
(1954) 09 BOM CK 0025
In the Bombay High Court
Case No : First Appeal No. 355 of 1950

The State of Bombay

APPELLANT

Vs

Fakir Umar Dhanse

RESPONDENT

Date of Decision : 24-09-1954

Acts Referred:

Land Revenue Act, 1879 — Section 66

Citation : (1955) 57 BOMLR 243

Hon'ble Judges : Rajadhyaksha, J;Chainani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Chainani, J.—[After narrating the facts as above the judgment" proceeded:] In order to appreciate the arguments, which have been advanced in this appeal, it is necessary to mention the relevant provisions of the Land Revenue Code. Clause (11) of Section 3 of the Code states that "to hold land", or to be a "landholder", or "holder" of land means to be lawfully in possession of land, whether such possession is actual or not Clause (12) defines "holding" to mean a portion of land held by a holder. Clause (20) defines the word "alienated" to mean transferred in so far as the rights of the State Government to payment of the rent or land revenue are concerned, wholly or partially, to the ownership of any person. The word "occupant" is denned in Clause (16). This clause states that "occupant" means a holder in actual possession of unalienated land, other than a tenant: provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the ease may be, shall be deemed to be the occupant. In Clause (17) "occupancy" is denned as meaning a portion of land held by an occupant; while Clause (18) defines the expression "to occupy land" as meaning to possess or to take possession of land. Clause (19) states that "occupation" means possession.

2. The Code, therefore, divides lands into two categories: (1) alienated lands, that is lands, the land revenue of which is wholly or partially transferred to the

ownership of any person, and (2) unalienated lands, which are commonly known as Sarkari (Government) or Khalsa lands. When a person is lawfully in possession of unalienated land, otherwise than as tenant, he is called an occupant, and the land held by him is called an occupancy.

3. The rights of an occupant are limited. Section 45 states that all land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to the Government except such as may be wholly exempted under the provisions of any special contract with the Government or any law for the time being in force. Section 68 states:

An occupant is entitled to the use and occupation of his land for the period, if any, to which his tenure is limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law, for the time being in force, and on the fulfilment of any other terms or conditions lawfully annexed to his tenure....

4. Section 73 provides:

An occupancy shall, subject to the provisions contained in Section 56, and to any conditions lawfully annexed to the tenure, and save as otherwise prescribed by law, be deemed an heritable and transferable property.

The occupant is not entitled to mines and mineral products. The right to them vests in Government u/s 69. The occupant is also not entitled to all the trees in his land. The trees, which have been reserved in the manner referred to in Section 40, vest in Government u/s 41.

5. It will therefore be seen that even though an occupancy can be held in perpetuity and is transferable and heritable, its holder is only entitled to the use and occupation of his land. He cannot also use the land in any manner he likes. Section 65 states inter alia;

An occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

But, if any occupant wishes to use his holding or any part thereof for any other purpose the Collector's permission shall in the first place be applied for by the occupant.

The Collector, on receipt of such application,

(a) shall send to the applicant a written acknowledgment of its receipt, and

(b) may, after due inquiry, either grant or refuse the permission applied for:

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application.

Section 66 is in the following terms:

If any such land be so used without the permission of the Collector being first obtained, or before the expiry of the period prescribed by Section 05, the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so used and from the entire field or survey number of which it may form a part, and the occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of Section 48 for the period during which the said land has been so used, such fine as the Collector may, subject to the general orders of the State Government, direct.

Any tenant of any occupant or any other person holding under or through an occupant, who shall without the occupant's consent use any such land for any such purpose, and thereby render the said occupant liable to the penalties aforesaid, shall be responsible to the said occupant in damages.

This section, therefore, authorizes the Collector to summarily evict the occupant and any tenant or other person holding under or through him, if the land held by the occupant has been used for non-agricultural purposes without the permission of the Collector being first obtained u/s 65. The learned trial Judge has found that the plaintiff had erected several structures without obtaining the prior permission of the Collector. That finding has not been challenged in appeal. The plaintiff was therefore liable to be evicted u/s 66. The orders passed by Government and by the Collector, in so far as they directed the eviction of the plaintiff, were therefore legal and intra vires. This has not been seriously disputed by Mr. Kotwal, who has appeared on behalf of the respondent-plaintiff.

6. The next question, which has been very ably argued by the learned advocates for the State and for the plaintiff, is whether the Collector was competent to remove the buildings, which had been unauthorizedly erected by the plaintiff. Section 66 does not give this power in specific terms. Mr. Desai has contended that under the Land Revenue system prevalent in the State of Bombay, the ownership of all lands vests in Government, that the holder of an unalienated land referred to in the Land Revenue Code as the occupant is only entitled to its use and occupation, that these rights of use and occupation cannot be exercised after the holder has been evicted from the land and that the necessary consequences of eviction therefore are that the holder's rights are extinguished and that the land reverts to Government. He has urged that on reversion the

land, together with the structures on it, vests in Government, who can thereafter deal with them in any manner it deems fit, and if it so deems fit, Government may restore the land to its original condition by removing the unauthorized buildings. Mr. Desai has also contended that even if the land does not vest in Government after its occupant has been evicted, the power given to the Collector to evict the occupant authorizes him not only to remove the occupant physically but also to remove all that he had brought on the land, including the buildings erected by him. Mr. Kotwal, on the other hand, has argued that the Land Revenue Code draws a distinction between forfeiture and eviction, that where the Legislature intended, to extinguish the occupant's rights in entirety, it has used the expression "forfeiture", that assuming that rights of an occupant are limited to the use and occupation of his land, he will not be able to exercise these rights so long as the order of eviction remains in force, but that his rights are not altogether extinguished and that he therefore continues to remain the owner of the land. Mr. Kotwal has also urged that where the Legislature intended to empower the Collector to remove the structures unauthorizedly put up on the land, it is specifically conferred that power on the Collector as it has done in Section 61, that Section 66 does not give this power to the collector and that consequently the Collector had no power to remove the buildings erected by the plaintiff.

7. The power to evict has been conferred upon the collector by Sections 61, 66 and 79A of the land Revenue Code Section 79A is not material in the present case. Section 61 states that

Any person who shall unauthorizedly enter upon occupation of any land set apart for any special purpose, or any unoccupied land which has not been alienated, and any person who uses or occupies any such land to the use or occupation of which by reason of any of the provisions of this Act he is not entitled or has ceased to be entitled shall.

be liable to pay assessment and fine to be assessed by the Collector in the manner provided in the section. The section goes on to state:

The person unauthorizedly occupying any such land may be summarily evicted by the Collector, and any crop raised in the land shall be liable to forfeiture, and any bulding, or other construction erected thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture, or to summary removal.

The words "or to summary removal were added in 1919 by the Bombay Repealing and Amending Act, No. II of 1919. This amendment was made in Section 61 evidently because the Legislature thought that the power previously given to the Collector to evict the person, who had unauthorizedly occupied government land, did not also authorize the Collector to remove any building or other construction put up on such land and that it was therefore necessary to confer this power in specific terms. If Mr. Desai's argument that under the power

given to the Collector to evict a person, he can also remove a building erected by that person, was correct, this amendment made in Section 61 in 1919 was wholly unnecessary. The fact that the Legislature considered it necessary to amend Section 61 in order to enable the Collector to remove buildings or other constructions unauthorizedly erected therefore makes it clear that the word "evict" used in this section only means the physical removal of the person and not also of the buildings or other constructions put up by him. The ordinary rule of construction is to give the same meaning to the same word in different parts of a statute. The word "evict" should therefore be presumed to have been used in the same sense both in Section 61 and 66. It would therefore follow that u/s 66, the Collector has no power to remove a construction put up without his permission on the land. This section was not amended on the lines of Section 61 in 1919. An inference, which may therefore legitimately be drawn, is that the Legislature did not intend to empower the Collector to remove the buildings unauthorizedly erected on occupied lands. The Legislature evidently wanted to confer larger powers for protecting Government lands and did not consider that all those powers were necessary for preventing unauthorized use of occupied lands.

8. The same conclusion is suggested by the provisions of Section 202. This section lays down the procedure to be followed in evicting a person. The relevant portion of the section provides:

Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following manner, viz:-

by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed by removing or deputing a subordinate to remove any person who may refuse to vacate the same.

Eviction therefore consists in physically removing the person to be evicted from the land. The section does not contemplate the removal of any building or structure as part of the process of eviction.

9. We are, therefore, unable to accept Mr. Desai's argument that under the powers given to the Collector to evict a person from a land, he can also remove a building constructed on that land.

10. The next argument of Mr. Desai is that the legal effect of eviction is to vest the land in Government. There is no provision in Section 61, 66 or 79A or in any other Section of the Land Revenue Code which states that the land, of which the occupant has been evicted, vests in Government. In this connection, it is necessary to consider the provisions of the Code which provide for forfeiture. Section 56 of the Code states:

Arrears of land revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrears by sale of the occupancy or alienated holding, or may otherwise dispose of such occupancy or alienated holding under rules made in this behalf u/s 214, and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person, or otherwise, howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, in cumbrances and equities theretofore created in favour of any person other than the Government in respect of such occupancy or holding.

See also Sections 150 and 163 of the Land Revenue Code. There can be no doubt that the effect of forfeiture is to extinguish all the holder's rights and to vest the land in Government or the other person to whom it may be transferred (unless the Collector otherwise directs), "freed from all tenures, rights, in cumbrances and equities created in favour of any person other than the Government". Mr. Kotwal has relied on the provisions of these three sections and has contended that where the Legislature intended to take away all the rights of an occupant, the word "forfeiture" has been used and that consequently eviction cannot be held to have the same effect as forfeiture. Mr. Desai has, on the other hand, contended that those three sections refer to both occupancies and alienated holdings, that eviction would not result in the termination of all the rights of a holder, if he is an alienee not only of the land revenue but also of the soil and that consequently the word "forfeiture" has been used in those sections in preference to the word "eviction". There would be some force in this argument but for the fact that in Section 61 Collector has been empowered not only to evict the person who has unauthorizedly occupied any land but also to forfeit the crops raised on the land and also any building or other construction erected thereupon, if not removed by the person unauthorizedly occupying the land after due notice by the Collector. These provisions in Section 61 relating to forfeiture also show that the legal consequences of eviction and forfeiture are not the same and that stands o the land.

11. It is true that an occupant has rights in his land and that he is, as stated in Section 68, only entitled to its use and occupation. He cannot exercise these rights after he has been evicted from his occupancy and so long as the order of eviction remains in force. But in the absence of anything more in the Code, we do not think that we will be justified in holding that his ownership of these rights is extinguished as soon as he is evicted. He may have created rights in favour of third parties before his eviction. If Mr. Desai's arguments are accepted, these rights would also come to an end on the eviction of the occupant. In the-case of forfeited lands the Collector is empowered to dispose of such lands subject to the

"tenures, rights, incumbrances and equities created in favour of any person other than the Government". There is no similar provision in respect of lands of which the occupants have been evicted. It is not likely that the Legislature could have greater hardship to innocent third parties for the unauthorized use of an occupied land than what might be caused to them on the forfeiture of the occupancy for non payment of land revenue.

12. Section 57 of the Land Revenue Code states that it shall be lawful for the Collector in the event of the forfeiture of a holding u/s 56 to take immediate possession of such holding and to dispose of the same according to the provisions of this Act or any other law for the time being in force. This section and Section 56 therefore empower the Collector to dispose of such lands subject to the rules made in this behalf u/s 214. Clause (e) of Section 214 empowers the Government to make rules regulating the disposal of land vesting in the Government, while under Clause (f) rules may be made regulating the disposal of forfeited lands. The rules for the disposal of forfeited lands contained in Chap. XVII of the Land Revenue Rules. There are no similar provisions in the Code or in the rules regulating the disposal of lands the occupants of which have been evicted. Mr. Desai has contended that as such lands vest in the Government, they will be governed by the rules regulating the disposal of lands vesting in the Government and that consequently it was not necessary to make separate provisions for the disposal of such lands. But the same argument will apply to forfeited lands which after forfeiture vest in the Government. The last clause of Section 61 also contains provisions for the disposal of crops and buildings forfeited under this section. The fact that neither the Code nor the rules contain any; provisions regulating the disposal of lands, of which the occupants have been evicted or of the crops and the buildings standing thereon, also suggests that all the rights of an occupant are not extinguished on his eviction from his occupancy.

13. Mr. Desai has invited our attention to the fact that the Code also contains no provisions as to what is to happen to the lands, of which the occupants have been evicted, in case the order of eviction remains in force permanently and is not cancelled. There is also no provision in the Code as to how the obligations of an occupant, such as the payment of land revenue or the repair of boundary marks, are to be discharged after his eviction. But the absence of provisions with regard to these matters will not warrant our giving the word "evict" a meaning which it does not legitimately bear.

14. In *The Secretary of State for India Vs. Abdul Husen Dosaji Godwala*, it has been observed that the Land Revenue Code is in the nature of a penal statute and therefore must be strictly construed in favour of the subject. It is also a settled rule of construction that provisions relating to forfeiture should be strictly construed, and that where the power to forfeit the rights of a subject is not given in express words, the power should not be inferred unless the words used by the Legislature are such as to show by necessary implication that it intended to

confer that power. No such words are used in Section 66. On the other hand, as I have pointed out, there is no provision in this section or in any other part of the Land Revenue Code stating that the land, of which the Occupant has been evicted, vest in Government after eviction of the occupant.

15. Although therefore there is considerable force in Mr. Desai's arguments, we feel that the better view will be to hold that the word "evict" used in Section 66 of the Land Revenue Code means to remove the occupant and/or any person holding under or through him from the land and that even though the occupant would not be able to use and enjoy his land after he is evicted from it, his ownership of the land, that is of his right to its use and occupation, is not extinguished on his eviction. The legal consequence of eviction therefore will be to deprive the occupant of his possession and use of the land but not of his ownership or proprietary rights, which will continue to vest in him. As a corollary it must follow that the buildings erected by the occupant on the land will also continue to belong to him. We are also of the opinion that the power given to the Collector to evict an occupant does not include the power to remove a building erected by him.

16. In our opinion, therefore, the Collector had no power to remove the buildings erected by the plaintiff on his land. The decree passed by the trial Court will accordingly be modified and the following decree will be substituted in its place:

It is hereby declared that the orders passed by the Government of Bombay on September 23, 1947, and by the Collector on October 10, 1947, (exh. 67), in so far as they directed the removal of structures erected by the plaintiff on his land, are ultra vires of Section 66 of the Land Revenue Code and as such illegal and inoperative. The defendant and his agents and servants are restrained from executing these orders in so far as they relate to the removal of buildings erected by the plaintiff. The defendant should pay Rs. 7,000 to the plaintiff as damages in respect of the plaintiff's buildings which have already been demolished.

17. As each party has succeeded in part we direct that the parties should bear their own costs of appeal and in the trial Court.

18. The cross-objections are not pressed and are dismissed with costs.