

# **BOMBAY HIGH COURT**

Daulatrao Malojirao

Vs.

Province of Bombay

Civil Reference No. 2 of 1945

(Leonard Stone, Kt., C.J., Macklin and Lokur, JJ.)

09.01.1946

## **JUDGMENT**

### **Leonard Stone, Kt., C.J.**

1. On March 17, 1944, judgment was delivered in this appeal by my brother Divatia and myself, by which we held, that as the plaintiff's claim is advanced and rests upon a saranjam tenure, Section 4 of the Bombay Revenue Jurisdiction Act of 1876 is a bar to any relief being granted to the plaintiff against Government relating to the suit lands, in so far as they are classified to be granted or held as saranjam. At the same time, we pointed out, that the appeal raised a very important question so far as the general body of the saranjamdars is concerned and we intimated that Government might desire to have it judicially determined by making a reference under Section 12 of the Bombay Revenue Jurisdiction Act. Accordingly, before passing any order, we gave an opportunity for a reference to be made, and it is such reference which is now before this full bench. The facts sufficiently appear from the judgments delivered on March 17, 1944, and arising out of what was then said Government have referred to us the following questions:-

- (1) Whether on February 25, 1936, being the date of the sub-divisional grant of the Gajendragad estate, the saranjam tenure in the 60 acres had been destroyed by the adverse possession of the kulkarni and his predecessors-in-title.
- (2) Whatever be the answer to question (1), what is the effect upon the tenure of the 60 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.

2. In its reference Government have concisely set forth the propositions upon which it relies and it will be convenient to refer to these. They are as follows:-

- (1) That every saranjam is held by the saranjamdars as a life estate.
- (2) That Government have a common law right to resume it at pleasure.
- (3) That the law does not require Government to exercise that right within a particular time.
- (4) That land held on saranjam tenure does not lose its saranjam character until the tenure is terminated; so long as the tenure subsists, no possession of the land can be adverse to that tenure; on the contrary it would be subject to the tenure.
- (5) That the character of land held on saranjam tenure does not change by efflux of time.
- (6) That no period of limitation being provided for the exercise by Government of their right to resume, such right is not extinguished by efflux of time.
- (7) That the 60 acres of land in dispute were all along held on saranjam tenure, irrespective of whether the saranjamdar or the kulkarni was in possession.
- (8) That the resolution of 1936 formally resumed and re-granted the 60 acres to Daulatrao Malojirao, the plaintiff. Saranjam tenure therefore continued.
- (9) That by the resolution of 1937 Government finally exercised their common law right of resumption as they found that the land had passed into the possession of non-saranjamdar. Saranjam tenure was therefore extinguished.

3. The propositions are a substantial departure from the allegations contained in the written statement filed by Government in the suit; but this is immaterial, because Government has succeeded in this appeal by virtue of the Court's want of jurisdiction, and the issues now before us are circumscribed by the reference. The contention now advanced on behalf of Government is in substance that land held by virtue of saranjam tenure cannot be alienated to a stranger, because the tenure is but an adjunct of and springs from the sovereign right, and only subsists at all by virtue of the will and pleasure of the sovereign power. It is therefore contended that the Crown's paramount right to the overlordship in the land is unassailable by adverse possession by a subject for however long duration. We are indebted to counsel for all the parties for the interesting debate which has taken place before us. The principal authorities to which we have been referred are the cases of *Shekh Sultan Sani v. Shekh Ajmodin*<sup>1</sup> and *Raghojirao v. Laxmmrao*<sup>2</sup>, We have also been referred to the treatise written by Colonel Etheridge in the year 1874 and which is contained as a preface to a book described as: "List of Saranjams", and also to an admirable little book, "the Law of Saranjams", by Mr. N.H. Phadnis. An examination of the authorities, in my judgment, makes it clear that the whole structure of saranjam tenure is founded in the sovereign right, which can only change by conquest or by treaty. So founded, jagirs and saranjams, with the feudal incidents connected with them, are granted or withheld at the will and pleasure of the sovereign power, and, if granted, the fixity of tenure is always subject to interruption and revocation by resumption, be it temporary or absolute in character. No incident normally applicable to private rights between subject and subject can fetter or disturb the sovereign will. Thus adverse possession by a private person for however long duration is nugatory before a paramount resumption or re-grant. But Mr. Coyajee on behalf of the appellant, the saranjamdar, submits that even so the sovereign power has by its legislative constituent bound itself by rules, and that even

if historically the basis of the tenure was the sovereign will and pleasure, the rules have created a new quality of durability. In my previous judgment I referred to these rules as being rules of convenience only and a further examination of them and their origin confirms me in that view. These rules which were made in 1898 are made under Rule 10 of Schedule B to Act XI of 1852 and under the second sub-clause, to Clause (3) of Section 10 of Bombay Act VIII of 1863. Rule 10 in the 1852 Act is as follows:-

<sup>1</sup> I.L.R.(1891-92) 17 Bom. 431

<sup>2</sup>(1912) 14 BOMBAY LR 1226

These rules shall not be necessarily applicable to jagirs, and saranjams or other tenures for service to the Crown, or tenures of a political nature, the titles and continuance of which shall be determined as heretofore under such rules as the Provincial Government may find it necessary to issue from time to time.

And the sub-clause in the 1863 Act provides:-

Lands granted or held as saranjam, or on similar political nature, shall be resumable or continuable in such manner, and on such terms, as Government, on political considerations, may, from time to time, see fit to determine.

4. It should be observed in passing, that there is a distinct contrast between that sub-clause and the next one which provides that "lands, held for service shall be resumable or continuable under such general rules as Government may think proper, from time to time, to lay down." In my opinion the rules with which we are concerned cannot exhaust the general power or prevent Government from making a decision or determination referential to a particular saranjam without altering the rules with regard to all of them. Accordingly in my opinion the answer to question 1 referred to us is "No", that is to say, the saranjam tenure was not destroyed by adverse possession.

5. It follows from this and from an examination of the resolution of 1936, that question 2(u) should be answered by saying that the Resolution had no effect upon the nature of the tenure of the 60 acres. It is to be observed that when examined the 1936 Resolution is not itself a re-grant, for it provides that each of the said de facto shares of the existing grant of the whole estate shall be continuable hereditarily as such as if it were a separate saranjam estate. It did not in fact change the nature of the tenure of the 60 acres already existing.

6. Question 2(b) causes at first sight a little difficulty, not because there is now any doubt as to Government's power to resume arbitrarily the saranjam or any part of it if it so thinks fit and to re-grant it in whole or in part as khalsa land, but as to the effect of the Resolution itself. It is dated October 26, 1937, and is as follows:-

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 possession for more

than 60 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 Sranjamdar'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.

7. This was based on. the view which then prevailed with Government's advisers and which we have referred to in our previous judgment in the quotation that:-

...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 60 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.

8. But because Government gives a wrong reason for something it does, the wrong reason does not operate to abrogate the operative part of the Resolution, since it is not necessary for Government to give any reason at all. The order of the Collector referred to in the Resolution is dated August 26, 1934, is in fact in two parts by the first part he ordered the resumption of the land by levy of full assessment and by the second part he ordered that such assessment be paid to the saranjamdar. It is the latter part of the order which is referred to in the last sentence of the resolution of 1937. Although this Resolution is not happily worded, since the body of it is couched in words of future, whereas cancellation of the Collector's order is expressed as being "hereby cancelled"; it does in my opinion operate to resume the saranjam estate, and accordingly in my opinion the answer to question 2(b) should be that as a result of the resolution of 1937 the 60 acres were resumed by Government by the levy of full assessment payable to Government, and thereby they ceased to be part of the saranjam lands and became khalsa lands.

9. Having thus finished with the reference before us, there is an outstanding point on the appeal with regard to the position of the kulkarni. But Mr. Coyajee on behalf of the appellant the saranjamdar is now content to leave this question in the hands of Government. So we need say no more about it.

10. There remains the question of costs. The order which is proposed is that the appeal be dismissed with one set of costs to be paid to Government, that the cross-appeal be allowed with one set of costs to be paid to Government. As to the other defendants they will get from Mr. Coyajee's client one set of costs on the appeal, but they must pay their own costs of the cross-

appeal and of the reference, and Government will pay its own costs of the reference.

**Macklin, J.**

11. I agree and have nothing to add.

**Lokur, J.**

12. I agree and have nothing to add.

13. Per Curiam. The order for costs will be as proposed above.

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