(1881) 03 PRI CK 0002

Privy Council

Case No: None

Maharaval Mohansingji Jeysingji		APPELLANT
	Vs	
The Government of Bombay		RESPONDENT

Date of Decision: March 8, 1881

Citation: (1881) 8 IndApp 77

Hon'ble Judges: Barnes Peacock, Montague E. Smith, Robert P. Collier, Richard Couch, Author Hobhouse, JJ.

Judgement

Montague E. Smith, J.

1. This is a suit brought by the Appellant in the District Court of Surat, claiming, as the adopted son of Maharaval Jeysingji Bhagvansingi, to recover from the Government of Bombay certain payments in respect of a to da garas hukk, formerly levied by his ancestors upon certain villages in the Surat district. It appears that the Government has for many years made payments on account of this to da garas hukk (divided into three parts) to three different branches of the Appellant''s family; his adoptive father, through whom he claims, being paid one-third. The father died in 1865, and upon his death the Government either refused to recognise the Plaintiff as the adopted son, or considered that, as an adopted son, he was not entitled to receive the payments, and discontinued them. The action is brought, in consequence of that discontinuance, to recover the arrears from the time of the father''s death.

2. The Government denied the right of the Appellant to bring this suit in the Civil Courts, relying upon the Pensions Act of 1871. The Courts below, both the District Judge of Surat and the High Court on appeal, have held that the Government is entitled to rely upon that Act, and that the Civil Courts can take no cognisance of the suit.

3. It is unnecessary to inquire at any length into the origin of these to da garas hukks. It would appear that they had their origin in arbitrary exactions made by strong and powerful persons, who obtained the name of Garasias, upon the village communities ; that those arbitrary exactions were in some way commuted into fixed payments by the villagers, in consideration of which the Garasias gave up their claim to make arbitrary exactions, and also undertook to defend the villagers against the exactions of others. The nature of these hukks has been defined in two cases by this Board, the latter of which only it will be necessary to refer to. In the case of Maharana Fattehsangji Jaswatsanji v. Dessai Kallianraiji Hekoomutraiji Law Rep. 1 Ind. Ap. 46., there is this description of them: The determination of this question " involves the consideration of the nature of a to da garas hukk. A good deal of learning on this subject is to be found in the case of the Collector of Surat v. Pestonjee Ruttonjee 2 Morris, S.D.A. Rep. 291., and in the case of Sumbhoolall Girdhurlall v. Collector of Surat 8 Moore''s Ind. Ap. Ca. 1., to which their Lordships have been referred. They do not think it necessary to go at any length into this. It is sufficient to state that these annual payments, although originally exacted by the Garasias from the village communities in certain territories in the west of India by violence and wrong in the nature of black mail, had, when those territories fell under British rule, acquired by long usage a quasi legal character as customary annual payments; that as such they were recognised by the British Government, which took upon itself the payment of such of them as were previously payable by villages paying revenue, and left the liability to pay such of them as were payable by inam villages to fall on the inamdar. And since the decision of the before-mentioned case in the 8th volume of Moore, page 1, it cannot be questioned that the to da garas hukks of the former class constitute a recognised species of property capable of alienation, and of seizure and sale under an execution." It must therefore be taken, after the two decisions of this Board, that these hukks have been recognised as a species of property, however unlawful their origin may have been. The Plaintiff bases his claim upon that view of the hukk. The plaint states that his ancestors had certain lands, and " likewise there has continued to us from ancient times the yearly cash hukk (right) of to da garas as our private property." Then it goes on : " Sometime after the introduction of the English Government the Government made an arrangement (bandobast) to pay from the Government Treasury in lieu of the to da garas hukks which the Garasias used to collect or levy directly from the village." It seems that there was a resolution of the Government of Bombay in 1862, which described the position of the Garasias at that time, and gave them the option of resuming the collection of the former hukks from the villages, or of receiving from the Government allowances of an equivalent amount, the Government in that case discontinuing the further receipt of the hukks. The resolution says: "It should therefore be publicly declared in every talooka, as the Revenue Survey Settlement is introduced, that the new rates of assessment do not include any such collections, and that the Government will in future not aid or take part in the collection of garas. In thus placing the Garasias in the same position with respect to the village

communities which they originally held, the Governor in Council cannot allow them to resort to other than legal means to enforce their claims, and if any village communities decline to accede to the Garasias'' demands the latter must resort to the Civil Courts. At the same time the Governor in Council is not unwilling to make some sacrifice of revenue in order to relieve the Garasias from resorting to law; and he is prepared whenever the Garasia may be willing to receive from Government his present income, instead of collecting it direct from the villagers, to continue that income to him, under such reasonable rules and restrictions as it may seem fit to Government to impose." Then : " The conditions on which this arrangement will be entered into are that the Garasia shall consent to abandon for the future his claims against the village communities ; and in return the allowances he has hitherto enjoyed shall be continued by the State hereditarily (during good behaviour) to the male issue of the first person who receives the garas from the British treasury." The arrangement with the Plaintiffs ancestors, stated in the plaint, is of the kind described in this resolution, though it appears to have been made before 1862. Payments of money in lieu of the hukk were made before that year, and were continued by the Government down to the death of the Plaintiff''s father, with regard to the three shares, and since that time the Government has apparently continued to pay the two other sharers, though they have discontinued the payment to the Plaintiff.

4. The nature of to da garas hukk having been adverted to, their Lordships have now to refer to the statute upon which the question, and the only question, in the appeal turns. The 4th section is this : " Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may be the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted." It has been shewn that this hukk, whatever it originally was, had acquired the character of a right, and the plaint bases the claim of the Plaintiff upon its being a right. That being so, it appears to their Lordships that the present suit is one of those which fall directly and plainly within the language of this clause. It is a suit relating to a grant of money conferred by the British Government; and the Civil Courts are prohibited from entertaining any suit relating to such a grant, whatever may have been the consideration for it, and whatever may have been the nature of the payment, claim, or right for which such grant may have been substituted. There is in this case a grant of money by the Government, and a right for which it was substituted. It, therefore, falls within the language of the fourth clause. The right of the Garasias was of a peculiar and precarious kind ; and allowances in respect of rights of this nature are clearly contemplated by the Act, and intended to be included in it. If there were any doubt the previous clause, the third, which is explanatory of the expression "grant of money or land revenue," may be looked at. It is as follows : " In this Act the expression '' grant of money or land revenue''

includes anything payable on the part of the Government in respect of any right, privilege, perquisite, or office." Even if the arrangement made by the Government was not strictly a grant, the suit relates to money payable by the Government in respect of a right. It was argued that the construction should be limited to rights ejusdem generis with pensions. But there is no sufficient ground for so limiting the language; and it is to be observed that the words of the Pensions Act of 1871, which include this case, are not found in the former regulations relating to pensions. There is no reason, therefore, either in the language of the Act itself or in the antecedent legislation, for construing these words as applicable only to rights of the nature of pensions.

5. It was contended further that this case is founded upon a contract, and it was said that if it is embraced by the Act all contracts for the payment of money must be held to be included in it. But that is not so. The Act applies to grants of money in respect of or in substitution for some right, privilege, perquisite, or office. Undoubtedly, in some sense it may be said that the arrangements made between the Government and the Garasias were in the nature of contract; but that contract, if it were one, resulted in the abandonment on the part of the Garasias of their claim to make collections from the villagers, and in the allowance of money by the Government in lieu of them. It is that allowance which falls within the operation of the statute.

6. It was contended in the Courts below, and appears to have been the principal contention there, that the Government were in the position of agents for the Appellant to receive the collections, and were therefore bound to pay over to him the amount of the former hukk. But this argument entirely fails of foundation, for the Government, since 1862, have abandoned the collection of the hukk from the villagers; therefore, having received no money, they have nothing to account for to anybody. Their Lordships think it right to observe that this argument was not pressed at the bar to-day, though it appears to have been very strongly relied upon in the Courts below.

7. This is not the first time that the Pensions Act of 1871 has come before this Board. In the case of Vasudev Sadashiv Modak v. The Collector of Ratnagiri Law Rep. 4 Ind. Ap. 119., an action was brought to recover certain payments on account of a grant which had been made to a deshmukh in consideration of some ancient dues which his ancestors had received. It seems that the deshmukh was a collector of Government revenue, the office being hereditary, and that the deshmukhs had been accustomed to receive a certain share of the revenue which they collected. The suit was brought against the Government for payments representing the old allowances, which it appears the native Government undertook to make; but the Board held that, by the terras of the Act in question, the Civil Courts were prevented from taking cognizance of the suit. It is said in the judgment: " Their Lordships are of opinion that whatever the foundation of the deshmukhs'' rights originally was, the sunnud must now be treated as the foundation of those rights as they exist. At the

date of that document the receipt of the old allowances had long been interrupted. The whole of what was received from ryots went into the coffers of the State, which paid its collectors by salaries; and consequently the restoration of the old allowances by the Peishwa was, in substance, a grant by him of part of his land revenue, and therefore falls within the terms of the 4th section, without the aid of the 3rd, as a grant of money or land revenue conferred by a former Government." It seems to their Lordships that this decision very nearly governs this case, if any authority were wanted for an interpretation of the plain language of the Act.

8. Their Lordships find that the High Court of Bombay, in the case of Parhudas Rayaji v. Motiram Kalyandas 1 Ind. Law Rep. Bomb. 206., give a like construction to the Act. The observations, however, of the Judges can only be treated as dicta, since they decided the case upon the ground that, the suit having been brought upon a decree obtained before the Act had come into operation, it was not a bar to the suit.

9. The only case which at all looks the other way is one in the High Court of Bengal: Shahzadee Hazara Begum v. Collector of Burdwan and Anr. 23 Suth. W.R. 378. The head-note is: " One Rhajah Anwar Shahad, a servant of the Delhi emperor, having been killed in Burdwan while fighting for his master, the emperor built a tomb over his remains and made a grant of land (five mouzahs) to his family for the purpose of maintaining it in the manner usual amongst Mahomedans. This grant was subsequently confirmed to a descendant of Shahad and his heirs. Some years later the land came into the possession of the Rajah of Burdwan, who paid to the grantees a certain sum of money annually. When the perpetual settlement was made the British Government continued the payment on account of the Rajah, in whose zemindary four of the five mouzahs were incorporated." It seems that the yearly payment was a sum of Rs. 3690. Mr. Justice Glover says: "It is an admitted fact that this annual payment was made by the Rajah on account of these mouzahs,"--that is, the five mouzahs referred to--"and it seems to us that such payment was, to all intents and purposes, the rent of the land transferred." After the permanent settlement the Government continued this payment, whether as of right or as an act of generosity may be a question. However, supposing the payment to have been obligatory, the nature of the obligation is treated by Mr. Justice Glover as an obligation to pay rent. He says: " And if the Rs. 3690 paid to the family of Anwar Shahad by the zemindar of Burdwan was the rent of the five mouzahs, how was the payment changed in its nature by being made through the British Government?" Their Lordships cannot help saying that it was a violent assumption that the Government were paying rent for these mouzahs. However, having made that assumption, the learned Judge decided that the payments were not within the Act. The decision, thus explained, does not affect the question in the present appeal.

10. For these reasons their Lordships think that the judgments below are correct; and they will humbly advise her Majesty to affirm the judgment of the High Court, and to dismiss this appeal with costs.