

**(1930) 12 BOM CK 0023**

**Bombay High Court**

**Case No:** First Appeal No. 271 of 1930

Damodar Narayan Bedarkar

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

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**Date of Decision:** Dec. 19, 1930

**Acts Referred:**

- Bombay Land Revenue Code, 1879 - Section 37, 63

**Citation:** (1931) 33 BOMLR 772 : (1931) ILR (Bom) 447

**Hon'ble Judges:** J.W.F. Beaumont, C.J; Murphy, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

J.W.F. Beaumont, C.J.

This is an appeal from the District Judge of Ratnagiri, who dismissed the plaintiffs' action on the preliminary ground that it was barred by limitation.

2. The dispute arises in this way. The plaintiff's allege that the land in suit is alluvial land, and that u/s 63 of the Bombay Land Revenue Code the Collector is bound, if with due regard to the interests of the public revenue he thinks the land should be disposed of, to offer the same to the occupant of the adjoining land (namely, the plaintiffs), the maximum price being three times the annual assessment. That claim was made as long ago as 1911, and in that year the Collector took the view that the land in suit was not alluvial land, that it was marsh land which vested in the Government, and on that view he disposed of the land in favour of defendant No. 2 u/s 37 of the Bombay Land Revenue Code.

3. The learned District Judge dismissed the suit on a preliminary point as to limitation on the authority of the case of Chhotubhai v. Secretary of State (1919) 22 Bom. L.R. 146, that case being a decision of this Court which undoubtedly is very similar on the facts to the present case. The learned District Judge states the proposition to be derived from that case in this way. He says:-

If it (the Collector's order) was correct plaintiffs have no cause of action, if it was not correct it was an order which requires to be set aside in order to enable plaintiffs to obtain relief. If it is an order which requires to be set aside then Article 14 of the Limitation Act applies and the present suit is barred by limitation.

4. I am not sure that the first part of the proposition stated by the learned Judge, viz., that if the Collector's order was correct the plaintiffs have no cause of action, is well founded. I think, the proposition was justified by the case to which the learned Judge refers, but in that case the previous decisions of this Court and in particular the case of *Surannanna v. Secretary of State for India* ILR (1900) 24 Bom. 435 were not cited. That was not a case of alluvial land, but a case in which the Collector had disposed u/s 37 of land to which the plaintiff claimed to be entitled, and what the Court there decided was that any order made u/s 37 of the Bombay

5. Land Revenue Code is expressly to be subject to the rights of individuals legally subsisting, and if the plaintiff had a right in the land, any disposition made by the Collector u/s 37 would not deprive the plaintiff of that right, and therefore the plaintiff could ignore the Collector's order and bring a suit in respect of the land. It seems to me that that reasoning is equally applicable to a case in which the plaintiff claims to have an interest in the Immovable property u/s 63 of the Bombay Land Revenue Code, and that the decision of this Court in *Chhotubhai v. Secretary of State* was given without due regard to that earlier decision which was binding upon the Court but which was not brought to the attention of the Judges. If I have to choose between the two cases, I prefer the reasoning in *Svrannanna v. Secretary of State*. But assuming that case to be right, and assuming that the order passed by the Collector in 1911 u/s 37 does not bind the plaintiffs and does not affect their interests u/s 63, the question then arises as to what form of action the plaintiffs can properly bring. The Collector is not bound to allot the land to the plaintiffs u/s 63 unless he is satisfied that it may with due regard to the interests of the public revenue be disposed of. Mr. Desai says that he is not troubled with that condition, because the Collector has actually made a disposition of the land u/s 37, and has thereby admitted that the land may properly be disposed of. But it seems to me that it does not follow from the fact that the Collector, assuming the land to be non-alluvial, came to the conclusion that it could be properly disposed of having regard to the interests of the public revenue u/s 37, i.e., at the market price, that he would have come to the same conclusion on the assumption that the land was alluvial land, and as such could only be disposed of at three times the annual assessment.

6. I think, the Collector has never expressed any view as to whether the land can properly be disposed of having regard to the interests of the public revenue on the assumption that it is alluvial land to which Section 63 applies. Therefore, it seems to me that, assuming the land to be alluvial, still it would not be possible for the plaintiffs to get an order for the recovery of possession of the land. All they could do

would be to get a declaration that the case fell within Section 63, because the land was alluvial, and an injunction to restrain the Collector from dealing with the land in derogation of their rights or something of that sort. Any action which the plaintiffs could bring would, in my opinion, not be an action for the recovery of the land to which Section 144 of the Indian Limitation Act applies, but would have to be some form of action to which Article 120 applies, and any such action would be barred after six years. As this action was not commenced for more than eleven years after the Collector's order and the handing of the property to defendant No. 2, I think the plaintiff's action is necessarily barred, though I come to that conclusion on different grounds to those which appealed to the learned Judge. In the result the appeal will be dismissed with costs.

Murphy, J.

7. The facts are that in 1911-it is alleged-(sic) Collector made a grant of about six acres of land to the defendants, other than defendant No. 1. The plaintiffs' case is that they are the owners of the adjacent land, and the grant being of alluvial land, should have been made to them in the terms of Section 63 of the Bombay Land Revenue Code.

8. The plaintiffs were parties to the revenue proceedings, but no copy of the Collector's order is forthcoming from either side.

9. The suit was dismissed on the preliminary point of limitation and on the authority of the case of Chhotubhai v. Secretary of State (1919) 22 Bom. L.R. 146, as being barred by Article 14 of the Indian Limitation Act.

10. What the plaintiffs really require is that the Collector should be directed to cancel his own order, evict the defendants in possession, and then make a grant to them in the terms of Section 63.

11. The decision really depends on a question of fact: "Whether the land was alluvial or not?"

12. This has not been decided, except presumably by the Collector, but it is clear that even on the assumption that it is alluvial; the Collector would still have a discretion, depending on his view of the interest of the public revenue involved in making the grant in the terms of Section 63. Assuming that such an order could be made, it seems to me that Article 120 of the Indian Limitation Act would apply, and that the plaintiffs' claim was time-barred in any case.

13. I agree that the appeal should be dismissed with costs.