State of Gujarat

Vs

Gujarat Revenue Tribunal and Others

Civil Appeals Nos. 2411-2427 and 2431-2440 of 1969

(N.L. Untwalia, A.P. Sen JJ)

08.08.1979

JUDGMENT

SEN, J. -

1. These twenty-seven appeals, by special leave, directed against a judgment of the Gujarat High Court dated November 5, 1968 raise a common question and are, therefore, disposed of by this common judgment.

2. The short question involved in these matters relates to interpretation of Section 6 of the Bombay Taluqdari Tenure Abolition Act, 1949, "the Taluqdari Abolition Act", and Section 7 of the Bombay Personal Inams Abolition Act, 1952, "the Personal Inams Abolition Act".

3. In the present appeals, certain facts are no longer in dispute. The respondents are the erstwhile taluqdars or inamdars in what was known as Ghogha Mahal, which now forms part of the Bhavnagar district. There were vest stretches of hilly tracts described as 'Dunger', which were incapable of cultivation, but on which there was spontaneous growth of grass. These lands formed part of their taluqdari estates or inams. They used to sell the grass growing on these lands and it was a definite source of income to them. It appears that the lands were recorded as kharaba in the record of rights and, therefore, consequent upon the abolition of taluqdari rights by the Taluqdari Abolition Act and with the abolition of inams under the Personal Inams Abolition Act, the lands were recorded as having vested in the government. Thereupon, the respondents made separate claims before the Mahalkari, Ghogha Mahal, seeking a declaration under Section 37(2) of the Bombay Land Revenue Code, 1879 that the lands were neither vacant lands nor uncultivated lands, and being in their possession, they became the occupants thereof.

4. In an enquiry held under Section 37(2), the Mahalkari examined the claimants individually, the village talatia and the relevant entries in the records of rights which showed that the taluqdars and inamdars were deriving income from the grass growing on the lands. It was also in evidence that considerable effort and expenses had to be incurred by them for securing the income of this grass i.e., by keeping watchmen etc. to see that unauthorised pasturing by cattle brought on land or trespassing on it did not destroy the growing grass, but that it grew to full stature so as to give a fair and full yield. When operation for cutting of the grass used to commence, the stubs were not cut off but were allowed to remain intact so that the next year after the rains, the grass would grow naturally again. A portion of the grass-lands were also kept apart by the respondents for the grazing of their cattle by fencing of the area. The Mahalkari, Ghogha Mahal by his order dated October 28, 1958 held on this evidence that the lands could not be treated as waste lands or uncultivated lands, and since the respondents were in possession thereof, they became the occupants.

5. The Collector, Bhavnagar, in exercise of his suo motu powers of revision under Section 211 of the Code by his order dated February 28, 1961 set aside the orders of the Mahalkari and held in all these twenty-seven cases, that since the lands in question were not being cultivated by taluqdars or inamdars, they must, by reason of Explanation to Section 6 of the Taluqdari Abolition Act and Explanation to Section 7 of the Inams Abolition Act, be treated to be "unoccupied lands" and, therefore, the lands vest in the government. The Revenue Tribunal, however, by its two orders dated June 19, 1962 and March 26, 1965, reversed the order of the Collector and restored that of the Mahalkari holding the respondents to be the occupants of the lands in question. The State Government of Gujarat filed twenty-seven writ petitions in the High Court for quashing the orders of the Revenue Tribunal.

6. Agreeing with the Revenue Tribunal, the High Court held that there was evidence that the lands in dispute were not lying desolate, abandoned or barren with no vegetation, but were, in fact, productive lands, in the sense that grass grew naturally and so, they could not be regarded as 'waste lands', although they were wrongly recorded as such. It also held that the hilly tracts on which grass grew naturally, by their very nature were unfit for cultivation and, therefore, could not be treated as 'uncultivated lands'. It relied on the Explanation to the two sections and observed that it contemplates only those lands which could be cultivated but which were left fallow and uncultivated for a continuous period of three years. In its opinion, the expressions 'waste lands' and 'uncultivated lands' therefore, did not cover grass-lands on hilly tracts which by their very nature are incapable of cultivation, but which are not useless so as to be not capable of any use.

7. The question for consideration in these appeals is whether the High Court was right in holding that the respondents, who were taluqdars or inamdars, were entitled to settlement of these grass-lands on hilly tracts as 'occupants' thereof under Section 5(1)(b) of the Taluqdari Abolition Act and Section 5(2)(b) of the Inams Abolition Act.

8. Before dealing with the judgment of the Court below, it will be convenient to refer to the scheme of the two Acts and to set out the relevant sections. The provisions of the two Acts are identical in terms. It would suffice, for our present purposes, to generally refer to the provisions of the Taluqdari Abolition Act.

9. The object and purpose of the Act, as is clear from the preamble, was to abolish the taluqdari rights as a measure of agrarian reform. Section 3 abolished the taluqdari tenure and extinguished all incidents of the tenure attached to any land comprised in a taluqdari estate save as provided in the Act. Under Section 4, all revenue surveys and settlements made under Section 4 of the Gujarat Taluqdars Act, 1888 are deemed to have been made under Chapter VIII and VIII-A of the Land Revenue Code. By Section 5(1)(a) all taluqdari lands are henceforth liable to the payment of land revenue in accordance with the provisions of the Land Revenue Code.

10. The abolition of the taluqdari tenure, however, did not deprive the taluqdars of the lands in their possession, and Section 5(1)(b) provides that a taluqdar holding any taluqdari land shall be deemed to be an occupant within the meaning of the Land Revenue Code or any other law for the time being in force. Then comes Section 6, which provides that all public roads, lanes etc., not situate within the wantas belonging to a taluqdar, shall vest in the government and all rights held by a taluqdar in such property shall be deemed to have been extinguished. Section 7 provides for payment of compensation to taluqdars for extinguishment of rights under Section 6. Clause (b)(i) thereof provides that if the property acquired is 'waste or uncultivated but is culturable land', the amount of compensation shall not exceed three times the assessment of the land. Section 14 provides for

payment of compensation to taluqdars for extinguishment or modification of any other right where such extinguishment or modification amounts to transference to public ownership of such land or any right in and over such land, i.e. in any land other than those in respect of which provision for the payment of compensation has been made under Section 7.

11. The scheme under the Personal Inams Abolition Act is more or less similar. Section 4 provides that notwithstanding anything contained in any usage, settlement, grant, sanad, or order or a decree or order of a court or any law for the time being in force (1) all personal inams shall be deemed to have been extinguished, with effect from and on the appointed date; (2) all rights legally subsisting on the said date in respect of such personal inams shall be deemed to have been extinguished, save as expressly provided by or under the provisions of the Act. Similarly Section 5(2)(a) provides that an inamdar in respect of the inam land in his actual possession or in possession of a person holding from him other than an inferior holder referred to in clause (b), shall be entitled to all the rights and shall be liable to all obligations in respect of such land as an occupant. Under clause (b) an inferior holder holding an inam land is entitled to the same rights.

12. Turning now to Section 6 of the Taluqdari Abolition Act and Section 7 of the Personal Inams Abolition Act, which are identical in terms, the first thing to be noticed is that they deal with specific properties alone, which are enumerated therein and in which all the rights of the taluqdars or inamdars are completely extinguished.

13. Section 6 of the Taluqdari Abolition Act reads :

> All public roads, lanes and paths, the bridges, ditches, dikes and fences, on or beside, the same, the bed of the sea and of harbours, creeks below high water mark, and of rivers, streams, nallas, lakes, wells and tanks, and all canals, and water courses, and all standing and flowing water, all unbuilt village site lands, all waste lands and all uncultivated lands (excluding lands used for building or other non-agricultural purposes), which are not situate within the limits of the wantas belonging to a taluqdar in a taluqdari estate shall except insofar as any rights of any person other than the taluqdar may be established in and over the same and except as may otherwise be provided by any law for the time being in force, vest in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the Government and all rights held by a taluqdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the Commissioner, to dispose them of as he deems fit, subject always to the rights of way and of other rights of the public or of individuals legally subsisting.

Explanation. - For the purposes of this section, land shall be deemed to be uncultivated, if it has not been cultivated for a continuous period of three years immediately before the date on which this Act comes into force.

14. On a fair reading of the section, it would be evident that the vesting is in respect of properties which could be put to public use. It leaves the private properties of the taluqdar untouched. The legislative intent is manifested by clear enumeration of certain specific properties not situate within the wantas of a taluqdar. It begins by specifying 'All public roads, lanes, paths, bridges, etc.' and ends up with 'all unbuilt village site lands, all waste lands and all uncultivated lands', and these being public properties situate in a taluqdar's estate must necessarily vest in the Government because

they are meant for public use. In spite of vesting of such property in the Government, however, the conferral of the rights of an occupant on taluqdar under Section 5(1)(b) in respect of the lands in his actual possession, is saved.

15. Pausing there, it is fair to observe that the words in parenthesis 'excluding lands used for building or other non-agricultural purposes', exemplify the intention of the legislature not to deprive a taluqdar of such land, even through such property is uncultivated land, due to its inherent character as well as by reason of the Explanation.

16. It is, therefore, evident that the determination of the question whether a particular category of property belonging to a taluqdari estate is vested in the Government or not, and the determination of the question whether the rights held by a taluqdar in such property shall be deemed to have been extinguished or not, will depend upon the category of that property. The expression 'all waste lands' has been joined by conjunctive 'and' with the expression 'all uncultivated lands'. They, therefore, indicate two distinct types of lands. If the legislature had intended that the aforesaid expression should indicate one class of lands, the expression rather would have been 'all waste and uncultivated lands' as against the expression 'all waste lands and all uncultivated lands'. Here we have, therefore, two distinct categories of properties viz., (1) waste lands, and (2) uncultivated lands. The contention that the grass-lands on hilly tracts which were incapable of cultivation were 'waste lands' or 'uncultivated lands' within the meaning of Section 6 cannot be accepted.

17. Now, the expression 'waste lands' has a well-defined legal connotation. It means lands which are desolate, abandoned, and not fit ordinarily for use for building purposes. In Shorter Oxford English Dictionary, 3rd Ed., Vol. 2, p. 2510, the meaning of the word 'waste' is given as :

> 1. Waste or desert land, uninhabited or sparsely inhabited and uncultivated country; a wild and desolate region; 2. A piece of land not cultivated or used for any purpose, and producing little or no herbage or wood. In legal use, a piece of such land not in any man's occupation but lying common. 3. A devastated region.

18. In the sequence in which the expression 'waste lands' appears in the two relevant sections, it cannot but have its ordinary etymological meaning as given in the Shorter Oxford Dictionary i.e., land lying desolate or useless, without trees or grass or vegetation, not capable of any use. In Rajanand Brahma Shah v. State of U. P. ((1967) 1 SCR 373 : AIR 1967 SC 1081 : (1967) 2 SCJ 830), this Court, while discerning the meaning of 'waste and arable land' in Section 17(4) of the Land Acquisition Act, 1894, observed that the expression 'waste land' as contrasted to 'arable land', would mean 'land which is unfit for cultivation and habitation, desolate and barren land with little or no vegetation thereon'. To the same effect is the decision in Ishwarlal Girdharilal Joshi v. State of Gujarat ((1968) 2 SCR 267 : AIR 1968 SC 870 : (1969) 2 SCJ 247).

19. It is clear that these grass-lands on hilly tracts were not waste lands. They were productive lands in the sense that grass grew naturally and so they were not desolate, abandoned or barren waste lands with no vegetation. The expression 'waste lands' in the context would be clearly, in the original sense of the term 'waste' as meaning barren or desolate lands which are unfit for any use or which are worthless. That test is not clearly fulfilled.

20. The appellant's alternative contention raises, primarily, the question whether upon a proper construction of Section 6, these grass-lands on hilly tracts were uncultivated lands. That depends upon the terms of the section. The expression 'uncultivated lands' in Section 6, must, in the contact

in which it appears, mean 'cultivable but not cultivated', i.e. fit for cultivation, but allowed to lie fallow. It is uncultivable or unfit for cultivation.

21. The Explanation below Section 6 has a two-fold function. The purpose of the Explanation first is to explain the meaning of the expression 'uncultivated lands' in the substantive position. If then seeks to curtail the effect of the section. It is a key for ascertaining the meaning of the expression 'uncultivated lands'. Without the Explanation, any land lying uncultivated, on the date of the vesting, even for a year, i.e., allowed to lie fallow according to the normal agricultural practice, would vest in the Government. But then the Explanation steps in and seeks to mitigate the rigour. It says that the land allowed to lie fallow continuously for a period of three years, shall alone be deemed to be uncultivated land, meaning thereby that a piece of land allowed to lie fallow, intermittently, for a period of less than three years will not be deemed 'uncultivated lands'.

22. In that view of the matter, the grass-lands on hilly tracts which were incapably of any cultivation could not, in law, be treated to be 'uncultivated lands' within the meaning of Section 6, read with the Explanation thereto.

23. There seems to be no doubt on the facts of the case that there were no such basic operations as tilling of the land, sowing or disseminating of seeds, and planting of grass. The subsequent operations i.e., operations performed after the grass grew on the land e.g., the act of securing the income of this grass by engaging watchmen etc. to see that unauthorised pasturing by cattle brought on land or trespassing on it did not destroy the growing grass but that it grew to full stature so as to give a fair and full yield, or when operations for cutting off the grass used to commence, the act of tending the stubs so that they were not cut off but were allowed to remain intact so that the next year after the rains, the grass would grow naturally again, by themselves would not be tantamount to cultivation of the land.

24. In our opinion, the High Court as well as the Revenue Tribunal were, therefore, right in holding that the disputed lands did not vest in the government under Section 6 of the Taluqdari Abolition Act and Section 7 of the Personal Inams Abolition Act.

25. In reaching that conclusion, we cannot but take into consideration the fact that the Acts make no provision whatever for payment of any compensation for the acquisition of the rights of the former taluqdars and inamdars in such lands. They are not entitled to any compensation either under Section 7(1)(b)(i) of the Taluqdari Abolition Act and Section 10(1)(b)(i) of the Personal Inams Abolition Act. These provision speak of the extinguishment of any right or interest in land which is 'waste or uncultivated but is culturable'. The lands in question not being fit for cultivation, were not 'culturable' and, therefore, they do not fall within the ambit of these provisions. If the contention of the appellant were to prevail, it would lead to an anomalous position. It would have the effect of taking these lands out of the purview of Section 14 of the Taluqdari Abolition Act and Section 17 of the Personal Inams Abolition Act, though such lands are not governed by Section 7(1)(b)(i) of the former Act and Section 10(1)(b)(i) of the latter Act. This would result in deprivation of property without payment of compensation.

26. Our attention was drawn to the decision in Ambabai Janhavibai v. State of Maharashtra ((1965) 67 Bom LR 291). That judgment proceeds on the footing that there was a conflict between Section 5 and Section 7 of the Personal Inams Abolition Act. There is no basis for this assumption. Further, the observation that 'since it is admitted that no agricultural operations were carried out on the lands for the purpose of raising or growing grass on the lands', the contention that 'the lands on which

grass grew naturally could not be said to be uncultivated, cannot be accepted', even though the inamdars were making use of these lands and were realising income by selling the grass which grew thereon, appears to proceed on a wrongful assumption that the sine qua non for the applicability of Section 5 was actual cultivation. This observation, in our view, cannot be supported.

27. In the result, these appeals must fail and are dismissed with costs.

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