

BOMBAY HIGH COURT

Daulatrao Malojirao

Vs

Government of Bombay

(Leonard Stone, Kt. C.J. Divatia, J.)

17.03.1944

JUDGMENT

Leonard Stone, Kt., C.J.

1. This is an appeal and cross-appeal from the judgment dated July 31, 1940, of the First Class Subordinate Judge of Dharwar.

2. The plaintiff, who is the appellant in this Court, claims to be the saranjamdar of an estate of which his ancestors had been tenants-for-life for a great many years. The estate was formerly part of a larger saranjam estate known as the Gajendragad estate registered in the books of Government in the name of an elder branch of the appellant's family. In or about the year 1842 one of the saranjamdars of this elder branch appointed as manager of a part of the Gajendragad estate a certain kulkarni, who was the ancestor of respondent No. 2. Whether this appointment was made orally or in writing does not appear, and no documentary confirmation of it is forthcoming. However, there is no dispute between the parties that some arrangement was in fact made, nor is it disputed that in consideration of hereditary services to be rendered by the kulkarni and his descendants in managing part of the estate and collecting the rents and profits thereof the kulkarni and his descendants were to retain for their own use the rents and profits of a certain portion thereof being some sixty acres of land formerly part of Survey No. 83, but now known by Survey Nos. 121-122-123-124.

3. Between the years 1869 and 1891 the Gajendragad estate was in fact informally divided between the three branches of the appellant's ancestral family, and it fell to the lot of the appellant's father to enjoy as saranjamdar, though without Government recognition, that one-third of the Gajendragad estate in which was included the sixty acres now in dispute. In 1891 Government, though without recognition and it may be without knowledge of the informal division between the three branches of the family, passed the following resolution:

It appears to Government that the whole Gajendragad Estate is a saranjam continu-able as

hereditary in the fullest sense of the word as interpreted by the Court of Directors in paragraph 9 of their Despatch No. 27, dated December 12, 1855. It is continuable to all male legitimate descendants of the holder at the time of the British conquest; and should Government ever sanction an adoption the terms of sanction would be those applicable to saranjamdars. The property should be dealt with like other saranjams in the Political Department, In the event of the saranjam or any part of the original saranjam being included in the scheme for the revision of the Hyderabad-Bombay Frontier, the reversionary interest would have to be calculated, and the rights of the saranjamdar should be guarded as recognised by Government. The family of the saranjamdar should be made acquainted with this decision.

4. In order to appreciate the implications of the subsequent history of this matter, it will be convenient to make at this stage some reference to the development of the legal conception of saranjam tenure and its position with regard to the jurisdiction of the Courts of this country. By Section 4 of the Revenue Jurisdiction Act, 1876, it is provided that "...no civil Court shall exercise jurisdiction as to any of the following matters : ...claims against the Crown relating to lands...granted or held as saranjam, or on other political tenure....

5. In the year 1882 the case of Ramchandra v. Venkatrao (1882) I.L.R. 6 Bom. 568 came before this High Court, and it was held that it was for Government to determine how saranjam grant were to be held and inherited, and that the Courts are bound to determine claims relating to the saranjam estates in accordance with rules laid down by the British Government. That case was between private persons : as also was the case of Shekh Sultan Sani v. Shekh Ajmodin (1892) I.L.R. 17 Bom. 431 P.C., which went to the Privy Council in 1892. Their Lordships had occasion to consider the nature of a saranjam estate, and in the judgment of the Board delivered by Lord Hannen there appears at p. 447 the following passage: With regard to the expression contained in some of the sanads previously cited of the grant being to the person named, 'his son, grandson, &c., from generation to generation,' it has been observed by many writers of authority on this subject that they do not, as might be supposed, impart a fixed hereditary tenure. Colonel Etheridge, in his preface to the narrative of the Bombay Inam Commission, the language of Sir Thomas Munro in a minute of the 15th March 1822, in which he states that the ' terms in such documents (sanads) ' for ever', 'from generation to generation' or in Hindu grants,' while the sun and the moon endure', are mere forms of expression, and were never supposed either by the donor or receiver to convey the 'durability which they imply, or any beyond the will of the sovereign'; and in a subsequent minute of 16th January 1823, Sir Thomas Munro shows that while the seizure of private property by the native princes would have been considered unjust by the country, jaghir grants were not regarded by the people in the light of private property (Etheridge, p. 14). Their Lordships entertain no doubt that the engagements entered into by the English Government with the Raja of Satara and with the several jaghirdars, did not impart any

greater fixity of tenure than had been previously enjoyed by those jaghirdars under the native rulers, and that their jaghirs were liable to resumption at the will of the Government, although from reasons of political expediency the English authorities would not be disposed to add to the disturbance and confusion attending a conquest, by dispossessing the holders of property to any greater extent than was necessary for safety. Then at p. 456 his Lordship observes: Their Lordships are of opinion that the question to whom a saranjam or jahagir shall be granted upon the death of its holder, is one which belongs exclusively to the Government, to be determined upon political considerations, and that it is not within the competency of any legal tribunal to review the decision which the Government may pronounce. This principle is clearly expressed, not for the first time, in Bombay Act VII of 1863, Section 2, Clause 3, and is recognised in cases where the question has been raised. In 1898 Government made rules for the better regulation of saranjam estates. Rule 1 is as follows: Saranjam shall be ordinarily continued in accordance with the decision already passed or which may hereafter be passed by Government in each case.

6. The rules proceed to lay down how a saranjam tenure shall be ordinarily regulated; and although some of the rules appear mandatory in form, they cannot, in my judgment, be held up as impeaching Government's right of free determination, so as to confer upon persons actually or prospectively interested in saranjam grants any firmer tenure than previously existed. In my judgment the rules are to be read as rules of convenience declaratory of Government's intentions : the avowal of which does not preclude Government from for ever changing its mind. There is also this further attribute of saranjam tenures : that they may be granted in respect of the royal rent, or of the soil itself. That the difference is one of substance is well illustrated by the case of Secretary of State v. Laxmibai in which the Privy Council held that whereas the jurisdiction of the Court was barred in respect of claims of saranjam tenures of the soil, it might be otherwise if the saranjam was of the royal rents.

7. Turning again to the history of the saranjam with which we are concerned in this appeal. The appellant's predecessor of his one-third of the Gajendragad estate died in 1896, and the appellant assumed occupation of that one-third without any formal sanction or grant from Government. Indeed, as appears from exhibit 34, which is an extract from the Inam Register in respect of the village of Kodaganur, Dharwar District, for the year 1906-07, the sixty acres under old survey No. 83 remained registered in Government's saranjam lists in the name of Daulatrao Bhujangrao Ghorpade, who was the main saranjamdar in a senior branch of the ancestral family of the appellant.

8. Up to the year 1929 the kulkarnis, pursuant to the arrangement made in 1842, retained possession and the rents and profits of the sixty acres. But in that year the then kulkarni by a sale deed purported to sell the sixty acres to respondent No. 3 and thereby unequivocally laid claim to them by adverse possession. This sale did not come to the notice of the main saranjamdar who

died in 1931. By a Resolution of Government dated June 6, 1932, the Gajendragad saranjam was formally resumed and regranted to the eldest son of the deceased main saranjamdar. He, instead of litigating the question of the sixty acres with respondents Nos. 2 and 3, complained to Government. Now, it appears that similar difficulties had arisen with regard to other portions of the Gajendragad estate and that Government by a Resolution of October, 1932, which did not directly affect the sixty acres, laid down that in cases in which part of the saranjam lands had been alienated for more than sixty years : "the Governor in Council is further pleased to direct that full assessment should be levied and the assessment so recovered should be credited to Government." The effect of this resolution, which appears to have been considered by Government as a precedent, purports to destroy the saranjam tenure of the lands to which it relates : so that such lands revert to the Crown who can regrant them as khalsa lands from which Government receives full land assessment.

9. By 1936 the necessity of the informal division of the Gajendragad estate between the three branches of the family receiving Government's recognition had become apparent : And by a Resolution dated February 25, 1936, it was declared:

After careful consideration the Governor in Council is pleased to confirm the decision in Government Resolution (Political Department) No, 1769, dated March 17, 1891, and to declare that the whole of the Gajendragad Estate shall be continuable as an inalienable and impartible saranjam on the conditions stated in the said Resolution. Having regard, however, to the manner in which different portions of the estate have been held by different branches of the family, the Governor in Council, in modification of the orders contained in Government Resolution No. 8969 dated June 7, 1932, is pleased to direct that the portions of the said estate held by Sardar Bhujangrao Daulatrao Ghorpade, Daulatrao Malojirao Ghorpade (the appellant) and Bhujangrao Yeshavantrao Ghorpade, respectively, shall henceforth be entered in the revenue records as de facto shares in the said estate held by the said persons as representatives, respectively, of three branches of the Ghorpade family. Each of the said de facto shares shall be continuable hereditarily as such as if it were a separate saranjam estate in accordance with the rules made for the continuance of saranjams by the Governor in Council in exercise of the powers referred to in the rules framed under the Bombay Rent Free Estates Act, 1852, and Section 2(3) of the Bombay Summary Settlement Act (VII of 1863) and such special orders as the Governor in Council may make in regard to the Gajendragad Estate as a whole or in regard to the said shares. The recognition of the aforesaid shares and their entry in the revenue records as separate shares shall not be deemed to amount to a recognition of the estate of Gajendragad as in any manner partible or alienable and shall not in any way affect the right of Government to treat the said estate as an entire impartible or inalienable saranjam estate.

2. The Governor in Council further directs that the aforesaid shares shall in no case be capable of

sub-division and shall not in any way be alienated or encumbered except in accordance with the rules and orders referred to above. The three shares referred to above shall be continuable hereditarily to the three holders named above and to such of their respective heirs as shall be male legitimate descendants of the holders of the Gajendragad Estate at the time of the British conquest in accordance with the orders issued in para. 9 of the Despatch of the Court of Directors No. 27, dated December 12, 1855, and in Government Resolution (Political Department) No. 1769, dated March 17, 1831. The holder of each of the three shares shall have the right to be consulted in the appointment of any Village Officer in any village comprised in his respective share, but he shall have no right to interfere with the management of the shares of the other holders. Be it observed, that the whole of the Gajendragad saranjam estate is thus divided into three shares, in accordance with the portions held by the three named persons and that there is not expressly omitted or subtracted from the whole estate any portion of it,

10. Pursuant to the 1936 Resolution entries had to be made in the revenue records. So far as the portion comprising the sixty acres is concerned this was in fact done in the Land Alienation Registry for the village of Kodaganur, being exhibit 33 : such registry having been current since the year 1890. The total area of the whole village, including the sixty acres in dispute, is included in the area of 3,580 acres and 15 gunthas, and it is admitted by the Government Header that the deduction of 170 acres and 25 gunthas described as inams has nothing to do with the sixty acres in dispute. Therefore, it appears that, pursuant to the 1936 Resolution, the sixty acres were entered in the revenue records in the name of the appellant.

11. Alterations to like effect were also made in the Inam Register, being exhibit 35, and there can be no doubt that after and as a result of the 1936 Resolution, Government regarded the sixty acres not only as being lands granted by saranjam tenure : but as included in the new saranjam carved out of the Gajendragad estate in favour of the appellant by the 1936 Resolution.

12. An argument was addressed to us by the Government Pleader founded on the word "held" in the Resolution of 1936, it being contended that all that was divided up was the land actually held or in the possession of the three de facto saranjamdars : but, in my judgment, this contention is untenable. As against Government the resolution was a grant of the whole Gajendragad estate, and there is no better evidence as to the identity of that estate than the careful entries made by Government in its revenue records. Not only did the sixty acres stand registered as part of the Gajendragad saranjam immediately before the 1936 Resolution : but they remained so registered afterwards, the alteration in the register being as to the name of the newly recognised saranjamdar, namely, the appellant. Further confirmation of this is to be found in the fact that in 19138, that is to say, after and as the result of the 1937 Resolution, to which I am about to refer, Government found it necessary to alter its records by, in effect, subtracting the sixty acres from what had been previously registered as saranjam lands; see exhibit 34.

13. The outstanding dispute between the appellant and respondent No. 3 came up for consideration by Government on October 26, 1937, and acting upon a memorandum of advice prepared by its Legal Remembrancer, to which the Resolution itself is attached, it was resolved: Government agree with the view of the Remembrancer of Legal Affairs that the saranjam lands which were alienated to an outsider and which have been in his (kulkarni's) possession for more than sixty years cannot now be claimed by the saranjamdar. The lands which have gone in the possession of one who is a total stranger to the saranjamdar's family and who does not do any service to the family should be resumed, but the resumption should be by the levy of full assessment which should be credited to Government and not to the saranjamdar, as the lands have been lost to the saranjamdar's family for a long time and there is no obligation on Government to pay the assessment to the saranjamdar. The orders of the Collector of Dharwar directing the assessment to be paid to the saranjamdar are hereby cancelled.

14. The appellant, as saranjamdar formally recognised by Government by the 1936 Resolution, prefers this suit against Government and against five other respondents; the first two being the alleged vendor and alleged purchaser of the sixty acres and the three others, being members of respondent No. 3's family.

15. The main buttress of the position taken up on behalf of Government, in the shadow of which Mr. A.G. Desai for respondents Nos. 3 to 6 with some diffidence, takes his stand, is that the sixty acres were once upon a time granted as saranjam lands; that since a claim is advanced against Government relating thereto, Section 4 of the Revenue Jurisdiction Act of 1876 is a bar to any Court entertaining the suit. But no argument has been advanced by Government, nor does Government's written statement of defence proceed on the basis that the sixty acres were at the date of the plaint, i.e. November 14, 1938, or now are of saranjam tenure. Indeed the written statement makes it clear that Government's contention is that the sixty acres are now khalsa lands. The way the matter is put in paras. 8 and 9 of Government's written statement of defence and the particulars delivered thereunder is as follows:

8. It is submitted that the land lost its saranjam character since it was in possession of the alienees uninterruptedly for over ninety-four years. And at any rate, such interest therein as the plaintiff may have had does not now survive and is extinguished in view of the fact that Government has resumed the same.

9. It is submitted, therefore, that the plaintiff is not entitled to a declaration of title to, to the possession of the land, as saranjam land. The land is now Khalsa land subject to the levy of full assessment by the Crown in the exercise of its prerogative. The land is therefore not liable to contribute for remuneration of the officiating kulkarni or to pay judi to the plaintiff. The particulars are as follows: In para. 9 of the written statement of defendant No. 1 it is contended

that the suit lands are now khalsa. It is meant by this that the lands in suit are lost to the saranjam and have lost their saranjam character.

16. In this Court the Government Pleader ultimately crystallised his arguments into the following submission in answer to the question : "What was the tenure of the sixty acres on November 14, 1928?" Answer : "The lands were khalsa. But this does not solve the question so far as Section 4 is concerned in view of the word ' granted' contained in that section." "Granted as saranjam" means granted at any date before the claim is made : so that once so granted a. 4 is thereafter always a bar in respect of claims against Government made by the former saranjamdar." On the other hand, Mr. Coyajee on behalf of the appellant asserts that he holds the lands in saranjam tenure in right of and as the result of the 1936 Resolution, and he submits that Government has not only framed its 1937 Resolution on the basis that it was dealing with non-saranjam land : but that the resolution hi resumption itself was for resumption of royal revenue and not of the soil. Accordingly it is ineffectual to operate upon the saranjam tenure granted by the 1936 Resolution.

17. In the Court below the learned Judge found as a fact that the Gajendragad saranjam was a saranjam of the soil and not of the royal rents, and no argument has been addressed to us against this finding.

18. The initial question, which falls for determination in this appeal, arises from the assertion made by the learned Government Pleader that the Courts have no jurisdiction to entertain this suit by reason of Section 4 of the Bombay Revenue Jurisdiction Act, 1876. The Government Pleader relies on the case of *Shrimant Sayaji Maharaj Gaikwar of Baroda v. Madhavrao* (1928) I.L.R. 53 Bom. 12 : S.C. 30 Bom. L.R. 1463 and in particular on the passage at p. 24, which is as follows:

Primarily it is for Government to determine in any particular case of this kind, whether a political tenure such as saranjam exists. This is enacted in Bom. Act II of 1863, Section 16, and Bom. Act VII of 1863, Section 32 (cf. Act XI of 1852, Schedule B, Clause. 10). It has accordingly been laid down in *Ramchandra v. Venkatrao*¹ and in *Shekh Sultan Sani v. Shekh Ajmodin*² that questions of this kind are primarily for Government to decide and that no civil Court can interfere with their decision.

19. In this suit, Government submits that the land is not saranjam at the date of the plaint on the ground that it had long since ceased to be saranjam before the 1937 Resolution. In my opinion, the date of the plaint is the material date, since Section 4 ousts the jurisdiction of the Court in respect of claims, so that it must be the date of the claim which is relevant in considering the question of jurisdiction.

20. If that be so, the material date is November 14, 1938, and the questions, which accordingly arise, are:

(i) Whether, on February 25, 1936, being the date of the sub-divisional grant of the Gajendragad estate, the saranjam tenure in the sixty acres had been destroyed by the adverse possession of the kulkarni and his predecessors-in-title?

(ii) Whatever be the answer to question (i) : what is the effect upon the tenure of the sixty acres as it existed immediately before February 25, 1936, (a) as a result of the 1936 Resolution, and (b) as a result of the 1937 Resolution?

21. The determination of these questions would require a careful consideration, whether for the sixty years then last past the possession of the kulkarnis had been adverse, or whether they had in fact rendered some service.

22. The 1937 Resolution itself does not purport to resume possession of saranjam lands. It proceeds on the assumption that the lands have lost such tenure and have escheated to Government so as to become khalsa lands.

23. It appears from one of the documents, which have been produced in this Court, that the view of Government in another case concerning other lands was as follows:the alienees who obtained possession in 1863 and 1870 at execution sales have been in possession in contravention of the rules or orders governing saranjams and can claim to hold adversely to Government. As these alienees have, by a lapse of sixty years, acquired an indefeasible right to remain in possession, under Section 28 read with Article 149 of the Limitation Act, their indefeasible right has now ripened into a prescriptive title. The saranjam tenure of these lands has been extinguished and Government cannot exercise their common law right of resumption, although such right was exercisable at pleasure.

24. The reasoning of that opinion, which, it seems to have been assumed, applies to the present case, is that Government can rely on the adverse possession of a stranger for sixty years to extinguish the saranjam tenure and at the same time claim the benefit of such extinction as setting up a new title to the ownership of the soil so>that full land assessment can be obtained from the very person who has created a statutory title by adverse possession.

25. Whether that be so or not, the plaintiff's claim is advanced and rests upon a saranjam tenure, and Section 4 of the Revenue Jurisdiction Act is a bar to any relief being; granted to the plaintiff against the Government relating to suit lands in so far as; they are claimed to be granted or held as saranjam. Even declaratory relief cannot be granted under Section 4(a) of the Revenue Jurisdiction Act : Patdaya v. Secretary of State . On the other hand, the question, whether lands granted by a saranjamdar for the performance of service can be acquired by adverse possession by the grantee, not only against the saranjamdar, but even against Government, is a very important one for the general body of saranjamdars, as is also the question, whether, assuming;

the saranjam tenure to be destroyed by adverse possession, the 1936 Resolution was effective as a regrant.

26. At one time the view taken by the legal adviser of Government was that the saranjam tenure of the land could be extinguished by adverse possession, and Government could exercise their common law right of resumption. All these matters require to be judicially considered. Unfortunately these questions cannot be decided in this litigation by an adjudication which would be binding on all parties.

27. In these circumstances, it may be that Government will consider it right that there should be a judicial decision on these points by making a reference to this Court under Section 12 of the Revenue Jurisdiction Act. Section 12 is obviously enacted to meet a situation like the present one, when the bar of Section 4 prevents the different questions of law from being decided judicially in the ordinary way. If Government decide to make a reference, I think the questions should in substance be those I have set out above.

28. There is a further point to be dealt with. It has been submitted on behalf of 'Government that Section 80 of the Civil Procedure Code, 1908, is a bar to this suit. That section provides: No suit shall be instituted against the Crown. until the expiration of two months next after notice in writing has been delivered to, or left at the office of...(c) in the case of a suit against a Provincial Government, a Secretary to that Government or the Collector of the District...and the plaint shall contain a statement that such notice has been so delivered or left.

29. It is admitted that notice was duly delivered and that the two months' period duly expired. What is said is that the plaint does not comply with the latter part of the section, which provides that " the plaint shall contain a statement that such notice has been so delivered or left." By para. 8 of the plaint it is stated : "The notice, as required by Section 80 of the Civil Procedure Code, has been duly given." The contention of Government is that the word "given" ought to have been the word "delivered." In my opinion, there is no substance whatever in this point. The object of pleadings and the rules by which they are regulated is to make the issues clear and to prevent parties from being taken by surprise. The plaint shows with sufficient clarity that the provisions of Section 80 of the Civil Procedure Code have been complied with, and, in my opinion, the words "duly given" are adequate for the purpose of discharging the obligation imposed by the section.

30. We think it right that Government should have the opportunity of considering the advisability of making a reference under Section 12, and the proper course will be for these appeals to stand over for further consideration till the decision of Government is known. In the meantime no order will be passed. The Government Pleader will lay the matter before Government and inform the

other parties as to Government's decision : after the receipt of which any of the parties will be at liberty to apply to restore this appeal to the list.

Divatia, J.

31. I agree. It is common ground that the lands in dispute form part of a saranjam grant to the plaintiff's ancestor by the Peshwa Government and that they were given to the ancestor of defendant No. 2 as remuneration for performing services as kulkarni. Government purported to resume the suit lands on the ground that they had been enjoyed adversely by defendant No. 2's family and had, therefore, lost their saranjam character. The main points in dispute are whether the Government are entitled to resume them on that ground and whether the suit is barred by Section 4 of the Revenue Jurisdiction Act. Taking the second point first, the suit is substantially to recover possession of the lands on the ground that they are still part of the plaintiff's saranjam and the Government was not justified in resuming them. It is true that the defendants' case is that they ceased to be saranjam long ago and at the date of the suit they were khalsa lands, but the plaintiff claims them in this suit as saranjam lands and such a claim must come within the bar of Section 4. The plaintiff, however, urges that the Government Resolution of 1937 by which they were resumed proceeds upon the erroneous ground that they were acquired by defendant No. 2's family by adverse possession and that they had ceased to be saranjam while the Government had included the suit lands in the grant of a separate saranjam to the plaintiff in 1936. It was urged on those grounds that the Resolution of 1937 was ultra vires and that therefore there was no bar of Section 4, but even the ultra vires nature of the resolution would not remove that bar as it would do in some cases under the Hereditary Offices Act. No relief even of a declaratory nature can be granted to the plaintiff. It is, however, necessary to make some observations on the merits of the plaintiff's case. Whether saranjam lands granted by the saranjamdar to a person for performance of service can be claimed adversely to the saranjamdar, at least so long as the services are being performed, is not free from doubt. The Government Resolution of 1937 proceeds on that basis and it ignores the grant of these lands to the plaintiff in 1936. I do not wish to say further on this point, because in my opinion this is a fit case where a reference should be made by the Government to this Court under Section 12 of the Revenue Jurisdiction Act, and if the Government decide to make the reference, the Court will have to go into these questions. All I can say here is that looking to the importance of the points involved on the merits of the case, this is pre-eminently a case in which the view taken by the legal advisers of the Government requires to be judicially considered in spite of the bar of Section 4, and Section 12 is enacted for this very purpose.

Cases Referred

2(1892) I.L.R. 17 Bom. 431, 456 P.C