, the bridges, ditches, dikes and fences, on or beside, the same, the bed of the sea and of harbours, creeks below high water mark, and of rivers, streams, nallas, lakes, wells and tanks, and all canals, and water -courses, and all standing and flowing water, all unbuilt village site lands, all waste lands and all uncultivated lands (excluding lands used for building or other non-agricultural purposes), which are situate within the limits of any inam village or inam land shall, except in so far as any rights of any person other than the inamdar may be established in or over the same and except as may otherwise be provided by any law for the time being in force, vest in and shall be deemed to be with all rights in or over the same or appertaining thereto, the property of the State Government and all rights held by an inamdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the State Government, to dispose them of as he deems fit, subject always to the rights of a way and other rights of the public or of individuals legally subsisting.

Explanation : For the purpose of this section, land shall be deemed to be uncultivated if it has not been cultivated for a continuous period of three years immediately before the appointed date.

The Court while construing the relevant sections observed that the effect of Section 7 was that the lands enumerated therein become vested in the Government. One of the items enumerated was "uncultivated lands". If the matter was left there uncultivated lands would include lands on which building had been put up or which had been converted to non-agricultural use but as apparently the Legislature desired that such lands although uncultivated should not vest in the State Government or be deemed to be the property of the Government. Such lands were excluded from "all uncultivated lands" by including in the brackets after the words "all uncultivated lands", the words "excluding lands used for building or other non-agricultural purposes." The effect of the exclusion was that the lands so excluded were subject to Section 5. This decision was appealed against and the Supreme Court in the case of Bangildas Varajdas Khandwala v. The Collector of Sural 63 B.L.R. 514, observed:

Under Section 4 of the Act, all personal inams have been extinguished and save as expressly provided by or under the Act, all rights legally subsisting on the said date in respect of such personal inams are also extinguished. Therefore, the appellant cannot claim protection from being assessed fully after the Act came into force." Section 5 makes it clear that all inam lands shall be liable to the

payment of land revenue in accordance with the provisions of the Code and would thus be liable to full assessment as provided by the Code. The appellant, however, relied on Section 7 of the Act and contended that Section 7 created an exception to Sections 4 and 5 with respect of lands of inamdars used for building or for other non-agricultural purposes and, therefore, the appellant's inam land which was used entirely for non-agricultural purposes (namely, building) could not be assessed u/s 5 of the Act. As" we read Section 7, we find no warrant for holding that it is an exception to Sections 4 and 5. As already pointed out, Section 4 abolishes personal inam and the rights of inamdars with respect to such inams and Section 5 makes all inam villages or inam lands subject to the payment of full assessment of land revenue in accordance with the Code. Section 7 deals with vesting of certain parts of inam lands in the State, (namely, public roads, lanes and paths, all unbuilt village site lands, all waste lands and all uncultivated lands and so on); but an exception has been made so far as vesting is concerned with respect to lands used for building or other non-agricultural purposes by the inamdar. The appellant relies on this exception and it is urged on his behalf that this exception takes out the land so excepted from the provisions of Sections 4 and 5. This reading of Section 7 is, in our opinion, incorrect. That section vests certain parts of inam lands in the Government and but for the exception even those inam lands which were used for building and non-agricultural purpose would have vested in the Government. The exception made in Section 7 only saves such inam lands from vesting in Government and no more. The result of the exception is that such inam lands do not vest in Government and remain what they were before and are thus subject to the provisions of Sections 4 and 5 of the Act. The appellant, therefore, cannot claim because of the exception contained in Section 7 that the lands excepted from vesting are not subject to Sections 4 and 5 of the Act. The argument, therefore, based on Section 7 must fail.

These observations clearly put an end to the controversy. The point did arise before the Supreme Court about the interpretation of Section 7 of the Act and the Court held that all uncultivated lands vested in the Government under the provisions of Section 7. Section 7 was not an exception to Section 5. Section 5 referred to the liability to assessment while Section 7 referred to vesting of property. Section 7 provided for vesting in the Government of the properties enumerated therein which enumeration included "all uncultivated lands". The operation fields of the two sections were thus different. Thus it is evident that Section 7 of the Act provides for vesting in the Government of the properties enumerated therein. "All uncultivated lands" are one of the items enumerated therein. Now the finding of the Court in these appeals is that the suit lands remained uncultivated for a period of three years immediately before the Act came into force and by virtue of the explanation to Section 7, the suit lands are deemed to be uncultivated. Mr. Shah for the appellants tried to challenge this finding but the finding relates to a question of fact and, therefore, the challenge cannot be entertained and has to be rejected. The suit lands being uncultivated

vested in the State Government u/s 6 of the Act subject to the rights of the plaintiffs as tenants of the lands because the section saves the rights of third parties.

5. J.B. Mehta J. as supported by the decision in *Ambabai Janhavibal v. State of Maharashtra* (supra), has consistently taken the view that the lands like the suit lands would be governed by Section 5 and not by Section 6 of the Act. The said view cannot now be accepted. The reasons for J.B. Mehta J. to take this view are two fold; (1) that Section 5 deals with specific properties which include uncultivated lands in possession of the Taluqdar and (2) that Section 6 covers properties of public nature only. Neither of these reasonings can be accepted. Section 8 is the only section which deals with the vesting of properties enumerated therein. Section 5 deals with liability of assessment. The words "all uncultivated lands are of very wide import and must, therefore, necessarily cover such lands even in possession of Taluqdar, whether used for public purposes or possessed by a Taluqdar. For the aforesaid reasons decrees passed by the learned Single Judge in second appeals out of which these letters patent appeals arise are set aside and the decrees of the lower appellate Court (District Court) therein are restored. In view of the divergent decisions of the Courts about the interpretation of the provisions of Sections 5 and 6 of the Act, we direct that there shall be no order as to costs throughout.