

(1966) 01 SC CK 0029

Supreme Court of India

Case No: Appeal (civil) 1048 of 1963

Navinchandra
Babubhai Nagarsheth
and Ors

APPELLANT

Vs

Bombay Revenue
Tribunal and Ors

RESPONDENT

Date of Decision: Jan. 21, 1966

Acts Referred:

- Bombay Land Revenue Code, 1879 - Section 10, 2(1), 216
- Bombay Personal Inams Abolition Act, 1952 - Section 10, 17(1), 17(5), 4, 5
- Constitution of India, 1950 - Article 226, 227, 31(1)

Citation: AIR 1966 SC 1509 : (1966) 3 SCR 412

Hon'ble Judges: R. S. Bachawat, J; J. R. Madholkar, J; A. K. Sarkar, J

Bench: Full Bench

Final Decision: dismissed

Judgement

Sarkar, J.

These three appeals concern compensation payable under the Bombay Personal Inams Abolition Act, 1952 to the appellants for abolition of their inams. Some of the appellants held shares in the inam village of Wanz and some in that of Dindoli. The appellants had moved the High Court at Bombay by several petitions under Arts. 226 and 227 of the Constitution for quashing the decision of the Bombay Revenue Tribunal regarding the compensation. The petitions were disposed of by the High Court by a common judgment. These appeals are against that judgment under a certificate granted by the High Court.

2. The appellants had claimed compensation under several heads based on different grounds but two of them survive. The first is that the appellants are entitled to compensation for loss of assessment payable to them by inferior holders, a special class of tenants holding lands from them. The Act does not expressly provide for compensation

in respect of such lands. Sub-section (1) of s. 17 of the Act however provides that if any person is aggrieved by the provisions of the Act abolishing any of his rights to or interest in property and if compensation for such abolition has not been provided for, such person may apply to the Collector for compensation. The appellants base their claim on this section. Sub-section (5) of this section makes the right under sub-s. (1) unavailable in a certain case and the question is whether the appellants' claim fell within it. Now the sub-section is in these terms :

S. 17(5) - Nothing in this section shall entitle any person to compensation on the ground that any inam village or in a land which has (sic.) wholly or partially exempt from the payment of land revenue has been under the provisions of this Act made subject to the payment of full assessment in accordance with the provisions of the Code.

Clearly this sub-section applies only to a certain kind of claim for compensation in respect of an inam village exempt from payment of land revenue. The appellants say that their inams were not of this kind and so the sub-section does not affect their claim. According to them, their inams consisted of a grant for land revenue only. The nature of an inam depends on the sanad or the terms of the grant. The High Court held on a construction of the sanads that the inams were grants of the villages with exemption from land revenue, because the words of the grant conveyed the soil and rights over trees, water, mines etc. This view is obviously correct.

3. The appellants then said that notwithstanding that the soil had been granted, their inams were none the less of land revenue only. Their contention is that before the grants the tenants in occupation paid revenue to the Government and thereafter to the inamdars and the latter being exempt from the liability to pay it over to the Government, the net result was that the inamdars retained the land revenue and were, therefore, the grantees thereof. This contention is idle. There is nothing to show that there were tenants holding lands in the villages before the grants which were made in 1794 and 1803 respectively and whether they paid anything and if so, what ? Furthermore, what the tenants paid to the inamdars (holders of the inams) after the grants was rent and not revenue; it was for the inamdars to fix the amount of it or forego it altogether if they liked. What the tenants paid to the inamdars was not something which was due to the Government which the inamdars kept to themselves having been exempted from the liability to pay it over to the Government; it was rent due to the inamdars.

4. It was next said that whatever might have been the position earlier, after the introduction of the survey in the villages in 1900 under the Bombay Land Revenue Code, 1879 what a tenant paid to an inamdar was land revenue. There is no justification for this contention either. No doubt since the introduction of the survey the amounts payable by the tenants to the inamdars were all assessed under the Code. The nature of the assessment payable was not however altered thereby nor did it become land revenue. The survey fixed the amount payable by a tenant to the inamdar and gave him certain rights. It also conferred certain benefits on the inamdar in the matter of the realisation of

his dues. The fact that the assessment was made in the same way as land revenue made no difference. It did not change the right to the assessment. Notwithstanding all this the inamdar remained the grantee of the soil and a person who was not liable to pay revenue in respect of it and likewise the tenant remained liable as before to pay rent to the inamdar.

5. Furthermore, the distinction between the two kinds of grants is well recognised and has been maintained by the Act by specifying in s. 2 (1)(e) that an inam means a grant of a village with exemption from liability to pay land revenue and also a grant of land revenue only. The appellants' contention would in effect wipe out this distinction and cannot therefore be accepted.

6. The appellants then contended that even if their inams were grants of villages exempt from payment of land revenue, sub-s. (5) of s. 17 did not bar their claim because they were not claiming compensation on the ground that the inam villages previously exempted from land revenue had under the Act been made subject to it. They say that they have not been made liable to pay land revenue themselves and are only claiming the loss of the money that they used to collect from the inferior holders, the right to which collection was abolished by the Act. This contention is based on s. 5 of the Act which is set out below.

7. S. 5. (1) All inam villages or inam lands are and shall be liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder and the provisions of the Code and the rules relating to unalienated land shall apply to such lands.

(2)(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 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 thereunder or any other law for the time being in force.

8. It seems to me that this contention is also without any foundation. The inamdar's right to appropriate to himself the assessment fixed by the survey and collected from the inferior holders existed only because he was exempt from the liability to pay land revenue. If he was not so exempt, then what he collected from the inferior holder would have to be paid over to the Government. It would follow that the loss of which the appellants claim compensation was really occasioned by the lands being subjected to revenue by s. 5(2)(b). The fact that the inamdar has not himself been made liable for the revenue in respect of the lands held by inferior holders makes no difference. The substance of the matter is that the inamdar has been deprived of his right to the

assessment from the inferior holders and the inferior holders have been made liable to pay that assessment to the Government. So in actual result the inamdar has been deprived of his right to the assessment because the land has been made subject to payment of land revenue. His claim for the loss of assessment is, therefore, in reality based on the ground that the lands which were free from revenue have been made subject to it. Sub-section (5) of s. 17 does not provide that the bar mentioned in it operate only when land revenue is made payable by the inamdar.

9. It also seems to me that any other interpretation would lead to a result which could not have been intended. It is not in dispute that for the loss of rights in respect of lands in his own possession excepting those mentioned in s. 7 or any lands in possession of persons holding from him other than as inferior holders an inamdar is not entitled to compensation. It is admitted that such compensation could not be allowed in view of s. 17(5). It would be difficult to imagine a reason for the legislature to have made a distinction between such lands in the possession of inferior holders.

10. The other part of the claim concerns the right to forfeit the inferior holder's tenancies for non-payment of rent and the right of reversion in respect of them. These the appellants have no doubt lost. The Collector asked the appellants to produce evidence in support of their claims under this head. They failed to do so. They could not even cite one instance of the exercise of any such right. It would be impossible to value the loss in respect of them as no material for doing so in on the record nor was furnished by the appellants. No compensation can, therefore, be assessed or awarded for the loss of these rights.

11. The result is that the appeals fail and they are dismissed. There will be no order as to costs.

12. Mudholkar, J. These appeals are from a judgment of the Bombay High Court dismissing the writ petitions preferred by the appellants before it. The appellants are co-sharers either in the former Inam village Wanz or in the former Inam village Dindoli, both of which are situate in Surat District. Under the Bombay Personal Inam Abolition Act, 1952 all personal Inams were extinguished and all Inam villages as well as all Inam lands were made liable to the payment of land revenue in accordance with the provisions of the Land Revenue Code. The Act did not provide for compensation to the Inamdars with respect to the loss of their rights to hold their villages or lands free from payment of land revenue. Under s. 10 of the Act, however, compensation to the Inamdars was provided for the extinguishment of certain rights possessed by them in their Inam villages. Those rights vest, by virtue of the provisions of s. 7 of the Act, in the Government. Section 17(1) of the Act provides for payment of compensation to a person aggrieved by the provisions of the Act which abolished, extinguished or modified any of his rights or interests in property provided that compensation for such abolition, extinguishment or modification of those rights had not been provided for in any of the provisions of the Act. To this provision the following exception has been made in sub-section (5) :

"Nothing in this section shall entitle any person to compensation on the ground that any inam village or inam land which has wholly or partially exempt from the payment of land revenue has been under the provisions of this Act made subject to the payment of full assessment in accordance with the provisions of the Code."

13. It is common ground that in both the villages there were holders of land called inferior holders. These were persons claiming through tillers in cultivating possession of different pieces of land in the Inam villages at the time of the grant of the Inams. It is common ground that their rights to continue to be in possession of those lands and cultivate them were left intact by the Inamdars and the grantees of the Inam were only entitled to claim rents from them. It is common ground that under s. 216 of the Bombay Land Revenue Code, 1879 settlement was introduced both in Wanz and Dindoli villages though at different points or time. It is also the common case of the parties that after the introduction of the survey, revenue was assessed on the lands held by the inferior holders and in place of their liability to pay such rent as may be fixed from time to time by the Inamdars they thenceforward were rendered liable to pay to the Inamdar only the land revenue assessed at the settlement. So far as the Government was concerned the grantees of the villages Wanz and Dindoli were exempt from paying land revenue not only in respect of lands held by the inferior holder but also in respect of lands held by the Inamdars themselves or held by persons holding through the Inamdars. Now, in consequence of the extinguishment of the right of the Inamdars to hold the villages revenue free they have been rendered liable to pay land revenue to the Government in respect of the lands in their possession or in the possession of persons holding through them. No liability is, however, cast upon them to pay to the Government land revenue in respect of lands in the possession of inferior holders. This follows clearly from s. 5 of the Act and is not disputed by either set of parties to the appeal. No compensation is expressly provided for the loss of the right of the Inamdar to recover from the inferior holders land revenue assessed on the lands in their possession. Mr. Padhya contends that the appellants would, therefore, be entitled to claim compensation in respect of this loss under s. 17(1). He points out that the loss of this right to the Inamdars is not occasioned because of the fact that the Inam villages were made liable to pay full assessment but because the inferior holders have now been required to pay land revenue to the Government instead of to the Inamdars. It is difficult to accept this argument. The relevant provision of the Act for consideration s. 5 which runs thus :

"5(1) All inam villages or inam lands are and shall be liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder and the provisions of the Code and the rules relating to unalienated land shall apply to such lands.

(2)(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 thereunder or any other law for the time being in force."

14. It is sub-section (1) of this section which creates liability to pay land revenue. Sub-section (2) then proceeds to say as to who is made liable to pay land revenue : the Inamdar or holder from the Inamdar or an inferior holder Clause (b) of sub-s. (2) which deals with the liability placed on inferior holders has, therefore, to be read with sub -s. (1) and when they are so read it would be clear that the loss resulting to the Inamdar is the direct consequence of the operation of these provisions. In other words it is the direct consequence of the provisions of the Act that lands in possession of inferior holders are made liable to pay full assessment "in accordance with the provisions of the Code". This in the context means, liable to pay full assessment to the Government. It is true that by making this provision the Inamdars have sustained loss of one of their rights in property. It is also true that if s. 17(1) does not apply - as in my view it does not apply - no compensation is payable to the Inamdars. However, as no argument has been raised before us that the aforesaid provision of the Act infringes the guarantee incorporated in Art. 31(1) of the Constitution and is, therefore, unconstitutional the provisions of s. 5 of the Act must be held to be fully operative.

15. It was faintly urged by learned counsel that the Inamdar's right of reversion and right of escheat have also been taken away by the Act and no compensation provided for it. No provision was, however, brought to our notice by virtue of which it could be said that these rights of the Inamdars have at all been touched by the Act. Even assuming that these rights have been taken away it seems to me that the grounds given by the High Court for rejecting the appellants' claim are cogent and adequate. In the result, therefore, I agree that the appeals be dismissed. I would make no order as to costs.

16. Bachawat, J. The appellants were holders of shares in inam villages; some held shares in the inam village of Wanz, others held shares in the inam village of Dindoli. The inams were abolished by the Bombay Personal Inams Abolition Act, 1952. By s. 4 of the Act, save as expressly provided by or under the Act, all rights in the inams were extinguished. Sections 10 and 17(1) provided for payment of compensation. In view of sub-s. (5) of s. 17, no compensation can be claimed under sub-s. (1) of s. 17 on the ground that any inam village or inam land which as wholly or partially exempt from payment of land revenue has been under the Act made subject to the payment of full assessment. The appellants filed claims for compensation u/s 10 and 17(1) of the Act before the Collector of Surat. We are now concerned with the following two claims for compensation under s. 17(1) of the Act : (1) loss for the abolition of the right of the appellants to recover assessment from the inferior holders in respect of the lands in their possession; (2) loss for the extinction of the right of reversion and forfeiture in respect of the lands. The Collector of Surat and the Bombay Revenue Tribunal concurrently held

that the claim for compensation in respect of the first item was barred by s. 17(5) of the Act and in respect of the claim under the second head, the appellants failed to prove that they sustained any loss. The appellants filed applications under Arts. 226 and 227 of the Constitution before the High Court at Bombay challenging the correctness of these findings. The High Court dismissed the applications.

17. Section 2(1)(e) of the Act classifies personal inams into two categories. The appellants content that their inams were grants of land revenue and therefore personal inams of the second category specified in s. 2(1)(e)(ii). In respect of the personal inam of the second category the bar of s. 17(5) is not attracted. On the other hand, the respondents contend that the inams in question were grants of villages partially exempt from payment of the land revenue, and therefore personal inams of the first category specified in s. 2(1)(e)(i). In respect of personal inams of the first category, the bar of s. 17(5) is attracted. The High Court held-and, in my opinion, rightly-that the grants of the villages on their true construction were grants of the soil. The inamdars were not required to pay any land revenue except the quit rent and some small haqs. Consequently, the grants were grants of villages with partial exemption from payment of the land revenue and were personal inams of the first category specified in s. 2(1)(e)(i).

18. The survey and settlement of the villages under s. 216 of the Land Revenue Code, 1879 made no difference in the character of the inams. The introduction of the survey settlement did not confer on the inferior holders the status of occupants, nor render them liable to pay land revenue to the Government; they continued to be inferior holders under the inamdar and liable to pay the assessments to him. In spite of the survey settlement, the villages continued to be alienated villages, and the inams continued to be personal inams of the first category referred to in s. 2(1)(e)(i) of the Act.

19. The High Court rightly held that the appellants are not entitled to claim compensation in respect of the abolition of their right to recover assessment from the inferior holders. The inam lands no longer enjoyed either total or partial exemption from payment of land revenue. By s. 5(1) of the Act, all inam lands are now liable to payment of full land revenue. By s. 5(2)(b), in respect of lands held by inferior holders on payment of assessment only, the inferior holders now enjoy the status of occupants, and are liable to pay the land revenue directly to the State Government. In respect of those lands, the inamdars are neither entitled to collect the assessment from the inferior holders nor liable to pay land revenue to the State Government. Had the appellants right to recover assessment from the inferior holders not been abolished, they would have been entitled to recover the amounts of assessments from the inferior holders and at the same time would have been liable to pay the identical amounts to the Government on account of land revenue. The loss consequential on the abolition of the right to recover assessment is, therefore, nil. The claim under this head is really on the ground that the inam lands which were formerly exempt from payment of land revenue have been subjected by the Act to payment of full assessment. Such a claim is barred by s. 17(5) of the Act.

20. With regard to the claim for compensation under the second head, the High Court rightly held that the appellants could not establish any loss under this head. They failed to show that they exercised any right of forfeiture or claimed any right of reversion at any time. I see no reason for disturbing the finding of the High Court and the Tribunals below on this point.

21. The appellants submit that in view of the ephemeral nature of their rights of reversion and forfeiture in respect of the lands held by the inferior holders, the grants of villages, as far as they relate to those lands, are assimilated to grants of land revenue. They submit that the High Court and the Tribunals below while holding that the only right of the appellants in respect of those lands was to recover the assessments from the inferior holders, have inconsistently and unjustly held that the grants were grants of inam villages and not of land revenue so as to attract the bar of s. 17(5). This submission is not well-founded. A grant of a village or land with total or partial exemption from payment of land revenue is essentially different from a grant of land revenue, and this distinction has been preserved by the Act. On the extinction of the grant of land revenue, the inamdar loses all rights in respect of the grant, and is therefore entitled to full compensation under s. 17(1). On the other hand, on abolition of the grant of an inam village or land, the inamdar is allowed to retain and enjoy various rights and benefits arising out of the grant. Section 5(2)(a) gives him the rights of an occupant in respect of lands in his actual possession or in possession of persons holding from him other than inferior holders. The grants of inam lands, on their true construction, may include the right to mines or mineral products, see *Secretary of State of India v. Shantaram Naravan* ILR (1925) 49 Bom. 99, and this right of the inamdar, if any, is preserved by s. 9 of the Act. By s. 10 of the Act the inamdar holding inam villages or lands is entitled to compensation of any right of interest in any property referred to in s. 7. He is also entitled to compensation under s. 17(1), but this right is subject to the provisions of s. 17(5). It will appear, therefore, that the Act treats the inams of the two categories very differently. While the holder of the inam of the first category referred to in s. 2(1)(e)(i) suffers from the disadvantage of the bar of s. 17(5) in respect of compensation, he enjoys numerous advantages which are denied to the holder of the inam of the second category referred to in s. 2(1)(e)(ii).

22. The appeals fail, and are dismissed. There will be no order as to costs.

23. Appeals dismissed.