(1928) 01 BOM CK 0027

Bombay High Court

Case No: None

The Secretary of State for India		APPELLANT
	Vs	
Yello Ramohandra Kulkarni		RESPONDENT

Date of Decision: Jan. 17, 1928

Acts Referred:

- Bombay Hereditary Offices Act, 1874 - Section 15
- Bombay Revenue Jurisdiction Act, 1876 - Section 4(a)
- Criminal Procedure Code, 1898 (CrPC) - Section 424

Citation: 111 Ind. Cas. 268

Hon'ble Judges: Mirza, J; Fawcett, J

Bench: Division Bench

Judgement

Fawcett, J.

This appeal arises out of a suit brought by the plaintiffs for a declaration that a certain order passed by the Collector of Dharwar u/s 15 of the Bombay Hereditary Offices Act III of 1874 was ultra vires and not binding on the plaintiffs. Plaintiff No. 1 was, as he stated in para. 2 of his plaint, the sole representative watandar Kulkarni of Hirebudhihal in the Dharwar District. Plaintiff No. 2 was his son. In the year 1914 a certain. circular was issued by the Collector of Dharwar, Ex. 31, explaining the terms on which Government had sanctioned commutation of Kulkarniki watans u/s 15 of the Watan Act, that is to say, the terms on which Government had authorized the Collector to come to agreements with the holders of Kulkarniki watans u/s 15: and the mamlatdar was directed to ascertain whether watandar Kulkarnis in his taluka consented to those conditions, and if so, to get applications from them stating their consent, so that further action might be taken.

2. Upon this the mamlatdar on July 13, 1914, recorded a statement of plaintiff No. 1 to the effect that he had noted the contents of the circular, which he refers to as an order, and that he was willing to relinquish his rights as required by it. The

mamlatdar has given evidence that that statement was made by plaintiff No. 1, and that is not disputed. On August 11, the Collector passed, an order, purporting to be made u/s 15, of the Act in these terms:

Commutation accepted. Talati on Rs. 14 to be appointed for Hirebudhihal and Chik Herkuni.

3. On May 28, 1923, the two plaintiffs brought the present suit, as already mentioned. Objections were raised by the Secretary of State that the District Court had no jurisdiction to take cognizance of the suit u/s 4(a) of the Bombay Revenue Jurisdiction Act, 1876, and that the suit was barred by limitation under Articles 14 and 91 of the Indian Limitation Act.

4. On the merits it was contended that plaintiff No. 1 as the holder of the Kulkarni watan in dispute gave his unconditional consent in writing to the commutation of service on the terms stated in the circular; that that commutation was accepted by the Collector; and that it was accordingly effectual and binding on plaintiff No. 1 as well as on plaintiff No. 2, under the provisions of Section 15 of the Watan Act. It may be added that in the plaint the plaintiffs alleged that the consent was obtained by the mamlataar representing to plaintiff No. 1 that he was disqualified from officiating as Kulkarni during his lifetime, and thus prevailing upon him to agree to the commutation of the watan. As regards this the defendant denied the allegation that the mamlatdar or any other officer or servant of Government exercised any undue influence, misrepresentation, or pressure on plaintiff No. 1 or obtained his consent to the commutation by unlawful or improper means. The District Judge of Dharwar held that the suit was barred u/s 4 of the Bombay Revenue Jurisdiction Act, and that it was also barred by limitation under Article 14 of the Indian Limitation Act. This decision was given without any evidence having been taken, and upon appeal the suit was remanded for recording evidence and hearing further arguments. It was held that it was undesirable that abstract questions of law should be decided by means of preliminary issues without the facts being ascertained, and it was remarked that in this case the facts were not admitted.

5. The District Judge accordingly recorded evidence and decided the issues that arose. On the merits, the first of the issues was whether the consent of the plaintiff was vitiated by undue influence as alleged in the plaint. He answered this in the negative. And in this appeal it has not been sought to set aside that finding. All that has been urged is that the reference to the circular as an order in the statement that plaintiff No. 1 made shows that his consent was not entirely free. But it has not been contended that the consent was such as would be vitiated by undue influence or for any other recognised reason. The second issue was--Does plaintiff prove that the Collector''s order was beyond his powers and void from the beginning? On this point the District Judge refers to Bhikaji Laxman v. Secretary of State for India AIR 1925 Bom. 365 and says:

That judgment is decisive of this case also because it rules that where the Collector orders commutation of watan Services without observing the provisions prescribed by Section 73 of the Bombay Hereditary Offices Act, 1874, the order passed is ultra vires of him, and a suit to set it aside can be entertained by a Civil Court notwithstanding the provisions of Section 4(a) of the Bombay Revenue Jurisdiction Act, 1876.

6. He holds that the order which the Collector passed in this case does not Comply with the provisions of Section 73 which says: "The Collector shall record his decision with the reasons therefore in his own handwriting." He says that, although it is, no doubt, a record of his decision, it is not a record of reasons therefor. He, therefore, held that the Collector''s order was ultra vires and void from the beginning, and granted the plaintiffs a declaration to that effect, with costs of the suit.

7. The Secretary of State appeals from this decision, and the main question we have to decide is whether the order of the Collector does so contravene the provisions of Section 73 referred to. In addition, however, the respondent''s Counsel has urged two further points, with which, I think, it will be convenient to deal first. One is that plaintiff No. 1 had been disqualified from officiating as a Kulkarni u/s 45(c) of the Watan Act, as shown by the heading to the Collector''s order, and that, therefore, he was not the holder of a watan within the meaningvof Clause (1) of Section 15. In my opinion, this objection, which has apparently been taken here for the first time, is quite unsustainable. The mere fact that plaintiff No. 1 had been disqualified from serving on account of his having attained the age of sixty under Clause (c) of Section 45, had no effect upon his status as a representative watandar. It merely prevented plaintiff No. 1, from exercising the right, which he otherwise had u/s 42, to officiate as Kulkarni. He still, however, retailed a right to appoint a deputy u/s 47 of the Act; and that his continuance as a representative watandar is contemplated by the Act is, I think, clearly shown by various provisions, such as, for instance, Clauses (6) and (c) of Section 49. Under Clause (6) the Collector can appoint a deputy instead of the representative watandar whose duty it is to officiate, if such representative watandar has been disqualified under Clause (e), (f) or (h) of Section 45, but the representative watandar so disqualified is still referred to as "the representative watandar." Again, under Clause (e) of Section 49, the Collector can appoint a deputy where the representative watandar fails to comply with any requisition of the Collector to appoint a deputy u/s 47, within a certain time. That contemplates his still being a representative watandar, although he has ceased to be entitled to officiate himself. Again, in Section 38 provision is made for a case where a representative watandar dies. The Patil and Kulkarni of the village have to report the fact to the Collector, and the Collector has to register the name of the person appearing to be the nearest heir of such watandar as representative watandar in place of the watandar so deceased. But there is no corresponding provision for any substitution, of the name of some other person as a representative watandar in a case where the representative watandar is disqualified from officiating u/s 45. I think it is clear that

plaintiff No. 1 still remained the sole representative watandar, and in fact he has so described himself in his plaint.

8. But it is further contended that he alone had no right to give a consent u/s 15, so as to bind his son. In support of this contention it is argued that Clause (4) of Section 15 makes the whole number of joint owners of a watan, holders within the meaning of Clause (1) of Section 15 of the Act, and that therefore, the son should have been consulted and his consent obtained before there was any commutation. In my opinion this is a clear misreading of the Clause (4) in question. It is to be noted, first, that it is not a definition of the expression "holder" because the word used is "includes" and not "means," Secondly, the case of joint owners that is there referred to does not, in my opinion, correspond to the ordinary case of a number of persons who are beneficially interested in a watan, so as to be watandars within the definition of "watandar" in Section 4 of the Act, at any rate in the case where a watan register has been framed in regard to such watan under Fart VI of the Act. In their case, it is a person who is dealt with as representative of the persons beneficially interested or entered as such in the Government records at the time of the settlement, who can be properly treated as a holder of the watan, because the clause says that the word "holder" includes such a person; and, therefore, when the Collector deals with such persons, namely, the representative watandars as the holders, he is dealing with persons who are the holders of a watan within the meaning of Section 15. The case of joint owners would probably arise only where there is a sole watandar in existence, who validly transfers some of his rights to another, or where there are only two or three watandars with equal rights. And the last part of Clause (4) points to such a ease being contemplated only where no register has been framed. For instance, it might apply to cases of Desais and Deshmukhs who have no duty of officiating and in regard to whom, therefore, no watan register has to be made under Part VI. No doubt, their watans had already been mostly commuted, when Section 15 came into force ; but by Clause (2) these prior settlements were validated as if they had been made under the powers conferred by Clause (1) of Section 15, and, therefore, it is natural that Clauses (1) and (4) should use wide language in regard to the holder of a watan, instead of merely referring to representative watandars, as might otherwise have been done. There is no authority that I know of for holding that, in settlements u/s 15, the whole body of persons Who are beneficially interested in the watan must consent; and the decision in Bhikaji Laxman v. Secretary of State for India 27 Bom. L.R. 463 only holds that a widow of a representative watandar was not a holder of the watan within the meaning of this Section 15. That does not affect the particular question with Which I am dealing. There are special provisions relating to female members of a watan family contained in Bombay Act V of 1886, which affect that other question in a way which does not touch the question now before us. And obviously it would be difficult to believe that the Legislature, having made provision for representative watandars, would require the consent of the whole body of watandars or of all the living

descendants of the representative watandars, to be obtained in such cases. Unless the wording absolutely forces us to put such a construction upon this clause I should say it is obviously one we should not adopt. But it is in fact shown to be an incorrect construction by Clause (3) which says that "every settlement made or confirmed under this section shall be binding upon both Government and the holder of the watan and his heirs and successors." In the present case, the plaintiff''s son would fall within the class of "heirs and successor," and would be bound by the consent of his father, if he was the holder of the watan, so that his personal consent is clearly shown to be unnecessary. Therefore, I feel no hesitation in rejecting this contention.

9. Coming to the main point, it is argued by the learned Government Pleader that in fact the words "Commutation accepted" contain the reasons, or at any rate the reason, for the Collector''s decision, and that there is in fact no contravention of Section 73 of the Act. On the other hand it is contended by Mr. Thakor for the respondent that the reasons for a decision are intended to be plainly put in the decision, so that a Court of Appeal or other authority having jurisdiction'' to interfere under the provisions of ''the Act as to appeals and superintendence would have a clear statement of those reasons and thus be in a position to deal properly with the matter. Reference has been made in the arguments to cases where judgments have been held not to be valid on account of their not containing the reasons for the decision in accordance with the provisions of Sections 367 and 424 of the Criminal Procedure Code or of Order XX, Rule 4(2), and Order XLL Rule 31, of the Civil Procedure Code. There are in fact cases which can be cited on each side in regard to judgments under those Codes. But such decisions are, of course, affected by other provisions in those Codes which are not contained in the Watan Act ; at any rate the analogy must be treated with some, caution. In regard to judgments I think it is safe to say that a good deal clearly depends on the particular circumstances of the case, and this has frequently been pointed out. For instance, in Pachi Dasi v. Bala Das 13 C.W.N. 1031 it was observed that 10361 13 C.W.N. --[Ed.])--

Each cage must be judged on its own merits, and the question whether certain words amount to a sufficient statement of the reasons for the decision is one on which different minds might reasonably form different opinions and its conclusion would not...amount to a decision of law, unless perhaps the words were identical.

10. Again at page 1037 Pages of 13 C.W.N.--[Ed.] it is observed:

A judgment is required but provided it substantially meets the requirements of the law, it is not necessarily defective because it is brief or because it does not repeat or recapitulate all that is contained in the judgment of the Court of first instance.

11. And, in my opinion, that is a very important point, which should not be overlooked in this particular case. Section 73 of the Act covers not only the case of orders directing a commutation of a watan, but various other questions such as

determining the custom, of the watan as to service and what persons should be registered as representative watandars, In those cases disputes might arise, and do in fast ordinarily arise ; and the section has, therefore, been drawn so as to require a proper investigation and a proper decision with reasons. Leaving aside for the moment the question whether this particular provision about reasons is mandatory or directory, it is at any rate a fair and reasonable remark that in cases where there is no actual dispute, and where an order is being made by the Collector with the consent that is required by Section 15, there is not, at any rate, the same necessity for a lengthy or clear statement of reasons as there is in the case of a dispute which is decided by the Collector''s decision. In such a ease there is obviously room for saying that so long as the decision contains enough to show what is the reason for the Collector''s decision, it is a sufficient compliance with the requirements of the section in the circumstances of the case. It is somewhat analogous to a case where a judgment is given by a Civil Court, making a decree or order in accordance with a compromise or with the consent of all the parties. In such a case, although the law requires reasons to be given in a judgment, still it is recognised to be a sufficient compliance, if the judgment at any rate says "by consent such and such an order is passed or a decree is made." And in the present case, it is not even a case of parties consenting and the Collector adding to that consent his command, such as is the basis for a judgment of the kind that I have just mentioned. u/s 15 the consent to a commutation of service has to be given by the holder of the watan in writing, and so long as that is before the Collector and the terms on which the commutation is to be made have been agreed upon between the Collector and the holder, he is authorized to pass an order directing commutation of service. Therefore an order saying that "as the representative watandar consents to the commutation on the terms contained in such and such a Government Resolution or such and such a Circular, I hereby direct commutation of service" would clearly be a sufficient compliance with the provisions of Section 73 of the Act. It would, no doubt, have been better if the Collector had written something of that kind. But, in my opinion, when he uses the words "commutation accepted," we are justified, in the circumstances of the case, in saying that those words clearly indicate that commutation was directed because of the consent of the representative watandar, which had been obtained and which the Collector "accepted." I do not agree with the contention of Mr. Thakor that, in order to comply with Section 78, the reasons recorded must in themselves plainly show all the facts that surrounded the decision, and that it is not legitimate to go outside the four corners of the decision in Order to ascertain in full detail what the reasons are. It is not necessary that a judgment written by a Judge should have every detail of his reasons set forth in his own handwriting in the judgment. He can, for instance, merely refer to another judgment (whether his own or some one else''s) where reasons are given, which he follows. He can also refer to a separate paper or note where his reasons are stated, either wholly or in part, or to a separate statement of facts which afford grounds for his decision. In my opinion, therefore, the Collector''s decision can at any rate be

read with the office note, below which it was written, and which is evidently intended to be referred to by the Collector and treated as part of the record of his proceedings. In effect the words "in the circumstances stated above" can legitimately be read into the words "commutation accepted." It might be different in the case of a dispute where an Appellate Court could not say from the record of the decision what was its exact basis. But in construing Section 73, it is, in my opinion, necessary to observe the general principle that, after all, rules of procedure are, as it is some time expressed, the handmaiden of substantive law, or as it has been put in Ma Shwe Mya v. Maing Mo Hnaing 24 Bom. L.R. 682 by their Lordsnips of the Privy Council in regard to the question of allowing amendments 835 48 C.:

All rules of Court are nothing but provisions intended to secure the proper administration of justice, and it is, therefore, essential that they should be made to serve and be subordinate to that purpose.

12. Here the rule of procedure that the reasons should be recorded in the Collector''s handwriting, must, in my opinion, be made subordinate to the ends of justice rather than to reverse the process and to say, merely because the reasons have to be implied from the actual words used, that, therefore, the order of the Collector must be treated as invalid, in spite of the fact that, while the plaint raised various objections to this order, this particular objection was not then thought of. I think that it is scarcely necessary to quote authority for saying that a Court can in proper cases imply certain other words from the actual words used. As an instance, however, I may refer to Maniram Seth v. Seth Rupchand 16 M.L.J. 300 where their Lordships of the Privy Council were dealing with the case of an alleged acknowledgment of liability u/s 19 of the Indian. Limitation Act. The acknowledgment was merely that there were certain open and current accounts still outstanding between certain parties. Their Lordships said that these words could legitimately be read to imply also that on an account being taken the person who was found to owe the other party was bound to pay him the debt, so that in effect there was an acknowledgment of liability to pay such debt. Again in Ledgard v. Bull 4 Sar. P.C.J. 741 an objection was raised that the plaint under a certain enactment should have given particulars about alleged infringements of a patent, yet it was held that it was not necessary that those particulars should be fully specified in the plaint, if they were sufficiently indicated, so as to give the defendant fair notice of the case he had to meet and it was immaterial whether the information was given in the plaint or in a separate paper. I refer to the remark of Lord Watson reported at page 197 9 A [Ed.] and the general remarks in the judgment at page 202 & 203 9 A..

13. Therefore, in my opinion, there has not really been any non-compliance with the provisions of Section 73 of the Act. It is unnecessary in this view to consider whether the provisions of the section are mandatory or directory. If we entered into that point, we should have to give due regard to the view taken on this point in Bhikaji Laxman v. Secratary of State for India AIR 1925 Bom. 365 as opposed to a view like

that taken in Fort Gloster Jute Manufacturing Co. v. Chandra Kumar Das 24 C.W.N. 791. In my opinion, the Disrict Judge is not justified in saying that the Collector''s order does not contain any record of reasons therefor. I think it does contain a sufficient statement of reasons to satisfy the provisions of Section 73 in the special circumstances of this case. The order of the Collector is thus not shown to be ultra, vires, and the suit also fails because of the objections under the Bombay Revenue Jurisdiction Act and the Indian Limitation Act, which depend upon the question of the validity of his order. Therefore, I would allow the appeal and dismiss the plaintiffs'' suit with costs throughout excepting the costs of the appeal to this Court when the case was remanded, which have to be borne by the Secretary of State for India in Council.

Mirza, J.

14. I agree.