BOMBAY HIGH COURT

Nathuram Hiraram Thakur

Vs

The Secretary of State for India

(Norman Kemp, Kt, C.J. Murphy, J.)

13.08.1929

JUDGMENT

Murphy, J.

1. The point we have to decide is whether Survey-No. 656 of Kanj, in the Viramgam Taluka of the Ahmedabad District, is liable to the assessment of Rs. 2 for land revenue, and to annas two for local fund cess which has been imposed on it. The way in which this point comes up for decision is as follows:-This survey number is within the talukdari estate of Bhankoda, which is held by defendants Nos. 8 to 38 as talukdars. But the land has been possessed by plaintiffs and their predecessors in interest for as far back as memory goes, and it is alleged by the plaintiffs and not seriously denied by the talukdars, free of any payment to them of, either rent, or the proportionate share of the assessment and local fund, which the talukdars themselves pay to Government for it, in the form of 'jama.'

2. The explanation probably is that the plaintiffs being of a Brahmin family the talukdars' ancestors allowed those of the plaintiffs to occupy the land, without exacting any of the usual dues, as a pious act and in the way of charity. But be this as it may, the fact is clear.

3. An attempt was first made by the talukdars in 1874 to impose land revenue on another survey number held in similar circumstances in this village by a cousin of the plaintiffs. It resulted in a suit being filed against the talukdar of that plot, then a minor represented by the Collector of Ahmedabad, as administrator of his estate, and also against the then Talukdari Settlement Officer,

4. The talukdars' assertion of title had taken the form of a demand for rent and assessment, enforced by the sale of the tenancy rights, if such they were, of the then plaintiff, under the provisions then in force and parallel to the present Land Revenue Code's, this course being possible because the estate was then under the management of the revenue officers, who had recourse to a quasi assistance suit procedure. The Courts found in favour of the then plaintiff, and the judgments of the three Courts which considered the question are exhibits in this case. The suit

was between other parties, and the land then being assessed was another plot. The grounds on which the decisions of the Courts proceeded were, that the then plaintiff had made out a case of twelve years adverse possession, as regards rent, against the Talukdar, who could no longer enforce its payment, and as regards assessment, that since the only enactment dealing with the case of alienees in such villages was Section 3 of the Summary Settlement Act (Bombay Act VII of 1863), which only provided that the Summary Settelment Act did not apply to such alienees but that their holdings could be fully assessed should Government resume the management of the village, a contingency which had not happened, there was no provision for levying the assessment imposed on the land and payable, and so far paid by the talukdar from his rent free tenant; and that the assistance suit procedure could not be had recourse to, as in fact there had been no default by the talukdar. I

5. The judgments of all three Courts are really based on similar reasoning, and though they are perhaps admissible, they are not I think of any particular significance in the present suit and appeal, for though the plaintiffs' case now is the same as was that of the then plaintiff, the defendants' stand is quite different.

6. It is said that there is a large area of land in this village in which the circumstances are similar, that is, that it is held by tenants who not only pay no rent, but also contribute nothing towards the 'jama' or assessment, and the local fund cess, which the talukdar has to pay to Government and to the Local Board; and the importance of the appeal really lies in this fact.

7. The talukdar's obvious escape from the onerous condition of these holdings is to resign his rights in them to Government, and this is what has been done in the case of this survey number as an experiment, or test case. The Collector has accepted the relinquishment, and has assessed the holding as ordinary occupancy-tenancy land, under the Land Revenue Code, and the suit is the result of this action.

8. It is necessary first to consider the nature of a Gujarat talukdar's holding, though I do not propose to go into the history of this class of landholder at any length.

9. The earliest enactment on the point is Bombay Act VI of 1862, most of which is still unrepealed. This law is in the nature of an Encumbered Estates Act, and makes provision for Government management of such estates in certain circumstances, but the only part of it I need refer to now is the preamble :-Whereas the lands held in the Zilla of Ahmedabad in the province of Guzerath under the title of ' Talukdari' estates are now only held on leasehold tenure determinable at the pleasure of Government and whereas etc...it has been brought to the notice of Government that many of the Talukdars are in embarrassed circumstances and have borrowed on the security of their landed estates, and whereas such of the estates as are of the Talukdari tenure

aforesaid could not and cannot be lawfully charged, encumbered or alienated and whereas it is expedient ...Provisions are accordingly enacted for the management of the encumbered estates, and it is perhaps this management which is referred to in Section 3 of Bombay Act VII of 1863, though possibly a final resumption also may have been contemplated. The position, therefore, was, and continued to be, for the Act does not change the tenure, that the talukdar was a leaseholder from Government, incapable of charging, encumbering, or alienating his holding But once the estate came under management and on expiry of its period, the talukdar, by Section 20, became the absolute proprietor of his estate, subject only to the liability to pay the land tax or the estate (sic) equivalent of the ordinary ' ryotwari,' or occupancy tenure. The next piece of legislation in connection with these holdings was Bombay Act VI of 1888, the Gujarat Talukdars' Act, which is also an Encumbered Estates measure. Its professed object was to remove doubts as to the applicability of certain portions of the Land Revenue Code to such estates,, and to provide for their revenue administration and partition, but Section 31 introduced the " life interest principle " in certain cases, and Section 33, cl, 2 (m), provided that, generally, the word " talukdar" shall be substituted for the word 'occupant' when applying the Land Revenue Code's provisions and the words " talukdar's holding " or, such words to that effect as may be required by the context, for the word 'occupancy,'

10. The effect generally of these statements and provisions is, in my opinion, that the talukdari holding is, and as far as we know always has been, that of an ordinary occupancy under the Land Revenue Code, its only special features, for historical reasons, being that an arrangement as to land revenue was made by the talukdar for the whole of his holding, and that, in certain cases, the holding is really one for life only. The general provisions of the two Acts I have referred to are in the nature of a special insolvency law and parallel to the Sind Encumbered Estates Act, which also applies to ordinary occupancy tenure land.

11. The legal position of the defendant talukdars, as against the plaintiff's, appears therefore to be that of an occupancy tenant, who has lost the right to recover possession from his sub-tenant, as well as the right to recover any rent, but who himself is under agreement with Government to pay the assessment, on the whole of his holding including the plaintiffs' land, in a lump sum.

12. Now, in this Presidency, the law in respect of occupancy tenants-who are really free-holders subject to the liability to pay assessment-is, that they may relinquish their holdings, either in favour of Government, or of a named person. The re-linquishment is called a "razinama." If it is in favour of Government, the holding then becomes unoccupied Government land, and may be given to any person who applies for it. If it is in favour of a named person, it is generally given to that person, who is required to execute a 'kabulayat' and on his so doing, he becomes the registered occupant, or owner.

13. Regulation XVII of 1827, which was in force till it was repealed by the present Land Revenue Code, contains provision to this effect in Section 6, Clause (1) :-Any occupant may throw up his land and cease to pay the assessment, but he must give notice to the person authorized to receive the revenue, of such being his intention, previously to the ' murgsal ' or commencement of the revenue year, or he will be liable for any loss in the revenue etc.

14. Originally two sections of the Land Revenue Code dealt with the power to relinquish, being as. 74 and 75. Section 75 referred to land paying lump assessment, and the resignation in question was under its provisions, but this section was repealed in 1913, when Section 74 was re-enacted as follows:-The occupant may relinquish his land, that is, resign it in favour of Government, but subject to any rights, tenures, incumbrances or equities lawfully subsisting in favour of any parson (other than Government or the occupant), by giving notice in writing to the Mamlatdar or Mahalkari before the 31st March in any year &c.

15. I have quoted Section 74 as amended since it is more in appellants' favour than were the repealed sections, which did not specifically save the tenant or other rights, though such a saving may always perhaps have been implicit in the old sections as has been urged by Mr. Divatia.

16. It appears to me to be clear from the provisions of the enactments I have quoted that the Gujarat talukdar has never had any rights or powers superior to those of an ordinary occupancy tenant, and admittedly the case must be governed by the two special Acts I have quoted, and the provisions of the Land Revenue Code. I find none which save the applicability of Section 74 of the Code or its predecessor and the position must, therefore, be that of an occupancy tenant who has relinquished his holding.

17. The present qualification on relinquishment is that it is subject to any rights, tenures, incumbrances, or equities lawfully subsisting in favour of a third party, here the plaintiffs.

18. The judgments relied on have held that a plaintiff in similar circumstances was not liable to pay rent, but none is now demanded, and that question does not arise. Plaintiff's tenure is a right to possession acquired by holding the land adversely to the talukdar, and he is entitled to retain It, but actually it is not threatened. There are no incumbrances and all that remains is the question of equities. The only equity in plaintiff's favour can be that he or his ancestors have lawfully acquired from the talukdars the right to hold this land free of assessment. But this is not, I think, a right which could lawfully be acquired from the talukdars, who do not themselves possess it, and from whom it cannot, therefore, lawfully be acquired. Entire or partial exemption from the payment of assessment is a common incident of the land revenue system. In most cases it has been acquired by grant from the sovereign powers previous to the present Government.

19. Section 45 of the Land Revenue Code accordingly enacts :-All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to Government according to the rules hereinafter enacted except such as may be wholly exempted under the provisions of any special contract with Government or the provisions of any law for the time being in force.

20. It has not been urged that there is any special contract with Government.

21. The law relied on is Section 3 of the Summary Settlement Act (Bombay Act VII of 1863):- This Act shall not apply to lands which, in villages held on taluqdari, bhagdari, narwadari, khoti or other similar tenure, may have been partially or wholly alienated by the present or former holders of the said villages or by any one of them ; and, in the event of the management of such villages being at any time resumed by Government, all land be alienated shall revert to Government un-affected by the acts of the holders or any of them, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals.

22. I am unable to read any exemption of the plaintiffs' land from assessment to land revenue into this section, What it does is to save land such as that held by the plaintiffs from being dealt with under the provisions of the Act, but it states that in the event of the management of the estate in which such land is to be found being resumed by Government, the alienations will not be allowed to affect the public revenue, that is, that the land will be assessable to land revenue.

23. It is true that the contingency contemplated by the section has not as yet happened, and that therefore this land is not as yet assessable under this section. But the section does not contain the words "and shall not be otherwise liable to assessment" which we are really being asked to read into it. The only other provision in it in the appellants' favour is the "without prejudice in other respects to the rights of individuals" which is not here relevant, for it refers to other subsisting rights.

24. The real meaning of Section 3 of the Act seems to me to be plain and against the appellants' contention. It appears that there were, at the time, numerous cases in which the holders of land claimed to hold it wholly or partially free of assessment. In order to settle these disputes, it was enacted that such claimants should be given the choice of proving their claims, or, in the alternative, of accepting the conditions provided by the Act (see Section 3). These were persons holding direct from Government, with no intervening superior holders. But the tenures excepted by the section are all peculiar. The Talukdari and Khoti tenures involve the Intervention, between Government and the tenant, of a superior holder, originally a farmer of revenue, the Talukdar and the Khot; and the Bhagdari and Narwadari tenures are peculiar systems of tenancy in common. All four are governed by special Acts. All four are ancient, and probably involved alienations by

the superior holders. In the case of the talukdari tenure, I have shown that the superior holder has all along been an ordinary occupant with whom, probably because he was found to be a large land-holder, it was convenient in the old days to make a special agreement about land revenue. But since he had never been recognized as having any powers of alienating the assessment, the case of his tenants, whatever their rights as against him might be, was not one which fell within the terms of the preamble of the Summary Settlement Act and was therefore excepted from it, with the necessary corollary that, when his holding determined in the way mentioned, the land would be assessed to Government revenue.

25. But though management and resumption was one mode of determination of such talukdari holdings, it was and is, as I have shown, not the only one, for relinquishment has always been possible. The section does not mention this possibility, and I believe cannot be read as if it included it within the terms management and resumption ; though it might be argued that relinquishment is in effect the equivalent of resumption, in which case also plaintiff must fail. I think that the talukdar has a right to relinquish a part of his holding and that on this happening, that part becomes Government occupied land liable to assessment, and the talukdar's former tenant is left with such rights as were provided by old Sections 74 and 75 as are now provided by Section 74 of the Land Revenue Code, which do not include that of holding free of assessment as against Government, and that he can have no equity in this respect on the ground that, as against the former talukdar, he had established a right to hold free of rent and of assessment.

26. On this view the appeal fails on the merits and must be dismissed with costs. A second point has, however, been argued. One of the original objections to the maintainability of the suit was that it was barred under Section 4 of the Revenue Jurisdiction Act. This point was originally decided in appellant's favour, though a second point under Section 11 of the same Act was decided against him. The matter came in appeal to this Court, and the point as to the maintainability of the suit under Section 11 was decided in appellants' favour, and the High Court's judgment does not refer to the question under Section 4. The Government Pleader has, therefore, sought to support the judgment appealed against on the ground that this point also should have been decided against the appellant. We have heard arguments but for the reasons given by the learned District Judge, we think that the suit was not barred on this ground.

Norman Kemp, Kt., Acting C.J.

27. The plaintiffs-appellants are Brahmins of Kanj in the Viramgam Taluka of Ahmedabad District and they and other Brahmins have for a long time past been in the exclusive enjoyment of 2500 acres in the Sim of that village which is part of a talukdari estate. Survey No. 656, which is the subject matter of the present appeal, is included in this 2500 acres. Defendants-respondents Nos.3 to 38 are the talukdars of the talukdari estate called the Bankoda estate in which is situated

the village of Kanj. Defendant-respondent No. 2 is the Talukdari Settlement Officer. The question in the appeal refers to the relinquishment in 1911 by the talukdars of Survey No. 656 sanctioned by the Collector and the question whether assessment to land revenue and local fund which was formerly payable by the talukdars in the modified form of "jama" can now be recovered by Government from the plaintiffs. So far back as 1876 another plaintiff (cousin of the present plaintiffs) in a previous litigation established his right against the talukdar with regard to another survey number held in similar circumstances to hold the land rent free and a sale of the tenancy rights for arrears of land revenue was set aside. This sale was effected through the machinery by which the talukdars were assisted by Government in realising the proportionate part of the assessment and local fund payable by them from their tenants as rent. That decision which went in appeal to the High Court-Special Appeal No. 300 of 1876-established the right of the plaintiffs to hold their lands rent free. The position was very disadvantageous one for the talukdars for whilst they were liable for jama (lump assessment) and local fund they were unable to recover any portion of it from the plaintiffs. Accordingly, as a test case, Survey No. 656 was relinquised in 1911 and the question now is whether Government instead of the talukdars can levy assessment and local fund from the plaintiffs. They paid the assessment, &c, for 1912-1913 under protest on receipt of a notice from the Mamlatdar on February 5, 1913. They paid the assessments for the following years similarly under protest and on April 27, 1915, they filed the suit out of which the present appeal arises for a declaration that Survey No. 656 belongs exclusively to them, that the defendants have no right by "relinquishment" or otherwise to impose any kind of tax upon it, for a refund of the amounts paid for the years 1912-1913 and 1913-1914, and for an injunction. The learned District Judge of Ahmedabad dismissed the suit. Against that order the present appeal is preferred. Shortly put, as stated by the learned District Judge, the contention of the plaintiffs is that they have never paid any rent or tax on their land in the past and, inasmuch as the talukdars have relieved them of the burden of the land revenue assessment since the days when it was first imposed, they have acquired a right to require the talukdars to pay this amount on their behalf in perpetuity. They contend that the talukdars cannot by relinquishing the estate shift this burden on to them.

28. Prior to the Gujarat Talukdars Act (Bombay Act VI of 1888) the talukdars were a kind of superior leaseholders but by Section 32 (2) of that Act " talukdar " is an " occupant" and " talukdar's holding" an occupancy.

29. A point, which I think is a real one to note, is that in the suit of 1874 the talukdar in that case was attempting to recover rent and revenue assessment with the assistance of the machinery then provided by Government under Section 44 of Bombay Act I of 1865 and Chapters VI and VII of Bombay Regulation XVII of 1827 (see now Land Revenue Code of 1879, Section 86) and to recover it as a proportionate part of assessment and local cess. It was held qua the talukdar that

the plaintiffs were the absolute owners of the land and not bound to pay any rent whether by way of rent or by way of a proportionate share of the jama and so it could not be recovered by any device. The question now is whether Government can recover assessment and local fund as such direct from the plaintiffs. In the suit of 1874 Government could not resort to the inferior holder until they had done their best to recover from the talukdar. But Government were not a party to that suit and it was held that the plaintiffs were not inferior holders but alienees of the land. Until, therefore, Government resumed the management of the lands they dealt only with the talukdar and had no recourse to the talukdar's alienees. The right was barred to the talukdar by more than twelve years possession adverse to him. No such right is barred against Government when and if their right to recover it accrues. It m certainly equitable that the plaintiffs should pay something towards the cost of administration and it is difficult to see how the exemptions from payment of rent acquired against the talukdar could avail as an exemption to pay assessment and local fund cess against Government or how the talukdar can be permanently bound to pay it. As I will point out later it is not correct that a man who is once a talukdar is always a talukdar, for, the Legislature has permitted him to relinquish the talukdari lands. The plaintiffs in the suit of 1874 did not acquire the right to compel the talukdar to pay in perpetuity the jama and local cess, If they did he could not relinquish it. Yet Section 74 of the Land Revenue Code says he may. As the lands are alienated they would not now be included in the area on which the talukdar's jama is assessed, i. e., as Darbari lands. Now under Sections 74 and 75 of the Land Revenue Code (Bombay Act V of 1879) which was in force on February 14, 1912, when the Collector sanctioned the relinquishment, an occupant may with the consent of the Collector relinquish his occupancy provided that such relinquishment applies (in this case) to the whole Survey Number. Section 74 has since been amended and Section 75 repealed by Bombay Act IV of 1913. But we are concerned here with the effects of the relinquishment in February 1912. The plaintiffs' contention, therefore, that the relinquishment in favour of Government must be subject to any rights, &c, lawfully subsisting in favour of any person is untenable for that qualification was introduced by the amending Act of 1913.

30. By Section 33, Clause 2 (m), of the Gujarat Talukdars' Act (Bombay Act VI of 1888) a talukdar was made an "occupant" within the meaning of the Land Revenue Code. The Summary Settlement Act (Bombay Act VII of 1863), which was cited in the arguments was, as the premable to it states, an Act for the summary settlement of claims to exemption from the payment of Government land revenue and Section 3 of that Act provides that the Act shall not apply to lands in villages held on talukdari tenure which have been alienated by the holders of the villages. That section states that in the event of the management of such villages being at any time resumed by Government, lands so alienated shall revert to Government unaffected by the acts of the holders so far as the public revenue is concerned. The appellants contend that as the

exemption of public revenue is only referred to in the case of the management of a whole village being resumed by Government it must be inferred that where Government resume only a portion of the village, the exemption in favour of the public revenue does not apply. But in my opinion Section 3 refers to the management of villages, being resumed by Government and not to relinquishment by the talukdar. Section 3 of Bombay Act VII of 1863 cannot, therefore, be read with Section 74 of the Land Revenue Code. Nor is there, I think, anything in the point raised by the appellants that the relinquishment under old Section 74 prior to the amending Act of 1913 provides only for the case of relinquishment to some person other than Government. For, although the amending Act of 1913 provided for the relinquishment to Government, that was merely legislative recognition of what happened in these cases, namely, that one occupier under old Section 74 merely relinquished to another occupier with whom Government made the new arrangement. The amended Section 74 merely expressed this by calling the relinquishment as to Government. I am, therefore, of opinion that the talukdar could in 1912 relinquish his talukdari or a survey number in it to Government, and where he did so no rights against the talukdar were preserved to the alienee of lands against Government. Indeed, as in this case equities are put forward in favour of the alienees, I think it might be said with some force that there is no equity at all in permitting exemption from payment of land revenue.

31. Now the liability to revenue is applied to all land under Section 45 of the Land Revenue Code except such land as may be wholly exempted under the provisions of any special contract with Government or any law for the time being in force. Here there is no special contract with Government and the only law on which the appellants rely for exemption is Section 3 of the Summary Settlement Act of 1863 and in the view I take of the construction of that section, not only does it not apply to a case of voluntary relinquishment but, further, it cannot he read as inferring that where the management of part (if indeed that is permissible) of a village is resumed the Legislature intended to exempt that part from payment of land revenue.

32. Sections 26 and 28 of the Gujarat Talukdars' Act provided for Government taking up the management of a talukdari. estate and restoring it. This merely extends to talukdars the protection afforded to other classes of landholders, e. g., under the Sind Encumbered Estates Act. It does not apply to cases of relinquishment. As Section 31, (cl. 2), provides that no alienation of any portion of a talukdar's estate shall be valid unless made with the previous sanction of the Governor in Council, which shall only be given on condition the responsibility for the portion of the jama, &c, due in respect of the alienated area shall vest in the alienee, this shows it is the intention of the Legislature that alienees should pay their share of jama. Yet, if the appellants are right, they fire alienees from the talukdar and not liable to pay their proportion of the jama. Section 32, Clause (1), says sanction under Section 31, (cl. 2), shall not affect any right of Government under Section 3 of Bombay Act VII of 1863, i. e., the reverting of alienated lands to

Government unaffected by the acts of the holders so far as the public revenue is concerned. Section 24, Clause (2), provides that the proportionate part of the jama may be recovered from inter alia 'the person in actual occupation of the estate" if the talukdar makes default. I allow that this may be said only to apply where the talukdar makes default, but it certainly contemplates the right of Government to have recourse to the actual occupant. It may well be argued why should Government be deprived of this right if the talukdar relinquishes the land. I think that the arrangements made for recovery of jama and local cess which applied in the case of a particular holding like that of a talukdar can have no application where the estate ceases to remain under a talukdar and resumes the ordinary direct relationship existing between an absolute owner and Government. The plaintiffs have, I think, acquired no rights against Government, nor can the acts or omissions of the talukdar be regarded as the acts or omissions of a properly authorised Government agent to deal with the plaintiffs.

33. Since writing my judgment I have had an opportunity of perusing that of my brother Murphy and consider that it should be regarded as the main judgment to which I subscribe my own in this appeal. With respect, I agree with his conclusions on those points which I have not dealt with.

34. Appeal dismissed with costs.