Rathod Bhimjibhai Masrubhai Rajput and Another

Vs

The State of Bombay and Others

Civil Appeal No. 327 of 1955

(S. K. Das, J. L. KAPUR, A. K. Sarkar JJ)

07.12.1959

JUDGEMENT

S. K. DAS J. –

This is an appeal by special leave from a decision of the High Court of Bombay, dated January 31, 1955, by which it dismissed with costs a writ application (No. 1100 of 1954) made by the petitioners therein, who are now appellants before us. It raises for consideration and decision a land revenue problem of some complexity, which resulted from the enactment of the Bombay Taluqdari Tenure Abolition Act, 1949, (Bombay Act LXII of 1949), hereinafter referred to as the Abolition Act. The problem is if the appellants, holders of certain lands known as "Lal-liti" lands, are liable to the State Government concerned for payment of land revenue under the provisions of the Bombay Land Revenue Code, 1879 (Bombay Act V of 1879), hereinafter referred to as the Revenue Code, after the enforcement of the provisions of the Abolition Act.

The problem has to be considered in the light of certain incidents of taluqdari tenures in the Ahmedabad district of Gujrat, with special reference to the changes through which those tenures had gone in the past by legislation or otherwise. For the purposes of this appeal it is not necessary to give a full history of taluqdari estates in Gujrat; but it is necessary to explain what is meant by "Lal-liti" lands. We get from such books as Baden-Powell's "Land-systems of British India" and Dandekar's "The law of Land Tenure in the Bombay Presidency", from both of which learned counsel for the parties have extensively quoted before us, a short history of the Taluqdars of Gujrat and of their estates. Shortly stated, the history is this : Taluqdars of Gujrat (they were not known as Taluqdars then, because the name was given much later) originally occupied the position of Chiefs or Rulers. This was before the Mahomedan rule in Gujrat. When the Mahomedans invaded Gujrat, they found the country partitioned out into estates of large or small Chiefs, whom they forcibly deprived of all but one-fourth of their possessions, and the portion thus left took the name of 'wanta' (divided). Some 'wantas' were free of payment of rent or revenue; other 'wanta' estates paid a tribute in the shape of an "udhad jama" (fixed sum). After the Moguls came the Marathas. The accession and domination of the Marathas made no substantial difference to the position of these semi-independent chiefs, except that the annual payments varied under the Maratha rule. Then came the British, who for sometime continued to realise annual payments according to past years; but very soon a significant change took place and the nature of the payment was altered, and instead of tribute, the Government assumed it to be rent or revenue. The rent or revenue was also increased by about 50 per cent. and the result was that the holders of these lands fell into pecuniary embarrassment and became impoverished and needy. A system of annual leases was then introduced : this remedy, however, proved worse than the disease, and it was sought to improve the position of the Taluqdars by legislation. It is not necessary for our purpose to refer to the details of that

legislation till we come to the Gujrat Taluqdars' Act, 1888 (Bombay Act VI of 1888), which was a landmark in the history of Taluqdari tenures. We shall have occasion later to refer to some of the provisions of this Act. It is sufficient to state here that by the time the aforesaid Act was passed the Taluqdars of certain districts of Gujrat including Ahmedabad had really become mere owners of proprietary estates, who held lands directly from Government, and the Act provided, inter alia, for the revenue administration of their estates. Under the provisions of the Act, the Settlement Registers were prepared for each village, which served the purpose of the Record of Rights in those estates. In these estates, large areas of lands were granted presumably by the Taluqdars to cadets, widows of the family, and relations for maintenance, and to village servants and others, either in reward for past services or as remuneration for services to be performed. The holders of these transferred lands paid no revenue either to the Taluqdar or to Government generally. These grants fell into three categories : (i) those made prior to British rule; (ii) those made between 1818 and 1888, that is, after the introduction of British rule and before the passing of the Gujrat Taluqdars' Act, 1888; and (iii) those made after 1888. The lands thus transferred were called "Lal-liti" lands because they were recorded in red ink in the old 'faisal patrakas' and in the Settlement Registers also, they were recorded in red ink but were shown as subject to "jama" (land revenue) liabilities of varying character. The pre-British transfers were recognised by Mr. Peile (later Sir James Peile) who was the Taluqdari Settlement Officer in 1866, and the holders of these lands generally paid no "jama". The 1818-1888 transfers were those which were not so recognised by prescription, and when these lands reverted to the Taluqdar, they became his ordinary lands liable to payment of full "jama". The post Act grants were covered by s.31 of the Gujrat Taluqdars' Act, 1888 (see in this connection "The Land Problems of Re-organised Bombay State" by Dr. G. D. Patel, pp. 174-175).

Such in brief, is the history of Taluqdari estates and "Lal-liti" lands, so far as that history has a bearing on the problem before us. It is necessary now to state the facts which have given rise to the present appeal. In their writ petition to the High Court, the appellants said that they were holders of "Lal-liti" lands in villages Kharad and Rajka of the Dhanduka taluq of Ahmedabad district and were enjoying the lands without payment of any "jama" (land revenue) since the pre-British rule, though the circumstances in which their predecessors originally got the lands are lost in antiquity. They said inter alia that the exemption from payment of land revenue which they had all along enjoyed was not affected by the Abolition Act or by any later legislation like the Bombay Personal Inams Abolition Act, 1952 (Bombay Act LXII of 1953), and that the demand for payment of land revenue made by the state Government of Bombay for 1950-1953 was not authorised by law. In the alternative, they also said that they were not liable to any assessment of land revenue till August, 1953. Accordingly, they prayed for appropriate writs (a) quashing the demands for payment of land revenue and (b) directing the State of Bombay, the Collector of Ahmedabad and the Revenue Officer of Dhanduka (who are now respondents before us), to forbear from taking any steps to enforce payment of land revenue for the "Lal-liti" lands held by them. A number of similar applications, presumably filed by other holders of "Lal-liti" lands, were also pending in the High Court. So far as we can gather from the record before us, there were three sets of such applications. The High Court delivered its leading judgment on writ application No. 1098 of 1954 and the application of the appellants herein (No. 1100 of 1954) was dismissed with costs on the grounds given in the leading judgment. The High Court held in effect that the holders of "Lal-liti" lands were liable to payment of land revenue under s.5 of the Abolition Act, read with the provisions of the Revenue Code, and the objections raised thereto, on their behalf were not legally valid. Having been unsuccessful in their application for a certificate under Article 133(1)(c) of the Constitution, the appellants applied for and obtained special leave from this Court on June 29, 1955. They then preferred the present appeal.

Learned counsel for the appellants has challenged the correctness of the decision of the High Court on various grounds. It will be convenient to take these one by one.

The first point urged is that the relevant provisions of the Abolition Act do not apply to "Lal-liti" lands, which are not "taluqdari lands" within the meaning of the Abolition Acts, and, therefore, no liability for payment of land revenue in respect of "Lal-liti" lands can arise under s.5 thereof. At this stage, we must read the relevant provisions of the Abolition Act. The expressions "Taluqdari land" and "Taluqdari tenure" are defined in s.2, clauses (3)and (4) :

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Section 2 :

"(1) ....(1A) ....(2) ....(3)

'Taluqdari land' means land forming part of a taluqdariestate and includes land forming part of such estate and held by acadet of a taluqdar's family for the purpose of maintenance;(4) 'Taluqdari tenure' means land tenure on which thetaluqdari land is held."

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Section 3 states :

"With effect from the date on which this Act comes into force

(i) the taluqdari tenure shall wherever it prevails be deemed to have been abolished;

(ii) save as expressly provided by or under the provisions of this Act, all the incidents of the said tenure attaching to any land comprised in a taluqdari estate shall be deemed to have been extinguished."

Section 5, which is of great importance for the purpose of this appeal, read as follows before it was amended in 1953.

Section 5(1) "Subject to the provisions of sub-section (2),

(a) all taluqdari lands are and shall be liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder, and

(b) a taluqdar holding any taluqdari land or a cadet of a taluqdari family any taluqdari land hereditarily for the purpose of maintenance immediately before the coming into force of this Act, shall be deemed to be an occupant within the meaning of the Code or any other law for the time being in force.

(2) Nothing in sub-section (1) shall be deemed to affect -

(a) the right of any person to hold any taluqdari land wholly or partially exempt from payment of land revenue under special contract or any law for the time being in force;

(b) the right of any person to pay Jama under any agreement or settlement recognised

> under section 23 or under a declaration made under section 22 of the Taluqdars' Act so long as such agreement, settlement or declaration remains in force under the provisions of this Act."

Now, the argument on behalf of the appellants has proceeded on the following lines; learned counsel for them has submitted that the expression "Taluqdari land" is defined as land forming part of a taluqdari estate; but the expression "taluqdari estate" is not defined, though the expression "Taluqdari tenure" is defined; therefore, taluqdari estate can only mean such land or estate in which the taluqdar has some subsisting interest; but in "Lal-liti" lands, at least of the pre-British rule, the taluqdar retains no interest after the grant, and, therefore, "Lal-liti" land is not taluqdari land within the meaning of s.5 of the Abolition Act. We have now to consider the soundness of this line of argument.

In the High Court as also before us an attempt was made on behalf of the respondents to establish that the taluqdar retained a reversionary right to "Lal-liti" lands in case the holder died without any heir. The High Court said rightly in our opinion, that on the materials placed before it, it could not be said that the respondents had established that position. The High Court then considered the meaning of the expression 'taluqdari estate' and said that it was used in a descriptive sense and was not equivalent to the expression 'Taluqdar's estate'. Said the High Court :

> "Therefore, the expression "Taluqdari estate" is a comprehensive expression including all lands which at one time belonged to the Taluqdar. In the eye of the law, although the lands might have been alienated by the Taluqdar, they still form part of the estate. Therefore, the expression is more an expression indicating a particular tenure rather than a particular interest enjoyed by the Taluqdar ....
> ....
> Therefore, if the lands, the subject-matter of the petition did at any time belong to the Taluqdar which he subsequently alienated, they would be covered by the definition in the Act of 1949, not withstanding the fact that when the Act was passed the Taluqdar had no interest in those lands."

We are in agreement with the view thus expressed by the High court. Having regard to the history of the "Lal-liti" lands to which we have earlier adverted and the provisions of the Gujrat Taluqdars' Act, 1888, it is manifestly clear that "Lal-liti" lands are lands which form part of a taluqdari estate, even though no 'jama' was actually paid for such lands to the taluqdar or to Government. It is necessary to refer here to ss.4, 5 and 22 of the Gujrat Taluqdars' Act, 1888. Section 4 empowers the Government to direct a revenue survey of any Taluqdari estate; section 5 lays down what particulars the Settlement Registers prepared by the Survey Officer in respect of a taluqdari estate shall contain. One of such particulars is "the name and description and the nature and extent of interest of every alienee and of every incumbrancer of the estate or any portion thereof together with a specification of (i) the aggregate area over which such interest extends; (ii) the amount and nature of rent or land revenue, if any, payable or receivable by such alienee and incumbrancer, etc." It is not disputed before us, and the High Court has referred to it, that in the Settlement Registers prepared in respect of the two villages in question under s.5 of the Gujrat Taluqdars' Act, 1888, the interest of the appellants in the "Lal-liti" lands held by them was shown as comprised within the Dhanduka Taluqdari estate. This clearly showed that these "Lal-liti" lands formed part of a taluqdari estate, apart altogether from the question what interest, if any, the taluqdar retained in them after the alienation. Section 22 of the Gujrat Taluqdars' Act, 1888, also points the same way. It lays down how the "jama" of a taluqdar's estate is to be calculated : it says that the aggregate of the survey

assessments of the lands composing such estate, minus such deduction, if any, as the Government shall in each case direct, shall be the "jama". Along with their petition, the appellants filed an annexure marked "A" : that annexure, besides showing the lands of the appellants within a taluqdari estate, also showed the "jama" payable for each plot of land. This again showed that whether the "jama" be actually paid or not, the "Lal-liti" lands held by the appellants formed part of a taluqdari estate. We accordingly hold that learned counsel for the appellants is not right in his contention that "Lal-liti" lands are not part of a taluqdari estate and, therefore, are not 'taluqdari lands' within the meaning of the Abolition Act.

Learned counsel for the appellants referred us to certain decisions of the Bombay High court as to the meaning of the expression "Taluqdar's estate" in s.31 of the Gujrat Taluqdars' Act, 1888, and contended that it meant an estate held by the Taluqdar as a Taluqdar and on the same analogy, he urged that land forming part of a taluqdari estate must also mean land in which the taluqdar has some interest as a taluqdar (Khoda Bhai v. Chaganlal ((1907) 9 Bom. L.R. 1122), Bichesbha Mansangji v. Vela Dhanji Patel ((1909) 11 Bom. L.R. 736) and Taluqdari Settlement Officer v. Chhagan Lal Dwarkadas ((1910) 12 Bom. L.R. 903). We do not think that those decisions are of any help to the appellants for the simple reason that the analogy does not apply; we are concerned here not with the meaning of the expression "taluqdar's estate" occurring in s.31 of the Gujrat Taluqdars' Act, 1888, but with the meaning of a different expression, viz. "taluqdari estate" in s. 2(3) of the Abolition Act. Moreover, in some of the decisions relied on by the learned counsel, it was recognised that there was a distinction between 'taluqdar's estate' and 'taluqdari estate.'

We were also addressed at some length on the effect of the relinquishment of his land by the taluqdar in favour of the Collector (Nathuram Hiraram Thakur v. The Secretary of State for India ((1929) 32 Bom. L.R. 907) or the effect of an attachment of the village under s. 144 of the Revenue Code on failure of the taluqdar to pay the assessment (Tulla Sobharam Pandya v. The Collector of Kaira ((1918) 20 Bom. L.R. 748). We do not think that it is necessary in the present case to consider those questions.

We now go to the second point urged on behalf of the appellants. This point was not urged before, nor considered by, the High Court in the writ application in which it gave its leading judgment. The appellants wished to urge the point in the High Court on their own application, but were told that if the decision of the High Court in Writ Application No. 1098 of 1954 was wrong, it could be corrected only by this Court. The argument on this point is based on s.5(1) of the Abolition Act, which we have quoted earlier, and is in two parts : firstly, it is contended that if clauses (a) and (b) of sub-section of s. 5 are read together, the only reasonable conclusion is that clause (a) is merely declaratory and clause (b) is the operative clause and according to that operative clause, the persons who become liable for payment of land revenue are only two in number, namely, (1) a taluqdar holding any taluqdari land and (2) a cadet of a taluqdari family holding any taluqdari land with hereditary rights for the purpose of maintenance immediately before the coming into force of the Abolition Act, and, therefore, the holder of "Lal-liti" lands, assuming them to be taluqdari lands, has no liability under s. 5(1); secondly, it is contended that even if clauses (a) and (b) of sub-section (1) of s.5 are read distributively, the holder of "Lal-liti" lands has still no liability, because cl.(a) makes taluqdari lands liable to the payment of land revenue in accordance with the provisions of the Revenue Code and there is no provision in that Code under which a "Lal-liti" holder can be made liable to the payment of land revenue.

We take the first part of the argument first. How should we read clauses (a) and (b) of sub-section (1) of s. 5 of the Abolition Act ? Learned counsel for the appellants states that if clause (a) is also

read as a clause which operates to charge all taluqdari lands with liability for payment of land revenue, then clause (b) becomes a wholly unnecessary surplusage. On the other hand, learned counsel for the respondents points out that if the intention was to fasten liability on two categories of persons only, taluqdars and cadets, then clause (a) was really unnecessary. We think that both the clauses have a meaning and purpose. Clause (a) makes all taluqdari lands liable to the payment of land revenue in accordance with the provisions of the Revenue Code. Section 3 of the Abolition Act abolishes taluqdari tenure and extinguishes all its incidents. If there was only abolition of taluqdari tenures without anything more, there would have been a void. Obviously enough, it was necessary to say what would happen to taluqdari lands after abolition of the taluqdari tenure. Therefore, clause (a) states that all taluqdari lands shall be liable to the payment of land revenue in accordance with the provisions of the Revenue Code. What then is the meaning of clause (b) ? It is a deeming provision by which the taluqdar and his cadet shall be deemed to be an occupant within the meaning of the Revenue Code; and 'occupant' under the Revenue Code means 'a holder in actual possession of unalienated land'. The word 'alienated' has also a special meaning in the Revenue Code; it means 'transferred in so far as the rights of Government to payment of rent or land revenue are concerned, wholly or partially, to the ownership of any person'. Clause (b) merely clarifies the position of the taluqdar and his cadet under the Abolition Act; it does not in any way derogate from clause (a);nor does it cut down the width of amplitude of clause (a). We are of the view that clauses (a) and (b) should be read together, but not in the sense suggested by the learned counsel for the appellants. Clause (b) clarifies the position as respects two categories of persons; but that does not mean that if a third category of persons properly come under clause (a), they will not be liable to payment of land revenue on a specious and unwarranted assumption that clause (b) as the operating clause cuts down the amplitude of clause (a). The true view is that clause (a) is a general provision and applies the Revenue Code to all taluqdari lands, while clause (b) is a particular deeming provision with regard to the taluqdar and his cadet.

Now, as to the second part of the argument. It is necessary to read here s. 136(1) of the Revenue Code :

> "Section 136(1) : In the case of unalienated land the occupant, and in the case of alienated land or taluqdari land, the superior holder, shall be primarily liable to the State Government for the payment of the land revenue, including all arrears of land revenue, due in respect of the land. Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable."

The question is if the holder of "Lal-liti" lands is, after the Abolition Acts, an occupant of unalienated land within the meaning of s. 136; if he is, then he is liable to the payment of land revenue under s.5(1)(a) of the Abolition Act read with s. 136 of the Revenue Code. In dealing with this question, which has caused us some anxiety, we must remember the meaning of the expressions 'occupant' and 'alienated' used in the Revenue Code. The argument on behalf of the appellants is that a "Lal-liti" holder is not an occupant of unalienated land; the respondents contend that he is, after the enforcement of the Abolition Act. On a careful consideration of the question we have come to the conclusion that the contention of the respondents is correct.

In respect of "Lal-liti" lands, Government made no separate settlement with the holder of such lands; the settlement was made with the taluqdar, within which settlement "Lal-liti" lands were included. The right of Government to payment of land revenue was never transferred to the holder of "Lal-liti" lands though it is true that some of the taluqdars got a deduction under s. 22 of the Gujrat Taluqdars' Act, 1888, for the "Lal-liti" lands. We have been addressed at some length as to

what was the position of taluqdars and "Lal-liti" holders previous to the Abolition Act. On behalf of the respondents it has been submitted that one characteristic of the taluqdari tenure was that the taluqdari estate was neither alienated nor unalienated within the meaning of the Revenue Code; because the taluqdars were not grantees of the British but enjoyed proprietary rights in their estates even before the advent of British rule. As to "Lal-liti" lands, they were not generally taken into account at the time of calculating the "jama" payable by the taluqdars to Government; and as a result, they were not covered by the Settlement guarantee operating in favour of the taluqdar. Therefore, so the argument on behalf of the respondents has proceeded, holders of "Lal-liti" lands became liable to payment of full assessment on the footing that they became occupants of unalienated land, with effect from the date on which the Abolition Act came into force. Learned counsel for the respondents has also drawn our attention to the list of amendments in the Revenue Code made by Schedule I of the Abolition Act in support of his contention that the taluqdars and all taluqdari lands have been brought into the scheme of the Revenue Code by the necessary amendments of s.136 and other sections of the Revenue Code.

The narrow question before us is, as we have stated earlier, whether a "Lal-liti" holder is an 'occupant' of 'unalienated land' within the meaning of the Revenue Code. We are of the view that whatever may have been his position earlier, on the abolition of the taluqdari tenure by the Abolition Act he became a holder in actual possession of land in respect of which the Government had not transferred its rights to the payment of revenue, wholly or partially to the ownership of any person.

Therefore, the second point urged on behalf of the appellants fails in both parts.

We need notice very briefly three other points urged on behalf of the appellants; because we are in such complete agreement with the High Court with regard to them, that it is unnecessary to re-state in detail the reasons which the High Court has already given.

> (1) As to the saving clause (c) of s.17 of the Abolition Act, the High Court has rightly pointed out that it is the usual saving clause which says in effect that the repeal of the Gujrat 'Taluqdars' Act, 1888, shall not be deemed to effect any declaration made or any agreement or settlement recognised etc. under the provisions of the repealed Act. The aforesaid saving clause affords no protection against the liability imposed by s.5 of the Abolition Act.
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> (2) Learned counsel also relied on s. 5(2)(a) of the Abolition Act, before its repeal by the Bombay Personal Inams Abolition Act, 1952 (Bombay Act 42 of 1953), and based his alternative claim thereon. Here again, the High Court rightly pointed out that there was no special contract in favour of the appellants as exemption from payment of land revenue nor was there any law for the time being in force (after the Abolition Act) which granted the holder of "Lal-liti" lands exemption, wholly or partially, from payment of land revenue; therefore, the appellants were entitled to no protection under s.5(2)(a) of the Abolition Act till August 1, 1953.
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> (3) Lastly, it was submitted that there was a settlement for thirty years with the taluqdari estate in question in 1925-26 and in the absence of any fresh settlement under the provisions of the Revenue Code, a "Lal-liti" holder was not liable to pay land revenue within that period. This point is completely answered by s. 4 of the Abolition Act which in terms says that all revenue surveys or revised revenue

> surveys of taluqdari estates under s. 4 of the Gujrat Taluqdars' Act, 1888, and all settlement made shall be deemed to have been made under Chapters VIII and VIIIA of the Revenue Code and the settlement registers and other records prepared at such surveys shall be deemed to have been prepared under the corresponding provisions of the Revenue Code. We know that the "Lal-liti" lands of this case were shown in the Settlement Registers prepared under the Gujrat Taluqdars' Act, 1888. In view of the provisions of s.4 of the Abolition Act, no fresh settlement was necessary.

For the reasons given above, we hold that the appellants have failed to show that the decision of the High Court is wrong. The appeal is accordingly dismissed with costs.

Appeal dismissed.

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