
(1911) 03 BOM CK 0007
In the Bombay High Court
Case No : First Appeal No 68 of 1908

The Secretary of State for India

APPELLANT

Vs

Bai Rajbai

RESPONDENT

Date of Decision : 20-03-1911

Acts Referred:

Citation : (1911) 13 BOMLR 609

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

Bench : Division Bench

Judgement

Heaton, J.—The District Judge has come to the conclusion that no conditions should be stated in the decree, because the written law makes enough provision for the matter. It would, he thinks, be superfluous to prescribe conditions.

2. As a result of the discussion in this Court it is, I understand, admitted that Bombay Act VI of 1888 and the provisions of the Bombay Land Revenue Code, with the modifications it enacts do apply to the Kasbati village of Chharodi. It is to me quite clear that they do, for Kasbatis are included amongst Talukdars (see the definition in Section 2 of Bombay Act VI of 1888). There was a good deal of discussion as to the meaning of Section 22 of that Act but it is now agreed that it covers the case of this village, so the matter needs no exposition in this judgment. It seems therefore that there is a written law applicable to the case and so far the District Judge is right.

3. Now I will deal with the argument that conditions are superfluous. If the precise relations between the Government and the Kasbati holder are to be fully known and easily referred to it is necessary to have them clearly stated, especially as it is admitted that the Kasbati does not hold unconditionally and the nature of the conditions has given rise to prolonged and acute controversy. In analogous cases the conditions are stated in a "patta" or lease or in a settlement register as provided by Section 5 of Bombay Act VI of 1888. Here we have no lease, "no patta" and no settlement register. Unless we provide for it in our decree the matter will be left at large and will, very probably, provoke continued

dispute and litigation. Clearly then it is not superfluous to determine the conditions ; and equally clearly it is convenient. Therefore to the best of our ability they shall be determined. But in so doing, nothing must be decreed which is contrary to or inconsistent with the written law.

4. The conditions first stated by the defendant are given in the judgment of the lower Court. A number are not now pressed: others as the result of discussion have been modified and agreed to. The remainder have to be dealt with by us.

5. Those not now pressed are numbers 5, 7, 8, 9, 14, 15, 16, 18 and 19. They will be ommitted.

6. Those agreed to are numbers 1, 2, 3, 4, 6 and 17. They are as set out below;

1. The amount of the Jama shall be subject to revision from time to time, and shall be payable in such installments as may be stated in the settlement register. When for any reason such settlement register has not been prepared, the installments shall be payable according to the orders of the Collector issued in that behalf.

2. In addition to the Jama, Local Fund Cess shall be charged and it shall be payable with the first installment of the Jama.

3. The amounts payable to Government shall be paid in British coin.

4. The holder shall keep a correct account of all produce brought by the tenant; of what the holder retains; and of what he hands back to the tenant; and on demand by the tenant shall give him, free of charge an extract from such account relating to the produce of such tenant.

6. So long as the Bhagbatai system is in force Kasbatis shall not levy by way of rent from the tenants more than one-third of the produce of the dry crops and more than one-fourth of the produce of the irrigated crops. Such proportions to be calculated after all customary allowances have been deducted.

7. As to condition No. 6 Mr. Gokuldas undertakes to furnish within a week a list of all the customary deductions.

17. Government shall be entitled to resume the village if the Kasbati holder for the time being unnecessarily and capriciously evicts the tenants or holders of lands in the village. or exacts rack-rents that is to say rents approaching the full annual value of the lands, or uses oppressive measures for the recovery of rents.

8. I will now deal with the disputed conditions:

9. Instead of conditions numbered 21 and 22 in the judgment of the lower Court the Advocate General proposes the following-

1. The village is impartible.

2. Subject to condition 4 none but a Viramgaum Kasbati" can be a holder.

3. Subject to condition 4 none but the lineal descendant of the last holder who is not a widow-holder under condition 4 can be a holder.

4. If a holder being a male shall die without lineal descendants but leaving a widow or widows she or they shall be during widowhood the holder or holders.

10. These are the most contentious conditions and round them argument has been most acute. Much of the argument adduced for the plaintiff was weakened because it confused two entirely different things. It failed to distinguish between the management and the enjoyment of the village. We are concerned only with the former. Except as regards the conditions protecting the tenants from harsh and oppressive treatment we are not concerned with the internal economy of the village; nor has any enquiry regarding it been made. We do not know, nor it is necessary to know, into whose hands the profits of the village ultimately pass, or how or by whom those profits are enjoyed. Resumption of the management of the village is the last penalty for breach of a condition. Such resumption would not affect the enjoyment of the profits except as to their amount. It would be a resumption of management not an eviction from the holdings. What we are concerned with therefore is the right to manage the village and nothing more.

11. It is contended for the plaintiff that this right is heritable and must pass by inheritance in the ordinary way. But it is a right which carries with it very definite obligations and the penalty for the failure to fulfil the obligations is resumption of the management by Government. That penalty must be effective. In order that it may be effective the obligations imposed must devolve on a known person or persons, recognised by Government as the manager or managers. They cannot properly sub-divide these obligations or surrender them to others without the consent of Government. The power to resume must remain a power to resume as a whole, not fractionally : it must remain a power which can be effectively exercised by taking the management out of the hands of the person or persons who are themselves responsible to the Government for the management. Partition of the management by the Kasbati holder, with others, or surrender by him to any other as of right, would diminish the control of the Government over the management and would destroy the proper character of the arrangement.

12. All this is to be inferred from the qualities peculiar to the thing we are considering.

13. The correctness of this conclusion is fortified by a consideration of the evidence in the case. We have a complete history of the right of management, not of Chharodi alone but of all the nine Kasbati villages, from the beginning. On no occasion has the right of management been partitioned; mostly it has vested in a single person for each village sometimes in two persons jointly; never in more than two,

14. The management has always been with a person or two persons recognised by Government as the managers. The Government have consistently exercised their power of control over the management. Where a manager has died the

question of continuing the management has been brought to the notice of the Government and the future arrangements made have been with their consent.

15. From the considerations stated and from the evidence in the case I infer that Government are not bound to recognise more than one person as the holder of the right of management.

16. The history of the case which has been sufficiently dealt with in the earlier part of this judgment shows that the management of the nine villages was left with the Kasbali for their maintenance and the support of their dignity. The intention was that the Kasbati should be the beneficiaries, not others. How definitely this was intended appears from the prohibition, imposed from the beginning, against alienation and against attachment by a creditor. The evidence tells us that with one exception the management has invariably vested in a Kasbati or the widow or the daughter of a Kasbati.

17. The exception is this: in 1839 half the village of Liya (one of the nine villages) was transferred by the Civil Court to a co-sharer of the original holder and this transfer was recognised by the Revenue Authorities who entered half of the village in the name of the co-sharer. This half was again transferred by the co-sharer to one Badamia who was not a Kasbati. Government recognised Badamia's holding during his life, as a matter of grace, not as of right (Exhibit 156). The half of Liya not with Badamia, was in 1874 resumed on failure of heirs whom the Government would recognise (Exhibit 155). On Badamia's death about 1879 the half held by him was resumed and Government declined to continue it to a claimant who represented himself to be Badamia's heir. The plaintiff's case derives no support from this exception.

18. I infer therefore that Government are not bound to recognise any one except a male or female Kasbati of Viramgam or the widow of such a Kasbati as the holder of the right of management.

19. But I am unable to infer any other restrictions on succession. Neither the evidence nor the nature of the right necessarily indicates others. What the Advocate General proposes is in effect a scheme of inheritance. It may be as a matter of convenience preferable to the conditions we propose: but it is vehemently opposed by the plaintiff and we must limit ourselves to such conditions as are established by the evidence and circumstances of the case. We cannot go further in order now to settle by conjecture questions relating to the village of Chharodi which have not arisen and have not been the occasion of settlement in the past though possibly they may arise in the future.

20. Conditions Nos. 10, 11., 12 and 13 relate to the power of the Kasbati holder to alienate the management of the village and the consequences of alienation or indebtedness. Restriction on alienation is in terms provided by Section. 31 of Bombay Act VI of 1888. We cannot it is said modify these terms because to do so would be to modify the purpose of the Act: it would in effect be, it is argued, to legislate. The ordinary law is that a holder may lawfully alienate. If restrictions

are to be imposed they must be imposed by law or by consent or arrangement. Here they are imposed by law and that law has superseded the conditions previously imposed by consent or arrangement. The law was intended to and did in fact promulgate the only restrictions imposed. This is the argument for the plaintiff. I admit its force and consider that the condition in its general form should be stated thus.

21. The Kasbati holder may not alienate the right of management contrary to the provisions of Section. 31 of Bombay Act VI of 1888.

22. But this condition does not exhaust the question in so far as the rights of Government are concerned. We are dealing with property of a peculiar character, if property it may properly be called. We are concerned with the management of the village not with the enjoyment of its profits.

23. As has already been explained the management always has been and must remain under the control of Government. That control would be interfered with if any person other than the manager recognised by the Government could, by process of a Court or otherwise; step in and take the management out of the hands of the recognised manager. To prevent this I would add to the proposed condition these words or words to a like effect:-

24. Government are not bound to recognise as manager any person or persons whatever who claim the right to manage in virtue of a transfer whether brought about privately or by process of a civil Court.

Chandavarkar, J.

25. I concur.