

PRIVY COUNCIL

Lakhamgouda Basuprabha Sardesai

Vs.

Baswantrao

P.C.A.No.6 of 1928

(Lords Blanesburdh Atkin, Sir Lancelot Sanderson JJ.)

10.03.1931

JUDGMENT

LORD ATKIN J.

1. This is an appeal from the High Court at Bombay, which dismissed an appeal by the plaintiff, the present appellant, from a decree of the Subordinate Judge of Belgaum and allowed a cross appeal by the defendants, the respondents. The respondents did not file a case or appear before this Board. The plaintiff is the Sirdesai of Vantmur and he brought the present suit to recover possession of lands which, as he alleged, his predecessor-in-title had given to the defendants' predecessor-in-title in the year 1841, as remuneration for services as a shiledar or mounted follower. The defendants' claim was that the land was granted to their predecessor, and that the tenure was heritable and permanent so long as the holder was prepared to render the necessary service. It was common ground that since about 1868 the plaintiff and his predecessors had been receiving nokriansha, or a yearly payment in lieu of service, from the defendants and their predecessors, and a further or alternative question arose as to the amount of the nokriansha which was the subject of the defendants' cross-appeal. The substantial question is whether the land was resumable at the will of the plaintiff whether service was tendered or not. Similar problems are familiar in the Indian Courts. Principles for their solution were formulated by this Board in 1870 in the case of *Forbes v. Meer Mahomed Tuquee*. The distinction to be borne in mind is between the grant of an office to be remunerated by the use of land and the grant of land burdened with service. In the former case the land will prima facie be resumable ; in the latter case prima facie it will not : but the terms of the grant or the circumstances in which it was made may establish a condition of the grant that it was resumable. The onus will be upon the grantor to make out such a condition. In the present case the written grant to the

defendants' predecessor is produced. It is written in Marathi and is translated in the record as follows :Seal of Stamp of eight annas.

2. God Prabhu be propitious, Copy,

(a) Memo, to Rajeshri Baba Desai Narendrakar.

(a) A general, term of respect.

Allowance of saranjam in respect of Tainat (c) Sur year 1241 shake year 1763, cyclical year being named Plawa, Lunar date the first day of Chaitra Shudha (i. e., date 24th March, 1841 A. D.).

1. Land yielding an income) of Rs. 200 (two hundred rupees.)

1. Rs. 5 (five rupees) and Re. 1 (one rupee) for goat (should be given) at the time of Dasra holiday.

(d)(1) him (i.e., Baba Narendra) and 1 one servant should be given daily.

1. Grain "Adisher" by Kaily measure and fodder for horse should be given daily.

(e) *****

1. "I Khijamatdar" and two peons, in all three persons, out of our retinue will be ordered to be appointed (for rendering service to you).

1. If you go on tour, an order will be given to supply horse, a keeper of the horse, an ornamented umbrella, carriers and torch bearers.

(b) Villages and lands granted in inam to persons from whom maintaining of forts or troops for the public service is required.

(c) A Stipandary (sic) such as district, town, etc., to a person for his maintenance.

(d) Undressed rice or corn and fuel to dress it.

(e) A servant of great men for petty offices about the person.

6.*****

"A grant of items 6 is made. Accordingly they will be continued. An agreement is duly given in writing as above. 30th moon of the month of Mohurram Mortab Sud Ruju.

True copy as per original 20th July 1863 A. D.

Balwant Krishnaji, Clerk.

Ramachandra Bapuji Karbhari,

A true translation.

S. M. Majumdar, Translator.

3. It seems to be admitted that the translator misread the word "tainat," which,

according to Wilson's Glossary, means " military charge or command, general control or management, stipend or salary." It will be observed that, whatever this document does, it does not in terms grant any office, though that the recipient is to render some service is indicated by the use of the word "tainat" and by the reference in the last item to " going on tour." It does in terms " grant " the six items the first being " land." There is no dispute that the land so " granted " is the land now in question. Contemporaneously with the grant of the land the Sirdesai issued a notice to the occupiers of the land :

Shri Prabhu God be propitious. Copy to "Kamati" (a) of Mouje Budihal, (From) Lakhamgowda Basavprabhu Desai Nadgowda Paragane Hukkeri for the Sur year 1241 (i. e., date 24th March 1841 A. D.). " Kamat " (a land measuring $\frac{1}{4}$ one-fourth chawoor (b)'situate at Mouje aforesaid had been ordered to be given in respect of Tainati (c) (saranjam) to (d) Rajeshri Babu Desai Narandrakar. So you should go on paying the income from produce, from the next year to the said person and go on acting according to his instructions. May this be known 30th moon of the month of Moharrum Mortab Sud.

True copy as per original.

Date 20th July, 1868, A. D. Compared by Seal Balwant Krishnaji Clerk Ramchandra Bapuji Karbhari.

A true translation

S. M. Majumdar

Translator

(a) Holder of land which a zamindar or jagirdar or inamdar keeps in his possession, cultivating it by labourers in distinction to that which he lets out in farm.

(b) A stipandari (sic) such as a district, town, etc., to person for his maintenance.

(c) Villages and lands granted in inam to person from whom maintaining of forts or troops for the public service is required.

(d) General term of respect.

(e) A person employed to cultivate with farming stock of the owner.

4. In 1868 the then holder of the land, who appears to have been the original grantee, was served with notice on behalf of the grantor to produce his title deeds, a notice no doubt served in contemplation of the approaching settlement, and on 20th July 1868, he made a statement which translated is as follows :

Before Ramachandra Bapuji Karbhari of Wantmuri Sansthan. Deposition (statement) : Deposition (statement) given in writing by Baba bin Anandrao Desai, age 40 years, Lingayat by caste, occupation service, resident of Mummigatti, taluka Dharwar.

5. Answer to questions:

As the (family of) Desai of Wantmuri is related to us, the deceased Lakhamgowda 'Desai, in the Fasli year 1960 (i e., 1840-41 A. D,) gave us an honourable post of Shiledar and gave : 1 memo and land in the village of Buvidal and rent 1 takid (order) to the Kamati (a) of that village in respect thereof, copies of those two papers (namely, one memo and one order) have been produced after showing the originals. According to that Tharav (decision) Desagati Chawarat land measuring one-fourth, assessed at Rs. 125, situate in the village of Budihal and Rs. 87-8-0 pertaining to the rights of the village of Mouje Hebbal, and Rs. 1-12-0 in respect of the rights of the village of Karagar have been continued with us year after year without break, since that year until now. We pray that henceforward also we may be permitted to serve as persons entitled to receive honour as before, and their income may be continued (with us). My elder sister was given in marriage to the late Lakhamgowda Dosai; on account of that relationship he treated us as people of (his own) family, gave the said income with a view to provide for our maintenance, and enlisted us as Shiledar to save our honour. But that was not given to us only for the sake of service. Therefore he income should be continued with us as before. Deposition (statement) is duly given in writing as above. Date 20th July 1888 A. D.

(a)Holder of land which a zamindar or jagirdar or inamdar keeps in his possession, cultivating it by labourers in distinction to that which he lets out in farm.

Signature of Baba bin Anandrao Desai,
my own handwriting

Deposition (statement) was taken before me.

Ramachandra Bapuji Karbari

A true translation

S. M. Majumdar

Translator

6. This document was produced from the custody of the plaintiff, and is the only evidence of the nature of the services " shiledar " in respect of which the land was granted. It appears to have been addressed to the successor of the original grantor: and

if as appears probable from the evidence, it was made by the original grantee, it would show that at the time of the original grant the grantee was only about 13 years old, a circumstance which would tend to support the view that, the intention of the grant was to provide maintenance and to negative the view that the sole object of the grant was to remunerate services in an office then granted. It is admitted that from this time onwards the defendants' predecessors paid a nokriansha in lieu of service, and it appears that such payment was the amount of the assessment, at that time about Rs. 58. In 1899 the original grantee's son executed a sale deed of the land in question to the present defendant's father. This holder was then paying the amount of the assessment, Rs. 96, as nokriansha to the Sirdesai. In 1903 the purchaser applied to the present plaintiff, who had succeeded to the grantor's estate, to be entered in the accounts of the estate as the holder of the lands. He recited his purchase for Rs. 1,950 and that nokriansha had been paid of Rs. 96, and undertook to continue to pay Rs. 96 nokriansha or if called on to render service instead. The application was granted and the purchaser's name was apparently substituted for the original grantee's in the books of the estate, and the plaintiff continued to receive Rs. 96 as an annual payment.

7. Apparently in 1915 or 1916 defendant 1 was accused of the murder of the plaintiff's adoptive grandmother. He was acquitted by the Sessions Court, but the plaintiff appears to have been dissatisfied with this result, and in November 1917, served the defendant with notice to pay for the future an increased nokriansha of Rs. 300 per annum or yield up possession of the lands in question. As the increased payment was refused the plaintiff brought the present suit.

8. Both Courts have held that the land is not resumable. Their Lordships see no reason to differ from this conclusion. The terms of the grant : the evidence of the statement of 1868 : the fact that nokriansha has been paid since 1868 by the grantee his son, and his son's transferee : that transfer was expressly permitted by the plaintiff, and payment received by him for over 12 years from the transferee : all appear to show that the consideration for the grant was truly stated in 1868, and that so far from the transaction in 1841 being a nontransferable, nonheritable grant of an office, or a grant of land conditioned to be resumable on cessation of service, it was in fact a grant of land not resumable, but intended to be heritable and transferable and permanent at any rate as long as service or its equivalent in money was forthcoming. Whether actual service is now exigible it is unnecessary in the present suit to decide.

9. As to the amount of the nokriansha their Lordships are not disposed to differ from the judgment of the High Court. It has to be conceded that the amount of the

nokriansha is not at the uncontrolled discretion of the grantor. It has therefore to be a reasonable amount in the circumstances. For over 50 years the parties themselves have measured it by reference to the amount of the assessment from time to time, and it seems to be reasonable to accept this measure as being correct as between the parties concerned with this particular land. Their Lordships will accordingly humbly advise His Majesty that this appeal be dismissed.

Appeal dismissed.

Cases Referred.

[1870] 13 MIA 438=14 WR 28=2 Sar 588 (PC).