

Byramjee Jeejeebhoy (P) Ltd.

Vs

State of Maharashtra

Civil Appeal No. 560 of 1962

(CJI B. P. Sinha, J. C. Shah, N. Rajgopala Ayyengar JJ)

03.04.1963

JUDGMENT

SHAH J. –

By an agreement called 'Cowl' dated October 2, 1830 the Principal Collector of Konkan conferred on behalf of the East India Company "farm rights" upon one Cursetjee Cowasjee Banajee - hereinafter called "Banajee" - in seven villages (1) Mogra, (2) Wasivre, (3) Bandivli (4) Majas, (5) Part Pahadi, (6) Goregaon and (7) Poisar on terms and conditions set out therein. By two letters dated October 17, 1835 and July 17, 1841 the original cowl was modified and Banajee was required to pay an amount to the East India Company of Rs. 2,708/7/- per annum in consideration of the benefits conferred upon him by the said cowl. Banajee constructed extensive salt works in the villages and expended Rs. 2/- lakhs in improving and developing the villages. On September 22, 1847 the East India Company granted to Banajee the seven villages on certain terms, freed from the covenants of the cowl, and also from liability to pay assessment on land revenue in consideration of the amount spent by him for improving the villages, and an amount of Rs. 30,000/- paid by him to the East India Company. The villages were held and enjoyed by the successors of Banajee under the terms of the grant without payment of land revenue till the year 1952. The Legislature of the Bombay State enacted the Salsette Estates (Land Revenue Exemption Abolition) Act, XLVII of 1951 (hereinafter called the Act) which received the assent of the President on January 4, 1952 and was brought into force on March 1, 1952. The Act was enacted as a measure of agrarian reform and formed part of a pattern of legislation undertaken by the State of Bombay to abolish the rights of intermediaries between the State and the cultivator of the soil. The Act provided for abolition of exemptions from payment of land revenue enjoyed by estate-holders, in certain specified villages in the Island of Salsette, and for the vesting of waste lands in the villages.

The Collector of Bombay Suburban District by his letter dated February 28, 1952 informed the appellant - who is the successor-in-interest of Banajee under the grant that with effect from March 1, 1952 as provided by s. 4 of the Act all waste lands which were not the property of the estate-holder under the cowl and all waste lands which had been demised in the cowl as the property of the estate-holder but which had not been appropriated before August 14, 1951 and all other kinds of property referred to in s. 37 of the Land Revenue Code and which were not the property of any individual or an aggregate of persons legally capable of holding the same shall vest in the Government. He also invited attention to the provisions of ss. 3 and 5 of the Act and informed and the appellant that the Bombay Land Revenue Code will apply to all lands of the appellant's villages with effect from March 1, 1952 and directed the appellant from that date not "to collect land revenue or rent as the case may be in respect of the lands to which the provisions of the Act" applied. By letter dated March 5, 1952 the appellant submitted that the seven villages were held as absolute owner under

and by virtue of the indenture of conveyance dated September 22, 1847 between the East India Company and Banajee and that under the terms of the grant all the lands in the villages were absolutely and for ever freed and discharged from the obligations of the Cowl of 1830 and also freed and discharged from all liability to pay land revenue, under Regulation XVII of 1827 and from all liability for assessment in nature of land revenue, and that the Act did not and could not apply to the lands of the appellant in the above-mentioned villages - the appellant being the absolute owner of the land in the villages. By letter dated June 25, 1952 the Collector informed the appellant that the provisions of the Act were applicable to the seven villages and the requisition to treat the villages otherwise could not be granted.

On November 28, 1952 the appellant commenced an action against the State of Bombay (which was numbered Suit No. 52 of 1953) in the High Court of Judicature at Bombay on its original side for a decree declaring that the provisions of the Act did not apply to the seven villages of the appellant and for an injunction restraining the State from enforcing the provisions of the said Act against the appellant in respect of the said seven villages. The State of Bombay by its written statement contended that the appellant was not the absolute owner of the said seven villages, that the Act applied to those villages and a decree for declaration and injunction as claimed could not on that account be granted. K. K. Desai, J., who heard the suit held that the indenture dated September 22, 1847 was not a lease, but it could be regarded as a grant of a farm of the right to recover revenue as an agent to whom the prerogative of the State was delegated as provided in the grant, and that in any event the indenture was in the nature of an agreement under which the estate was held from the Government and therefore the seven villages were an "estate" in the hands of the appellant within the meaning of s. 2(b) of the Act. The estate was also not exempted from the operation of sub-s. (1) of s. (3) of the Act.

In appeal a Division Bench of the High Court held that the indenture dated September 22, 1847 created a right not of the nature of a 'lease' or 'farm' but the villages were held under an 'agreement' from the State Government within the meaning of s. 2(d) of the Act and therefore under a 'cowl' and the villages were an 'estate' within the meaning of s. 2(b) and exemption from payment of land revenue conferred by the indenture was statutorily abolished. The Court also held that the rights of the appellant in the villages as grantee of the exemption were not saved by cl. (3) of s. 3, and confirmed the decree passed by the Trial Court. With certificate granted by the High Court this appeal is preferred by the appellant.

The appellant had initially challenged the validity of the Act as infringing the fundamental rights under Arts. 19(1)(f) and 31 of the Constitution but this plea was abandoned after the enactment of the Constitution Fourth Amendment Act, 1955. Two questions survive in this appeal :

- (1) Whether the villages held by the appellant constitute an estate within the meaning of s. 2(b) of the Bombay Act 47 of 1951; and
- (2) If the villages constitute an estate, whether the exemption from payment of land revenue granted under the indenture is saved by sub-s. (3) of s. 3.

The Act was enacted with the object, as the preamble recites, to abolish exemption from land revenue enjoyed by the holders of certain estates in the Island of Salsette in the Bombay Suburban and Thana District in the state of Bombay. By sub-s. (2) of s. 1 the Act extends to the villages specified in the Schedule to the Act and the seven villages granted to Banajee are included in the Schedule. Section 2 defines by cl. (b) an 'estate' as meaning a village or a part thereof specified in

the Schedule, and held under a cowl. Clause (d) of s. 2 defines 'cowl' as meaning a lease, a farm or an agreement under which an estate is held from the State Government. The material provisions of s. 3(1)(a) and (3) are as follows :-

"(1) Notwithstanding anything contained in the cowl, a decree or order of a court or any other instrument or any law for the time being in force, but subject to the provisions of sub-section (3).

(a) all lands in any estate are and shall be liable to the payment of land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder;"

"(3) Nothing in sub-section (1) shall be deemed to affect the right of any person to hold any land in an estate wholly or partially exempt from the payment of land revenue under a special contract, or grant made or recognized by the terms of the cowl in respect of the estate or under a law for the time being in force in favour of any person other than the estate-holder."

By sub-s. (1) of s. 3 all lands in an estate subject to the exception contained in sub-s. (3) are made liable to pay land revenue to the state : this is so notwithstanding anything contained in the cowl, a decree or order of a court or any other instrument or any law for the time being in force. Sub-section (1) is, however, subject to the provisions of sub-s. (3) to which we will separately refer. Lands rendered liable for payment of land revenue by sub-s. (1) of s. 3 are lands in an estate which means a village or part of a village specified in the schedule to the Act and held under a cowl. Every village in dispute held by the appellant is included in the schedule, but unless the village is held under a lease, a farm or an agreement from the State Government it will not be an estate for the purpose of the Act.

The grant is an elaborately drawn up document. It consists of the preamble, premises, reservations, habendum, covenants of the transferor and the transferee and unconditional covenant of title. In the preamble of the cowl granted in 1830 by the East India Company of seven villages and the terms thereof and the expenditure incurred by Banajee upon the said villages amounting to Rs. 2 lakhs on the construction of extensive salt works, are recited. Then there is a reference to a request by Banajee to the East India Company for grant to him in consideration of the sums expended by him and to an offer to pay Rs. 30,000/- to the East India Company of the said villages freed and absolutely discharged from the cowl and the rents or annual sums payable thereunder and from the terms and stipulations thereof. It then refers to the payment of Rs. 30,000/- by Banajee in pursuance of the agreement so entered into. The grant then proceeds to set out the premises, viz. : "they the said East India Company x x x by these presents do grant alien and release to the said Cursetjee Cowasjee Banajee his executors, administrators and assigns all those seven villages" together with all rights in and appertaining to the villages, x x x "except, and reserving to the said Company x x x and all other persons, all rights of navigation and fishing as at present exercised and the reversion and reversions remainder and remainders yearly and other rents issues and profits of all and singular the villages land hereditaments and premises hereinbefore granted, aliened and released or expressed and intended so to be together with the fees to arise upon the grant of licences by the Collector of Thana or other revenue authority of the district x x x. And all the estate, right, interest, inheritance, use, trust possession, property, possibility, claim and demand whatsoever both at law and in equity of the said East India Company of into from and out of the same premises and every part and parcel thereof." Then follows the habendum "To have and to hold all and singular the villages lands

hereditaments and premises hereinbefore granted aliened and released or mentioned and expressed so to be unto and to the use of the said Cursetjee Cowasjee Banajee his heirs and assigns absolutely forever freed and absolutely discharged from the said cowl and the several provisions thereof and the rents and annual sums payable thereunder to the said Company x x x and freed and discharged from all liability to contribute to the land revenue under Regulation XVII of 1827 and from all liability to assessment in the nature of land revenue but subject nevertheless to all laws and regulations which now are or from time to time may be in force in the Island of Salsette touching the sale and manufacture of spirituous liquors or poisonous or injurious drugs or substances and subject to all duties of customs and excise not being in the nature of land revenue or in substitution thereof or of any part thereof and subject also to the payment of an annual rent of sum of Rupee one to be paid on the first day of January in each year forever to the said East India Company their successors and assigns if demanded and subject also to such estates rights and interests as any villages tenants and occupiers had in any lands in their respective occupation on the second day of October one thousand eight hundred and thirty." The indenture then proceeds to recite that Banajee had covenanted with the East India Company that he, his heirs, successors, executors, administrators and assigns shall continue to pay the said rent reserved on the terms mentioned if demanded, continue devasthans, dharamadawas and allowance to Pals and shall not make any innovations and shall conform to the rules, ordinances and regulations as existing and applicable to farmers. Finally, the indenture grants an unconditional covenant of title and quiet enjoyment to the village lands and authorises Banajee to take rents and profits thereof without let or hinderance from the grantor.

The scheme of the document as disclosed by the terms is to relieve the grantee Banajee from the Cowl of the year 1830 and the covenants and obligations thereunder and to grant to him in ownership in consideration of the amounts spent by him and the amount of Rs. 30,000/- paid by him to the grantor the seven villages together with all rights therein except those which were expressly reserved. The rights reserved were the rights of navigation and fishing, reversion and reversions remainder and remainders, rents, issues and profits and fees to arise upon the grant of licences by the Collector of Thana for the sale of poisonous drugs. The grantee is by the terms of the grant exempt from liability to pay land revenue under Regulation XVII of 1827 and assessment in the nature of land revenue in future, but the exemption is subject (a) to all laws and Regulations relating to the sale and manufacture of spirituous liquors or poisonous or injurious drugs or substances, (b) to payment of duties of customs and excise not being in the nature of land revenue, (c) also to the payment of an annual rent of Re. 1/- if demanded, and (d) to such estates rights and interests of the tenants and occupiers of the lands in the villages. The indenture then imposes upon the grantee an obligation to maintain all dewasthans, dharmadawas and allowances to Pals, and to receive only the prevailing rates of assessment and not to make any innovations in that behalf and to conform to all laws applicable to farmers and the relation subsisting between him and the tenants, and to be liable for all acts of his servants and agents for injury caused to any person. The grant of the villages free from liability to pay land revenue, was therefore subject to a triple restriction :

- (1) Restriction in the interest of the tenants or occupants holding lands in the estate and also of the rights of dewasthans, dharmadawas and customary allowances to Pals;
- (2) The sovereign right to levy customs and excise duties and also duties in respect of manufacture and sale of spirituous liquors and poisonous or injurious drugs; and
- (3) Subject to a liability to pay an annual rent of Re. 1/-, if demanded.

Such a grant cannot be regarded as a lease, for a lease contemplates a demise or a transfer of a right to enjoy land for a term or in perpetuity in consideration of a price paid or promised or services or other things of value to be rendered periodically or on specified occasions to the transferor. The grant does not purport to demise merely a right of enjoyment of land : it confers rights of ownership in land. There is again no contractual right reserved either expressly or by implication, to determine the grant. The reservation of the reversion and reversions remainder and remainders yearly, and rents issues and profits of all the lands hereditaments and profits in the premises clause, is of the nature of a restriction upon the estate transferred and does not restrict the quality of the estate. The rent to be demanded was again not stipulated as consideration for the grant of the right to enjoy land, but expressly in consideration of granting freedom from liability to pay assessment. The conclusion of the trial Court and High Court that the villages were not held under a lease within the meaning of s. 2(d) of Act 47 of 1951 must be accepted.

Nor is the indenture of the nature of a 'farm' within the meaning of that clause. The Island of Salsette in which the seven villages are situate was taken over in 1774 by the East India Company from the Peshvas who had only about 40 years earlier wrested it from the Portuguese. The Portuguese administrators were originally accustomed to farm out all revenues of the villages to the highest bidders. It appears that the Peshva rulers did not alter the system of farming out the revenues. After assumption of authority, the East India Company modified the system of land tenures and revenue administration. In the first instance the Company gave certain hereditary rights to the old occupants of the land which were to ensure so long as they paid a fixed assessment measured in most cases in kind. Farming of revenue was also modified. The farmers were given grants of villages either for a limited term or in perpetuity under which, in consideration of paying a fixed lump sum to the East India Company the grantee enjoyed all the rights of revenue, agricultural as well as non-agricultural, except the rights expressly excluded from the grant. It appears that the original cowl in favour of Banajee was a farm of this nature. By the indenture of 1847 he was discharged from all liability under the farm or the cowl of 1830 and all the obligations thereof ceased, and the villages subject to the reservations already mentioned were granted absolutely without reserving any power to cancel the grant or to resume the lands. The grantee was not accountable for collection of the revenue and he was not required to make any payment either fixed or proportionate to the revenues collected by him to the East India Company, annually as a farmer. It is true that in relation to the occupants of holders of the land before the date of the grant, the grantee was constituted a superior holder and had merely the right to collect land revenue payable by the holders. But under the terms of the indenture Banajee was a grantee of the sovereign right to recover land revenue : he was in consideration of the money expended and paid by him entitled to appropriate all the collections. Banajee was not an agent of the East India Company for recovering the revenue, nor was he a transferee of a right to recover revenue of land belonging to the East India Company in consideration of payment either a fixed sum; or a share in the revenue collected. He was made a grantee both of the lands and of the right to recover land revenue from the occupants. Such a grant cannot be regarded as in the nature of a farm.

But we agree with the Trial Court and the High Court that the villages were held by Banajee under an agreement with the East India Company. By the indenture the villages were granted to Banajee, and he was freed from liability to pay assessment. The freedom from liability to pay land revenue was subject to certain covenants - covenants to respect the rights of occupants of the land and not to introduce innovations in the rates of assessment in respect of all lands in the possession of tenants, to continue Dewasthans, Dharmadawas and allowances and to pay 'annual rent' of Re. 1/- if demanded. The right to hold the villages free from liability to pay land revenue was therefore conferred by the indenture subject to the restrictions imposed by agreement between the East India

Company and the grantee.

Counsel for the appellant urged that the agreement contemplated by s. 2(d) of the Act is a personal agreement and not one relating to the estate granted, and submitted that the covenants in the indenture being not of that nature the appellant does not hold the villages under an agreement. We are unable to accept this contention. It is true that where property is transferred absolutely by one person to another, it cannot be said that the property transferred is held under an agreement with the transferor merely because of the covenant of title. But when the State transfers property to a citizen, it does not thereby, in the absence of an express provision, grant exemption from liability to pay revenue. The right to recover revenue is not an incident of ownership : it is a prerogative of the sovereign, or a liberty or franchise of some authority claiming derivatively from the sovereign. Mere grant of land by the State does not absolve the grantee from liability to pay revenue. Under the indenture dated September 22, 1847, the grantee was given a right to hold the villages free from liability to pay revenue on certain terms, one of which was to pay rent of Re. 1/- per annum when demanded. The villages were granted subject to the restrictions, in absolute right and freedom from liability to pay revenue in respect of the villages was given subject to certain conditions. Imposition of these conditions subject to which exemption from liability to pay land revenue was granted, and acceptance thereof constituted an agreement within the meaning of s. 2(d). The villages though held in absolute right are still in the matter of liability to pay land revenue held under an agreement from the State Government. In the grant in question there is in the first instance an obligation to pay 'annual rent', if demanded. There is also an obligation to respect the rights of the holders of the lands and of Dewasthans, Dharamdawas and to make allowance to pals. There is then an obligation not to alter the rights of the holders of land to their prejudice, and the grant of the right to exemption from payment of revenue is made subject to all laws and regulations which are from time to time in force in the Island of Salsette touching the sale and manufacture of spirituous liquors or poisonous or injurious drugs or substances. These are all covenants which raise contractual obligations on the exemption from land revenue, absolute grant of the land notwithstanding. Both the conditions prescribed under the definition, namely, specification in the Schedule and holding under a cowl as defined under the Act were therefore fulfilled, and the villages were at the date of the Act held under an agreement from the State of Bombay.

The next question is whether the grant is exempt from the operation of sub-s. (1) of s. 3, under which all lands in an estate 'are and shall be liable to the payment of land revenue to the State Government'. This liability is imposed notwithstanding anything contained in the cowl, or decree or order of a court or any other instrument or any law for the time being in force. Prima facie, the covenants contained in the cowl whereby the grantee was discharged and absolved from liability to pay land revenue must be regarded as superseded by the statutory imposition of liability to pay land revenue. But the operation of sub-s. (1) of s. 3 is subject to the provisions of sub-s. (3). That sub-section states that nothing in sub-section (1) shall be deemed to affect the right of any person to hold land in an estate wholly or partially exempt from the payment of land revenue under a special contract, or grant made or recognized by the terms of the cowl in respect of the estate or under a law for the time being in force in favour of any person other than the estate-holder. This clause only protects the rights of a person to hold land in an estate exempt from payment of land revenue, if such exemption is under a special contract or grant made or recognised by the terms of the cowl in respect of the estate or under a law for the time being in force, and a person whose rights are not so affected must be a person other than the estate-holder. By sub-s. (1) therefore exemption granted from payment of land revenue to the grantee of the cowl is extinguished : sub-section (3) however saves the rights of persons other than the estate-holder, who hold land in the estate. By express provision the estate-holder is excluded from the benefit of sub-s. (3). The intention of the

Legislature is clear : it is to withdraw the exemption in favour of the estate-holder from payment of land revenue if such right was granted under a cowl. That withdrawal is not to affect the rights of persons holding land in an estate under a special contract, or grant which was made or recognized by the terms of the cowl even if the right was to hold the land exempt from the payment of land revenue. The futility of the argument that the expression "person" when it first occurs in sub-s. (3) includes the estate-holder, becomes obvious if the clause is read after substituting the expression "estate-holder" for "person".

In that view of the case, this appeal fails and is dismissed with costs.

Appeal dismissed.

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