

BOMBAY HIGH COURT

State of Bombay

Vs.

Chhaganlal Gangaram Lavar

Second Appeal No. 651 of 1952, in Appeal No.588 of 1950

(Chagla, C.J., Dixit and Shah, JJ.)

15.07.1954

JUDGMENT

Chagla, C.J.

1. Mr. Justice Gajendragadkar and Mr. Justice Vyas, while hearing a second appeal, have referred a certain question to this Full Bench and the question comes to be referred under the following circumstances.

2. It appears that Government let out six lands bearing various survey numbers in the village of Mukharaba to the plaintiff in the suit from which the second appeal arises. The lease was a temporary lease for three years and it was for the period 1940 to 1943. On 29-5-1943, the plaintiff applied to the Collector to grant him a permanent occupancy lease, and on 15-6-1943, the District Deputy Collector passed an order making a grant of a lease on occupancy tenure with certain conditions attached to that case, and the conditions were that it was to be on the old impartible tenure on the term of raising foodgrains till the completion of the war and on certain other conditions with which we are not concerned.

On 21-7-1943, the Mamlatdar gave a written permission to the plaintiff to occupy these lands and on 21-8-1943, the plaintiff executed a kabulayat in accordance with the rules and the form under the Act. On 1-4-1947, the Collector set aside the order passed by the District Deputy Collector on 15-6-1943, and the Government, exercising its revisional powers, set aside the order of the Collector, but modified the order of the District Deputy Collector by directing that the plaintiff should hold the lands, not on the old, but the new tenure, the effect being that the lands which were alienable and transferable became unalienable without the previous sanction of Government. On 7-2-1949 the plaintiff filed a suit challenging the order passed by Government on 8-7-1948, as 'ultra vires', null and void. The trial Court decreed the plaintiff's suit. In appeal, the learned District Judge dismissed the appeal and confirmed the decree of the trial Court, and the State of Bombay then came to this Court in second appeal and in the second appeal the

learned Judges have raised the following question for consideration of the Full Bench:

"Where a grant has been made under Section 62, Land Revenue Code and a kabulayat has been taken in pursuance of the said grant under Rule 37, Land Revenue Rules, can the said grant and the kabulayat be modified or cancelled under Section 211, Land Revenue Code?"

3. In order to understand and appreciate this question and to come to a conclusion as to what the proper answer to the question should be, it is necessary to look at the relevant provisions of the Land Revenue Code. Section 37 of the Code provides that all lands wherever situated, which are not the property of individuals or of aggregates of persons legally capable of holding property vest in Government and are the property of Government, and that it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by the Government. Section 60 provides that any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mamlatdar, and this was the permission that was granted by the Mamlatdar on 21-7-1943. Section 62 provides that it shall be lawful for the Collector subject to such rules as may from time to time be made by the State Government in this behalf, to require the payment of a price for unalienated land or to sell the same by auction, and to annex such conditions to the grant as he may deem fit, before permission to occupy is given under Section 60.

Therefore, it is open to the Collector to fix the price and also to annex such conditions as he thinks proper to the grant and it was in pursuance of this power that the Collector attached certain conditions to the grant of the lands to the plaintiff by his order dated 15-6-1943. Then Section 68 provides that the rights of the occupant are conditional: either his tenure is of a limited period or, if the period is unlimited, the tenure is perpetual, but on condition that he pays land revenue and fulfils the other terms lawfully annexed to his tenure. There is a proviso to this Section 68, which is really enacted for greater caution and contains the same provision of law as is already to be found in Section 62, and that proviso is that it will not be unlawful for the Collector to grant permission to occupy unalienated land to any person for such period and on such conditions as he may prescribe, and that the occupancy shall only be held for the period and subject to the conditions prescribed by the Collector. Section 203 provides for appeals to higher revenue authorities from decisions of the subordinate revenue authorities, and under Section 211 the power of revision is conferred upon the State Government and higher revenue officers and the revisional power is conferred for the satisfaction of the authorities concerned as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of a revenue Officer. Paragraph 3 of Section 211 provides that in the exercise of the revisional power the authority can modify, annul or reverse the order or proceedings and may pass such order thereon as the authority deems fit.

4. Now, the contention of the State is that the order which was passed by the District Deputy Collector on 15-6-1943, was subject to its being revised under Section 211 and the Government

has revised it under the power conferred upon it by that section and it had every jurisdiction to do so and therefore the order is valid and proper. On the other hand, it is the contention of the plaintiff that, as soon as a kabulayat was entered into under the provisions of the rules framed under the Land Revenue Code, the result was a binding and concluded contract between the plaintiff and the State and that contract could not be unilaterally modified or changed by the Government. It is necessary at this stage to look at Rule 37 of the Rules framed under the Land Revenue Code. That Rule deals with how unoccupied survey numbers can be disposed of and the rule lays down that they can be disposed of at the Collector's discretion either upon payment of a price fixed by the Collector or without charge or may be put up to public auction and sold subject to his confirmation to the highest bidder. Then Sub-Rule (2) says that in the case of such grants an agreement in Form F shall ordinarily be taken from the person intending to become the occupant. Then when the land is granted on inalienable tenure, the clause specified in Form I shall be added to the agreement, and when the land is granted on impartible tenure an agreement in Form F (1), and when it is also granted on inalienable tenure, an agreement in Form I (1), shall be taken from the person intending to become the occupant. In this case, as the grant was merely on impartible tenure and not also on alienable tenure the kabulayat was executed in Form F (1) which is annexed to the rules; and when we turn to this form and also to the kabulayat which is in identical terms, we find that the order passed by the District Deputy Collector is set out and the plaintiff states in this kabulayat that this land has been granted to him in perpetuity from 1-8-1943, subject to the provisions of the Bombay Land Revenue Code and the Rules made thereunder and the further condition that he would not transfer the land except as a whole or allow any portion of it to be cultivated, used or occupied by any other person so as to divide it. The plaintiff also agrees by this kabulayat that if he fails to perform any of the aforesaid conditions, he shall be liable without prejudice to any other penalties that he may incur under the Code and the rules made thereunder, to have the said land summarily forfeited by the Collector and that he shall not be entitled to claim compensation for anything done or executed by him in respect of the said land. He also undertakes by this kabulayat to pay the land revenue from time to time lawfully due in respect of the said land. Now, what is urged by the plaintiff is that what the Government really did by its order on 8-7-1948, was to incorporate into this contract a new condition and compel the plaintiff to abide by this condition although he had not agreed to it. In other words it was an attempt at a unilateral incorporation of a new term into a contract entered into between the parties and acted upon by the plaintiff by his taking possession and carrying out the terms and conditions of the contract. The plaintiff says that there is no suggestion in this case that he committed a breach of any of the terms of the contract and the case of the plaintiff is that the revisional powers of Government cannot extend to violating the contractual rights of parties and creating a new contract for the party in lieu of the contract already entered into and agreed to by Government itself. Now, in order to understand these rival contentions, we must first consider what is the extent and limit of the revisional powers of Government under Section 211 of the Code. The powers are obviously wide and ample and one cannot but help being impressed by the extent of the power conferred by the Legislature upon the Government and the higher authorities under the section. It is not as if there is no limitation upon the power of the State. The

ambit of its power is to be found in the first paragraph of Section 211 itself. It is not any and every order that Government can revise or modify. It is only those orders which according to Government are illegal or improper, because the power to revise only arises provided the Government wishes to satisfy itself as to the legality or propriety of a decision or the regularity of a proceeding of a subordinate officer. But once the Government is satisfied either that the order is illegal or improper or the proceeding irregular, then Government is given the power either to modify, annul or reverse either the proceeding or the order and to pass any such order as it deems proper. Now, it is necessary to note in this case that the plaintiff has not challenged the order of Government as having been passed improperly in the sense of the order being arbitrary, capricious or mala fide. It is hardly necessary to state that, wide as the powers of Government are, they cannot exercise those powers arbitrarily or capriciously or in the absence of good faith. But the challenge of the plaintiff is confined to the jurisdiction of the State to pass an order under Section 211, and we have to consider the contentions put before us from the limited point of view, and indeed it is that limited question that has been referred to us by the Divisional Bench.

5. It has been urged by Mr. Thakore-with some indignation-that Government, in modifying the terms of tenure solemnly granted to his client, has not even thought fit to state the reasons which led the Government to modify the order. Now, we should like to say this, that however these powers might have been exercised in the past, we do expect from our present democratic Government that they would exercise these very wide powers with a sense of responsibility and that they would try and see that no hardship is caused in the exercise of those powers. We also think it would be very advisable that, whenever Government passes an order under Section 211, it should communicate to the party aggrieved the reasons why they had thought fit to interfere with the order of a subordinate revenue officer. In this case, the plaintiff is rightly nursing a grievance that his permanent occupancy rights, which he thought were beyond assail, had suddenly been interfered with and a new onerous term had been added to that tenure without his knowing why the order of the District Deputy Collector in his favor was interfered with and modified by Government. But the real question that has been agitated at the Bar before us has been whether any distinction can be made in principle between an order passed by the District Deputy Collector under Section 62, which does not result in a kabulayat being passed by the party in whose favor the grant is made, and an order which results in a kabulayat. Mr. Thakore's contention is that there is an important distinction in principle between the two cases: When there is only an order, that order is clearly subject to revision under Section 211; but when an order results in a kabulayat, we enter the region of contract, and Section 211 was not intended to interfere with the contractual rights of parties. In other words, the whole of Mr. Thakore's submission has been that an order passed by the District Deputy Collector under Section 62 ceases to be revisable as soon as a kabulayat is executed in pursuance of that order. Now, if Mr. Thakore was right in his contention that the rights that he is asserting are contractual rights, then undoubtedly it seems to us that Section 211 was not intended to interfere with contractual rights. If the plaintiff has contractual rights against the Government, then he and Government are on the same footing as any two other litigants in the land, and if the Government wants to set aside the

contract or to modify it in any way it could only do so in the manner provided by the law of contract and the contractual rights would be adjudicated upon by a civil Court and not by an administrative fiat of Government under Section 211. Therefore, the question to which we have to address ourselves is whether the rights of the plaintiff to occupy this land is a contractual right or is a right that arises out of statute.

6. Now, when we look at the relevant provisions of the Code and of the Rules, it seems to us clear that the kabulayat is nothing more than a part of the proceedings provided for by the Land Revenue Code and the Rules for the grant of Government land to a person who applies for it. It is equally clear to us that the title of the plaintiff to the land depends upon the order passed under Section 62 and not upon the kabulayat which is executed in pursuance of that order. The kabulayat is nothing more than a mere formality which the law requires in order to give effect to the order passed by the authority under Section 62.

Therefore, when a citizen asserts occupancy rights in relation to any land in the State, the rights which he asserts are statutory rights and not contractual rights; and the obligations of Government towards the citizen in respect of an occupancy tenure are not contractual obligations, but statutory obligations. Every step taken in the proceedings which ultimately led up to the execution of the kabulayat was the result of statutory provisions and the various acts done by the revenue officers were also done pursuant to the powers conferred upon them by statute. It is, therefore, not proper to divorce the kabulayat from the rest of the proceedings and to attach to it a solemnity which the statute never intended it to have. It is pertinent to note that in the kabulayat itself the plaintiff has agreed that the land has been granted to him in perpetuity subject to the provisions of the Land Revenue Code and there is no reason to suggest that the provisions of the Land Revenue Code would not include the provisions of Section 211. Therefore, in effect and in substance, by executing this kabulayat the plaintiff agrees that he is liable to be disturbed in his tenure if the order of the District Deputy Collector was to be reversed or modified by Government under Section 211. It is true that this would make the tenure of any occupant under the Land Revenue Code most insecure because it is rather extraordinary that there is no period of limitation prescribed for the exercise of the revisional powers of Government under Section 211. Therefore, the result may well be that after several years Government may interfere with a title or with titles and disturb the security of a tenure created a long time back. It is a matter for consideration whether the Legislature should not at least impose a time-limit upon the exercise of revisional powers under Section 211, because if an improper or illegal order is made by a subordinate revenue officer, surely Government would have notice of it within a reasonable time. It is also a matter for consideration for the Government whether apart from any legislative provision they should not impose upon themselves some limitation of time in the exercise of their powers under Section 211.

7. But there is another and a more serious difficulty in the way of the plaintiff when he contends that his rights are governed by a contract between him and the State. Before the Government or the State can be held to a contract, the law requires that the contract should be executed with a

certain amount of formality. Under the Government of India Act, the provision was to be found in Section 175 and under our Constitution similar provisions are to be found in Article 299. The contract has to be by the Governor when the State enters into a contract, and by the President when the Union enters into a contract. Now in this case, not only is the contract not in the form required by the Government of India Act or the Constitution, but it is not even executed by any one on behalf of the Government. The only executing authority is the party who executes this agreement as required by Rule 37. Another difficulty would arise if we were to accede to the argument of the plaintiff. Finality would attach to an order under Section 62 as soon as the order takes the form of a kabulayat. Therefore, however wrong and improper the order might be, the subordinate revenue officer by taking a step in conformity with the statute would put upon it a finality which would render the order unassailable under the revisional powers of Government under Section 211. It is clear that the statute could never have contemplated such a result.

8. It is then urged by Mr. Thakore that the kabulayat was given by the Collector pursuant to a valid order and as an agent of Government, and so long as the agency is not disputed and so long as the officer was acting within the scope of the agency, the resulting kabulayat cannot be challenged by Government. Now it is wrong to introduce the principles of agency when considering the various functions to be discharged by officers under the Land Revenue Court. These functions are not discharged by these officers as agents of Government. These functions are discharged by them as officers upon whom certain obligations are imposed by statute and certain discretion is vested by statute. Therefore, in exercising these functions, they are exercising statutory duties and not duties as agents for Government. To talk of agent and principal is, in our opinion, again introducing principles well understood in the law of contract which have no application whatsoever when we are dealing with statutory rights and obligations.

9. It is then suggested by Mr. Thakore that it may be open to Government to set aside the order passed by the District Deputy Collector on 15-6-1943, but that it has no jurisdiction to interfere with the kabulayat executed on 21-8-1943. Now, there are two answers to this contention. In the first place, as already pointed out, a kabulayat is nothing more than a part of the proceedings required by the Code for the grant of Government land to a person who applies for it; and the other answer, which is equally fatal to the plaintiff's contention, is that if the order is set aside, the kabulayat by itself confers no title upon the plaintiff. The plaintiff's title, if we may repeat, is based upon the order passed by the District Deputy Collector on 15-6-1943, and not upon the kabulayat, which is merely the formal embodiment of that order. It is clear that the kabulayat by itself does not give any better or higher right to the plaintiff than the order itself. Therefore, in our opinion, if an order passed by the Collector or the District Deputy Collector under Section 62 can be revised by Government under Section 211, the mere fact of a kabulayat having been executed in pursuance of that order does not make the order any the less revisable under Section 211, nor does the execution of the kabulayat impose upon the Government any limitation with regard to its powers under that section. As we shall presently point out, except perhaps in one case, there is no case decided by this Court where it has been held that the Government's jurisdiction under

Section 211 was curtailed or restricted by the execution of a kabulayat by a person to whom land had been granted under Section 62. As far back as in 1891 - '*Virupaxshapa Hundekar v. Secy. of State*¹', Mr. Inverarity appearing for the aggrieved party, as Mr. Thakore is appearing before us, urged upon Mr. Justice Jardine and Mr. Justice Parsons that it would be a serious matter if these powers of revision were used so as to discredit titles and long possession or as a means of breaking contracts between Government and the ryot. It does not appear clear from this judgment as to whether in this case a kabulayat was executed or not, but very likely it was because Mr. Inverarity had relied on the fact that there was a contract between the ryot and the Government, and the brief answer given by the Bench was that the inconvenience of such mode of applying revisional powers is doubtless present to the mind of the officer and they did not think that the argument was conclusive. Therefore, the mere possibility of a contract being broken and title and long possession being discredited was not sufficient to induce the Court, as far back as in 1891, to put any limitation upon the revisional powers of Government under Section 211.

10. The next decision to which reference may be made is - '*Dattatraya Jairam v. Secy. of State*²,. In that case Sir Norman Kemp and Mr. Justice Murphy were considering a case where price was paid for occupancy rights and the order of grant was subsequently reversed by the Collector and it was urged before this bench that the Deputy Collector's order may have been wrong, but he having made it and it having

¹1891 Bom PJ 230

² AIR 1930 Bom 95

remained unchallenged for three years it was wrongful for the Collector to set it aside, and Mr. Justice Murphy at pp.97 and 98 points out that this argument assumes a finality in the District Deputy Collector's order which it did not possess. Then we come to - 'Nulkar's case', which ultimately reached the Privy Council, and the facts of that case are that land was granted to Capt. Nulkar free from occupancy charge and free from assessment until it was brought under cultivation. The assessment of this land was more than Rs. 100 and Nulkar executed kabulayat - as in this case - in respect of this land and he actually gifted this land to his wife. The Commissioner held that the grant was invalid without his consent inasmuch as the assessment of the land was more than Rs. 100 and he passed an order that Nulkar should be asked to pay the full occupancy price and assessment from the date of the grant. Nulkar paid the assessment under protest, but refused to pay the occupancy price and thereupon Government passed an order of forfeiture. Nulkar challenged the order of the Commissioner by suit. The matter first came before Sir John Beaumont, Chief Justice, and Mr. Justice Baker and the report of the decision is to be found in - '*Anant Nulkar v. Secy. of State*³', Sir John Beaumont took the view that the order was not in the form required under Section 211. The learned Chief Justice's view was that the order really called upon Nulkar to pay a certain amount and that was not permissible under Section 211. Mr. Justice Baker took the view that the order was in proper form and was valid. In view of this difference of opinion, the matter was referred to Mr. Justice Blackwell, who concurred with the learned Chief Justice. The matter then went to the Privy Council and the decision of the Privy

Council is reported in - '*Secy. of State v. Anant Nulkar*⁴', In our opinion, that decision is conclusive of the matter. The view taken by the Privy Council was that the grant made by the Collector was bad because no sanction of the Commissioner was obtained, and as the title of the plaintiff was based upon the order of the Collector, the title of the plaintiff disappeared when it was found that the order itself was invalid.

But their Lordships went on to express a clear opinion on another aspect of the case which had been fully argued before them and that question was the jurisdiction of the Commissioner to modify, annul or reverse the order passed by the Collector; and it is in this connection that at page 11 their Lordships observed:

".....The amplitude of the powers conferred on the Commissioner by that section is striking. Now, the order of the Commissioner purported to modify the order of the Collector. In their Lordships' opinion, it effectively did so."

They point out that the Collector had given the first respondent Nulkar the lands in suit on certain conditions. The Commissioner decreed that the first respondent should continue to occupy the lands, but he varied the terms of occupation, and their Lordships observed (page 11):

".....If this be not a modification of the Collector's order, their Lordships are at a loss to apprehend the import of what the Commissioner did. Their Lordships entertain no doubt that the Commissioner's order fell within the powers conferred

³ AIR 1931 Bom 238

⁴ AIR 1934 PC 9

upon him by Section 211. Accordingly, even if - contrary to their Lordships' opinion - the Collector's order was valid, it was competently modified by the order of the Commissioner."

Their Lordships conclude by saying (page 11):

".....their Lordships are of opinion that the respondents have failed to qualify such a title as would enable them to maintain this suit. On this ground also the case for the respondents, in their Lordships' opinion, fails."

Now, the complete parallel between - 'Nulkar's case, and the case before us will be immediately noticeable. In - 'Nulkar's Case (D)' as is evident, a grant was given under certain terms. Nulkar executed a kabulayat, went into possession and carried out all the terms of the grant. Subsequently, the Commissioner altered the grant by imposing upon Nulkar onerous conditions as a condition of his being allowed to continue as an occupant and the Privy Council held that, although there was a kabulayat and although in the sense in which Mr. Thakore contends there was an agreement between Nulkar and the Government that he should be allowed to be in occupancy in perpetuity on conditions laid down in the grant by the Collector, the agreement was

varied and new terms were incorporated in that agreement by the order of the Commissioner. Considering these facts, which are as striking as those before us, the Privy Council held, after careful consideration, and went out of their way to express an opinion which was 'obiter', that the Commissioner had ample jurisdiction under Section 211 to make the order. It is true that this opinion of the Privy Council is 'obiter'; but so long as the Supreme Court does not take a different view from the view taken by the Privy Council, the decisions of the Privy Council are still binding upon us, and when we say that the decisions of the Privy Council are binding upon us, what is binding is not merely the point actually decided but an opinion expressed by the Privy Council, which opinion is expressed after careful consideration of all the arguments and which is deliberately and advisedly given. No opinion could be more well-considered by the Privy Council than this one, because they say that they did not hesitate to express the opinion because they have formed a clear opinion on the subject.

11. The above case came to be considered by Mr. Justice N.J. Wadia and Mr. Justice Sen in - '*Govt. of the Province of Bombay v. Hormusji Manekji*⁵', Now, that was a case where a contract was executed by the Collector on behalf of the Secretary of State under Section 68, Land Revenue Code and that contract was sought to be interfered with by Government purporting to exercise its powers under Section 211, and the learned Judges point out that in - 'Nulkar's case' there was no agreement between the occupant on the one hand and the Collector acting on behalf of the Secretary of State on the other, but as in the case before them the agreement was in the manner required by Section 175, Government of India Act and as the Collector was discharging, not the statutory duties, but was acting as the agent of the Secretary of State, the matter must be regulated by the contractual rights of the parties and Government had no jurisdiction to interfere with those contractual rights under Section 211. Therefore, this case clearly makes a distinction between a kabulayat executed by an occupant and a formal contract entered into by the Collector acting on behalf of the Secretary of State or on behalf of the Government.

⁵ L.P.A. No.40 of 1938, D/-8-8-1940 (E)

Therefore, this case really supports the contention of the Government before us that a kabulayat does not stand on the same footing as a formal agreement executed by Government through its accredited agent under Section 175, Government of India Act or Article 299 of the Constitution. Now, this matter also went before the Privy Council. It may be pointed out that in this case three agreements were in question - one of 1906, the other of 1915 and the third of 1924 - and these three agreements were considered by the Privy Council when the matter went before them and the decision of the Privy Council will be found in - '*Government of the Province of Bombay v. Hormusji Manekji*⁶', The Privy Council took the view that the agreement of 1906 was superseded by the agreement of 1915 and the agreement of 1924 was void, and therefore the only agreement that had to be considered was the agreement of 1915. With regard to the 1915 agreement, the view of the Privy Council was that the occupant, by his unauthorised alterations and extensions in 1920 and subsequent years, had so altered the subject-matter of the 1915 agreement that it had become useless and unenforceable, and in view of this finding it became unnecessary to consider whether the order passed by the Government in 1930 under Section 211 was valid or not. But at

page 205 their Lordships say this: "Having formed this view, their Lordships are clearly of opinion that the order or resolution, of the Governor in Council dated 11-4-1930, even if it impliedly treated the agreements as broken or cancelled, did no more than recognise the true position of the agreements in law, and was not 'ultra vires' of the Governor in Council, acting under Section 211 of the Code." Mr. Desai wants to rely on this statement for contending that even in the case of a formal agreement executed by the Collector on behalf of the Secretary of State the Privy Council observed that Government can interfere with it under Section 211. We refuse to read this statement of the Privy Council as implying what Mr. Desai suggests it does imply. All that the Privy Council say is that the order did not in any way interfere with the agreements, but merely treated the agreements as broken or cancelled and merely took notice of the true position of these agreements in law, and it is only in that limited sense that the Privy Council says that the order of the Governor in Council under Section 211 was not 'ultra vires'. The Privy Council has not expressed any opinion as to what the position would have been if this order of the Governor under Section 211 had in any way modified or interfered with a formal agreement when that agreement was not broken or cancelled. This 'LPA No.40 of 1938 (Bom), was followed by a decision of Mr. Justice Divatia in - '*Government of Bombay v. Mathurdas Laljibhai*'⁷, This was also a case where a sanad was issued under Section 65 and Mr. Justice Divatia says that Section 211 does not apply to documents embodying terms and conditions agreed to between Government and the occupant and he cites the Letters Patent Appeal and follows it.

12. Then we have rather an instructive case in-'*Govt of Bombay v. Ahmedabad Sarangpur Mills Co., Ltd*'⁸, Sir John Beaumont and Mr. Justice Rajadhyaksha were in that case considering an agreement made by a Collector as agent for the Secretary of State and the question arose whether the Commissioner could under Section 211 cancel such an agreement; and Sir John Beaumont, in his judgment, points out that it was open to the Commissioner to set aside the order on which the agreement was founded, but that he could not cancel the agreement, and the learned Chief Justice is at pains to point out that he could not cancel the agreement because the agreement was entered into by the Collector, not as a subordinate officer of the Commissioner, but as agent of the Secretary

⁶ AIR 1947 PC 200

⁸ AIR 1944 Bom 244

⁷ AIR 1942 Bom 256

of State and entered into by the Collector in that capacity with the parties. Therefore, a clear distinction is made by the learned Chief Justice in this case between agreements entered into by the Collector as a subordinate to the Commissioner and the Collector as the agent of the Secretary of State.

13. Finally, we come to the decision of this Court in - '*Sambhaji v. Mamlatdar of Baramati*'⁹, which has been very strongly relied upon by Mr. Thakore. Mr. Thakore is quite right when he says that the facts in that case were very similar to the facts before us. In that case also a kabulayat was executed in Form F (1) and the order making the grant was ultimately set aside by the Government. Now, in that case the Government gave reasons why the order was set aside,

and the reasons were that the grant was obtained by the occupant by misrepresentation and the occupant challenged that order of Government, not by a suit, but by proceedings under Article 226 of the Constitution; and what the Court held was that (p.302):

".....in a case like this, where Government want to set aside or avoid a contract entered into on the ground of misrepresentation, the proper procedure to follow is not to take action u/s. 211 but to file a suit for avoiding the contract, so that the question whether the contract was entered into by misrepresentation or not should be judicially determined."

We also took the view in that case that

"assuming that it was open to Government to take action under Section 211, the action has been taken in gross violation of the rules of natural justice."

We pointed out that (page 302):

".....The Government have made their own inquiry and have come to their own conclusion that the petitioner was guilty of misrepresentation; no notice was given to the petitioner to show cause: he has never been heard with regard to the allegations made against him, and on an 'ex parte' decision come to by the Government the petitioner is sought to be deprived of the land which he has obtained under the sanad."

Now, Mr. Thakore is right in emphasizing the fact that although there was only a kabulayat in this case and no formal agreement executed by the Collector on behalf of the Government, we set aside the order of Government made under Section 211. Now, this authority would completely support Mr. Thakore if, after considering the matter, we came to the conclusion that the execution of a kabulayat made a difference to the powers of Government under Section 211. It is true that at page 301 in the judgment which I delivered for the Court I have stated that there was a complete and concluded contract between the parties and that fact has been emphasized. But when one reads the whole of the judgment, it is clear that it proceeds on the assumption that what was executed by the petitioner was not a kabulayat, but that a sanad was granted to him, and in their defence the Government itself referred to the document in question as a sanad and not as a kabulayat. Therefore, the distinction which the various authorities have made, and to

⁹ AIR 1953 Bom 300

which we have drawn attention, between a kabulayat executed by the occupant alone and a formal contract entered into by a Collector on behalf of the Governor or the Secretary of State, was never present to the mind of this Bench, and the real decision in that case was, where there is a contract between the State and the subject and the State wants to avoid that contract on the ground of misrepresentation, the proper way to avoid it is by going to a civil Court and not by setting aside the contract by an administrative order under Section 211. Therefore, although it is true that on the facts this case is of considerable assistance to the plaintiff here, it does not lay

down, in our opinion, any principle of law which is inconsistent with what the Privy Council laid down in - 'Nulkar's case' nor is it inconsistent with the series of decisions to which we have drawn attention. In that case we were influenced by the fact that it was a writ petition and that the petitioner had been badly treated in a contract being set aside on the ground of misrepresentation without his being heard. In this case also our sympathies are with the plaintiff and we do feel that perhaps he has not been properly treated. But it would be a dangerous precedent to lay down that the true principles of law should be deduced from sympathy the Court feels towards the parties and not from a detached consideration of the legal provisions which we are called upon to consider.

14. Our attention has been drawn to two further unreported judgments: (1) - '*State of Bombay v. Kutubuddin Sarafuddin Munshi*¹⁰', and (2) - '*State of Bombay v. Garasia Prabhatsing Vaghjibhai*¹¹', Both these Benches have taken the view that in view of - 'Nulkar's judgment (D)' it is not possible to take the view that the execution of a kabulayat makes any difference to the revisional powers of Government or the superior revenue authorities under Section 211.

15. We propose to answer the question after slightly amending it and the question as amended will read as follows:

"Where a grant has been made under Section 62, Land Revenue Code and a kabulayat has been taken in pursuance of the said grant under Section 37, Land Revenue Rules, can the order making the grant and the kabulayat be modified or cancelled under Section 211, Land Revenue Code?"

and we answer that question in the affirmative.

16. Mr. Thakore wanted to challenge the order on the ground that it purported to set aside a valid order of the Collector and therefore it was arbitrary or capricious. Now, as we have already pointed out, that allegation does not find a place in the plaint and the decision of the two Courts below proceeded only on the question of the jurisdiction of Government to make the order under Section 211. Mr. Thakore says that he wants to urge the point at this stage. As far as this Full Bench is concerned, this has been formed for the limited purpose of answering the question referred to it. It would be open to Mr. Thakore to persuade the Divisional Bench, to which this matter will go back, to allow him to raise this question.

Dixit, J.

¹⁰ LPA No.4 of 1952, D/-24-7-1953 (Bom)

¹¹ S.A. No.408 of 1950, D/-24-8-1953 (Bom)

17. I agree.

18. I would like to say a few words with regard to the scope of Section 211, on which reliance has been placed by the State in justification of the order of 8-7-1948. The contention on behalf of

the State is that under Section 211, the State Government or the revising authority can make any order and that Government or the revising authority is not bound to give any reasons in support of the order. Section 211 provides, by para.1, that the State Government and any revenue officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. Section 211, then by para.3, provides that if in any case it shall appear to the State Government, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit. Now, it is clear that Section 211 confers upon the State Government and the officers mentioned in that section very wide powers. That this is the position has been recognized in many decisions of this Court ever since 1891. It will be sufficient, I think, to refer to the judgment of their Lordships of the Privy Council in - 'AIR 1934 PC 9'. With regard to the section, this is what Lord Alness said (p.11):

".....The amplitude of the powers conferred on the Commissioner by that section is striking. Now, the order of the Commissioner purported to modify the order of the Collector. In their Lordships' opinion, it effectively did so. The order 'inter alia' directed 'that the proper occupancy price according to the full market value of the land on the date on which the grant was originally made should be recovered from Captain Nulkar, and the ordinary land revenue (consolidated) should be recovered from the year 1919-20.' The Collector had given the first respondent the lands in suit on certain conditions. The Commissioner decreed that the first respondent should continue to occupy the lands, but he varied the terms of occupation. If this be not a modification of the Collector's order, their Lordships are at a loss to apprehend the import of what the Commissioner did. Their Lordships entertain no doubt that the Commissioner's order fell within the powers conferred upon him by 211."

The last case to be mentioned in this connection is the judgment of the learned Chief Justice and Mr. Justice Bhagwati reported in - 'AIR 1953 Bombay 300'. At page 301 this is what the learned Chief Justice said:

".....On this two questions arise. One is whether Government had power to set aside or cancel an agreement entered into between the Government and a subject. The powers of the Government under Section 211 are revisional and they are undoubtedly very wide powers. Power is given under this section to the State Government and any revenue officer to call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer."

19. It may, therefore, be conceded that the powers conferred by Section 211 are very wide. The question still remains as to whether there are not any limits to the exercise of the powers. In my opinion, there is indication in the section to suggest that there is a limitation to the exercise of these powers, because the revising authority has to satisfy itself as to the legality or propriety of any decision or order passed and as to the regularity of the proceeding of such officer. The section therefore, means that, before the revising authority under para.3 of Section 211 modifies, annuls or reverses the order the authority must be satisfied that the order is not a legal order, that the order is not a proper order, or that there has been some irregularity in the proceedings. It may be that the order made by a revenue officer may be an illegal order; it may also be that the order made by a revenue officer may be an improper order; or it may well be that there may be an irregularity in the proceedings conducted by the revenue officer. But in each case the revising authority has got to be satisfied, and if before the order is modified, annulled or reversed the authority is to be satisfied as to one or the other of the limitations imposed by Section 211, it seems to me that it is implicit in the section that the revising authority must state or indicate the grounds or the reasons as to why the authority is disposed to modify, annul or reverse the order.

20. It may well be that in certain circumstances the order may be a capricious order. The order may be manifestly unreasonable. The order may, again, be a mala fide order. While, therefore, the State Government has a very wide jurisdiction under Section 211 either to modify, cancel or reverse an order, the State Government's powers are regulated by the language of para.1 of Section 211 and the State Government can do so only where the order is not a legal order or the order is not a proper order or there is some irregularity in the proceedings conducted by the revenue officer.

21. In the present case, the order was made by the District Deputy Collector on 15-6-1943. This order was followed by a kabulayat executed by the plaintiff on 21-8-1943. Now, the contention urged on behalf of the plaintiff is that here there has been a contract between the plaintiff and Government as a result of the execution of the kabulayat and, therefore, while Government can modify the order, Government cannot set aside the kabulayat. It seems to me that this argument can be repelled on two grounds. Firstly, the order made by the District Deputy Collector on 15-6-1943, is subject to the provisions contained in Section 211. Whether in a particular case the revising authority may or may not modify the order is quite another matter. But I think it is clear, having regard to the language of Section 62 and Section 211 of the Code, there is no doubt that a higher revenue authority has power to modify, annul or reverse an order made under Section 62. It may be that the plaintiff has executed a kabulayat on 21-8-1943, on which Mr. Thakore relies. But the kabulayat merely gives effect to the order made on 15-6-1943, and at best it is merely evidence of the order which was made by the District Deputy Collector on 15-6-1943. Now the order which has been made by Government on 8-7-1948, does not, so far as I see, indicate any reason or any ground as to why Government thought it fit to modify the order made by the District Deputy Collector which was set aside upon appeal and no reasons or indications are given in the order. Mr. Desai says that even if the Government has made the order without

assigning any reasons, it is still a valid order. Now, when you have a section like Section 211, which puts limitations upon the exercise of a power and the revising authority gives no reasons as to why it thinks fit to modify the order, I should have thought that it is no valid order at all. But in this case the plaintiff has not challenged the validity of the order. The plaintiff's contention is that the State Government has no jurisdiction under Section 211 to modify the order; and, in my opinion, having regard to the language of Section 211, although Section 211 confers upon Government and the revising authority very wide powers, those powers are subject to the limitations contained in para.1 of Section 211. Apart from this, the other answer to the contention of Mr. Thakore is that the kabulayat which has been executed by the plaintiff on 21-8-1943, itself provides that the grant has been made subject to the provisions of the Land Revenue Code. Apart from the question, therefore, that the State Government has, under Section 211, the power to modify, cancel or reverse an order made under Section 62, the kabulayat itself shows that the grant was made subject to the provisions of the Land Revenue Code, which would include the power under Section 211. Now, I will assume in favor of Government that normally Government will make a proper order. But in certain circumstances it may well be that the revising authority may make a capricious or a mala fide order or an order which will be manifestly unreasonable. In such a case, I am not prepared to accept the argument of Mr. Desai that the Court would be utterly powerless to examine the correctness of such an order. But as I think in this case the only ground urged by the plaintiff is the ground that under Section 211 the State Government has no power to revise the order made by the District Deputy Collector, it seems to me that that question does not really arise for decision.

22. There is another reason why the argument of Mr. Thakore cannot be accepted. Suppose a legal order is made by a revenue officer and it is followed by the execution of a kabulayat and the order giving rise to the kabulayat is not modified, annulled or reversed, the kabulayat executed by the party would be a good kabulayat and would clothe him with all the rights under the Land Revenue Code. But supposing an order is made which is an illegal order and it is also followed by the execution of a kabulayat, and if the order is set aside, it seems to me that it must follow that the kabulayat which is executed in pursuance of the order, which itself fails, must also fail.

23. Mr. Desai's contention in the present case is that Government modified the order because of the policy of Government. Now, what the policy of the Government is, is entirely for the Government to know; it is not usually for the party to know what the policy of Government is and Mr. Desai sought to justify the order of Government on the ground that the order, subsequently modified, was contrary to the policy of Government. It seems to me, however, that as the question of jurisdiction is the only question raised in this reference, and not a question as to merits of the order, it is not necessary to express an opinion on the question.

24. For these reasons, I agree with the answer proposed by the learned Chief Justice.

Shah, J.

25. I agree with the order proposed by my Lord the Chief Justice. In view of the importance of the question I desire shortly to state my reasons for agreeing with the conclusion arrived at.

26. The question to be decided in this reference is whether the revisional jurisdiction conferred by Section 211, Bombay Land Revenue Code, upon the various authorities specified in that section can be exercised so as to set aside an order granting land under Section 62 of the Code when that order has been acted upon by acceptance by the person to whom land is granted by execution of a kabulayat. In the present case the order was passed by the District Deputy Collector granting the land in dispute to the plaintiff.

Pursuant to the order the plaintiff executed a kabulayat. He was already upon the land and he continued upon the land in pursuance of the order and the kabulayat executed by him. It was more than five years after the date on which the kabulayat was executed that the Government of Bombay thought it proper to impose additional conditions, upon the plaintiff. It is clear that if the plaintiff failed to accept the additional conditions, he would be liable to forfeit the holding. The plaintiff filed the present suit for a declaration that the action of the Government in passing the order dated 8-7-1948, seeking to impose additional conditions was void and inoperative.

27. In order to adjudicate upon the validity of the contention it is necessary to refer briefly to the revelant provisions of the Bombay Land Revenue Code. Under Section 37 all unoccupied or waste lands are vested in the State and it is open to the Collector subject to the orders of the Commissioner to dispose of them in such manner as he may deem fit, or as may be authorised by general Rules sanctioned by the Government and subject to the rights of way and all other rights of the public. Under Section 60 of the Code a person desirous of taking up unoccupied land which has not been alienated must previously to entering upon occupation obtain the permission in writing of the Mamlatdar. By Section 62 authority is conferred upon the Collector subject to the rules which may be made from time to time to require payment of price for occupation of unalienated land and to impose additional conditions before permission to occupy the land is given under Section 60. On the land granted the occupant acquires the rights under Section 68 for the period during which his tenure is limited, if there is such restriction, or where survey settlement is extended to the land in perpetuity conditional on the payment of the amounts due on account of land revenue. When such a grant is made in favor of an intending holder of land and he has acquired the rights of an occupant, by reason of Section 73 the rights become transferable and heritable unless conditions restricting those rights have been annexed to the tenure. On a reference to the provisions which I have set out it is clear that a person who is given permission to occupy land acquires valuable rights therein. But the order granting sanction to occupy the land is subject to the provisions of Sections 203 and 211 of the Code. By Section 203 a decision or an order of a revenue officer is made appealable to the officer's immediate superior, whether such decision or order has been made by the officer exercising powers in the first instance or in appeal. By Section 211 the State Government and revenue officers not inferior in rank to an Assistant or Deputy Collector are given the power to call for the proceedings of subordinate

revenue officers for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officers, and in the proceedings so received it is open to the authority mentioned in the section to modify, annul or reverse the order and to pass such order thereon as that authority deems fit. When the Collector has granted permission to occupy land, by reason of the provisions of Section 68 the occupant is entitled to exercise certain rights in respect of the land and those rights in the absence of any condition imposed are transferable and heritable. But the order granting land is subject to the appellate jurisdiction of a superior authority under Section 203 and further subject to the revisional jurisdiction of the authorities mentioned in Section 211 of the Code. I may also refer to the provisions of Rule 37 of the rules framed under the Bombay Land Revenue Code which requires that where an unoccupied survey number is granted by the Collector for agricultural purposes, the Collector may require the intending occupier to pay the price to be fixed by him or he may give the land without charge and he may require the intending occupier to execute a kabulayat in the form prescribed. In the present case, the land was granted by the District Deputy Collector and under Rule 37 the plaintiff executed a kabulayat in Form No. F (1) prescribed under the Rules. The order granting the land by the District Deputy Collector was, however, liable to be reversed in appeal by the Collector or by the Commissioner and was liable to be set aside in the exercise of the revisional jurisdiction of the State under Section 211 of the Code. The State chose to pass an order on 8-7-1948, imposing an additional condition to the terms on which the grant was originally made by the District Deputy Collector. In passing that order the State superseded the order of the Commissioner by which order the entire grant in favor of the plaintiff was set aside. 'Ex facie' such an order passed by the State falls within the third paragraph of Section 211 which provides that the authority may pass such order as it "deems fit".

28. Mr. Thakore on behalf of the plaintiff has contended that when a kabulayat was executed in pursuance of the order and as evidence of acceptance of the grant made by the order, it was not open to the State to set aside the order and to render the grant ineffective or to impose any additional conditions not contained in the original grant. In substance the contention was that the execution of a kabulayat made such a fundamental modification in the nature of the order and its effect that the powers which could have been exercised under Section 211, Land Revenue Code, before the kabuliyat was executed could not thereafter be exercised so as to affect the operation of the order. That argument was sought to be supported on three grounds: (1) That the making of the order and the acceptance of the kabulayat by the District Deputy Collector amounted to a contract between the State and the plaintiff, and by mere unilateral action the State was not entitled to set at naught that contract. It was urged that the State was as much bound by its contractual obligations as the plaintiff, and was not entitled to avoid those obligations by setting aside the order granting the land in exercise of the powers under Section 211, Land Revenue Code; (2) By reason of the grant a right was created in favor of the plaintiff to occupy the land, and when the kabulayat was executed the plaintiff became an 'occupant' entitled to all the rights under Section 68 read with Section 73 of the Code, and it was not open to the State in exercise of the powers under Section 211 to alter the extent of those rights by vacating the order granting the

land; and (3) That the powers under Section 211 are so wide and drastic that they are likely to be misused and therefore the Court must import some limitation upon the right to exercise those powers especially when a kabulayat is taken by the revenue authorities from the grantee and the grantee has continued in possession of the land under the impression that he has got the rights which he accepted under the kabulayat. In my view none of the contentions can assist the plaintiff in this case.

29. Admittedly the execution of a kabulayat was necessitated by Rule 37 as evidencing acceptance of the grant of the land under the order of the District Deputy Collector. It was a part of the proceeding of the District Deputy Collector. An application was made by the plaintiff for grant of land. That application was granted by the District Deputy Collector and thereafter the District Deputy Collector called upon the plaintiff to execute a kabulayat and it was after the kabulayat was executed by the plaintiff that his possession of the land could be regarded as possession conferring upon him the rights under Section 68, Land Revenue Code. The kabulayat therefore could not be divorced from the context of the application and the order passed by the District Deputy Collector. Even assuming that when an application was made by the plaintiff for grant of land and the District Deputy Collector by his order accepted that application and made an offer to grant the land to the plaintiff and the plaintiff accepted that offer, still no contract enforceable against the State resulted. Section 175, Government of India Act which was in operation at the relevant time required that before a contract having a binding operation on the State could result it had to be executed on behalf of the Secretary of State and by an authority specified in that behalf under the Rules framed under that section. In this case we have only a kabulayat. There is not even a written acceptance of the kabulayat by any authority competent in that behalf. The kabulayat is not addressed to the Secretary of State and there is nothing to show that any contract has resulted between the Secretary of State and the plaintiff from the order passed by the District Deputy Collector and the execution of the kabulayat by the plaintiff. In my view, therefore, the plaintiff is not entitled to rely upon any contractual obligation incurred by the State.

30. It is true that once the land was granted the plaintiff became entitled to the rights of an occupant. But the foundation of those rights was the order passed by the District Deputy Collector and that order was liable to be reversed or modified by any authority superior to the District Deputy Collector, when that authority chose to exercise the powers under Section 203 or Section 211, Land Revenue Code. Mr. Thakore on behalf of the plaintiff attempted to argue that when land was granted to the plaintiff and he entered upon the land he acquired the rights of an occupant and even if the order which granted the land was subsequently vacated the rights of the plaintiff as an occupant of the land could not be affected. In my view, that argument cannot be accepted. The very foundation of the right of the plaintiff is the order of the District Deputy Collector, and so long as the order remains operative, the right acquired by the plaintiff subsists. If, however, that order is vacated by an authority competent in that behalf, the foundation of the rights of the plaintiff disappears. Implicit in the contention sought to be raised by Mr. Thakore

appears to be the view that however improper, however erroneous and however illegal the order of the revenue officer granting land may be, if the grantee enters upon the land in pursuance of the order, it would not be open to a superior revenue officer to vacate the order. That would in substance be implying a limitation upon the powers conferred upon the appellate authorities under Section 203 and upon the revisional authorities under Section 211 for which there is no warrant in the Code. In effect it would be rewriting the provisions of the Code so as to provide that the power to set aside orders passed by subordinate revenue officers granting land can only be exercised so long as the person to whom the grant has been made has not entered upon the land. In my view there is nothing in the Code which compels us to take that view.

31. The orders passed by a revenue officer are liable to be set aside under Section 203 not only on the ground of illegality but on other grounds as well. Jurisdiction is also vested under Section 211 to set aside those orders on the ground of illegality or impropriety or irregularity in the proceeding of a revenue officer. Mr. Thakore argued that a revenue officer under the Land Revenue Code functioned as an agent of the State and when in exercise of his functions he passed an order lawfully granting land, that order was not liable to be set aside by the State in exercise of its revisional jurisdiction.

Mr. Thakore sought to requisition in his aid the concept of the law of contract that a principal is bound by the lawful acts of his agent done in the discharge of his duty as an agent. A revenue officer is, however, not an agent of the State or of his superior officers; he exercises his power by virtue of the statute which confers upon him that power. The source, the extent and the limitations upon that power are in the Code and not in contract express or implied. Orders passed in the exercise of that power or authority are again by the Code made liable to be modified, annulled or reversed. The Legislature has not made the orders of revenue officers which they are competent to pass final, and an attempt to place restrictions upon the appellate or revisional jurisdiction under the Land Revenue Code would be plainly contrary to the words of Sections 203 and 211. There is nothing in the Land Revenue Code which supports the view that a revenue officer exercising powers under the Code acts otherwise than under the authority of the Code. The whole argument built upon an assumed analogy of a contractual relation of principal and agent between the State and the revenue officer is founded upon a fallacious premise and must fail.

32. It is necessary at this stage to point out that there is a clear distinction between a case in which pursuant to an order passed by a revenue officer land has been granted under a formal contract executed with the necessary formalities by an authority competent to enter into a contract on behalf of the State, and a case in which there is no such contract and a grant of land is only evidenced by an order of the revenue officer and the execution of a kabulayat. In the former case the relation between the State and the grantee is governed by the contract and not by the Land Revenue Code; and even if the order under which the grant was made is vacated, the contract between the State and the grantee is not thereby affected and the State cannot unilaterally alter or avoid the contract, relying upon the reversal of the order. Such a contract

binds the State until it is set aside by proper proceedings on grounds on which a contract may justifiably be avoided. The effect of an order setting aside an order by a subordinate revenue officer may be considered from another angle. Section 203 enables an appeal to be entertained only against the decision or order passed by a 'revenue officer'. Similarly the revisional jurisdiction under Section 211 can be exercised only against an order or decision or in respect of the proceeding of a 'revenue officer'. But a contract entered into on behalf of the State by an agent of the State is not an order, decision or a proceeding of a 'revenue officer' within the meaning of those sections. It is only a fortuitous circumstance that in respect of grants of lands it is usually the Collector who enters into contracts on behalf of the State, but it would be open to the State to appoint any other officer who may have no concern with the revenue administration to execute a contract on behalf of the State. By executing a formal contract on behalf of the State, the officer executing the contract does not become a 'revenue officer'. That class of cases in which a formal contract binding upon the State is entered into on behalf of the State is therefore entirely distinct from the class of cases in which there is no contract formally executed and the right of the grantee depends for its validity upon the order of a revenue officer.

33. In this case, as already pointed out earlier, there has been no contract which binds the State. The rights of the plaintiff are not claimable by him under a contract but are claimable by him only under the Land Revenue Code. The rights claimable by the plaintiff being by virtue of the Code, the obligation to recognise them must be found in the Code and subject to all the restrictions contained therein, and not in any assumed contract which has not resulted. It may also be pointed out that in the kabulayat executed by the plaintiff it is expressly stated that the land has been granted to him in perpetuity from the first day of the month of August 1943 subject to the provisions of the Bombay Land Revenue Code of 1879. The grant having been made under the provisions of the Bombay Land Revenue Code which include the provisions of Sections 203 and 211 of the Code and the grant under the kabulayat having been expressly accepted subject to the Code, the order granting the land is liable to be vacated or modified in the manner permitted by the Code. If the distinction which I have pointed out between cases where there is a deed or sanad creating contractual obligations binding upon the State, and the cases in which the rights of a citizen, to whom land is granted, are purely statutory, is observed, the principle underlying the cases which have been referred to us can be easily reconciled.

'1891 Bom PJ 230, 'AIR 1930 Bombay 95' and 'AIR 1934 PC 9' are all cases in which there were no formal contracts executed on behalf of the State creating any obligations enforceable against the State apart from the statutory obligations imposed upon it; and it was held in those cases that even if land was granted by order of a revenue officer and accepted it was open to the superior revenue authorities in the exercise of revisional jurisdiction to set aside the order and to render the grant of the land thereunder ineffective.

There is the other class of cases such as 'AIR 1947 PC 200', 'AIR 1942 Bombay 256' and 'AIR 1944 Bombay 244', in which on behalf of the State formal sanads were granted to the citizens

and contractual obligations were incurred by the State and thereafter the revenue authorities had sought unilaterally to alter the covenants contained in those sanads; and it was held that it was not permissible to the State or the revenue authorities to do so.

34. The last argument advanced by Mr. Thakore that the powers under Section 211 are very wide and drastic and therefore we must import a limitation upon the exercise of those powers, that the powers can be exercised only in those cases where the grant by a subordinate revenue officer is on the face of it illegal, need not detain us long. It is true that the powers under Section 211, Land Revenue Code are of the widest amplitude. As their Lordships of the Privy Council pointed out in 'Anant Nulkar's case' they are of 'striking' amplitude. It is open to the State Government in exercise of those powers to call for the record of any order or proceeding for the purpose of satisfying itself not only as to the legality of the order or decision but even on the rather nebulous ground of propriety; and in exercise of the revisional jurisdiction the State Government can pass orders modifying, annulling or reversing the order passed by the subordinate officer and may pass such orders thereon as it deems fit. As the authority to call for the record and proceeding of a revenue officer is conferred expressly for the purpose of enabling the revising authority to satisfy itself as to the legality or propriety of any decision or order or as to the regularity of the proceeding of a subordinate officer, it should be regarded as implicit in Section 211 that orders can be passed by the revising authority only on the ground that an order of the subordinate officer is illegal or improper or that the proceedings of the officer are irregular. But the Legislature has not provided any period of limitation within which these powers can be exercised. The Legislature has not made it obligatory upon the State or the revising authority to give any reasons for passing the order, and it does not appear to have been made obligatory upon the revising authority to hear any one before passing such orders. That the existence of jurisdiction of such wide amplitude, not only in the State Government but in comparatively minor officers of the State, which can be exercised without restriction as to the length of time after which it can be invoked, and which does not recognize even the necessity of disclosing grounds for exercising the same, and which can be availed of for passing orders which may cause serious prejudice to a citizen without even affording him an opportunity of being heard, may give rise to serious misgivings in the minds of Judges who are called upon to decide whether an impugned order is one which was justifiably made in the exercise of that jurisdiction cannot be denied. But the question whether such powers should be conferred upon the revising authority is for the Legislature to decide and it is not for the Courts to attempt to restrict the powers by judicial decisions. Undoubtedly the orders passed under section 211 are executive orders; and if the orders are arbitrary, capricious or passed mala fide, they can be challenged in proper proceedings and before proper tribunals. In the present case, however, it is unnecessary to dilate upon this argument for the simple reason that the plaintiff did not seek to challenge the order passed by the State on 8-7-1948, on the ground that it was arbitrary, capricious or mala fide, but he sought to challenge the order on the sole ground that the State Government had no authority to pass that order.

In paragraph 8 of the plaint the only cause of action stated by the plaintiff is of absence of

authority of the State Government to pass the order, and that is the only question which has been referred to us in this case and we are not concerned with the question whether the order passed by the State Government is otherwise liable to be challenged.

35. For the reasons mentioned by me I agree with the order proposed by my Lord the Chief Justice.

Answer accordingly.