SUPREME COURT OF INDIA

State of Gujarat

Vs.

Jetawat Lalsingh Amarsingh

C.A.No.1057 of 1965

(S. M. Sikri, R. S. Bachawat and K. S. Hegde, JJ.)

07.08.1968

JUDGEMENT

HEGDE, J.:-

1. This is an appeal by special leave. Herein we have to determine the true scope of section 14 (1) of the Bombay Merged Territories and Areas (Jagir Abolition) (Bombay Act No. 39 of 1954). That question arises thus:

2. Respondent No. 1 was the Bhayyat of the Jagir of Ghantoil. That Jagir was situated in the Idar State, a former Indian State. The area comprised in that State is a part of the State of Gujarat at present. The said Jagir was a proprietary Jagir and for the purpose of succession and inheritance, it was governed by the rule of primogenitor. The eldest son succeeded to the Gaddi; the other junior members of the family were granted maintenance known as Jiwarak out of the Jagir estate. The former Thakore of Ghantoil, Shri Dalpatainhji Kumansingh granted as Jitwarak to the father of the present respondent, a half share in a village by means of a deed dated February 18, 1916. In 1928 dispute arose between the Thakore and the Bhayyats in the matter of aforesaid Jiwarak. Hence the

first respondent and his brother filed a suit in the Sadar Court of the then ldar State claiming Jiwarak. The Court of first instance decreed the suit in favour of the first respondent and his brothers. The Thakore went in appeal against the said judgment. When the appeal was pending, the dispute was compromised and a consent decree was passed on September 23, 1940. Under the consent decree the following rights were given to the first respondent and his brothers as Jiwarak.

(1) Rights to recover assessment (Vighoti) of Survey Nos. 382-387, 396, 398, 399, 542, 543, 544, 545 and 546 assessed at Rs.175/-.

(2) Right to own and possess Gharkhed Lands consisting of Survey Nos. 219, 220, 225, 227, 228 and 229 assessed at Rupees 74/8/- free from payment of assessment and

(3) Right to receive a cash allowance of Rs. 234/12/- annually from the Jagir.

3. The Act came into force on August 1, 1954 as a result of which all Jagirs in the merged territories of Bombay including the Jagir of Ghantoil were abolished. Thereafter respondent No. 1 claimed compensation under S. 14 (1) of the Act. He applied to the Jagir Abolition Officer for fixing the compensation due to him in respect of his aforementioned rights. That officer rejected his claim but when the matter was taken up in appeal to the Gujarat Revenue Tribunal, the Tribunal granted him compensation in respect of his rights to recover assessment of Rs. 175/- annually, but it rejected his claim for compensation under the remaining two heads. The first respondent then took up the matter to the Gujarat High Court under Art. 227 of the Constitution in Special Civil Application No. 560 of 1961. The High Court allowed that application. It held that the first respondent is entitled to compensation in accordance with the provisions of the Act both in respect of Gharkhed lands as well as in respect of his right to receive cash allowance of Rs. 234/12/- annually. The Jagir Abolition Officer was directed to hold further enquiry for determining a compensation payable to the first respondent in respect of those rights. This appeal is directed against the said order of the High Court.

4. The long title of the Act shows that it is an Act to abolish Jagirs in the merged territories and merged areas in the State of Bombay. Its preamble reads:

"Whereas it is expedient in the public interest to abolish Jagirs of various kinds in the merged territories and merged areas in the State of Bombay and to provide for matters consequential and incidental thereto: it is hereby enacted as follows..... .."

Section 2 defines the various expressions including Gharkhed land, Jagir, Jiwai Jagir, used in the Act. Jagirs are abolished under S. 3. That Section reads:

"Notwithstanding anything contained in any usage, grant, sanad, order, agreement or any law for the time being in force, on and from the appointed date,. ...

(i) all jagirs shall be deemed to have been abolished;

(ii) save as expressly provided by or under the provisions of this Act, the right of a jagirdar to recover rent or assessment of land or to levy or recover any kind of tax, cess, fee, charge or any hak and the right of reversion or lapse, if any, vested in a jagirdar, and all other rights of a jagirdar or of any person legally subsisting on the said date, in respect of a jagir village as incidents of jagir shall be deemed to have been extinguished."

Section 4 provides that all Jagir villages shall be liable to pay land revenue in accordance with the provisions of the Code and the rules relating to unalienated lands shall apply to these villages.

5. In this case we are not concerned with the compensation payable to the Jagirdar. We are dealing with the case of a person coming under S. 14 (1) of the Act. That Section prescribes the method of awarding compensation to persons other than Jagirdars who are aggrieved by the provisions of the Act as abolishing, extinguishing or modifying any of their rights to, or interest in property. The Section reads thus:

"Section 14 (1).

If any person other than a jagirdar is aggrieved by the provisions of this Act as abolishing, extinguishing or modifying any of his rights to, or interest in property and if compensation for such abolition, extinguishment or modification has not been provided for in the provisions of this Act, such person may apply to the Collector for compensation."

6. The real question for decision is whether the right to own and possess Gharkhed land and the right to receive cash allowance annually from the Jagir are rights to property or at any rate interest in property. Before a person can claim compensation under S. 14 (1), he as to establish (1) that he is not the Jagirdar of the concerned Jagir, (2) he is aggrieved by the provisions of the Act as

abolishing, extinguishing or modifying any of the rights to, or interest in property as a result of the abolition of the Jagir and (3) compensation for such abolishing, extinguishment, modification has not been provided in the provisions of this Act. It is admitted that the petitioner was not a Jagirdar. It is also admitted that he is aggrieved by the provisions of this Act. It was not said that for abolition of any of the privileges enjoyed by him any compensation had been provided under the provisions of the Act. The only point in controversy is whether the claim put forward by him can be considered as right to, or interest in property.

7. We shall first take up the Gharkhed lands. Admittedly the first respondent was enjoying those lands without any liability to pay assessment. That was a right conferred on him under the compromise decree. No material was placed before us to show that the Jagirdar was competent in spite of the compromise decree to collect assessment from him in respect of those lands. This was not a case of suspension of land revenue. The first respondent's right was to enjoy the land free of the liability to pay the land revenue. That was the position on the date the Act came into force. So far as the Thakore was concerned the right to collect the assessment of those lands had been given as Jagir to the Jagirdar. We see no merit in the contention of Mr. N. S. Bindra, the learned Counsel for the appellant that the Sovereign had an inherent right to levy assessment and any agreement not to collect assessment has necessarily to be considered as a concession and not a right. That question is wholly irrelevant for our present purpose. In this case we are not called upon to consider the nature of the power of the Sovereign to levy assessment. The only question for our decision is that whether by abolishing the Jagir and by levying assessment on the Gharkhed lands any of the respondents rights to or interest in property were abolished, extinguished or modified. We are considering the plaintiff-respondents right to or interest in property as it stood before the Act and not after S. 5 of the Act came into force. There is no denying the fact that right to enjoy a property without the liability to pay assessment is a more valuable right than the right to enjoy the same property with the liability to pay assessment. Before the Act, the first respondent was enjoying Gharkhed lands without the liability to pay assessment but after the Act came into force he is enjoying those very lands with the liability to pay assessment. Therefore there is hardly any doubt that his interest in that property stands modified. In this case it is not necessary to consider whether that interest can be considered as a right in the property.

8. We are also in agreement with the High Court that the right to receive cash allowance of Rs. 234/12/- annually from the Jagir is one of those rights that have got to be compensated under S. 14 (1). That liability was not the personal liability of the Jagirdar. The first respondent was entitled to get that amount from the Jagir. In other words it was a charge on the Jagir. Therefore it is an interest in property.

9. We are unable to agree with Mr. Bindra that the decision of this Court in Civil Appeals Nos. 517---534 of 1965 = (AIR 1968 SC 1481) State of Gujarat etc. v. Vakhatsingh Vajesinghji Vaghela to which two of the members of this Bench were parties is of any assistance to the appellant. Therein this Court was called upon to consider the scope of S. 14 (1) of the Bombay Taluqdari Abolition Act, 1949. The language of that provision is substantially different from the language of S. 14 (1) of the Act. Further therein this Court held that the concerned Taluqdar was not entitled to enjoy the

lands with the liability of paying only 60 per cent of the assessed assessment though for some years only 60 per cent of the assessed assessment was collected as a matter of concession. That was only a concession and not a right. Mr. Bindra tried to extract one or two sentences from the decision of the Bombay High Court in Shapurji Jivanji v. Collector of Bombay, (1885) ILR 9 Bom 483 and found an argument on the basis of those sentences to the effect that the right to collect assessment can never be given up. Far from supporting that contention the decision actually proceeded on the basis that the said right can be given up either by contract or on the basis of legislation.

10. For the reasons mentioned above we see no merits in this appeal. It is accordingly dismissed with costs.

Appeal dismissed.