
(1918) 02 BOM CK 0001
In the Bombay High Court
Case No : First Appeal No. 237 of 1915

Tulla Sobharam Pandya

APPELLANT

Vs

The Collector of Kaira

RESPONDENT

Date of Decision : 15-02-1918

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 144
Gujarat Taluqdars Act, 1888 — Section 33

Citation : AIR 1918 Bom 107 : (1918) 20 BOMLR 748 : 47 Ind. Cas. 117

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

Bench : Division Bench

Judgement

Heaton, J.—The plaintiffs are land-holders in the village of Badalpur in the Kaira District and they sued for an injunction to restrain the Collector from acting as he proposes to do by way of levying assessment from them. The Talukdari Settlement Officer gave them notice to this effect dated the 20th May 1913. Their case is that they hold their lands rent-free. The defendant, who originally was the Talukdari Settlement Officer and who has now been replaced by the Collector, maintained that the village of Badalpur had been attached under the powers conferred by Section 144 of the Bombay Land Revenue Code and that in virtue of Section 160 of that Code he had power to levy assessment on the lands of the plaintiffs. The District Court decided the case in favour of the defendant and the plaintiffs appealed to this Court. The evidence at that stage was so extremely scanty that eventually this Court found itself unable to decide the appeal and remanded eight issues to be determined by the District Judge. Those issues have been found on in a sense adverse to the plaintiff's, who again appear as appellants in this Court.

2. The first thing we have to determine is the nature of the agreement or settlement for this village of Badalpur. It must have been made in the early part of last century but there is no document relating to it, and there are no Kabulayats signed by the Talukdars of the village. We have not even an extract from the register of Talukdars. There is mention made of the Mehwasi villages, of

which Badalpur is one, in Government official correspondence, from which extracts are filed of the years 1821 Exhs. 37 ; 1822 Exh. 39; and 1823 Exh. 40. Then we have an extract from a Jama-bandi statement of 1821-22 (Exh. 41) and Kalambandhi of 1828 (Exh. 18). We have also general historical knowledge to go by. We know that the settlements or agreements for Mehwasī villages were made with the Mehwasī Chiefs or Heads of the villages and were usually made for the village as a whole in each case and were not made for any particular lands. The payment due for each village was annual, was a fixed lump sum or substantially fixed in amount (there may be small variations from year to year) and was regarded as Jama or land revenue though based on the amount of tribute which the Chief formerly paid and not on an estimate of assessable lands.

3. The evidence in the case indicates, so far as it goes, that the settlement or agreement for Badalpur was of the normal kind : that it was for the whole village and for a fixed annual payment for which the Mehwasī Chief of the village was responsible. Were it otherwise, there would be definite evidence of it forthcoming as is to be expected where there is a variation from the normal.

4. The learned pleader for the plaintiff-appellant challenged this conclusion, but the only evidence or circumstance in the case on which he could base any argument of value is the Kalambandhi, Exh. 18. This is a statistical statement prepared by the village authorities in reply to a set of questions sent them by some Government officer : the kind of thing that is usual in a newly acquired territory, where the Government desires to inform itself of the condition and resources of the country. It shows amongst other things that only about one-sixth part of the land in the village paid either vaje or vero to the Chief or Talukdar : the other five-sixths paid nothing. This information, though it may be of great value to the plaintiffs in resisting any demand the Talukdars might make on them, has no bearing on the nature of the settlement or agreement between the Government and the Talukdars. The Government recognised the existing or traditional position of the Mehwasī Chiefs provided they paid the annual Jama; it was no part of the understanding or of the policy of the Government to concern themselves with the internal arrangements or economy of the Mehwasī villages. This Kalambandhi, therefore, is found on examination to be of no value to the plaintiffs, for it does not give any indication of a state of affairs in any way incompatible with the ordinary type of settlement or agreement.

5. The plaintiffs have also argued that they were the original owners of the village and certain witnesses depose that there is a tradition in the village to that effect. It may be that there is such a tradition but that it is well-founded there is no reason to suppose and that it has any bearing on the case is not apparent.

6. Again, the plaintiff argues that he holds and always has held his lands rent-free. That again may be conceded and so long as the management of the village remained with the Talukdar, the plaintiff could not be called on to pay anything. But unfortunately the payment of the Jama by the Talukdar became irregular and the village was attached by order of the Collector made u/s 144 of the Bombay

Land Revenue Code (Exh. 49). Thereafter, Section 100 of that Code became applicable. This appears to be beyond question. Now, Section 160, when applied to a Talukdari village (see Section 33 of Bombay Act VI of 1888), runs as follows : "The lands of any village or share of a village so attached shall be unaffected by the acts of the superior holder or of any of the sharers or by any charges or liabilities subsisting against such lands, or against such superior holders or sharers as are interested therein, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals ; and the Collector or the agent so appointed shall be entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof." This leaves it open to Government to levy the Jama from all the lands of the village. Their powers are ample, for Section 45 of the Code expressly recognises the right of Government to levy assessment on all lands which are not excepted under the provisions of any special contract with Government or any law for the time being in force. There is neither a special contract nor a law which prohibits Government in the circumstances of this case from levying an assessment on the plaintiff's lands. This supplies the answer to a further argument urged on behalf of the plaintiffs, which is that they held their lands absolutely rent-free, and no one, not even the Government, can lawfully demand assessment from them. They do not so hold them from the Government: that is clear, for if they did, there would be some Sanad or some record of the matter. If they hold them rent-free from the Talukdar, that does not affect the right of Government to assess the lands; for the Talukdar has no power to free any lands from liability to pay assessment to the Government: only the Government can do that.

7. The same conclusion, that it is lawful for Government to demand assessment from the plaintiffs can be reached by a consideration of Section 24 of Bombay Act VI of 1888.

8. In reality there is no great hardship involved to the plaintiffs. The Government will only gather in the agreed Jama which must apparently be light if it is distributed over the village as a whole.

9. It is unnecessary after this to state in detail the findings on the issues which were sent down. That which is the most important is No. 4: "Whether the Udhad Jama was fixed on the whole of the village, including the lands in suit, or on a share of it ". If the latter on what share. I find that the Udhad Jama was fixed on the whole of the village and as I have said it follows from the operation of Sections 144 and 160 of the Bombay Land Revenue Code that the Government have the right to levy assessment on the lands of the plaintiffs in this village. Therefore I think that the decree of the District Judge dismissing the plaintiffs suit should be maintained and that this appeal should be dismissed.

Beaman, J.

10. I have asked my learned brother to deliver the judgment of the Court in this case because he was a party to the remand order and fully acquainted with the litigation in all its earlier stages. I have only to add in agreement with what has just been said that in my opinion there can be no doubt but that the settlement made in the earlier part of the nineteenth century was made with a Rathor Rajput whom I will call the Talukdar on behalf of the whole village. Such was the nature generally of all these settlements. Their object was to maintain to some extent at any rate the signorial rights and privileges of the petty Chieftains and to recognise them as proprietors of their respective villages subject only to the payment of the Udhad Jama. In such circumstances the Government had no concern with the internal economy of the village. Provided that the Talukdar duly paid the stipulated Udhad Jama he might, as far as Government was concerned, gratify his pride or generosity by granting as much of the village land as he chose rent-free, or upon any other terms that pleased him, to inferior holders; but such grants could never be taken as superseding the paramount obligation of the village as a whole to pay through the recognised Chieftain the Jama due to the Government. That is a primary charge, and, in my opinion, it cannot, upon any known theory, be found to have been settled with the Talukdar upon this or that piece of land in the village ; but it is settled with the Talukdar upon the village as a whole ; the price that is to say at which he is to be recognised by the Government as a Chieftain and proprietor of the village. It is possible that at the time that such settlements were made the recognised Talukdar or his predecessor may already have given away much of the village land rent-free to privileged classes, such as Brahmins, Bhats and Charans. That, however, in my opinion, does not affect the principle upon which this case has to be decided. That principle is that, apart from all other considerations and private arrangements within the village itself, the village must contribute the agreed Jama to Government. Otherwise we might have the extreme case put by the learned Judge below of the Government consenting to recognise a Chieftain as proprietor of a village upon payment of an annual Jama and the Chieftain then giving away every inch of land in the village rent-free and declining to pay Government one rupee of the agreed Jama. In such a case it is not to be supposed that Government ought to or would recognise such alienations. The Government would then in my opinion be entitled to say that since the Talukdar had repudiated his obligations, the village as a whole, failing anyone coming forward to represent it, must certainly be made to pay the Government Jama. And that is in effect what has occurred in the present case. The Jama has not been paid, and according to the Kalambandi a very large proportion of the village lands have already been given away and were not in the Talukdar's own estimate liable to contribute to the Jama. That, however, was a matter with which Government, as far as I can see, had nothing to do. As soon as the Talukdar declared himself unable to keep his treaty obligations, the Government in my opinion had a per se right to put in force the provisions of Sections 144 and 160 of the Bombay Land Revenue Code for the single purpose of obtaining from the village the amount of Jama which was due from it. Such a mode of

contribution would not press nearly as heavily upon these inferior holders of rent-free lands as would the resumption of the village and the levy of assessment after making revenue survey, and it is quite clear that one or the other of these modes would have to be adopted. It cannot, be seriously, I think, argued that Government intended to make free presents of these villages to anyone to whom the Talukdar in a fit of generosity might grant the whole of their lands rent-free. It is upon this principle, I think, that this and all cognate cases must be decided.

11. I am in entire concurrence with the judgment of my learned brother and the decree he proposes to make.

12. We treat this and the other six appeals, viz., First Appeals No. 233, 234, 235, 233, 238 and 239 of 1915, as consolidated for the purpose of costs, and dismiss them with costs, one set of costs payable by all the appellants.