

Shrishailagouda and Others

Vs

Gurusangappa Ramasangappa Desai and Another

Civil Appeals Nos. 345-48 of 1969

(A. C. Gupta, P. N. Shinghal JJ)

29.07.1980

JUDGMENT

GUPTA, J. –

1. These four appeals by certificate are directed against an order dated July 20, 1967 of the High Court of Mysore at Bangalore allowing four writ petitions made by the first respondent before us (hereinafter called 'the respondent'). By the impugned order the High Court reversed the decision of the Mysore Revenue Appellate Tribunal and restored the order passed by the Assistant Commissioner under Section 4 of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 (hereinafter referred to as 'the 1950 Act'). The Assistant Commissioner's order directing regrant of a watan land to the respondent had been affirmed by the other authorities under the 1950 Act before the Revenue Tribunal set it aside. The four writ petitions relate to different parcels of the said watan land.

2. The relevant facts which have been found or admitted are as follows. The lands in question are paragana watan lands. "Paragana watan" has been defined in Section 2(e) of the 1950 Act to mean "a watan appertaining to the office of a hereditary District (Paragana) Officer in respect of which a communication settlement has been effected ..." The watan in question was originally acquired in the 17th century by an ancestor of the respondent of during the reign of the Adilshahi Kings of Bijapur in recognition of the services rendered by him. Except the Revenue Tribunal, the other authorities under the 1950 Act, namely, the Assistant Commissioner, the Deputy Commissioner and the Divisional Commissioner found that the grant was of the soil and not of the royal share of the revenue. The respondent's ancestor continued to enjoy the watan property through the years and perform the duties of the office watandar in spite of political changes in the country. After the death of the then holder of the watan in 1851, Government challenged the right of his son Bhimrao to the privileges of the watan. An inquiry into the rights of Bhimrao was started under the Bombay Rent Free Estates Act, 1852 (known as 'Inam Act'). Ultimately, in 1863 a settlement was reached between the British Government and Bhimrao. The terms of the settlement were similar to those of the other settlements arrived at between the British Government and various other watandars under which the British Government relieved the watandars of the liability to perform the services attached to their offices in consideration of a fixed annual sum charged upon the watan lands. This is commonly known as the Gordon Settlement because it was entered into by a committee of which Mr. Gordon as Collector was Chairman, acting on behalf of the Government. The settlement was apparently made under Section 15 of the Bombay Hereditary Offices Act (Bom. Act 3 of 1874), commonly known as the Watan Act. The relevant part of Section 15 of this Act is as follows :

The Collector may, with the consent of the holder of a watan, given in writing,

relieve him and his heirs and successors in perpetuity of their liability to perform service upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon by the Collector and such holder.

Every the settlement made or confirmed under this section shall be binding upon both government and the holder of the watan and his heirs and successors.

Following the settlement, a Sanad was issued by the British Government to respondent's ancestor Bhimrao in 1872. The Sanad is in the standard form of a Gordon Sanad and says that the lands and cash allowances shall be continued in lineal succession from generation to generation on condition that the persons in enjoyment and their heirs shall be obedient to the British Government and act faithfully and honestly and shall go on paying to government permanently every year the amount as mentioned in the Sanad.

3. The effect of communication of service on watan property has been considered by this Court in *Collector of South Satara v. Laxman Mahadev Deshpande* ((1964) 2 SCR 48 : AIR 1964 SC 326) After referring to the definitions of "watan property" and "hereditary offices" in Section 3 of the Watan Act this Court observed :

It is clear that the watan property, if any, the hereditary office, and the rights and privileges attached thereto, together constitute a watan and hereditary office does not lose its character merely because the service originally appertaining to the office has ceased to be demanded. Communication of service does not, therefore, in the absence of an express agreement to that effect alter the tenure of the land held as watan. By agreement, the State, for consideration, may agree to relieve the holder of the office and his successors of the duties to perform the service for purposes of which the grant was made, but the office and the grant continue, subject to the terms of the settlement under Section 15 of the Bombay Hereditary Offices Act, 1874.

4. It is necessary to state a few more facts touching the watan lands in question. In 1874 some of these lands were auction-sold in execution of a money decree obtained by the ancestors of the appellants against the respondent's ancestors. Ultimately in 1912 a compromise decree was passed concluding the dispute between the parties in terms of which the decree holders were allowed to be in possession of these lands during the lifetime of Bhimrao and his adopted son Ramsomappa. The present respondent is Ramsomappa's son. Bhimrao died in 1918 and Ramsomappa in 1944. After Ramsomappa's death the appellants ceased to have any right to continue in possession of the lands. Section 5 of the Bombay Hereditary Offices Act, 1874 (Watan Act) also forbids a watandar to alienate his watan property beyond his lifetime to any person not a watandar of the same watan.

5. The 1950 Act abolished the paragana and Kulkarni watans from the date the Act came into force. Under Section 3(3) of this Act all watan land was resumed and was made subject to the payment of land revenue subject to the provisions of Section 4. Section 4(1) provides :

A watan land resumed under the provisions of this Act shall .... be regranted to the holder of the watan to which it appertained, on payment of the occupancy price equal to twelve times of the amount of full assessment of such land .... and the holder shall be deemed to be an occupant with the meaning of the Code (Bombay Land Revenue Code, 1879) in respect of such land and shall primarily be liable to pay land revenue to the State Government ...

The appellants and the respondent both applied to the prescribed authority for regrant of the aforesaid watan lands to them under Section 4 of the Act. The Assistant Commissioner, Jamkhandi, held that the respondent was the holder of the watan and as such was entitled to an order of regrant. On appeal preferred by the appellants the Deputy Commissioner, Bijapur, affirmed the order of the Assistant Commissioner. The Divisional Commissioner, Belgaum, dismissed the appeal against the order of the Deputy Commissioner filed by the appellants. The Mysore Revenue Appellate Tribunal, Belgaum Bench, allowed the revision application made by the appellants setting aside the order of regrant in favour of the respondent. The High Court of Mysore at Bangalore allowed the writ petitions made by the respondent challenging the order of the Revenue Tribunal and restored the order for regrant in his favour.

6. On the facts found by the authorities under the 1950 Act except the Revenue Tribunal, the respondent would be clearly entitled to the watan lands being regranted to him under Section 4 of the Act. All the authorities including the Revenue Tribunal held that the appellants were strangers to the watan and therefore could not ask for an order under Section 4 in their favour; the appellants not having challenged this finding it has become final. The Revenue Tribunal however was of the view that under the Sanad issued in favour of the respondent's ancestor what was granted was only the royal share of the revenue, it was not a grant of the soil, and that as such the lands in question could not be regranted to the respondent under Section 4. The facts stated earlier make it clear that the Sanad was granted on the basis that there was a watan and that the respondent's ancestor Bhimrao to whom the Sanad was granted was the holder of the watan. The Sanad of 1872 granted only the right to hold the watan lands free from full assessment. The view taken by the Revenue Tribunal appears to be based on a judgment of the Bombay High Court, Ramsomappa Bhimrao Desai v. Secretary of State for India-in-Council (39 Bom LR 851 : AIR 1937 Bom 465), disposing of an appeal that arose from a suit instituted in 1929 by the respondent's father Ramsomappa against the Secretary of State for India-in-Council in 1929. According to the Tribunal the Bombay High Court had held in that case that the grant to the respondent's ancestor did not include the right to the soil. It may be necessary here to state a few facts upon which Ramsomappa's suit was instituted. Bhimrao to whom the Sanad was given adopted Ramsomappa in 1909. After Bhimrao's death in 1918 government refused to recognise Ramsomappa's adoption. He then applied to government for the grant of ex post facto sanction to his adoption by Bhimrao and, alternatively, prayed that in case the sanction was not given, then the watan might be resumed by the levy of full assessment on the lands and he should not be evicted therefrom. Both these requests were turned down and the government passed orders for resuming possession of the lands. Ramsomappa then brought the suit against the Secretary of State for a declaration that the orders passed by government for resumption of possession of the watan lands were illegal. The trial Court having dismissed the suit Ramsomappa came up in appeal to the Bombay High Court. The question whether the original grant to the respondent's ancestor was of the soil or it was only a right to the royal share of the revenue did not arise for consideration in Ramsomappa v. Secretary of State (39 Bom LR 851 : AIR 1937 Bom 465). The Bombay High Court allowed Ramsomappa's appeal holding that the Sanad of 1872 did not purport to be a grant of the right to occupy the soil, it had only reference to and was a grant of the right to hold the lands free from full assessment, and that if any of the conditions of the grant, namely the condition of remaining faithful to government or the condition of paying a fixed duty was broken, then government was only entitled to claim full assessment on the lands but any right of occupation which the holder of the watan possessed apart from the Sanad would remain untouched. The Tribunal's reading of the judgment in Ramsomappa's case does not therefore seem to be correct. The judgment under appeal before us points out that the decision in Ramsomappa v. Secretary of State (39 Bom LR 851 : AIR 1937 Bom 465) has no bearing on the issue involved in

the instant case.

7. Counsel for the appellant also relied on the decision in Ramsomappa in support of the appeal but, for the reasons stated above, we do not think Ramsomappa case (39 Bom LR 851 : AIR 1937 Bom 465) at all helps him. The only other ground urged was that an application made on behalf of the respondent in 1947 (when he was a minor) under Section 10 of the Bombay Hereditary Offices Act (Act 3 of 1874) having been rejected, the respondent's right to a regrant of the watan lands was extinguished. Section 10 empowered the Collector to issue a certificate on the basis of which the respondent could bring an action against the appellants for recovery of possession of the lands. The point was argued before the Deputy Commissioner in the present proceedings who held that the rejection of the application did not take away the right of the watandar to ask for a regrant of the watan lands under Section 4 of the 1950 Act. From the judgment of the high Court it does not appear the point was argued there, and normally the appellants should not be allowed to take the point in this Court. In any case it seems to us clear that the rejection of the application under Section 10 of the Bombay Hereditary Offices Act, 1874 is not a matter relevant to the issue whether the respondent is entitled to a regrant of the watan lands under Section 4 of the 1950 Act.

8. The appeals are dismissed with costs; one hearing fee.

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