Bhagwantrao

Vs

Vishwasrao and Another

Civil Appeal No. 208 of 1955

(S. K. Das, A. K. Sarkar JJ)

12.01.1960

JUDGMENT

S. K. DAS, J. -

This is an appeal on a certificate granted by the High Court of Nagpur under clause (c) of Article 133(1) of the Constitution to the effect that the case is a fit one for appeal to this Court. It raises some important questions as to the right of the revenue authorities of the State Government concerned, to resume certain lands which are known as "patel ki huq inam" lands situate in what was previously known as the ceded area of Berar. The plaintiff Bhagwantrao Shivaji Patel (Bhagwantrao, to give his short name) is the appellant before us. Vishwasrao Patel, who was defendant No. 2 in the suit, is now respondent No. 1. Originally, the Provincial Government of the Central Provinces and Berar was defendant No. 1, and now the State of Bombay is respondent No. 2 before us. Formerly, the lands in suit lay within the province of Central Provinces and Berar; later they fell within the State of Madhya Pradesh, and now they are in Bombay.

The relevant facts which have given rise to the appeal may now be shortly stated. The lands in suit were comprised in six survey numbers stated in paragraph one of the plaint. They lay in village Nawabag, a jagir village, of Ellichpur (now called Archalpur) taluq of Berar, and we shall hereinafter give some more details of that jagir. In that village there were four families of Patels some members of which held the Patel's office in rotation of ten years each. These four families went by the surnames of Dongre, Rokade, Raut and Ingle. We are concerned with the Rokade, family. One Shivajirao of that family had two sons, called Amrit and Bhagwant. Bhagwant, as we know, is the appellant before us. Vishwasrao, respondent No. 1 is the son of Amrit. Shivajirao died sometime in 1886. His son Amrit died in 1920. In 1923 there was a partition between the appellant and respondent No. 1. The case of the appellant was that as a result of this partition, the "patelki inam" lands were divided and the lands in suit were allotted to the share of the appellant. When Shivajirao was alive, he worked as patel; so did Amritrao in his turn. Lastly, Vishwasrao also worked as patel. In 1935 a special officer was appointed by Government to prepare a record of rights of the jagir village of Nawabag. This officer submitted a report on which certain enquiries were made. As a result of these enquiries it was held that the appellant was not entitled to hold the "patelki inam" lands which were given as emoluments of his office to the working patel from the Rokade family. It was ordered by the Deputy Commissioner that the lands in possession of the appellant should be resumed and regranted to the working patel, viz., respondent No. 1. The appellant appealed against this order. The Commissioner of Berar set aside the order of eviction, but maintained the status quo pending final orders of Government. Ultimately, on December 19, 1941, the Financial Commissioner held that the person actually working as patel was entitled to receive the full emoluments of his office, and revenue officers had consistently refused to admit any claims

to shares in patelki emoluments. Accordingly, he set aside the order of the Commissioner and restored that of the Deputy Commissioner. Thereupon, the appellant brought his suit in 1942 in which he claimed that the Government had no jurisdiction or authority to resume and regrant the lands to respondent No. 1 and the orders passed by the revenue authorities concerned were null and void. The appellant asked for possession and mesne profits. By a subsequent amendment of the plaint, the appellant alleged that at least two of the plots, 2/1A and 9/1A, had ceased to be "patelki inam" lands and were private property of the family. Therefore, in any view of the matter, Government had no right to resume these two plots. His claim with regard to these plots was alternatively placed on a somewhat different footing and we shall, in due course, consider that claim.

The suit was dismissed by the trial Judge, but on appeal by the present appellant the learned Additional District Judge of Amraoti decreed the suit. There was a second appeal to the High Court of Nagpur which allowed the appeal, set aside the decree of the lower appellate court, and restored that of the trial Judge. The High Court substantially held that (1) the lands in suit were granted by the then sovereign authority by way of remuneration or emoluments for services to be rendered by the patel and the grant was recognised as a service inam by the British Government, and (2) it was open to the revenue authorities to resume and regrant the lands in accordance with the provisions of the Patels and Patwaris Law, 1900 in force in Berar and s. 190 of the Berar Land Revenue Code, 1928. Thereafter, the appellant applied for and obtained a certificate from the High Court, and the present appeal has been brought pursuant to that certificate.

To appreciate the points which have been urged before us on behalf of the appellant, it is necessary to state some more historical facts about the jagir village Nawabag and the "patelki inam" lands comprised therein. The original sanads by which the jagir of Nawabag or the "patelki inam" was created have not been produced in this case. There is no doubt, however, that both are of very ancient origin. Berar was ceded by the Nizam of Hyderabad in 1853 and the Inam Rules for settlement of jagir and inam claims were made in 1859, Rule I whereof stated inter alia that land which was proved to have been held as inams, either under a fixed quit rent of rent-free for a period of 40 years before the cession, was to be treated by the British Government as inam possessed under a valid title. The promulgation of the Inam Rules was followed by an inams investigation. Ex.P-1 is the copy of an inam entry dated August 31, 1866. This document shows that the jagir of Nawabag was granted by the Kings of Delhi to one Shah Abdul Huq originally. It was subsequently continued and confirmed by sanads granted by the Nizam of Hyderabad in 1757. The village had a total area of about 1,846 bighas, out of which about 262 bighas were held by patels in lieu of their "huq" in the proportion of 1 bighas per netan (a measure of nine bighas). The Inam Commissioner stated that the jagir had been held upwards of 100 years before the inam enquiry and should be continued (except for an area of 200 bighas for which there was no satisfactory proof) in perpetuity subject to a quit rent of Rs. 87-8-0. There is an earlier document, Ex.P-9A, of October 24, 1771, which shows that there was a dispute between the jagirdars and the patels about the latter's right to get 1 1/2 bighas of "patelki inam" land per "netan". The jagirdars disputed the claim of the patels and ultimately the dispute was submitted to the Nazim Sahib of Ellichpur. The document contains the following recital which shows that the "patelki inam" lands of village Nawabag were also very ancient grants : "The Nazim, after seeing from the previous records as to who was in enjoyment, granted the mukaddami inam of a bigha and half from year to year as desired by the mukaddaman. As per the old judicial usage, land is calculated at the rate of one and half bigha per netan and measured out from the lands of Nawabag and the aforesaid mukaddaman are held to be occupants of the said cultivated land". It appears that out of 262 bighas of "patelki inam" lands in the village, the Rokade family held about 11 plots, approximately of about 50 acres. Sometime before 1904 some of

the co-sharer-jagirdars of Nawabag alienated the jagir lands to strangers. This led to resumption proceedings by Government, and ultimately half of the jagir village was resumed by Government in or about 1904-05. As a result of a detailed enquiry, survey numbers 1 to 21 and 40 to 45 of the "patelki inam" lands fell in the resumed portion and survey numbers 22 to 39 were included in the jagir portion. As survey numbers 2/1A and 9/1A in possession of the Rokade family fell in the resumed portion, they were recorded as Khalsa and were assessed to revenue, while the remaining survey numbers viz. 29/1, 34/3, 36/2 and 37/2 continued to be in possession of the Rokade family free of assessment. There was another resumption proceeding in or about 1917 when it was discovered that the jagirdars had alienated lands falling in the jagir portion also. This time the lands resumed were not made Khalsa but were regranted to the jagirdars. As a result of this regrant the jagirdars thought that they were entitled to take possession of the "patelki inam" lands of the Rokade family also. This led to some more revenue proceedings, and we come now to one of the important documents in this case, viz., a letter dated August 28, 1922, by which sanction of Government was conveyed to the "exclusion from resumption of 25 acres and 15 gunthas of land in the khalsa portion of the village and to the exclusion from the land regranted to the jagirdar viz., of 24 acres 30 gunthas in the inam portion of Nawabag jagir village". The order made by the Government further stated that the aforesaid lands would be recorded in the name of Amrit Shivaji Patel as his "patelki huq inam". Some of the other patel families made an attempt to get a release of the inam lands held by them, which had since been resumed; but this attempt proved unsuccessful and Government held that an enquiry showed that with the exception of Amritrao, no member of the old patelki families except Deo Rao was in possession of the old "patelki inam" lands and as Deo Rao did not belong to a branch in which the right to officiation resided, his claim could not be considered. The order of Government in 1922, therefore, made it clear that the "patelki inam" lands of Amritrao formed one homogenous, separate service grant and were not dependent on the resumption of the jagir of Nawabag.

The proceedings of 1917-1922 were followed by the proceedings of 1935-1941 which culminated in a third resumption of the "patelki inam" lands and regrant to Vishwasrao and to which we have earlier referred. These proceedings bring the history of the lands in suit up to the time when the appellant brought his suit in 1942.

Now, apart from the alternative claim with regard to survey numbers 2/1A and 9/1A and the claim of title by adverse possession, which claims we shall consider later, the principal question which falls for decision in this appeal, is the true nature of these "patelki inam" lands; do they constitute a grant by way of remuneration or emoluments of the patel's office by the use of the lands, as found by the High Court, or do they constitute a grant of land to the patelki family burdened with service and so long as the service is performed by any member of the family, the lands are joint family lands subject to partition etc. among the members of the family? On behalf of the appellant, it has been very strongly contended before us that the finding of the High Court on this point is wrong. On this part of the case learned counsel for the appellant has made a four-fold submission; firstly, that the rights which the Rokade family had in these lands were rights of dealing with the property as owners, subject to a member of the family rendering patelki service; or in other words, the grant was a grant of land burdened with service; secondly, the grant was made by the jagirdar of village Nawabag and not by the sovereign authority and neither the Inam Rules, nor the provisions of the Patels and Patwaris Law, 1900 applied; thirdly, even if the aforesaid Rules and provisions applied, the appellant still retained his hereditary rights in the lands; and fourthly, the orders of Government dated August 28, 1922, did not confer any new right nor did they deprive anybody of any subsisting right in respect of the "patelki inam" lands and Government had no right to resume the lands and regrant them to respondent No. 1.

The second submission can be disposed of without much difficulty. We have already stated that the sanads creating the jagir or the "patelki inam" have not been produced. The earliest document we have is the kararnama of October 24, 1771. That document shows, as we have stated earlier, that there was a dispute between the jagirdars and the patels; the patels were demanding 1 1/2 bighas per netan as their "huq" and the jagirdars were saying that no such "huq" mentioned in the sanads granted to the jagirdars. The dispute was referred to the Nazim, who was the local representative of the then sovereign authority, and the decision of the Nazim was expressed by saying

The Nazim granted the inam of a bigha and a half from year to year for each netan; it was also stated that this was supported by old judicial usage. In our view the kararnama shows two things : first, the grant of "patelki inam" of 1 1/2 bighas per netan was in its origin a grant by the sovereign authority which the Nazim confirmed in accordance with old judicial usage; secondly, that the grant was from year to year in lieu of patelki services and was binding on the jagirdars who agreed to be bound by it. The entry in the Inam Register, dated August 31, 1866 (Ex.P-1) is to the same effect; it shows that 262 bighas were excluded from the jagir "as allowed to patel in lieu of his huq to 1 1/2 bighas", in contradistinction to other petty inams allowed by the holders (jagirdars) themselves. On behalf of the appellant our attention has been drawn to Rules I and II of the Inam Rules and to Rule XV; it has been submitted that if the "patelki inam" was separate from and independent of the jagir which was a class III inam, a separate title deed in the form of an inam certificate would have been granted in respect of the "patelki inam" as a case IV inam. It may be, as the High Court points out, that the "patelki inams" were not separately recognised during the inam enquiry, and it was then assumed as if these were interests carved out of the lands granted to the jagirdars. There is, however, clear evidence in the record that the "patelki inam" of this case was independent of the jagir. Immediately after the first resumption proceedings against the jagirdars in 1904-05, the position of the patels came under consideration of the revenue authorities. In 1906 one Moti of Dongre family was appointed patel by the Sub-divisional officer, Ellichpur. In 1907 Amrit, son of Shivaji, was appointed patel in the Rokade family to officiate in rotation with Moti. This appointment was made by the Deputy Commissioner. In 1908 there was a dispute between the jagirdars and patels and the order of the Sub-divisional officer who decided the dispute said :

> "The Jagirdar says that his family appointed Patels from the watan family, but this is not borne out by such papers as exist. There is a petition dated 4-1-67 from the Jagirdar requesting the Revenue authority of the time to appoint a certain person as Patel. At that period then the Revenue authorities and not the Jagirdar appointed the Patel.
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> The Patels are village servants only and are responsible only to the Government and not to the Jagirdar.
>
> The Patel family has had watandari rights for certainly 150 years or so.
>
> I am of opinion therefore that the watan seems independent of the jagir."

This dispute went up to Commissioner Sly (later Sir Frank Sly) and he held that the patelki is a watan independent of the jagir, and he approved the proposal for rotation between Moti and Amrit. The "patelki inams" were treated on the same basis in the resumption proceedings of 1917-1922, and by the order dated August 28, 1922, Government excluded the "patelki inam" lands from the resumption proceedings relating to the jagir on the footing that they were separate from and independent of the jagir. Mr. Walker, then Financial Commissioner, said in his order dated August 7,

1918, (Ex.ID-II) :

> "Although the Patel holds no Inam Certificate, I agree with the Commissioner that the inam resumption procedure which was necessitated by the action of the jagirdar, ought not to upset the arrangement concerning the Patels, which was made at the suggestion of His Exalted Highness the Nizam's Government many years ago. To give effect to this view, it will be necessary to reopen the enquiry as regards the whole village - both the khalsa part and the regranted inam part - and to determine what fields in each represent the original grant of 262 bighas to the Patel in lieu of his huq. When that area has been determined, the orders of resumption will have to be modified so as to exclude it."

There is, therefore, overwhelming evidence in this case to show that the patelki inams were separate from and independent of the jagir of Nawabag, though the lands lay within the jagir village.

This brings us to the more important question - what is the true character of the "patelki inam" lands of this case ? On this point also, we think that there is clear and unimpeachable evidence in support of the finding of the High Court. We have already referred to the kararnama of 1771 and the inam entry of 1866. If the grants were a grant of land to the patelki families burdened with service, it is difficult to understand how there could arise a dispute about remuneration of 1 1/2 bighas per netan should be fixed from year to year. In a revenue case of 1908 Amrit Patel had himself stated that the land was given to his ancestors in lieu of patelki huq and it should not be assessed to land revenue. Even in his plaint, the appellant had asserted that the "Patels were given certain lands out of the jagir village for their working as patels and for discharging other duties." There is another important document in this connection. In the second resumption proceedings of 1917 Government had first decided to resume the jagir and regrant it to the then Jagirdar Amerulla Khan. In the orders passed (Ex.ID-18) it was stated that the Jagirdars would be at liberty to allow the working patels to hold such lands as were considered reasonable by the Deputy Commissioner free of revenue and in lieu of mushahara (emoluments or wages). It is important to note that everybody understood then that the "patelki inam" was in lieu of wages or emoluments for the office of patel. These orders led to an enquiry, and Amritrao made a statement that he was holding survey numbers 26, 27, 29, 34, 36 and 37 in lieu of patelki emoluments. He said that he was even willing to hold 4 acres 17 gunthas of survey No. 27 in lieu of his emoluments. It appears that the Sub-divisional officer then recommended that Amrit Patel should be given only 4 acres 17 gunthas, as emoluments for his office. Later, an application was made on behalf of Amrit, which was signed by his brother, the present appellant as his agent, in which occurred the following significant statements :

> "The learned S.D.O. has again lost sight of the fact that the family of the applicant has been doing the work of the Patel from a very long time, that in the early days of the Berar Administration when land had no value and did not fetch the income it is doing now, the applicant and his predecessors worked to what they would get from the land. Cash had more value then than land and hence the Inamdars thought it is advisable to commute money payment into land grant.
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> #.....##
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> That the learned Sub-Divisional Officer has lost sight of the fact that in the inam enquiry and the anad granted to the Inamdar of the Nawabag Jahagir in 1866, the land in the possession of the applicant has been deducted from the area of the village

> and it is only the rest of the area that is made over to the Inamdar, vide, Co. 5 of the sanad viz. area of grant. This shows that in 1866 the area reserved for the Patel was considered as a fair remuneration in kind to the Patel for his work."

These statements show clearly enough what the appellant and his brother Amrit, understood to be the character of the "patelki inam" lands; they clearly said that the lands were given in lieu of emoluments or remuneration. This view ultimately prevailed and the earlier orders were modified on the recommendation of Commissioner Standan who said that the lands held by the patel as "patelki inam" should be excluded from resumption and the patel should be allowed to hold the lands free of any payment in lieu of cash remuneration for his office. In the result were passed the orders dated August 28, 1922, to which a reference has already been made. These transactions and the statements made therein are admissible, in the absence of the sanads creating the grant, to show how the parties themselves have understood and dealt with the grant in contested revenue proceedings between the jagirdars and patels.

On behalf of the appellant it has been submitted that there is evidence in the record to show that some of the patels had alienated "patelki inam" lands of each patel remained with him, in spite of the fact that the office was held in rotation; these circumstances, it is contended, militate against the view that the grant was a mere grant of office with emoluments in the shape of Inam lands. We are unable to accept this contention as correct. The statement of the appellant himself in a revenue case of 1937-38 (Ex.ID-15) shows that the lands alienated by the other patels were resumed and regranted to the jagirdar in the resumption proceedings of 1917-18. After Amritrao had succeeded in getting his "patelki inam" lands excluded from resumption, the other patels also unsuccessfully attempted to get their lands released - a circumstance to which we have earlier referred. This shows that Government never accepted the position that the "patelki inam" lands could be freely alienated; on the contrary, the evidence in the record shows that Government had resumed such lands on more than one occasion. As to the second circumstance, it is indeed true that the office was rotatory (this is provided for in s. 3 of the Patels and Patwaris Law, 1900); but each patel retained his inam land even when it was not his turn to work as patel. We do not however, consider this circumstance as establishing that the grant was other than what the High Court held it to be. Section 3 of the Patels and Patwaris Law, 1900 says in clear terms that when there are two or more patels in a village and the duties can, in the opinion of the Deputy Commissioner, be efficiently performed by one patel, the Deputy Commissioner can direct that each patel shall hold office in turn by rotation for a term of not less than 10 years. This does not mean that a patel ceases to be a patel when this turn is over; he continues to be a patel and enjoys his emoluments.

We purpose now to examine the position under the Inam Rules, 1859, the Berar Patels and Patwaris Law, 1900 and the Berar Land Revenue Code, 1928. The argument on behalf of the appellant is that even under the Inam Rules, he is entitled to his share in the "patelki inam" lands, so long as a member of the family works as patel. Learned counsel for the appellant has drawn our attention to Rules V and VI and has submitted that being a service inam, the "patelki inam" would come under the fourth class mentioned in Rule II and would be governed by Rule VI(2) which says :

> "Inams granted in lieu of lands or money stipends, commonly called huqs and ressums of offices, such as Deshmukh, Deshpandia, and others the service of which has either been dispensed with or otherwise discontinued, shall be disposed of according to clause 2 of the Rule V, if they are hereditary in their terms, either by express declaration of Government or by recognized usage. Nothing in this rule shall be deemed to apply to cash allowance known as ressums or lawazamas granted to

Deshmukhs and Deshpandias in lieu of emoluments previously payable to them."

That Rule refers to clause (2) of Rule V which reads :

> "If the present incumbent is a descendant of the original grantee, the inam will be continued to him hereditarily, subject to the following conditions :-
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> First - Successions limited to direct lineal heirs and undivided brothers.
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> Second - The inam escheats to Government on failure of such heirs.
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> Third - Future alienation of the inam is prohibited.
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> Fourth - The right of adoption to an inam is not recognized."

The contention before us is that under Rule VI(2) read with Rule V(2), the appellant was entitled to his share in the "inam" as an undivided brother of Amritrao, Patel. We do not think that this contention is correct. For one thing, Rule VI(2) applies to inams, granted in lieu of lands or money stipends, the service of which has either been dispensed with or otherwise discontinued. That is not the case here. Secondly clause (8) of Rule VI makes it clear that when the inam attached to the office is wholly or partially in the enjoyment of members of the family who do not perform service, such portion of the alienated inam as may be considered necessary for the efficient performance of the duties will be attached to the office-holders, and Rule XIV(2) says that service grants are not liable to be alienated by purchase or otherwise. Rule VIII explains the term "inam" and Rule II also has bearing on the question before us. It says, so far as it is relevant for our purpose :

> "The settlement will be made with the head member of the family holding the office or enjoying the inam and who will be held alone responsible to Government, and in no case will the Government interfere to compel the actual incumbent of an office to make over any portion of his regulated service grant to other branches of the family, as service grants cannot be divided according to the orders of Government ..."

Rule XXI(2) says interalia that in respect to service grants, the decisions of the Commissioner and the Resident respecting lands held free by the village officers as remuneration for service, shall be considered final.

From these Rules it is manifestly clear to us that there is nothing in them on the basis of which the appellant can claim as of right that he has a share in the "patelki inam" lands as a member of the patel's family, irrespective of whether he performs the service or not.

The position under the Patels and Patwaris Law, 1900, appears to be clearer still. Section 9 of the said Law states that the emoluments appertaining to the office of the patel or patwari shall be enjoyed solely by the person for the time being holding the office; even a substitute shall receive the whole of the emoluments appertaining to the office, unless the Deputy Commissioner otherwise directs, and if there are two or more patels in a village, the Deputy Commissioner shall determine the proportions in which they shall share in the emoluments of office. Section 10 and 11 say that the emoluments appertaining to the office of patel shall not be liable to attachment or sale, and every assignment thereof shall be void. Under s. 20 the jurisdiction of the Civil Court is barred with respect to any claim by any person to any emolument appertaining to the office of patel. These provisions clearly indicate that the "patelki inam" lands are subject to orders passed by the revenue

authorities in respect of the matters mentioned therein, and no right is given to a member of the family of the patel to claim a share in the emoluments.

The power to resume lands granted on condition that the holder shall render certain services is specifically referred to in s. 190 of the Berar Land Revenue Code. We quote below the material portion of the section :

> "Section 190(1) - If alienated land has been granted on condition that the holder shall render certain services or incur expenditure for the benefit of the community or any section thereof, and the holder fails to render such services or to incur such expenditure to the satisfaction of the Deputy Commissioner, or, if the holder transfers the land in such a manner that, in the opinion of the Deputy Commissioner, the purpose of the grant is likely to be defeated, the Deputy Commissioner may declare such land to be forfeited.
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> (2) Land forfeited under this section shall vest in the Crown for the purposes of the Province free of all encumbrances and shall be regranted on the original conditions made under this Law."

Section 192 says inter alia that no civil court shall entertain any suit to obtain a decision on any matter which the revenue authorities are empowered under the Law to determine, and among the matters mentioned in the section, is any claim against the State relating to any property or emoluments appertaining to the office of any hereditary officer or servant. These provisions also negative the claim of the appellant.

We proceed now to consider certain decisions on which learned counsel for the appellant has sought to place reliance. We may notice here one comment made by him. He has submitted that the High Court has relied on the decision of the Privy Council in Venkata Jagannadha v. Veerabadrayya ((1921) L.R. 48 I.A. 244) where the question was whether the karnam service lands enfranchised to a karnam, a village accountant in Madras State, were subject to any claim of partition by other members of the family, and his comment is that the "patelki inam" lands in Berar stand on a footing different from karnam service lands in Madras and there are decisions in which it has been held that co-sharers have a right to a share in service grants in Berar. The first decision to which our attention has been drawn is Krishnarao v. Nilkantha and Others (A.I.R. (1922) Nag. 52). That was a case of a jagir, and it was held that it came under the third class, and nothing regarding service was mentioned in the terms of the original sanad. The decision proceeded on the basis that the ordinary rule is that if persons are entitled beneficially to shares in an estate, they may have a partition. It was further held that property consisting to an ordinary inam village was liable to partition at the suit of a co-sharer except when it was held on a saranjam or other impartible tenure or where the terms of the grant impose a condition upon its enjoyment. We do not think that this decision establishes what the appellant is seeking to establish in this case, that is, that he has a share in the emoluments of the patel's office. The next decision is that of the Privy Council in Mir Subhan Ali v. Imami Begum ((1925) 21 Nag. L.R. 117); all that was laid down there was that the devolution and incidents of an inam estate in Berar were regulated by the Inam Rules, 1859, but only in matters not mentioned in the sanad or certificate or other document evidencing the special terms of the grant in the particular case. The fundamental question at issue there was one of construction, namely, whether the beneficial interest in the Inam granted to a common ancestor of the parties and continued by the British Government in 1866 passed under the terms of the grant then made to all heirs of the grantees according to Shia Mahomedan Law or whether the interest devolved on the male

descendants only. It was not a service grant, and no question of a share in the emoluments of the patel's office arose there. In Lakhamgouda Basavaprabhu Sardesai v. Baswantrao and Others (A.I.R. (1931) P.C. 157) the Privy Council pointed out the distinction between the grant of an office to be remunerated by the use of land and the grant of land burdened with service; it said that in the former case, the land would be prima facie resumable but not so in the latter case, unless the terms of the grant or the circumstances in which it was made established that it was resumable. In the case of Jaiwantrao and Another v. Sahebrao ((1933) 29 Nag. L.R. 210), the inam certificate issued to the head of the senior branch of a family of Deshmukh watandars stated that the village was granted "for personal maintenance to the claimant, his descendants and co-sharers"; Accordingly, it was held that a co-sharer was entitled to possession of his share appearing from the inam statement. In Raje Shrinivasrao v. Raje Vinayakrao (I.L.R. (1949) Nag. 1) there was grant there was grant of two villages to the great-grand-father of the appellant and the respondent, who were brothers, and "his lineal heirs" or "his successors". The question was whether primogeniture was to be the order of descent or the estate was impartible. It was held that the ordinary principles of Hindu Law were applicable and the earlier decision in Mir Subhan Ali v. Imami Begam ((1925) 21 Nag. L.R. 117) was referred to. Here again the grant was not a service grant, and no question of a claim of a share in the emoluments of office fell even for consideration, not to speak of decision.

We consider it unnecessary to multiply decisions. It is enough to state that no decision has been brought to our notice in which it has been held that a member of the patel's family is entitled as of right to a share in the emoluments of the patel's office and that Government has no right to resume "patelki inam" lands and regrant the same to the officiator.

It remains now to consider the special claim with regard to survey numbers 2/1A and 9/1A. The case of the appellant was that these two plots ceased to be inam lands, when they fell in the resumed portion of the Jagir; they were sold by Bannobi Begum and Mahmudi Begum, the jagirdars, and the appellant and his brother Amrit brought suits and obtained decrees in respect of these two plots and in execution of the decrees they obtained possession. The learned trial Judge rightly pointed out that the decrees aforesaid related to property other than plots 2/1A and 9/1A. Moreover, it is not disputed that the entire "patelki inam" lands in possession of Amritrao patel, including the plots which were made khalsa in 1904-05, were excluded from resumption and Amrit's "patelki inam" lands were treated as a homogenous unit by the orders passed on August 28, 1922. The two plots, 2/1A and 9/1A, therefore, stand on the same footing as other "patelki inam" lands of Amritrao.

The claim of title by adverse possession can be disposed of in a few words. Once it is held that the lands were given by way of emoluments for the patel's office, no question of title by adverse possession arises against Government, even though the lands were shown as excluded from the jagir of Nawabag in 1866. Amrit worked as patel till he died in 1920, and even though the appellant got possession by partition in 1923, it was open to Government to resume the lands in 1941 and regrant the same to respondent No. 1. The appellant can only succeed if he established that he had a right to a share in the "patelki inam" lands and Government has no right to resume the same. This the appellant has failed to establish.

For the reasons given, we hold that the appeal is without merit and must be dismissed with costs.

Appeal dismissed.

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