

BOMBAY HIGH COURT

Ambabai Janhavibai

Vs.

State of Maharashtra

Special Civil Application No. 1267 of 1963 (with Special Civil Application No. 1268 of 1963)

(H.K. Chainani, C.J. and Gokhale, J.)

21.01.1965

JUDGMENT

H.K. Chainani, C.J.

1. The petitioners were the Inamdars of two Inam villages Vinehur and Sayakhedc in Niphad Taluka. The Inams were abolished by the Bombay Personal Inams Abolition Act, 1952. In each of the two villages the Inamdars were in actual possession of some Kuran lands. These lands were not sown or cultivated, but grass grew naturally in these lands. The Inamdars used to graze their cattle on these lands and they also used to sell the grass and realised income from it. As the lands were in possession of the petitioners, they were shown as the occupants of the lands. The Collector subsequently felt that they had wrongly been shown as occupants, as in his opinion the lands vested in Government under Section 7 of the Act. A mutation entry was, therefore, made deleting the names of the petitioners. This was objected to by the petitioners. An inquiry was then held under Section 37(2) of the Land Revenue Code in order to decide whether the lands vested in the Government under Section 7 of the Act. The Mamlatdar held that as the lands were, uncultivated lands, they vested in Government. This order has been confirmed in appeal by the Deputy Collector and subsequently by the Additional Collector and also by the Revenue Tribunal.

2. Sub-section (2) of Section 5 of the Act is in the following terms:

- (a) An inamdar in respect of the inam land in his actual possession or in possession of a person holding from him other than an inferior holder, referred to in Clause (b) below, or
- (b) an inferior holder holding inam land on payment of annual assessment only, shall primarily be liable to the State Government for the payment of land revenue due in respect of such land held by him and shall be entitled to all the rights and shall be liable to all obligations in respect of such land as an occupant under the Code or the rules made

there under or any other law for the time being in force.

This sub-section applies to lands, which on the appointed date, that is, the date on which the Act came into force, were in the possession of the Inamdar or of a person holding from him other than an inferior holder or of an inferior holder. Such lands do not vest in the State Government, but are to be held by the Inamdar or the inferior holders as occupants under the Land Revenue Code. The sub-section does not make any exception in the case of uncultivated lands.

3. Section 7 of the Act provides:

All public roads, lanes and paths, the bridges, ditches, dikes and fences, on or beside, the same, the bed of the sea and of harbours, creeks below high water mark and of rivers, streams, nallas, lakes wells and tanks, and all canals, and water courses, and all standing and flowing water, all unbuilt village site lands, all waste lands and all uncultivated lands (excluding lands used for building or other non-agricultural purposes), which are situate within the limits of any inam village or inam land, shall, except in so far as any rights of any person, other than the inamdar may be established in or over the same and except as may otherwise be provided by any law for the time being in force, vest in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government and all rights held by an inamdar in such property shall be deemed to have been extinguished...

The explanation to this section states that for the purposes of this section, land shall be deemed to be uncultivated if it has not been cultivated for a continuous period of three years immediately before the appointed date. Under this section, all waste lands and all uncultivated lands, excluding lands used for building or other non-agricultural purposes and excluding rights which persons other than the inamdar had in such lands, vest in the State Government.

4. The question, which arises for determination, is whether the lands in dispute, in which grass grows naturally but which were in the possession of the petitioners on the appointed date, vest in the State Government as uncultivated lands under Section 7. Mr. Vaidya., the learned advocate for the petitioners, has contended that as the petitioners were making use of these lands and were realising income by selling the grass which grew thereon, the lands cannot be said to have been uncultivated. We would have found it difficult to accept this argument, since it is admitted that no agricultural operations were carried out on the lands for the purpose of raising or growing grass on the lands. It is, however, not necessary for us to decide this point in these applications, because even assuming that the lands were uncultivated lands, it seems to us that they would not vest in the State Government by reason of the provisions of Section 5.

5. Section 5 provides for all lands, which on the appointed date were in possession of the Inamdar or of some other person. The section does not make any exception in regard to uncultivated lands in the possession of the Inamdar, Under this section, the Inamdar would

become the occupant of all the lands, cultivated and uncultivated, which were in his actual possession, on the appointed date. Section 7 is also in general-terms and states that all uncultivated lands, except the rights of any person other than the Inamdar, shall vest in the State Government. There, therefore, appears to be a conflict between the two provisions. It is a well-settled rule of construction that different provisions of the Act must be read together, so as to bring about harmony between them. This can be done by holding that Section 7 applies to lands, which were not in the possession of any person on the appointed date. This is also suggested by the scheme of the Act. Apart from waste and uncultivated lands, the other properties mentioned in Section 7 are public roads, paths, lanes, rivers, canals, etc., which ordinarily are not in the possession of any particular person, but the use and benefit of which are taken by the public in general. Section 7, therefore, appears to deal with lands and other properties, which were not in the possession of any person on the appointed date, while Section 5 makes provision for lands which on that date were in possession of the Inamdar or some other person. It has been urged by Mr. Rane that Section 7 carves out an exception to what is provided in Section 5. This argument does not seem to be correct, because Section 7 refers to many other properties such as public roads, rivers and canals, to which Section 5 does not apply and which ordinarily are not in the possession of any particular person. It has been contended that the intention of the Legislature that such lands should vest in Government is also shown by the fact that in Section 10 it has made provisions for compensation for the abolition or extinguishment of rights in uncultivated lands. This circumstance is not of much assistance, because in many villages there are uncultivated lands, such as lands used for grazing of village cattle, which are not in the possession of any person, but which are set apart or reserved for the use of all the villagers. The Legislature may have considered it desirable to provide for compensation for the loss of the Inamdar's rights, if any, in such lands.

6. It seems to us that the question whether the Inamdar loses his rights to the lands, which were in his actual possession, but which were not cultivated, should be decided by reading together Sections 5 and 7 and so construing them as to bring about harmony between them, and if this is done, Section 7 will, in our opinion, not apply to lands, which on the appointed date were in actual possession of the Inamdar, even if they were uncultivated lands.

7. The evidence in these cases shows that the lands in dispute were in possession of the petitioners on the appointed date. Under Section 5 the petitioners, therefore, became the occupants of these lands and these lands do not vest in the State Government under Section 7.

8. We, therefore, set aside the orders made by the Mamlatdar, the Deputy Collector, the Additional Collector and the Revenue Tribunal.

9. The petitioners should get their costs from the respondents.
Order set aside.