Shyamsunder Tikam Shet and Another

Vs

State of Maharashtra and Another

Civil Appeal No. 744 of 1966

(V. Ramaswami-I, I.D. Dua JJ)

15.10.1969

JUDGMENT

RAMASWAMI, J. -

1. This appeal is brought by special leave from the judgment of the Maharashtra Revenue Tribunal, Bombay in Revenue Appeal No. 40 of 1962 whereby the Tribunal set aside the award of the Special Deputy Collector (Khoti), Kolaba under Section 12 of the Bombay Khoti Abolition Act, 1949 directing the amount of Rs. 837.94 to be paid to the appellants for their share of Rs. 0-12-1 1/3 in village Kotheri, Taluka Mahal, District Kolaba and remanded the case for retrial stating the points for decision by the Special Deputy Collector.

2. On October 9, 1950 the appellants made an application before the Collector of Kolaba for obtaining compensation for Khoti rights in respect of reserved forest and unassessed lands in accordance with the provisions of the Bombay Khoti Abolition Act, 1949 (Act No. VI of 1950) (hereinafter referred to as the Act). In the application, the appellants stated that the village Kotheri in Taluka Mahal was a Khoti village of pat (leasehold) and that the appellants had a Khoti share of Rs. 0-12-1 1/2 in the village. The appellants said that the total compensation which they claimed for the entire village came to Rs. 17,615/- and that the share of Rs. 0-12-1 1/3 came to Rs. 13,333-9-0. The appellants further claimed a sum of Rs. 7,480/- in respect of 'loss under the reserved forest (74 acres 32 gunthas)' and a sum of Rs. 6,850/- being the one-third share of "the price at the present marked-rate of the trees etc., that at present stand in the reserved forest". On January 31, 1962 the appellants filed before the Special Deputy Collector, Kolaba a preliminary statement. In that statement the appellants contended that the Khots used to guard the forest in their proprietary rights in about the year 1860 A.D. and that the said land had been taken to the reserved forest. The appellants further contended that they had a partnership with the sate in respect of forest income, that is, in the division of agricultural produce and that the "partnership in the forest income has not been abolished under the Khoti Abolition Act and the partnership is still subsisting". The appellants said that "the question of determining compensation for the forest partnership cannot, therefore, arise". On May 15, 1962 the Special Deputy Collector (Khoti) Kolaba made his award granting a sum of Rs. 837.94 as compensation. Aggrieved by the award the appellants preferred an appeal before the Maharashtra Revenue Tribunal being Revenue Appeal No. REV. A 40 of 1962. On September 16, 1963 the appellants submitted before the Tribunal their written arguments. On September 18, 1964, November 21, 1964 and February 1, 1965 the appellants filed before the Tribunal further supplementary arguments in writing. On February 21, 1965 the Tribunal delivered its judgment holding that the Khoti in the Kolaba cannot claim proprietary rights in the village or in the reserved forest unless he proves that he has separate sanad or grant conveying to him these proprietary rights. The Tribunal, however, took the view that the appellants were not bound by any

compromise decree and the Special Deputy Collector has dealt with the matter in a perfunctory manner. The Tribunal therefore, set aside the award and remanded the case for retrial setting out the points to be decided by the Special Deputy Collector.

3. The Bombay Khoti Abolition Act, 1949 came into force with effect from April 12, 1959. Section 2(1)(iv) of the Act defines the word "Khot" as including a mortgagee lawfully in possession of a Khoti. Section 2(1)(vii) of the Act defines the words "khoti khasgi land" as follows :

> "(a) in the Ratnagiri District Khoti land held by and in possession of a Khot other than khoti nisbat land and land held by a privileged occupant as defined in the Khoti Act;
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> (b) in the Kolaba District -
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> (i) land which is entered in the Khot's own name as Khoti or in that of a co-sharer in a Khotki in the records of the original survey; and
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> (ii) land acquired since the original survey by the Khot by purchase or other lawful transfer otherwise than in his capacity as a khot;"

Section 2(1)(viii) defines the words "khoti land" as follows :

> "'khoti land' means land in respect of which a knot had, as such, any right or interest in the district of Ratnagiri according to the provisions of the Khoti Act and in the district of Kolaba according to the custom of the tenure;"

Section 3 of the Act provides for the abolition of the Khoti tenure and states :

> "3. With effect from and on the date on which this Act comes into force, -
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> (1) the Khoti tenure shall, wherever it prevails in the districts of Ratnagiri and Kolaba, be deemed to have been abolished; and
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> (2) save as expressly provided by this Act, all the incidents of the said tenure shall be deemed to have been extinguished, notwithstanding any law, custom, or usage or anything contained in any sanad, grant, kabulayat, lease, decree or order of any court or any other instrument".

Section 10 deals with the right to trees and states :

> "The rights to trees specially reserved under the Indian Forest Act, 1927, or any other law for the time being in force except those the ownership of which has been transferred by Government under any contract, grant or law for the time being in force shall vest in Government".

Section 12 of the Act before its amendment by the Maharashtra Act 43 of 1963 stood as under :

> "(1) If a Khot or any other person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in land and if such person proves that such extinguishment or modification amounts to transference to public ownership of

any land or any right in or over such land, such person may apply to the Collector for compensation.

(2) Such application shall be made in the form prescribed by rules made under this Act on or before the 31st day of March, 1952.

(3) The Collector shall after holding a formal inquiry in the manner provided by the Code award such compensation as he deems reasonable and adequate :

Provided that -

(a) the amount of compensation for the extinguishment of the right of reversion in lands in a Khoti village in the district of Ratnagiri shall not exceed the amount calculated at the rate of Rs. 2 per 100 acres of such land;

(b) the amount of compensation for the extinguishment of any right to appropriate any uncultivated and waste lands not appropriated by any Khot and not entered in the revenue or survey records as Khoti khasgi immediately before the 1st day of August, 1949, shall not exceed the amount calculated at the rate of Rs. 5 per 100 acres of such land :

Provided further that in the case of the extinguishment or modification of any other right of a khot or any right of any other person the Collector shall be guided by the provisions of sub-section (1) of Section 23 and Section 24 of the Land Acquisition Act, 1894 :

Provided also that if any question arises whether any land is dhara, khoti khasgi or khoti nisbat or is held by a permanent tenant or other tenant, the Collector shall after holding a formal inquiry in the manner provided by the Code decide the question.

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(4) Subject to the provisions of sub-section (5), the award or decision of the Collector shall be final.

(5) Any person aggrieved by the award or decision of the Collector may appeal to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939."

4. The Act was amended by the Maharashtra Act 43 of 1963 by which payment of compensation was provided to any loss of share in the forest revenue and the Amending Act came into force on October 6, 1963 and it was provided that the claim for compensation can be entertained up to March 31, 1964.

5. On behalf of the appellants Mr. S. T. Desai did not press the argument that the Act is ultra vires of the Constitution of India or that the Act did not apply to the village of Kotheri or to the survey plots are in dispute. Learned counsel said that the appellant should be give sufficient opportunity of proving by oral and documentary evidence that they had proprietary rights in survey plots 130 and 132 of Mauja Kotheri in the status of Kothi.

6. The legal position is well-established that Khotis in the district of Kolaba are hereditary farmers of land revenue and are entitled to hold villages as Khoti on their entering every year into the customary kabulayat. According to Molesworth's Dictionary 'khot' means :

> "a renter of a village, a farmer of land or revenue, a farmer of the customs, a contractor or monopolist; an hereditary officer whose duty it is to collect the revenue of the village for Government, also an officer appointed for this office, a tribe of Brahmins in the Southern Konkan".

In Tajubai v. Sub-Collector of Kolaba it was held by the majority of the Full Bench that the Khotis have no proprietary right in the soil of their village but only hereditary right to farm the revenue and that if the "khot's right is the hereditary farming of the revenue, the living principle of that right would not be property inherent in the Khot, but a perpetually running contract with the State". At p. 149 Newton, J., observed in the course of his judgment :

> "Do these facts establish more than is admitted, namely, that the plaintiff had an hereditary right of farming the half of the village of Pegode, as long as she continued annually to enter into the customary agreement ? Do they prove that she as khot had any such prepriotary interest in the village, as would authorise her to claim restitution of the half-share unconditionally, after failure during several years to discharge the office of khot ? We think not. We think, further, that some of the above facts militate against the title alleged by the plaintif."

7. In Ganpati Gopal Risbud v. The Secretary of State for India the Bombay High Court reiterated that khots in the district of Kolaba are hereditary farmers of the revenue and are entitled to hold their villages as Khoti on their entering every year into the customary Kabulayats. At p. 768 Macleod, C.J. stated :

> "The relationship between the Khot and the Government, to my mind, is perfectly clear. As stated in Mr. Candy's report it is indubitably established that a Khot's interest in his village is limited, not absolute; he possesses in some measure a proprietary right; in fact he is an occupant with all the rights and liabilities affecting such a status. The Khot has to secure to Government the payment of the village revenue, while the village lands which he has to manage to accordance with the restrictions mentioned in the Kabulayat fall under three distinct clauses. These are (1) Dharekari lands the tenants of which have a transferable and heritable right paying Dhara alone to the khot; (2) Khotnisbat lands which are either in the hands of permanent occupancy tenants or tenants with less permanent right paying Fayda to the Khot and the Government assessment; and (3) Khoti Khasgi lands, private lands, in the possession of the Khot of which he can make such use as he pleases."

8. It was contended on behalf of the appellants that the Sud of 1869 at p. 124-A of the paper book was an important document and the Tribunal has not correctly appreciated the meaning of the words Khalsa and Varkas. We do not wish to express at this stage any concluded opinion on the construction of this document. We wish to make it clear that it will be open to the appellants to show before the Special Deputy Collector how far this document has a bearing on their claim to proprietary right of survey plot Nos. 130 and 132.

9. It is clear that in the absence of a sanad or a deed of a grant granting proprietary rights over the

coil a Khoti is not the proprietor of the lands constituted as reserved forest in the Khoti village and is not entitled to any proprietary right in the uncultivated or forest land. The legal position is correctly summarised in Dandekar's law of Land Tenures, Vol. 1, pp. 287-288 as under :

> "Section 41 of the Land Revenue Code declares that the right to all trees, bushwood, jungle or other natural product, wherever growing, except in so far as the same may be the property of individuals capable of holding property, vests in Government. Government proprietorship of all trees in the rule and private rights of proprietorship, if any, are merely exceptions to the rule. The question whether a Khot has got the proprietary or any other limited right to the trees standing or growing on lands in his khot village depends (1) upon the khot's interest in the soil, (2) upon any express grant or concession, and (3) upon the customary user, if any. In the first case, if the khot is the proprietor of the soil, which is very hardly the case, he is the proprietor of all the trees standing or growing on the lands in his khoti village. The trees upon the land, and the right to cut down and sell those trees is incident to proprietorship of the land. In such a case the principle is quicquid plantatus solo solo credit. Ordinarily the khot having no ownership over the soil, it has been held that he is not entitled to cut timber either on uncultivated or on forest lands. Government has the right to take such lands to make a forest reserve under the customary law as well as under positive enactments".

It is necessary in this context to refer to the presumption that forest tracts and old waste belong to Government unless the presumption is displaced by positive evidence that Government has granted rights in any particular tract or piece of land or has consciously allowed adverse rights to grow therein. (See Kodoth Ambu Nair v. Secretary of State for India).

10. In Sadashiv Parshram Risbud v. The Secretary of State for India the question arose whether the khots were entitled to recover the sale proceeds of certain teak trees sold by Government grown on Varkas lands. In the alternative the Khots claimed one-third share of the sale proceeds relying upon the clause in the kabulayat. It was held by the Bombay High Court that as between the khots and the Government the matter in dispute was concluded by the kabulayat and the khot could not obtain more than one-third of the proceeds of the sale of the trees. It was held by Shah, J., that the Dunlop's Proclamation could apply to Varkas lands in a khoti village; but if any person claimed the benefit of the Proclamation he should prove that the land, on which the trees stood, was his in a popular sense, that is, it was sufficiently marked out as being in his permanent occupation in his own right so as to make it properly describable as his land. On the facts of that case it was held that the khots had no claim to the teak trees under Section 40 of the Land Revenue Code and they had failed to prove that they were entitled to the benefit of Dunlop's Proclamation in respect of the Varkas lands in question.

11. In the present case the Maharashtra Revenue Tribunal has remanded the case for retrial to the Special Deputy Collector, Kolaba for decision on the following points :

> (1) whether the appellants prove that they are the proprietors of the lands in the village of Kotheri or in the lands attached as a reserved forest to the said village;
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> (2) whether the appellants are entitled to any compensation for the village gaothan lands or lands under the rivers and nallas. This claim is based on the allegation of the appellants that they are the proprietors of the village;

(3) whether the appellants are entitled as a customary incident of the khot, to a share in the forest revenues of the village;

(4) what is the market-value of the loss of such share or right, if any, in the gaothan and river and nalla lands.

12. We affirm the above order of remand and further direct that an opportunity should be given by the Special Deputy Collector to both sides to adduce such evidence as they choose on these points. After taking such evidence the Special Deputy Collector will pronounce the award in the light of the law laid down the this judgment. Subject to these observations we affirm the order of the Maharashtra Revenue Tribunal dated February 25, 1965 and dismiss the appeal. There will be no order as to costs.

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