

(1911) 09 BOM CK 0011
In the Bombay High Court
Case No : Appeal No. 98 of 1905

The Secretary of State for India

APPELLANT

Vs

Sadashiv Abaji Bhat

RESPONDENT

Date of Decision : 04-09-1911

Acts Referred:

Bombay Survey and Settlement Act, 1865 — Section 38
Land Revenue Act, 1879 — Section 102

Citation : (1912) 14 BOMLR 77

Hon'ble Judges : Hayward, J; Beaman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Beaman, J.—This case has assumed very large proportions, but we think, it can be disposed of in few words. We think, however, that we ought not to dismiss, it without paying a tribute to the great thoroughness and ability with which the learned Judge, who tried this suit, has dealt with the enormous mass of materials laid before him. In the argument before us it has become only too clear that an undue and quite an unnecessary strain was put upon that learned Judge, owing to the course taken by the litigation below. The whole of his learned and elaborate "enquiry into the character of this particular Khoti is for our present purposes entirely irrelevant. So too is much else in that judgement which, however, may not prove to be labour in vain, since it always be useful for purposes of reference when kindled questions arise.

2. The point before us, Forever, is extremely simple, and turns upon the construction of Sections 25, 28, 37, and 38 of Bombay Act 1 of 1865, and Sections 102-106 of the Land Revenue Code (Bombay Act V of 1879). Briefly put, it amounts to this: Whether under the settlement of this Khoti village, which was sanctioned in 1863 and introduced in 1865, subject to all the provisions of Act I of that year, and thereafter fixed for a period of twenty-seven years, the Government was entitled on the expiration of the said period of twenty seven

years to insist upon the terms imposed upon the Khot as between him and his tenants under the settlement as still being sanctioned.

3. In the Court below the learned judge has discussed this point very elaborately, but we cannot help thinking that he has entirely over-looked the intention of the Legislature in using in certain sections the words "fixed or guaranteed" and in other sections the word "sanctioned." In his opinion "sanctioned" at the conclusion of Section 38 of Bombay Act I of 1865 is synonymous with guaranteed or fixed"; and if this interpretation be correct, it would follow that the terms imposed the settlement of 1863 upon the Khot ceased to be in force on the expiration of the term for which that settlement was fixed or guaranteed. That would be in the year 1892, so that in his view the plaintiff-respondent was justified in refusing to renew the settlement including those terms after that year. We think, however, that the contention of the Honourable the learned Advocate-General on behalf of Government is clearly right and must prevail. If we look to the effect of all the sections we have mentioned, taken as a whole, it appears to us that there can be no serious doubt but that the construction placed upon the concluding words of Section 38 by the Advocate-General is not only the natural and right construction, but also is essentially equitable and in conformity with the plain policy of Government. The various steps taken under these sections may be thus briefly described.

4. The officer entrusted with preparing a Survey Settlement proposed his rates to Government" and these rates were only enforceable as assessment, for one year, until they were sanctioned by Government. When they were so sanctioned, the settlement became a sanctioned settlement within the meaning of the clear words of Section 38, and that meant no more than that Government had accepted the various rates of the assessment proposed by the Survey Settlement officer. Such a sanctioned settlement might remain in force for one year or for fifty years. But in order to give some fixity to tenure, for those holding under it, the law provided that Government might in their interests fix or guarantee those rates for a definite period, not exceeding, under Bombay Act I of 1865, thirty years. That was clearly intended to be in the interests of those paying assessment and holding under the settlement. Section 38 of the same Act together with Section 37 appear to have exclusive reference to Khoti villages. It was further enacted that at the time of the general survey the Settlement Officer might limit the rent to be taken by the Khot from his tenants. And the section goes on to say that all the terms so imposed shall hold good during the period for which the settlement may be sanctioned.

5. Now Section 37 of the same Act provides for fixing the dues to be paid by the Khot to the Government, There we find a Provision made for guaranteeing or fixing the period of such sanctioned settlement. And it is very important to discriminate in all these sections between the carefully and no doubt advisedly made choice of the words "sanctioned" on the one hand and "fixed or guaranteed" on the other.

6. If we turn of the Act, we shall find that it provides for the sanctioning of the settlement. If we turn to Section 28 of the Act, we shall find that it provides for fixing or guaranteeing the period of that settlement up to a term not exceeding thirty years. So again in the later Act, Land Revenue Code (Bombay Act V of 1879), in Section 102 we find in the first sentence provision made for sanctioning the rates proposed by the Settlement Officer, which is tantamount to sanctioning the settlement within the meaning of Section 25 of Bombay Act I of 1865. And the section then goes on to provide for fixing the period of the settlement which is tantamount to re-enacting what was provided in Section 28 of Bombay Act I of 1865. Thus we think that there is a very fair distinction between " fixing " a period during which a sanctioned settlement is to continue in force unmodified, and " sanctioning" a settlement which goes no further than accepting the rates proposed by the Settlement Officer.

7. We have then to consider what the effect of Section 38 of Bombay Act I of 1865 is when a settlement has been sanctioned and a period has been fixed and that period has expired. That is what has happened here. The settlement was, as we have said, sanctioned in 1863. It was introduced in 1865 and a period of twenty-seven years from that day was fixed. During that period the plaintiff-respondent does not deny that he was bound u/s 38 to comply with all the terms regulating his right to levy rent from his tenants proposed under the sanctioned settlement. But his contention is that when the period fixed expired, those terms no longer remained in force, since Section 38 says that they shall only hold good during the period for which, such settlement may be sanctioned. But what is the effect of the fixed period terminating before any revised settlement has been introduced? Surely it can be no other than to continue the sanctioned settlement relieved from the quality of fixity. That is to say, that the position of those holding under it is, until interfered with, precisely the same, as it was at the commencement of the fixed period, but less secure since at any day Government might intervene, revise the settlement, and enhance the rates and assessment. So long, however, as it does not do so, we must presume that the settlement originally sanctioned continues to be sanctioned, and we think, therefore, that the Advocate-General is right in saying that no proof is needed, even of any implied sanction on the part of Government, so long as the other side can show nothing to the contrary. Were, however, any proof of implied sanction necessary, the Advocate-General points out that it is to be found in the fact that immediately upon the expiration of the fixed period Government demanded the assessment from the Khot on the same terms as before, and this, it is said, is convincing]5roof of the implied intention of Government to continue the sanction given to the assessment in 1863, pending the introduction of any new and revised settlement which might later be found necessary.

8. On both these lines of argument we are disposed to agree with the Honourable the learned Advocate-General. We think too that in adopting them we are giving effect to the real equity of the case and the intended policy of Government. For, if we were not to do so, the effect would be that since no revised settlement has

been introduced, the Khot would be able to retain the benefit of the low rate of assessment fixed upon him in 1863, while he would be at liberty to exact from his tenants, as indeed he wishes to do now, up to half the actual produce of their cultivable lands. That we feel sure never could have been the intention of Government, nor do we think that the words used in the Legislative enactments compel us to and such conclusion. Rather we are clearly of opinion that the actual words used, when all the sections are read together, naturally do bear the meaning and construction which we have been invited to put upon them by the Honourable the learned Advocate-General.

9. We, therefore, hold that in 1892 when the fixed period of the settlement sanctioned in 1863 and introduced in 1865 came to an end, the terms which had been imposed upon the Khot u/s 38 of Bombay Act I of 1865, when that settlement was introduced, remained in force, since the settlement itself must be deemed to have been then and still to be sanctioned : and that Government was within its rights in insisting upon the Khot accepting Clauses 5, 7 and 8 in the Kabulayat of that year. These are the clauses which are now chiefly in dispute.

10. As to Clause 15 the learned Judge below found that it was in the interest of the plaintiff, and as he did not desire that it should be continued, it ought to be struck out of the Kabulayat. To that the Advocate-General on behalf of Government has no objection.

11. As to Clause 10, which is the only other clause in the Kabulayat in dispute, the Advocate-General on behalf of Government accepts the finding of the learned Judge below as to the plaintiff's rights to trees. therefore, must be modified in accordance with what has been found by the learned Judge of the first instance.

11. On behalf of the plaintiff-respondent the only plea taken by Mr. Khare has been that of estoppel, but we are totally unable to find anything in the materials, upon which he has sought to rest his argument, even resembling a legal estoppel; and Mr. Khare himself after very little argument virtually conceded that it was no true case of estoppel, though his client felt that he had some legitimate grievance in the manner in which his petitions and complaints to Government had been dealt with, while the Ambdosi case was under consideration. With that, we think, we have nothing to do in this Court.

12. The result, therefore, will be that subject to the excision of Clause 15 in the Kabulayat and the modification indicated in Clause 10 the plaintiff's suit in all respects fails and must now be dismissed with all costs throughout, including costs of the appeal and the cross-objections.

13. The deposit of Rs. 400 in the Thana Court may now be refunded to the defendant.