
(1921) 06 BOM CK 0035
In the Bombay High Court

Vallabhdas Narayanji and Another

APPELLANT

Vs

The Special Land Acquisition Officer for Railways and Another

RESPONDENT

Date of Decision : 30-06-1921

Acts Referred:

Citation : 85 Ind. Cas. 427

Hon'ble Judges : Norman Macleod, C.J;Shah, J

Bench : Division Bench

Judgement

Norman Macleod, C.J.—This is an appeal from the decision of the Assistant Judge of Thana in Reference No. 5 of 1915. In. 1910 a strip of land on the east side of the G. I. P. Railway between Kurla and Thana was notified for acquisition in order that the line might be widened. This Reference refers to a portion of that strip situated in the Vikhroli village, and the lands in other companion References are all similar lands either in this village or in the village of Kanjur through which, the line passes.

* * * * * 2. With regard to the apportionment of the compensation in those cases in which the claimants had proved that they were in occupation of bhati lands, in the proportion of one to the khot and two to the occupant, the khot claims to be entitled to the whole of the compensation, whether, he was in occupation of the lands or not. This is a question which seems to have arisen, and must always necessarily be arising, in Salsette, in cases of compulsory acquisitions, because there have been a number of instances in Salsette where what may be called khoti grants have been made in old times by Government to various individuals in order to encourage better cultivation in the villages granted, and it has come to be understood that with regard to bhati lands the compensation money should be awarded in the proportion of one to the khot and two to the occupants. It has been thought on principles of equity that the compensation money should be apportioned in this way, although the occupants may have proved that they had the right to occupy the grass lands and retain the whole of the produce without paying any assessment to the khot. That being the

case, I see no reason why any alteration should be made in the apportionment of compensation in those References in which it has been proved that the lands in Reference were bhati lands in the occupation of particular individuals who claimed the rights of occupancy.

3. An enormous amount of learning seems to have been devoted to this case on the part of the legal advisers on both sides, as I see that this question how the compensation should be apportioned was argued for twenty days before the Assistant Judge, and I do not know which to admire most, the patience of the Judge or the ingenuity of the learned Counsel. But it seems to me that a great deal of the time taken up might have been saved if the parties had really "considered what was the real issue. Most of the arguments on the issues which were raised by the Assistant Judge appear to me to have been purely academical. There was no necessity to construe Bombay Regulation I of 1808, nor was there any necessity to consider clause by clause the lease to the khot of the villages of Vikhroli and Kanjur. Whatever rights the khots acquired under the lease between themselves and Government in 1837 to the waste lands in these villages, even assuming for the purposes of this case that they became absolute proprietors of the soil, that would not prevent other persons acquiring rights against the khot either permanent or otherwise under the general law.

4. I may take the opportunity here of pointing out how a great deal of confusion has arisen in these cases and other similar cases which have come before the Courts by the use of the word "warkas." Evidently the word "warkas" was originally applied to that land in the neighbourhood of rice lands from which the villagers procured from times immemorial rough grass and branches for the purposes of rab burning, on the rice fields, and it is admitted that although the villagers or suti dars in occupation of a particular area of rice land have a right to collect rab materials from the adjacent waste lands, they have no proprietary interest on account of that in the soil, so that in the case of those lands it might well be, if they were compulsorily acquired, the villagers or sutidars would have no right to, any part of the compensation. The case of Vasudev Bhaskar Pendse v. The Collector of Thana (1879) P.J. 274 has been referred to as showing that the villagers have no rights whatever in any waste lands, for whatever purpose they are used. But what was decided in that case appears at page 286: "The general conclusions at which we have arrived are these, viz., that the holders of rice fields in the Konkan, whatever may be their tenure of such fields, are not proprietors of the soil in the "warkas" lands held by them: and that they are not entitled either by custom, or prescription, or, (so far as appears in the present case), by any grant or recognition on the part of the Government to cut down teak or other specially reserved trees growing on "warkas" lands of which they are the occupants. The plaintiff, therefore, cannot have a decree declaring him entitled to cut down such trees." So that the distinction between warkas land, which could be considered as appertaining to the cultivation of rice fields, and waste lands producing grass, which are better styled bhati lands, was not dealt with in the judgment. So it seems to me that, that is a very good reason why the

decision in Harischandra V. Sorabji (1897) P.J. 9 is not an authority in the case now before us. The learned Judges considered that the question before them was concluded by the decision in Vasudev Bhaskar Pendse's case (1879) P.J. 274. They say: "Warkas lands are waste lands, and are, therefore, included in the grant made by the State of waste lands to the original grantee. The right to take rab from these lands for manuring rice lands confer no title to the soil or the trees growing in it, which remain the property of the grantee." Therefore, in that case the Court was not considering bhati lands but warkas lands proper. This question arose in First. Appeal No. 149 of 1903 and No. 11 of 1904 with regard to bhati lands in Malad, and although the khoti grant in that case may not have been worded in the same way as the khoti grant in this case, the decision that bhati lands are distinct from warkas lands which are appurtenant to rice holdings is directly in point.

5. It comes to this, therefore, that as these bhati lands were included in the village of Vikhroli, it may be said they were included in the lease which Government granted to the khot in 1837, and it might also safely be assumed that for centuries the villagers in Salsette have been accustomed to cut grass on the waste lands, if it was required for feeding their animals or for sale, and it nowhere appears, at any rate in this village, that the khot has ever interfered with those rights of cutting grass. That of course by itself would not be sufficient to create anything in the nature of occupancy rights. But we find in these cases the evidence shows that a great deal more was done than merely entering on the land when the grass was ready to cut and removing the grass. These grass lands have been enclosed. They have been sold by registered sale-deed's. They have passed from hand to hand under these sale-deeds, and the khot was perfectly aware that the villagers were enclosing these grass lands and were treating them as if they belonged to them. In that state of affairs it is impossible to say that the villagers could not acquire by such action proprietary rights in the lands so enclosed and dealt with. There is no suggestion in this case that these lands had not been so dealt with for a period of twelve years and upwards. It would follow, therefore, unless the khot chooses to contest the question in a regular suit by endeavouring to regain possession of grass lands of this nature, that the villager-claimants in these References have acquired an interest in the land in Reference.

6. It is not necessary for the purposes of these References to define exactly what that right is. "But it is certainly clear that they have been in possession of these lands, and have taken the profits of these lands, and have paid no assessment for them, and so they might certainly have made a perfectly good case for receiving the whole of the compensation. But it seems to have been recognised in other similar cases not only on the east side of the island but also on the west side, that some residuary interest remained in the khot which entitled him to share in the compensation, and as this question was not fought out before the Assistant-Judge, and considering all the circumstances and the previous recognition of this method of apportionment, I do not think there is any reason why it should be disturbed. It evidently was in the past recognized as a,

compromise between the conflicting interest of the khot and the villager-occupants who had been accustomed to take grass for their own purposes from the grass lands without paying anything by way of assessment to the khot. Therefore, I think, that is the ground on which all these References ought to be decided, and we make it clear> that there was no necessity for the findings on various issues which were raised in the lower Court, in particular issues Nos. 12, 3, 4 and 5.

* * * * * Shah, J.

7. The main question in these appeals round which the arguments have ranged is the question of apportionment. The "khot claims the whole of the compensation in respect of these bhati lands. On the other hand the villagers claim to have a substantial interest in these bhati lands on account of the long and continued" user thereof adversely to the khot, and claim to be entitled to the compensation in respect of those lands. It is not necessary for the purpose of deciding this question of apportionment to consider the points relating to the construction of Regulation I of 1808, nor is it necessary to deal with the general question as to whether under the lease the khot did or did not acquire any right to the bhati lands or other waste lands. Whatever his rights under the lease may be, it is quite clear that, if the occupants of the particular plots acquired can show that they, have been in enjoyment of the respective plots for over twelve years, and have enjoyed those lands in them own right, there is no reason why they should not acquire the interest which they claim to have in those lands. The acquisition of rights by prescription is open in law to these villagers against the khot, whatever his rights under the lease may be The Government do not claim any interest in Land Such as might go to reduce the market-value of the land acquired under the Land Acquisition Act. The lower Court has considered the question of the enjoyment of each particular plot by a particular individual very carefully, and has dealt with that part of the case fully in the judgment. In the course of the argument, no attempt has been made on behalf of the khot except in relation to a few plots to show that the conclusion of the lower Court on evidence with regard to the possession and enjoyment of each particular plot by each particular holder is open to any objection. These conclusions, therefore, must be accepted to be right with regard to the enjoyment and possession by particular villagers of the particular plots in question. If we accept those findings, it is clear that the villagers, who are shown to have enjoyed and held these lands for a number of years to the knowledge of the khot, and without any assertion on the part of the khot, against their enjoyment, are entitled to a substantial share in the compensation. On that ground it is clear that the claim of the khot to the whole of the compensation cannot be allowed. If once the conclusion is reached that the khot is not entitled to the whole of the compensation in respect of each plot acquired, then as regards the apportionment between the khot and the villager there is not any serious difference between the parties. In previous cases the occupant and the khot have been held entitled to share the compensation in the proportion of 2 to 1. It is in the same proportion that the

lower Court has directed the apportionment of compensation in these cases; and in spite of the desire of the occupants expressed through their Pleader in the course of argument, for the first time, that they should get the whole amount, there is no reason whatever to think that that is not a fair and equitable apportionment under the circumstances. The fact that they have filed no cross-objections, and have raised no objection in the lower Court to allow the compensation to be divided in that proportion goes a great way to show that they have all along understood their rights to be as determined by the lower Court. That proportion has been accepted in some of the earlier decisions of this Court with regard to the bhati lands, and that proportion, I think, may properly be accepted in these cases.

8. I desire to add a word with reference to the decision in *Harischandra v. Sorabji* (1897) P.J.J 9 which has been relied upon by Mr. Desai as showing that all these bhati lands are on the same footing as the warkas land, and that no length of enjoyment of such lands would give any right of ownership over the same to the holder. I do not think that that decision has any such effect. That case was decided really on the evidence in that case; and it is pointed out that in the absence of any evidence the learned Judges declined to assume that the sutidars as such had become the owners of the soil in the warkas land. They referred to the case of *Vasudev Bhaskar Pendse v. The Collector of Thana* (1879) P.J. 274 in the judgment. It is clear to my mind that neither that case nor *Vasudev Bhaskar Pendse's* case (1879) P.J. 274 helps the khot in the present case, because the lands with which we are concerned, are not exactly of the class of warkas lands with which the Judges were concerned in that particular case; nor can I accept those cases as laying down the general proposition, which it is contended they do, that in no case can warkas land be acquired by the holder by adverse possession against the khot. But in the present case we are not concerned with the effect of these decisions on what may be described as proper warkas land. These bhati lands stand on the same footing for the purpose of acquisition of rights by prescription as ordinary lands; and I see no reason why these villagers who have been enjoying the produce of these grass-growing lands, should not have the benefit, which the law gives to such occupation and enjoyment, as against the khot. As regards the few lands, as to which Mr. Desai contended that the acquisition of rights by adverse possession was not established, I am of opinion that he has failed to show that the conclusion reached by the lower Court is wrong.