

Shrinivas Ramakrishna Karandikar and Others

Vs

State of Maharashtra and Others

Civil Appeal Nos. 610-614 of 1973

(Dr. T. K. Thommen, V. Ramaswami II JJ)

5.07.1990

JUDGMENT

THOMMEN, J. –

1. These appeals arise from the common judgment of the Bombay High Court in First Appeal Nos. 839 of 1961, 60 of 1964, 61 of 1964 and 171 of 1966 and Second Appeal No. 1598 of 1961 whereby the High Court on appreciation of the evidence on record reversed the findings of the courts below, allowed the State's appeals, and dismissed the appellants-plaintiff's suits. The plaintiffs sought in their suits a declaration that they were the owners of the trees in question, an injunction to restrain the State from interfering with their alleged right to fell and remove the trees, and certain other reliefs. The plaintiffs contended that, in terms of Section 40 of the Bombay Land Revenue Code, 1879, the right of the government to all trees in unalienated land had been conceded to the plaintiffs as the occupants. There was no specific order which was made at the time of the settlement whereby royalty trees, such as teak had been reserved to the government. No notification or rule or general order had been made to reserve these trees to the State. The claim of the plaintiffs was contested by the State. They relied on various orders, such as those contained in the report of Major Waddington and certain government resolutions of December 23, 1892, which clearly showed that the right to all royalty trees, such as teak, blackwood, sandalwood in Mokhada Petha, Thana District and certain other places vested in the government. The trees in question are in warkas lands in Mokhada Petha and these trees being royalty trees are, according to the State, clearly covered by these government orders issued by the Chief Secretary to the government on December 23, 1892 as a result of which all rights and titles relating to them clearly vested in the government.

2. Section 40 of the Bombay Land Revenue Code, 1879 reads as follows :

"40. In villages, or portions of villages, of which the original survey settlement has been completed before the passing of this Act, the right of the government to all trees in unalienated land, except trees reserved by the government or by any survey officer, whether by express order made at, or about the time of such settlement, or under any rule, or general order in force at the time of such settlement, or by notification made and published at, or at any time after, such settlement, shall be deemed to have been conceded to the occupant. But in the case of settlement completed before the passing of the Bombay Act 1 of 1865 this provision shall not apply to teak, blackwood or sandalwood trees. The right of the government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of the government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land except insofar as any such rights may be reserved by the government, or by any survey officer on behalf of the government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

When permission to occupy land has been, or shall hereafter be, granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of the government to all trees growing on that land which may not have been, or which shall not hereafter be, expressly reserved at the time of granting such permission, or which may not have been reserved, under any of the foregoing provisions of this section, at or about the time of the original survey settlement of the said village or portion of a village.

Explanation.. - In the second paragraph of this section, the expression 'In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this 'Act' shall include cases where the work of the original survey settlement referred to therein was undertaken before the passing of this Act as well as cases where the work of an original survey settlement may be undertaken at any time after the passing of this Act."

3. Government Resolution, Revenue Department No. 10087 dated December 23, 1892 reads :

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3. As regards Government Resolution No. 2447, A, dated April 8, 1890, which deals with the right to trees in occupied lands in the Thana District, the Governor in Council is pleased to cancel the whole Government Resolution, and to declare that in all occupied lands, whether classed as rice garden, rabi or warkas in that district, as in Kolaba, the right to all royalty trees, viz. teak, blackwood, sandalwood and in the talukas Vada, Shahapur (including Mokhada Petha) Dahanu (excluding Umbargaon Petha) and part of Mahim coming under Sajan and Kolvan settlements tivas vests in government....."

4. The High Court found that, in the light of the various orders considered by the High Court, the reservation clause of Section 40 clearly applied to the trees in question. The right to all such trees vested at all material times in the government, whether or not the trees in question existed at the time of the settlement, or at the time of the orders which had been made about the time of the settlement, or the trees were planted subsequently. However, on the evidence on record, including the testimony of DW 5 that the youngest tree was about 96 years old, the High Court held that the trees were in existence long before the orders reserving them to the government had been made about the time of the settlement.

5. The High Court has, on proper appreciation of the evidence on record and the relevant provisions of the statute and the orders of the government, rightly in our view, come to the conclusion that the

plaintiffs have not proved that they have any right or interest in the royalty trees in question.

6. In the circumstances, we see no reason to interfere with the findings of the High Court. Accordingly, these appeals are dismissed with costs.

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