Jayantrao Amratrao Pradhan

Vs

Parthasarthy, Collector of Kaira District and Others

Civil Appeal No. 1446 of 1971

(A. P. Sen, D. P. Madon JJ)

01.04.1986

JUDGMENT

MADON, J. –

1. The appellant was the holder of large plots of land. By his order dated March 21, 1964, the Collector, Kaira District, directed that plots of land admeasuring 6 acres and 28 gunthas were to be considered as Service Inam land class vi(a) assigned for remuneration in respect of patel's service of village Malarpura, Taluka Matar, and the remaining plots of lands were to be resumed and entered in the name of the Government of Gujarat under Rule 4 of the Resumption Rules, 1908, and steps for their disposal should be taken separately by the competent authority. He further ordered that the lands which were held to be Service Inam lands should be dealt with under the Gujarat Patel Watans Abolition Act, 1961 (Gujarat Act 48 of 1961) (hereinafter referred to as "the Abolition Act"), with effect from April, 1963. Against the said order of the Collector, the appellant filed an appeal before the Commissioner of Revenue, Ahmedabad Division, but as the office of the Commissioner was abolished, the said appeal was transferred to and heard by the Special Secretary to the Government of Gujarat, Revenue and Agricultural Department, Ahmedabad, who dismissed it by his order dated August 4, 1964. Thereupon the appellant filed a writ petition under Article 226 of the Constitution of India in the Gujarat High Court being Special Civil Application 718 of 1964, challenging the aforesaid orders of the Collector and the Special Secretary. The said writ petition was dismissed by a Division Bench of the Gujarat High Court by its judgment and order dated October 4, 1969. On an application made by the appellant the High Court granted a certificate of appeal under sub-clause (b) of clause (1) of Article 133 of the Constitution, prior to the amendment of the said clause by the Constitution (Thirtieth Amendment) Act, 1972, certifying that the judgment and final order of the High Court involved directly or indirectly a claim or question respecting property of the value of not less than twenty thousand rupees.

2. In order to appreciate the points argued at the hearing of this appeal, it is necessary to set out the facts which led to the passing of the impugned order of Collector dated March 21, 1964. Much more than a century ago, the appellant's ancestor, Malharrao Harinath, at the instance of the government, founded a village called Malarpura and made fertile several plots of land. The government, therefore, granted to the said Malharrao lands bearing eighteen different survey numbers approximately admeasuring 74 acres and 10 gunthas of which the land revenue assessment was Rs 557. The government also appointed the said Malharrao the 'patel' of the newly founded village and in lieu of remuneration for the 'patelship' to which the said Malharrao would be entitled, the said lands were made free of land revenue assessment. In accordance with the terms of the Government Resolution 4270 dated August 11, 1874, the annual remuneration for this 'patelship' would have been only Rs 67 but in the case of the said Malharrao the entire land revenue assessment was treated

as the annual remuneration of Malharrao's 'patelship' with the result that the said Malharrao annually received in the shape of non-payment of land revenue assessment Rs 490 more than what was payable according to the scale of remuneration fixed for persons rendering services as 'patels'.

3. In or about 1901 certain lands admeasuring 31 acres and 18 gunthas were taken away by the government from the lands granted to the said Malharrao, without paying any compensation, for the purpose of improving and enlarging the irrigation tank in Village Goblaj. Ultimately, it was resolved that the Commissioner (ND) should be requested to arrange a reasonable settlement for the transfer of the said lands to the government on terms which the 'patel' was willing to accept and to report to the government the amount of such compensation. Thereupon, proceedings were commenced under the Land Acquisition Act, 1894, in respect of the said lands. Against the award made by the Land Acquisition Officer a reference was filed which was heard and decided by the Extra Assistant Judge, Ahmedabad, who directed the total amount awarded as compensation to be invested in the manner provided in Section 32 of the Land Acquisition Act. Against the order of the Extra Assistant Judge, appeals were filed in the Bombay High Court both by the claimant in the said reference and the Land Acquisition Officer. The High Court confirmed the order of the Extra Assistant Judge with a slight modification. The compensation was, however, not paid in cash but the government granted to the 'patel' certain lands in lieu of such compensation.

4. Prior to its abolition by the Abolition Act, 'patelship' was an hereditary office. "Hereditary office" is defined by Section 4 of the Bombay Hereditary Offices Act, 1874 (Bombay Act 3 of 1874) as follows :

> 'Hereditary Office' means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue or with the village police, or with the settlement of boundaries, or other matters of civil administration. The expression includes such office even where the services originally appertaining to it have ceased to be demanded.

The watan property, if any, and the hereditary office and the rights and privileges attached to them together constitute the watan.

The same Section 4 defines "watan property" in the following terms :

> 'Watan property' means the moveable or immovable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise.

It includes cash payments in addition to the original watan property made voluntarily by the State Government and subject periodically to modification or withdrawal.

5. Claims against the government on account of 'inams' and other estates wholly or partially exempt from payment of land revenue in certain territories in the Bombay Presidency were excluded from the cognizance of ordinary civil courts. The Bombay Rent-free Estates Act, 1852 (Act 11 of 1852), was passed so that such claims could be determined. Section 4 of the said Act provided as follows :

> 4. Determination of titles of claimants to exemption. - In the adjudication of claims to exempt lands or interest therein, the titles of claimants shall be determined by the rules in Schedule B annexed to this Act.

Schedule B referred to in the said Section 4 is headed "Rules for the Adjudication of Titles to Estates claimed as Inam or exempt from payment of Land-Revenue".

6. Under Rule 10 of Schedule B to the Bombay Rent-free Estates Act, 1852, the rules contained in the said schedule were not necessarily applicable to jagirs, saranjams or other tenures for service to the Crown or tenures of a political nature, and the titles and continuance of such jagirs, saranjams and tanners were to be determined under such rules as the Provincial Government may find it necessary to issue from time to time. Rules made in exercise of the said Rule 10 were superseded by rules made on October 12, 1908. Under Rule 1 of the 1908 Rules, an inquiry into the title by which any land held for service was enjoyed could be instituted from time to time by such officer as the government may direct. The only other relevant rule for our purpose is Rule 4 of the 1908 Rules which provides as follows :

> (4) Service lands which do not fall under No. 2 and No. 3 of these rules shall be continued subject to the provision of the Bombay Act 3 of 1874, and of any other law for the time being in force, relating thereto, to the heirs to the present holders or in the event of the same being any time lawfully alienated, to the heirs of the alienators without restriction as to adoption or female or collateral succession but such land shall be resumed in default of any heir in whom, in the ordinary course of descent, the deceased holder's private property would vest and shall not be liable to be dealt with under the ordinary law for the time being in force relating to intestate property. Provided that if the Collector is at any time satisfied that the service in respect of which any such lands are held is no longer performed or that its performance is no longer necessary or that for the service performed the remuneration derived from the profits of the enjoyment of such lands is unnecessarily high, or in the case of service lands to which the provisions of Bombay Act 3 of 1874 did not apply, if it shall appear that the holder has been guilty of any serious offence or misconduct, or that such lands or any part thereof or any of the profits thereof have or has by succession or otherwise, come into the possession of a female or any person other than the person who for the time being is duly authorised to perform and does actually perform the service in respect of which such lands are held, the Collector may in his discretion direct either (1) the resumption of such lands or (2) the continuance of the same subject to such new conditions as he shall deem fit to impose or (3) the resumption of portion of such land and the continuance of the rest thereof, subject to such conditions as aforesaid.

7. To continue with our narrative, the Agricultural Lands Tribunal, Mehmedabad, sent a notice to the appellant's father which was received by him on July 1, 1960, to show cause why the lands held by him should not be sold to the tenants as provided by the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act 47 of 1948). The appellant thereafter by his application dated July 3, 1960, addressed to the Collector, District Kaira, stated that the lands held by him were a service inam and the Bombay Hereditary Offices Act had been applied to them as they were given to him as remuneration for services and, therefore, they were not liable to be proceeded against under the Bombay Tenancy and Agricultural Lands Act. By the said application, the appellant's father requested the Collector to order the Mamlatdar to give instruction to the Talati of various villages to enter in the land records clearly the words "village servants useful to government" as also to issue directions to the Agricultural Lands Tribunal not to send any intimation or notice to him for selling any land of this nature. By his reply dated July 12, 1960, the Collector intimated to the appellant's father that the matter was under consideration. Thereafter, the Collector, District Kaira, sent a notice

dated December 31, 1962, to the appellant's father. The relevant part of the said notice is as follows :

> Subject : - About the classification of Patlai lands, Malarpura, taluka Matar
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> Sir,
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> It is intimated that you will remain present at 12 noon on January 2, 1963 with all evidence and with whatever you have to say about the determination of the amount of lands which you held as Watan Inam lands according to your statement which lands are from the villages of Malarpura, taluka Matar.

(About the steps that are to be taken according to Rule 4 of the Resumption Rules, 1908.)

According to the appellant, on January 2, 1963 a chitnis by the name of Desai took the said notice from the appellant and took it to the Collector and in the presence of the Collector added the words reproduced in brackets in the above extract. The hearing before the Collector was adjourned from time to time and ultimately, after hearing the advocate for the appellant, the Collector, District Kaira, passed the impugned order dated March 21, 1964.

8. It will be convenient at this stage to notice the relevant provisions of the Abolition Act. The Abolition Act received the assent of the President on November 24, 1961, and it was published in the Gujarat Government Gazette on December 6, 1961. The Abolition Act was brought into force on April 1, 1963. Under Section 4 of the Abolition Act, patel watans were abolished, the office of patel was made non-hereditary and all watan lands were resumed and were to be subject to the payment of land revenue under the provisions of the relevant land revenue code and the rules made thereunder, as if such lands were unalienated land. Under Section 5, in the case of a grant of watan land which is not a grant of soil and is held subject to a total or partial exemption from payment of land revenue, the resumption is to be by levy of full assessment and the holder is deemed to be an occupant of the land. Certain definitions given in Section 2 may also be noticed. They are the definitions of the terms "existing watan law", "hereditary patelship", and "patel watan" given in clauses (6), (7) and (11) of the Abolition Act. These definitions are as follows :

> (6) 'existing watan law' includes any enactment, ordinance, rule, bye-law, regulation, order, notification or any other instruments having the force of law relating to a patel watan and in force immediately before the appointed day;
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> (7) 'hereditary patelship' means every village office of a revenue or police patel held hereditarily under the existing watan law for the the performance of duties connected with the administration or collection of the public revenue of a village or with the village police or with the settlement of boundaries or other matters of civil administration of a village and includes such office even where the services originally appertaining to it have ceased to be demanded;
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> (11)' patel watan' means a watan held under the existing watan law for the performance of duties appertaining to the hereditary patelship, whether any commutation settlement in respect such patel watan has or has not been effected.

Section 3 of the Abolition Act provides as follows :

> 3. Powers of Collector to decide certain questions and appeal. - (1) If any question arises -
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> (a) whether any land is watan land,
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> (b) whether any person is a watandar, matadar or representative watandar,
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> (c) whether any person is an unauthorised holder or authorised holder,
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> (d) whether any grant is a patel watan and if so whether it is a grant of soil or grant of exemption from payment of land revenue or a grant of land revenue only,
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> the Collector shall, after giving the party affected an opportunity to be heard and after holding an inquiry, decide the question.
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> (2) Any person aggrieved by such decision may file an appeal to the State Government within ninety days of such decision.
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> (3) The decision of the Collector, subject to an appeal under sub-section (2), and the decision of the State Government in appeal under sub-section (2) shall be final.

The Abolition Act also contains provisions for re-grant of watan land either to the holder of the watan or to authorised holders and it also provides that if any watan land has been lawfully leased and such lease was subsisting on the date of the coming into force of the Abolition Act, the provisions of the tenancy law would apply to the said lease.

9. The first point urged at the hearing of this appeal was that the original grant was not a grant of the soil but of the revenue of the land and, therefore, the said lands were not liable to be resumed either under the Abolition Act or under the Resumption Rules, 1908. It is an admitted position that neither the original grant not its copy was traceable. In support of his submission, learned counsel for the appellant, therefor, relied upon a letter dated July 12, 1912, from the Under Secretary to the Government of Bombay, to the Commissioner (ND), written in connection with the compensation to be allowed for the lands admeasuring 31 acres and 18 gunthas taken by the Government for the improvement and enlargement of the Goblaj tank. This was also the only piece of evidence relied upon by the appellant before the Collector, the Special Secretary and the High Court. Far from supporting the appellant's case, the said letter negatives it. It inter alia states that "the whole of the land consisting of 18 survey numbers and measuring 74 acres 10 gunthas and originally assessed at Rs 557 has been assigned to the patel of Malharpura, taluka Matar, for his remuneration". It is also stated in the said later that "Under the Government Resolution 3969, dated June 15, 1898, no cash compensation is to be paid on account of land assigned for village servants useful to government". It is further stated in the said letter as follows :

> Malharpura appears to have been given about 100 bighas of land for his enterprise in establishing a new village and bringing waste land under cultivation, and this land of the....appears to have been converted subsequently into patel's service inam land under the them Collector's vernaintar order dated August 5, 1842. This original order is not traceable but its substance is known from the village inward and outward register of the time.

The said letter, therefore, clearly shows that it was not the revenue of the said land which was

assigned to Malharrao but the land itself. Further, there are one on the record categorical admissions made by the appellant's father that what was given to Malharrao was land and not the revenue of the land. In this said application dated July 3, 1960, made to the Collector, District Kaira, the appellant's father had sated that he was "holding lands of service inam". In the said application he had further sated as follows :

> Besides, the Hereditary Offices Act has been applied to lands 'village servants useful to government' and those lands have been given to me as remuneration for services.

The appellant had also given a statement which was reproduced in the said application. In the said statement it was stated : "We are doing Mukhiship of village Malarpura taluka Matar (hereditary). We did not get any salary from the treasury for this service but government has given some lands for remuneration". During the pendency of the proceedings before the Collector, the appellant's father had also given to the State of Gujarat at notice dated March 11, 1963, under Section 80 of the Code of Civil Producer, 1908. In that notice also it was stated : "In appreciation of the venturesome work of my ancestors 74 acres and 10 gunthas of lands were given to my said ancestor by the government and that was as inam or gift". There is, therefore, so doubt that the grant made to Malharrao by the government was a grant of soil and not of the revenue of the land the said lands were, therefore, liable to resumption.

10. The next point which was urged before this Court was that the lands granted by the government to the appellant's predecessor under Section 32 of the Land Acquisition Act in lieu of the lands acquired under the said Act could not be the subject-matter of watan and were, therefore, not liable to resumption. This contention again in negatived by the express admissions made by the appellant and his father. In the said application dated July 3, 1960, the appellant had stated that these lands were "of the same nature as the lands acquired, namely, village servants useful to government". In the said notice under Section 80 of the Code of Civil Procedure, the case made out by the appellant's father with respect these lands was as follows :

> Thereupon the additional compensation was invested in government bonds and the government bonds were kept in government possession. As and when the said lands were purchased, the vendors were paid by selling bonds of required amount. I had purchased from it government fallows lands and government had taken price from the said bonds of mine.

In that way I had purchased from government nearly 59 acres and 8 gunthas of land in village Goblaj, Kajipura, Dedarda and Kaira. In all I had purchased 36 acres 12 gunthas of lands in Malarpura, Kaira, Dedarda, Samarda, Vasan Khurd, Parsantaj, Naika, Pansoli, Kanera, Antroli Punaj and Chanindra and government converted the same into inam service land and therefore the lands purchased in this and previous lands in my possession are of the same class and all these lands are of my possession and ownership.

Thus there can be no doubt that the lands which the appellant's predecessor got in lien of lands which were acquired by the government were of the same nature and class as the lands which had been acquired.

11. The third point which was urged was that notice of the resumption proceedings was not given to the appellant or his other as required by law. This is again factually incorrect. The said notice dated December 31, 1962, clearly stated that the presence of the appellant's father was also required

"about the steps that are to be taken according to the Rule 4 of the Resumption Rules, 1908". Assuming that the said words were added later in the letter by the chitnis in the presence of the Collector or January 2, 1963, the proceedings before the Collector were adjourned time and again, and, in fact, when an application for adjournment was made before the Collector by the appellant's advocate on January 31, 1963, the purpose for which such adjournment was required was stated in the said application as being to enable the advocate to obtain information about the Resumption Rules. It may be mentioned that this point was not even argued before the High Court. Thus, there is no substance in this contention and it also requires to be rejected.

12. The fourth and the last point which was argued was that as the Abolition Act came into force on April 1, 1963, the watan rights in the lands in question stood abolished on and from that day and, therefore, when the Collector passed his impugned order dated March 21, 1964, the said lands had ceased to be watan lands and no lands were available for resumption and accordingly, therefore, no order under the Resumption Rules, 1908, could have been made on March 21, 1964. It was further submitted that the proceedings pending before the Collector on April 1, 1963, were not of the nature mentioned in Section 22 of the Abolition Act and, therefore, they were not saved by the provisions of the said section. There is equally no substance in this contention. Section 22 provides as follows :

> 22. Savings. - Nothing contained in this Act shall affect -
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> (i) any obligations or liability already incurred under an incident of a patel watan before the appointed day, or
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> (ii) any proceeding or remedy in respect of such obligation or liability, and any such proceeding may be continued or any such remedy may be enforced as if this Act had not been passed.
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> Thus, there are two things which are saved by Section 22, namely, (i) an obligation or liability already incurred under an incident of a patel watan before the appointed day, that is, April 1, 1963, and (ii) a proceeding or remedy in respect of such obligation or liability. Under Rule 4 of the Resumption Rules, 1908, it was an incident of a patel watan that it the Collector was at any time satisfied that the remuneration derived from the profits of the enjoyment of watan lands was unnecessarily high, he might in his discretion either direct resumption of such lands or the continence of the same subject to such new conditions as he might deem fit to impose or the resumption of a portion of such lands and the continuance of the rest subject to such conditions which he might deem fit to impose. Under the said Rule 4 the Collector had the power to determine whether the remuneration for the performance of the service derived from the profits of the enjoyment of patel watan land was unnecessarily high or not and if it was unnecessarily high, to resume the whole or part of such land. Under Rule 1 of the Resumption Rules, 1908, the Collector could at any time institute an inquiry into the title by which any land held for service was enjoyed. The jurisdiction of the Collector to determine the title to the lands in question was, in fact, invoked by the appellant's father by his said application dated July 3, 1960. It was as a result of the said application that the inquiry was instituted by the Collector and notice thereof was given to the appellant's father by the Collector by the said letter dated December 31, 1962. In the said letter, an express statement was made that the hearing would be about the classification of patel lands at Malarpura and the steps to be taken according to Rules 4 of the

Resumption Rules, 1908. Even if the statement relating to the steps to be taken according to the said Rules 4 was inserted later in the said notice dated December 31, 1962, as shown earlier the appellant's father and the appellant had full knowledge of it and had enough opportunity to put forward their case with respect to the proposed resumption of the said lands. The proceedings, therefore, which were pending before the Collector on April 1, 1963, were in respect of a liability which had already been incurred under an incident of a patel watan prior to April 1, 1963, this liability being that the said lands or a part thereof were liable to be resumed inasmuch as the remuneration received by the patel in respect of the services performed by him was wholly disproportionate to the remuneration actually payable for such service. The proceedings before the Collector thus fell within the express terms of the said Section 22 and under that section they could be continued after the Abolition Act came into force as if the Abolition Act had not been passed. The Collector was, therefore, entitled in law to continue the said proceedings and to pass a final order in such proceedings as he did by his impugned order dated March 21, 1964.

13. For the reasons mentioned above, this appeal must fail and is accordingly dismissed with costs.

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