(1920) 07 BOM CK 0036

Bombay High Court

Case No: None

In Re: Bombay Revenue Jurisdiction Act, 1876 In Re: Shri Vasudev Harihar Pandit alias Baba Maharaj		APPELLANT
	Vs	
		RESPONDENT

Date of Decision: July 20, 1920

Acts Referred:

- Bombay Revenue Jurisdiction Act, 1876 - Section 12
- Summary Settlement Act, 1863 - Section 3

Citation: (1921) ILR (Bom) 463

Hon'ble Judges: Pratt, J; Norman Macleod, J; Fawcett, J

Bench: Full Bench

Judgement

Norman Macleod, Kt., C.J.

As a preliminary question to the hearing of this reference, it has been argued by Mr. Bahadurji for the third party that this Court has no jurisdiction to hear the matter referred because Section 12 of the Bombay Revenue Jurisdiction Act only deals with claims or objections which, but for the passing of the Act, might have been tried or investigated by a civil Court. The meaning the earned Counsel gives to those words is this, that if there was any claim or objection which was excluded before the passing of the Act from the cognizance of the civil Courts, then it could not be said to have been within the cognizance of the civil Courts but for the passing of the Act. Speaking for myself, I do not think that is a proper interpretation to be put on Section 12. Act X of 1876, (Revenue Jurisdiction Act) was a consolidating Act passed, by the Government of India, and the object of it appears in the preamble which states "Whereas in certain parts of the Presidency of Bombay the jurisdiction of the civil Courts in matters connected with the land-revenue is more extensive than it is in the rest of the Presidency; and whereas it is expedient that the jurisdiction of all

the civil Courts in the said Presidency should be limited in manner hereinafter appearing." If we look to the repealed sections in the Act, we find that all the Acts or parts of Acts which had been passed by the Government of India or by the Government of Bombay with the object of withdrawing certain matters from the cognizance of the civil Courts were repealed. It was clearly intended that all the matters which were withdrawn from the congnizance of the civil Courts should be contained within Section 4 of the Act. I cannot think that it was intended that the Government should have no right to refer a question for the decision of the High Court u/s 12, when investigating any claim or objection which before 1876 may have been excluded from the cognizance of a civil Court. But apart from that, it is extremely doubtful whether the question in this case could not have been tried by a civil Court before Act X of 1876. A dispute arose before the passing of the Summary Settlement Act II of 1863. An offer was made to Tatya Maharaj to accept the Summary Settlement before the Act was actually passed. It appears in a letter at page 48 written on the 6th of March 1862 by the Government to the Revenue Commissioner, Southern Division, as follows: "I am directed to acknowledge the receipt of your letter No. 195, dated 1st ultimo, submitting for consideration the question as to the applicability or otherwise of the terms of the Summary Settlement to the estates of Tatya Maharaj lying in British territory. In reply I am desired to inform you that His Excellency in Council does not consider that a prima facie case has been made out for excluding Tatya Maharaj''s lands from the benefit of the Summary Settlement on the ground of their being held on political tenure. His Excellency in Council accordingly directs that the terms of the Summary Settlement be offered to Tatya Maharaj. If he refuses to accept the unassailable title thus offered, it will remain for further consideration whether any and what inquiry should be instituted into the title on which he holds the lands".

2. On the 29th March 1862, Tatya Maharaj replied: "Since the time of my father Shrimant Bhau Maharaj Inam villages and gifts in Inam, bungalow, garden, grazing lands and lands, &c, have been continued to us through the friendship and favour of Government and this has already been communicated in detail to Meherban Agent Saheb Bahadur and Revenue Saheb Bahadur. In spite of it, Government are passing the order and it cannot be helped. I therefore agree to the Summary Settlement being applied to the Inam villages and lands, &c, in our enjoyment on the assessment after the same are classified and measured.

3. The question in this reference is whether or not on the facts herein stated the application of the Summary Settlement in or about the year 186-1 to the villages and lands of Tatya Maharaj situate in British India or to any and if so which of them was valid and legal. I cannot see how Act XI of 1852 has any application, as it was only by the provisions of Act II of 1863 that the Summary Settlement was introduced, and could be made applicable to any lands of this nature, and it has not been pointed out to us by the earned Counsel under what provision of any later Act or of Act II of 1863 itself, if the 1st and 2nd parties had filed a suit against the 3rd party and

Government, it would have been excluded from the cognizance of the civil Courts. However that may be, I am clearly of opinion on the construction of Section 12 of the Bombay Revenue Jurisdiction Act that this Court has jurisdiction to hear the reference.

Pratt, J.

4. I agree.

Fawcett, J.

5. I agree.

6. Arguments were then addressed on the merits of the case.

7. Sir Thomas Strangman: The question involved is whether the lands were held under treaty and, secondly, whether they were held under political tenure. If either of these questions is answered in the affirmative it follows that Summary Settlement was wrongly applied.

8. The first point that arises is: Were the lands under reference held under treaty? We submit they were. The Talukas comprising, the lands were held by the Maharaja of Kolhapur under the treaty of 1826. Under Article 7 of the treaty the Raja of Kolhapur; promised to continue to Bhau Maharaj and Baba Maharaj their respective lands agreeably to the Schedule annexed and the British Government guaranteed the enjoyment of these lands during the life-time of the grantee as founded on the Sanad or custom.

Macleod C.J.

9. The Summary Settlement was applied to the villages in British territory. What right has the Maharaja of Kolhapur to dispute its application?

10. The Maharaja undertook to protect the rights which arose under the treaty. Though the talukas were taken back by British Government, the treaty is still in force and the Maharaja of Kolhapur does continue to exercise certain rights with regard to the Guru Maharaj''s family. The Maharaja can refuse to recognise an adoption which was not sanctioned by him. This right was recognised in 1867 when Baba Maharaja''s adoption was made. Further, the Maharaja has to see that the grants which were made for the maintenance and dignity of Guru Maharaja''s family were kept in tact. By the application of Summary Settlement the villages were made alienable as private property. To this the Maharaja can object.

Macleod C.J.

11. Supposing Tatya Maharaj had agreed with the British Government for the application of Summary Settlement, what right had the Maharaja to dispute the application?

12. The Maharaja can say that the rights of the descendants of the Guru Maharaj family to continue the property in particular lineage were affected by the application of Summary Settlement and these rights which were originally founded on the Sanad were guaranteed by the treaty. Tatya Maharaja''s consent was, therefore, of no avail. Surrender of the estate by him could not prejudice the rights of his descendants, though he could enter into any agreement with the sovereign power during his own life.

13. Further, at the moment of the grant the lands were held by Bhau Maharaj under the Sanad and at that time the talukas comprising these lands were held by the Maharaja of Kolhapur not under specific arrangement. The treaty of 1826 having come into force, they were held so far as Kolhapur Darbar was concerned under the treaty. Subsequently, by the treaty of 1827 they were handed over by the Raja of Kolhapur to British Government free from any rights. According to international law, however, the rights of private parties arising under the treaty are to be respected; and in this case the rights of the Bhau Maharaj family had arisen by reason of the guarantee; so Bhau Maharaj and his family could claim title to the land by virtue of the treaty: Cook v. Sprigg [1899] A.C. 572 .

14. The second point is, the lands were held as Jaghir or on a similar political tenure. Jaghir is a Mahomedan term; Hindu term for the tenure is Saranjam. Description of "Jaghir" is to be found in Ramchandra v. Venkatrao (1882) 6 Bom. 598. The grant to Bhau Maharaj was made for political consideration and not for any commercial consideration. Sir Thomas Munro describes the grant as "New Jaghir" (Appx. 4, page 14). In settling the Mahratta Country Bhau Maharaj who is described as "great, worthy, and a friend and well-wisher of the Company''s Government "rendered great service to the British Government and the grant was made as a reward for these services. It is stated" in transferring Chikodi to the Raja of Kolhapur, the three Inam villages which formerly belonged to his Vakil''s brother were restored, and four villages were given as a Jaghir to Yakil Bhau Maharaj himself." (Appx. 5, page 15). We submit that on these facts it is proved that the grant to Bhau Maharaj was made out of political considerations and is a ''political tenure'' within the meaning of the term u/s 16(e) of the Summary Settlement Act (Bombay Act II of 1863): see also Shekh Sultan Sani v. Shekh Ajmodin (1892) 17 Bom. 431 : L.R. 20 IndAp 50. This case is on all fours with the present case. There also Inam villages and lands included originally in one Saranjam granted under Mahratha rule, remained after 1820, when the Peshwa rule ceased, a grant of political tenure. The British Government held that the whole estate passed to the person whom the Government at its discretion, for political reasons, recognised as the grantee.

15. In considering a grant, the Court has also to look into the surrounding circumstances: Gulabdas Jugjivandas v. The Collector of Surat (1878) 3 Bom. 186.

Macleod, C.J.

16. App. 21, page 48 shows that the Government considered that no prima facie case was made out for excluding Tatya Maharaj''s lands from the benefit of the Summary Settlement on the ground of their being held on political tenure.

17. The question that is put to the Court is whether the Summary Settlement Act was properly applied to these lands. If it is found that the lands were granted for political considerations, it cannot he said that the Act was properly applied. In this connection we have already submitted that Tatya Maharaja''s consent was immaterial as he was not by his consent entitled to compromise anything except his own life estate.

18. Bahadurji: The question referred does not at all arise having regard to the facts. The facts on which I rely are these : The lands in question were granted to Bhau Maharaj in 1818 by British Government. After the lands were granted by a Sanad (Appx. 2, p. 12), the talukas in which these lands were situated were given to the Kolhapur Government. In 1827, by a treaty between the Kolhapur State and the British Government, the talukas were restored to the British Government in full sovereignty. After they had been restored to the British Government in full sovereignty in 1829, the rules and regulations applying to British territory were made applicable to these very territories by Regulation VII of 1830: Lyons Code, Vol. Ill, p. 740. This shows that amongst the various lands which fell into Dharwar District were the lands in dispute. The question as to the settlement of the various holders in British territory was being adjusted in 1844. Investigations were instituted into the titles of the holders and in order to finally determine them Bombay Act XI of 1852 was passed, whereby the Inam Commission was appointed and it was made a civil Court. So far as titles to these properties were concerned, the title was investigated in 1859 and report upon investigation was made: see Appx. 18, p. 46. Ultimately an order was passed, in respect of the village of Koosgaum in Poona Collectorate, which was one of the villages exchanged in lieu of the village of Keyoor in Chikodi Taluka. Similar proceedings were adopted in reference to the two other villages in Poona Collectorate and similar orders were passed. It is necessary to mention that when the Government raised the question of going into the title of lands into the possession of Tatya Maharaj, Tatya Maharaj protested "on the ground that inquiries have already been held about them many times and it is not that inquiry should be made about them again and again" (Appx. 20, p. 47). It was intimated to Tatya Maharaj that it was for his benefit that the title should be looked into under Summary Settlement Act otherwise in future it may cause him great inconvenience. On Tatya''s protest, the letter of reference to Government was made and the Government replied by their letter dated the 6th, March 1862 (Appx. 21, p. 48) and applied Summary Settlement to the possessions held by Tatya Maharaj. Thus the question of the application of Summary Settlement does not arise at all. Government claimed in the first instance to apply Summary Settlement without any question as to what the tenure was. Moreover, it was Government who was to decide whether the property was held on political tenure and they held that the

tenure was such that Summary Settlement would apply. Tatya consented to its application. Thenceforth the lands became the private property of Tatya Maharaj and the reason why one anna Nazarna for each rupee of assessment was charged was because it was considered that the lands were not resumable.

19. The next point urged is that in respect of the breach of treaty and that the Maharaja of Kolhapur is entitled to compensation. Admitting that the Maharaja has got his remedy against the British Government, he has to seek it through the Political Department and not in this Court. Surely not under Act X of 1876, or Act II of 1863 or Act XI of 1852. As a matter of fact there is no breach of either of the two treaties of 1826 and 1827 (which was confirmed in 1829). Even if there be, so far as the Kolhapur Maharaja is concerned, he has no interest in this country and has no locus standi in the matter at all. As regards Shri Bala Maharaj he has got no locus standi for this reason: (1) He is the second adoptee and his adoption was decreed to be invalid by the Privy Council, my client''s adoption being declared valid. (2) Quite apart from the question of adoption, Shri Bala Maharaj does not even belong to the branch of Shri Bhau Maharaj.

20. As to the nature of the grant, the proper way to construe a grant is to look at the document itself. Surrounding circumstances may be looked at when the document is not clear in its terms. Here the Sanad described the grant as Inam Dhantnadaya (Appx. 2, p. 12).

Macleod C.J.

21. Tatya did not withdraw his consent to Summary Settlement being applied.

22. Tatya never withdrew. Raoji it seems consented after some difficulty.

23. Tatya had no right to enter into any arrangement which would affect the rights of his descendants; but u/s 3 of the Summary Settlement Act, 1863, any order passed under the Act is binding not only upon the holder but also on the rightful owner, his heirs assigns whoever such rightful owner may be. If the property is in possession of a person who is not the rightful heir, such heir may file a suit to establish his right; but no reference u/s 12 of the Bombay Revenue Jurisdiction Act would lie.

24. Strangman, in reply: For the purposes of the question referred to, we submit, Shri Baba Maharaj has a locus standi. He is interested in these lands and the interest depends upon the answer that the Summary Settlement was not applicable to the lands.

25. Section 2 of the Summary Settlement Act contemplates agreement in certain cases according to the tenure under which the lands were held. In the present case the authority of the adjustment and guarantee could not extend, as the lands were held under treaty which supersedes all other agreements.

Macleod, C.J.

26. The Governor-General in Council being desirous of having the decision of the High Court of Judicature at Bombay on the following question:

Whether or not on the facts in the case stated the application of the Summary Settlement in or about the year 1864: to the villages and lands of Tatya Maharaj situate in British India or to any and if so which was valid and legal?

27. Has referred the said question for the determination of this Court under the provisions of Section 12 of the_ Bombay Revenue Jurisdiction, Act X of 1876.

28. The parties to the reference are : (1) H.H. the Maharaja of Kolhapur, (2) Shri Bala Maharaj, (3) Shri Jagannath Vasudev Pandit Maharaj, (4) The Secretary of State for India in Council. The last named holds no contentious attitude in relation to the matter, the real contes-stants being Shri Jagannath, who claims under a decision of the Privy Council to be the person entitled to the estate of Tatya Maharaj, on the one hand, and His Highness the Maharajah of Kolhapur and Shri Bala Maharaj on the other.

29. The facts which require to he extracted from the case stated for the purpose of our decision are as follows:

Upon the downfall of the Peshwa, Sir Thomas Munro in 1818 when settling the Southern Mahratta Country which hatl fallen into the hands of the British Government, granted by Sanad dated the 2nd August to Bhau Maharaj, the youngest son of Shri Sideshwar Maharaj appointed before 1800 to be the spiritual preceptor of the then ruler of Kolhapur, three villages and one hamlet in the talukas of Chikodi and Manowlee as Inam Dharmadaya to be enjoyed from son to grandson, &c, from generation to generation.

30. This grant was subsequently confirmed on the 24th October 1819 by a Sanad in the same terms signed by the Honourable Mount Stuart Elphinstone.

31. Bhau Maharaj was at that time Prime Minister to the Maharajah of Kolhapur. On the same day as the Sanad was granted Sir Thomas Munro wrote to the Maharajah that the talukas of Chikodi and Hukeri had been given in charge of Bhau Maharaj, and requested His Highness to send orders to the Mamledar of the Company''s Government and take possession of the talukas, and by a private letter of the same date His Highness was informed that it had been deemed necessary to grant four villages in the talukas to Bhau as he was a particular friend of the Company.

32. In 1821, His Highness granted to Bhau ten villages several of which were within the said talukas.

33. It was not until the 24th January 1826 that the cession of these talukas was recognized by treaty.

34. By Article 7 the Raja of Kolhapur promised to continue to Bhau and his elder brother Baba their respective lands and rights agreeably to the Schedule annexed. The guarantee of the British Government to the enjoyment of the above lands and rights should only continue during the life-time of the abovementioned persons but the rights of their descendants as founded by Sanad or custom should not be prejudiced by the cessation of the said guarantee.

35. By a further Treaty confirmed by the Governor-in-Council on the 5th November 1827 after reciting the cession of these talukas to His Highness on his engaging to respect the rights and privileges of the Zamindars, Inamdars and Vatandars of the said District and the infringement of those rights by His Highness it was provided in Article 2 that His Highness should give back to the British Government the said talukas in the same stale in which he received them. By Article 3 after reciting Article 7 of the previous treaty and the guarantee given thereby to Bhau Maharaj and. Baba Maharaj, and the fact that His Highness had never ceased to annoy and distress these persons by seizing their villages and other property, it was provided that it had been deemed necessary to extend the guarantee of the British Government to their descendants, and His Highness accordingly engaged never to molest them.

36. Thereafter a question arose with regard to the villages in these talukas granted to Bhau Maharaj by His Highness during the period they were in his possession, and, though it is not quite clear from the letters Nos. 16 and 17 in the Appendix to the case, it seems that these grants were confirmed. Bhau Maharaj died in 1837 leaving two sons Tatya and Dada.

37. In 1838, four villages and lands in the Pooria District were given in exchange for Keroor, one of the villages granted by the Sanad of 1818. From 1841 onwards arrangements were being made for the investigation of the claims of persons to hold. villages and lands as Inam in the Southern Mahratta Country, and in 1843 a Committee was appointed to conduct the investigation. The inquiry proceeded until by Act XI of 1852 an Inam Commission was given a statutory existence, and rules were framed for the determination of the titles of claimants. The preamble to the Act is as follows: Whereas in the territories of the Dekkhan, Khandesh and Southern Mahratta Country and in other Districts recently annexed to the Bombay Presidency, claims against Government on account of Inams'' and other estates wholly or partially exempt from payment of land revenue are excepted from the cognizance of the ordinary civil Courts and whereas it is desirable that the said claims should be tried and determined without further delay.

38. In 1850, an inquiry was held under the Act as to the succession to the villages in the Pooua District given in exchange to Tatya Maharaj in 1838, and on the report of the Sub-Assistant Inam Commissioner the Acting Inam Commissioner decreed that the villages should be continued in Inam for so long as there might be in existence any male lineal descendant of Bhan Maharaj.

39. As sufficient progress was not made under the Act of 1852, a more summary mode of settlement was projected. It was proposed to offer an enlarged tenure on certain terms to claimants to Inams. A Bill was prepared and negotiations were entered into with such claimants pending its becoming law. Tatya Maharaj objected to the Summary Settlement being applied to his Inams on the ground that he held under treaty and in reply to a letter from the Revenue Commissioner of the 1st February 1862 to Government asking for instructions, Government replied that it did not consider that a prima facie case had been made out for excluding Tatya Maharaja''s lands from the benefit of the Summary Settlement on the ground of their being held on political tenure. If Tatya refused to accept the unassailable title thus offered to him it would remain for further consideration whether any and what inquiry should be instituted into the title he held.

40. On the 29th March 1862, Tatya agreed to the Summary Settlement being applied to the Inam villages and lands, &c, in his enjoyment.

41. The Summary Settlement Act (Bombay Act II of 1863) was passed on the 9th April 1863.

42. The preamble states:

43. Whereas it has been deemed expedient to provide for the final adjustment, summarily, of unsettled claims to exemption from the payment of land revenue, and to fix the conditions which shall secure, in certain cases, the recognition of titles to such exemption with respect to succession and transfer in those districts of the Bombay Presidency to which the operation of Act XI of 1852 of the Legislative Council of India extends.

44. Section 1 says: When the holders of lands in any of the said districts (except as is excepted in Clause 2 of this section), held either wholly or partially exempt from the payment of Government land-revenue, whose title to exemption has not yet been formally adjudicated, shall have consented to submit to the terms and conditions hereinafter described, in preference to being obliged to prove their title to the exemption enjoyed by them, it shall be lawful for the Governor in Council to finally authorise and guarantee the continuance, in perpetuity, of the said land to the said holders, their heirs and assignation the said terms and subject to the said conditions.

45. Meanwhile, Ravji Maharaj, the representative of Baba''s branch, had been contending against the application of the Summary Settlement to his Inams but he consented on the 19th December 1863.

46. The Summary Settlement was accordingly applied to ail the possessions of Ravji Maharaj and Tatya Maharaj in British India.

47. In 1866, Tatya Maharaj died and eventually Baba Maharaj was recognized as his successor by adoption.

48. Baba Maharaj died in 1897 leaving a will whereby he appointed rive trustees and directed his widow in certain events which have happened to adopt a son. On the 28th June 1901, the widow purported to adopt Jagannath. On the 19th August 1901, she purported to adopt Bala.

49. By the decision of the Privy Council in Appeal No. 33 of 1914 Jagannath was declared to be the validly adopted son. His Highness the Maharaja did not give his consent to the adoption of Jagannath and supported the adoption of Bala. Although many grounds are stated in the case under which His Highness and Bala Maharaj contest the validity of the application of the Summary Settlement to the villages and lands of Tatya Maharaj, only two have been argued before us. It has been contended that at the time the Summary Settlement was applied these villages and lands were either lands held under treaty, or under political tenure and therefore were excepted from the provisions of Act II of 1863.

50. I am of opinion that the villages and lands of Tatya were Inam and did not come within the exception in Clause 2 of Section 1 of the Act.

51. My learned brothers agree with me and have given very full and sufficient reasons for the conclusions they have arrived at; and so there is no need for me to go over the ground again at length.

52. The 1st and 2nd parties appear to me to have entirely misread the provisions of the treaties of 1826 and 1827, The Sub-Assistant Inam Commissioner in his report (Appendix 18) seems to have fallen into the same error. When the two talukas came back to the British Government, they were to be taken back in the same state-in which His Highness received them, that is to say, the sanads granted by His Highness would not be recognized. His Highness'' guarantee not to molest Bhau Maharaj and Baba Maharaj could only refer to those possessions which they continued to hold in the territories of His Highness. These appear in the Schedule annexed to the treaty of 1826. Bhau''s title to the villages in the two talukas granted to him by His Highness after 1818 was not recognized by the British Government under the treaty but was recognized afterwards in accordance with principles which the Government considered just and expedient. The Political agent in his letter of the 18th April 1828 (Appendix 18) considered that such Inams might have been resumed according to the strict letter of the treaty, but he had allowed them to remain in the possession of the proprietors in consequence of their having been restored at the suggestion of the British Government or granted with its concurrence. Tatya''s title thereafter to these villages depended more on the goodwill of the British Government than on any regular grant.

53. But as regards the villages mentioned in the Sanad of 1818, his title would be based on the Sanad after the talukas of Chikodi and Manowlee reverted to the British Government, and not on-the treaty of 1827.

54. The fact that by that Sanad the villages were granted to Bhau Maharaj as Inam Dharmadaya is conclusive against the villages being held on political tenure.

55. Generally it may be pointed out that lands held on Saranjam, Jaghir or other political tenure were excepted from the provisions of the Summary Settlement Act for the protection of Government, and not for the protection of persons claiming exemption from the payment of land revenue. For the terms offered were extraordinarily favourable, especially when the title to exemption was at all doubtful, as Government relinquished all claims whatever to the land on payment of a Nazrana, and in some cases of a fourth of the assessment. Subject to that the Inam would be held by the grantee, to use an English expression, as freehold. It would not, therefore, be open to an Inamdar to question the validity of the application of the Summary Settlement to his lands and certainly not when he had agreed to such application. It might be open to the Government of India to criticise the application of the Summary Settlement to an Inam on the ground that the favourable terms which had been offered to the holder were beyond the powers of the Local Government.

56. The answer to the question propounded is that the application of the Summary Settlement in or about 1864 to the villages and lands of Tatya Maharaj situate in British India was valid and legal.

57. The 1st and 2nd parties must pay the costs of the 3rd party.

58. No order as to the costs I of the; Government.

Pratt, J.

59. This is a reference by the Bombay Government u/s 12 of the Bombay Revenue Jurisdiction Act, 1876.

60. The question referred is: "whether or not on the facts herein stated the application of the Summary Settlement in or about the year 1864 to the villages and lands of Tatya Maliaraj situate in British India or to any and if so which of them was valid and legal?"

61. The question has arisen out of a disputed adoption.

62. Baba Maharaj died in 1897 holding Inam villages both in British and Kolhapur territory.

63. In 1901, his widow Tai adopted first Jagannath in June and Bala in August.

64. The adoption of Jagannath has been held to be valid by the Privy Council. Bat the Maharajah of Kolhapur has refused Iris sanction to the adoption and has recognized the second adoptee, Bala.

65. For want of his sanction Jagannath, it is said, cannot succeed to the villages in Kolhapur territory. That is a question will which we have no concern. But it is further

contended that the adoption is ineffectual in regard to the succession to the British villages also.

66. These British villages came under Summary Settlement under Bombay Act II of 1863. If the Summary Settlement is valid Jagannath is entitled to succeed.

67. But Bala who is a lineal descendant and the Maharajah of Kolhapur who supported Bala contend that the settlement is invalid; and that being set aside there is no right under the antecedent title of the adopted son either to succeed at all or to succeed unless recognized by Kolhapur.

68. It is thus that the validity of the Summary Settlement comes to be agitated after the lapse of half a century.

69. It is first necessary to trace the history of the title to villages up to the time of the settlement.

70. Bala''s grand-father Bhau was Prime Minister and spiritual Preceptor to the Maharajah of Kolhapur and had rendered valuable services both to Kolhapur and to the Company''s Government.

71. In 1818, on the Settlement of the Southern Mahratta ''Country on the downfall of the Peshwa two talukas of Chikodi and Manowlee were ceded to Kolhapur and at the time of the cession four villages in those talukas were granted in Inam to Bhau. The Sanad (Appendix 2) is of the 2"nd August 1818. It is of the same date as the 1 transfer of the talukas (Appendix 7). It describes the villages of Dharmadaya Inam to be enjoyed from generation to generation.

72. In 1821, the Maharajah of Kolhapur granted Bhau ten villages some in the same two talukas and some without those talukas.

73. In 1826, there was a treaty between Government and the Maharajah of Kolhapur (App. 11).

74. By Article 4, Government finally acknowledged that the two talukas had been ceded to Kolhapur and Kolhapur undertook to respect the rights of Inamdars.

75. By Article 7, Kolhapur promised to continue to Bhau villages specified in a Schedule which included the four villages granted by the British Sanad of 1818 and ten villages granted by Kolhapur in 1821. The British Government guaranteed Bhau enjoyment of these villages for life.

76. The Maharajah of Kolhapur did not perform his promise not to molest Bhau and by a treaty of 1827 (confirmed in 1829) the British Government resumed the two talukas.

77. Article (3) of this treaty (Appendix 15) is as follows:

In the 7th Article of the said treaty the possessions of Bhau Maharaj and Baba Maharaj were guaranteed to them for the terms of their respective lives only (provision being made that the rights of the descendants as founded on Sanad or custom should not be prejudiced by the cessation of the said guarantee). As, however, His Highness Chhatrapati Saheb has never ceased to annoy and distress these persons by seizing their villages and other property, it has been deemed necessary to extend the guarantee of the British Government to their descendants and His Highness accordingly engages never to molest them.

78. After this treaty Bhan held : (a) four villages in the two talukas in British territory in respect of which the British Sanad of 1818 had been granted, (6) other villages in the same two talukas in British territory granted by Kolhapur in 1821, and (c) other villages in Kolhapur territory also granted by Kolhapur in 1821.

79. In 1838 one of the four villages was exchanged for villages in Poona.

80. In 1843, Mr. Goldsmith''s Inam Committee was appointed to investigate alienations in the Southern Mahratta Country. The rules of this Committee are subsequently embodied in the Schedule to Act XI of 1852. Under these rules lands held under Sanad: declaring them to be hereditary were to be continued according to the terms of the Sanad (Rule 2, Schedule B of Act XI of 1852).

81. In 1859, following this rule the Poona village was decreed by the Inam Commissioner to be continued in Inam so long as there may be in existence a lineal; descendant of Bhau Maharaj (Appendix 18).

82. The procedure of the Inam Commission led to such lengthy and complicated inquiries that it was proposed to cut the matter short by a Summary Settlement under which the tenure of all personal Inams would be enlarged to a transferable freehold with descent not only to heirs by inheritance but to heirs by adoption. This was to be with the consent of the holders on payment in the case of lands already adjudicated by the Inam Commission of a Nazrana of one anna of the assessment; and in the case of lands not adjudicated on payment of Nazrana of four annas of the assessment; the extra three annas being the consideration for waiver of the inquiry under Act XI of 1852. This proposal was enacted in Bombay Act II of 1863.

83. The representatives of the Inamdar family-Bhau''s son Tatya and his cousin Raoji-accepted this adjustment and the villages have been held ever since under this Summary Settlement.

84. Now, of the various objections raised to the Summary Settlement only two have been argued before us. These are that the settlement is invalid or the villages are excepted from the operation of Bom. Act II of 1863.

(1) Because they are held under treaty-Section 1, Clause 2(1) of the Act.

(2) Because they had been granted under Jaghir or political tenure--Section 1, Clause 2 (2) of the Act.

85. It is said that when the villages were ceded by Kolhapur in 1827 Bhau had no title which he could enforce against the British Government: Cook v. Sprigg [1899] A.C. 572 Bhau''s title was therefore extinguished but as Bhau and his descendants continued to hold the villages it is argued that they must have done so under the guarantee in Article 3 of the treaty of cession.

86. Now when territory is ceded by one Sovereign State to another the latter may either ratify or repudiate existing grants. According to International Law change of sovereignty by cession does not affect private property and there is an obligation to ratify. All that was decided in Cook v. Sprigg [1899] A.C. 572 was that this obligation cannot be enforced by Municipal Courts. In the present case the question of ratification was left in abeyance to be dealt with, by the Inam Commission; and in the end the claim to ratification was compromised and adjusted under Bom. Act II of 1863.

87. It is, therefore, not correct to say that Bhau had no rights after the cession. He continued to hold under his original title-a title precarious until ratified.

88. Nor docs the fact that he continued to hold pending ratification lead, necessarily to the conclusion that lie-held under the treaty. To establish this it must be shown either that the original title was under a term of a treaty which remained in force or that the treaty of cession guaranteed title.

89. Now it is true that the original title was guaranteed, by Article 7 of the treaty of 1826 but as that term of the treaty was superseded by the treaty of 1827 that guarantee wras determined at the time of the cession.

90. There was a further guarantee in Article 3 of the treaty of 1827-but I am unable to construe this as affecting the British villages at all. The two talukas were resumed, in order to save Bhau from molestation by Kolhapur. Kolhapur was in no way solicitous for the welfare of Bhau and his descendants and could not have requested the British Government to guarantee Bhau''s enjoyment of villages in British-territory. The British would not and Kolhapur could not molest Bhau in British villages. But Kolhapur could molest Bhau in the villages that were not resumed. By Article 7 of the treaty Kolhapur engaged not to do so and. the British Government gave a guarantee for the protection of Bhau and his descendants in those villages.

91. It is true that the Sub-Assistant Inam Commissioner in his report in 1859 (Appendix 18) described Bhau''s titte as resting partly on the guarantee of the British Government. This is an erroneous construction and the report cannot prevail against the plain words of the treaty. On the other hand the Alienation Settlement Officer in 1863 correctly construed the guarantee as limited to Kolhapur villages (Appendix 30). I am satisfied that at the time of the Summary Settlement the villages

were not held under treaty.

92. The second contention that the Inam was a Jaghir or held under political tenure is easily disposed of. The points urged are that Bhau had rendered political services, that he is described in the Sanad. as a well-wisher of Company''s Government, and that the Inam was described as a Jaghir in letters written in 1818. But these circumstances cannot prevail against express terms of the Sanad in which the Inam is described as Dharmadaya, i.e., charitable or religious. Bhau was both a Prime Minister and a spiritual preceptor and the Inam was given to him in the latter capacity. Again if the Inam was Jaghir it was liable to resumption u/s 38 of Regulation XVII of 1827 and the Poona village would have been settled under the Jaghir rules and. not under Rule 2 of the Schedule to the Act of 1859. And lastly, Government on the 6th March, of 1.862 decided that the Inam was not Jaghir (Appendix 21) and this decision is conclusive u/s 16(c) of the Act of 1862. The decision was given shortly before the Act came into force but that makes no difference. The Act was the last stage of a laborious process that had already lasted nineteen years and provision was made by Section 13 for the validation of prior orders.

93. I, therefore, find that the Inam was not Jaghir.

94. The application of the Summary Settlement was, therefore, valid and that is the answer to the reference.

Fawcett, J.

95. The objection that the application of the Summary Settlement is invalid because the property was held on political tenure can be shortly disposed of.

96. In the first place, the decision of the Bombay Government that a prima facie case had not been made out for excluding the lands from the Summary Settlement on the ground of their being held on political tenure (which was communicated to the Revenue Commissioner in the letter of 6th March 1862, App. 21, p. 48 of the statement) is conclusive and cannot be questioned in a civil Court. This follows from the enactment in Section 16 (c) of Bom. Act II of 1863. It is true the decision was made prior to the date when that Act came into force; but the Commissioner''s letter of 1st February 1862, referring the point for determination, shows that a similar provision was contained in the Rules issued for effecting the settlement-which receives legislative validation as an "order issued" falling u/s 12 of the Act.

97. Secondly, there does not appear to be any substance in the contention that the lands were "granted or held as Jaghirs or Saranjams or on similar political tenure", so as to be excepted u/s 1, Clause 2, of the Act. The original Sanads (App. 2 and 3, pp. 12, 24) and the Schedule annexed to the treaty of 14th January 1826 (App. 10, item 15, pp. 22, 23) describe the grant as one of "Inam Dharmadaya", i.e., of a religious nature.

98. This would scarcely have been done, if the grants were really intended to be Saranjam or Jaghir grants. Such grants by the British Government in Bombay generally contained the words "as Jaghir", cf. Gulabdas Jugjivandas v. The Collector of Surat (1878) 3 Bom. 186; Dosibai v. Ishwardas Jagjivandas (1885) 15 Bom. 222; and Dosibai v. Jagjivandas (1891) 15 Bom. 222. It is true that in two letters of 1818 Sir Thomas Munro describes the grant as a "Jaghir" (App. 4 and 5, pp. 14, 15): but the word there was probably used in a loose sense and cannot prevail against the terms of the formal Sanads. Nor was any such claim apparently set up before the Inam Commissioner, when he enquired into the title on which the Poona villages were held; and his decision appears to treat them as held in ordinary Inam (App. 18, pages 43-46). When Tatya and Raoji Maharaj protested against the Summary Settlement being applied, they did not set up a claim to exception on the ground that the lands were held on political tenure, but on the ground that they were Inam Dharamdaya grants, guaranteed hereditarily under the treaty of 23rd October 1827 (App. 20 and 29, pp. 47 and 53). In para. 5 of his letter of 6th July 1863, Raoji again describes the grant as one of khairat, i.e., of a religious or charitable nature. The Commissioner"s letter of 1st February 1862 also specifically states that the latter"s daim was that the lands should be excepted as held "under treaty". In these circumstances, even supposing the point is open to reconsideration, there seems no: good ground for differing from the view taken by the Bombay Government in 1862.

99. The other objection that the lands were "held under treaty" and so fall under the 1st head of Clause 2 of Section 1 of the Act requires more consideration. The 3rd article of the treaty of 1827 (as I read it) undoubtedly contains a guarantee of the British Government" for the continuance of the lands entered in the Schedule to the treaty of 1826 to the descendants of Bhau and Baba Maharaj; and it is contended by the learned Advocate-General that this guarantee is the "foundation of the title of those descendants to the lands. This is based on the argument that, under the cession of the talukas containing the lands in question by the Raja of Kolhapur to the British Government (Article 2 of the treaty of 1827), the lands came back to the British Government free from any rights, so that the holders of the lands and their descendants can only claim a title to them by virtue of the treaty. In support of this contention the case of Cook v. Sprigg [1899] A.C. 572 was cited. That, however, only decides that upon annexation of territory by the British Government persons to whom concessions have been made, by the former sovereign cannot enforce them against its successor, or (as it is put in Halsbury"s Laws of England, Vol. XXIII, Article 652 at p. 311) "nor can privileges or rights obtained from the predecessor be directly enforced against the successor". This does not apply to the present case, for the rights in question to these lands were obtained not from the predecessor (i.e., the Kolhapur Maharaja) but from the successor itself, i.e., the British Government, which had granted them prior to the origina cession of the tulukas to Kolhapur under the treaty of 1826. There could never be any question of the British Government

repudiating such rights, especially as the treaty of 1827, Article 2, provides that the talukas shall be given back "in the same state in which he (the Raja of Kolhapur) received them." This is confirmed by the letter of the Political Agent (App. 16, p. 41), which only discusses the validity of grants subsequent to the cession of 1826. The appended statement (p. 42) accordingly deducts all " old Inams in the enjoyment of the proprietors at the time the district was ceded by the Honourable Company," as well as the grants to Bhau Maharaj, which are now in question. The original rights under the Sanads, therefore, remained undisturbed, pleno vigore. This is borne out by the-report of the Inam Commissioner regarding the Poona villages (App. 18, pp. 43-46), which recites the Sanads, as well as the treaty of 1827, as part of "the evidence produced by the claimant in support of his title," and says (para 15) that the holder''s claim " appears to be firmly based on the recognized competency of the grantor and the guarantee of the British Government" contained in the treaty of 1827. The guarantee is not there regarded as the sole basis of his title: it also rests on the grant by a grantor, recognised as competent. This is in conformity with Rule 2 of Schedule B to Act XI of 1852, under which "any land held under a Sanad declaring it to be hereditary shall be so continued according to the terms of the Sanad," where the grant was by a competent authority and" was not afterwards revoked, disallowed or altered. Apart from the guarantee contained in the treaty of 1827, the Sanad s, which directed, the Inam to be continued "from son to grandson, &c, from, generation to generation," would clearly justify the Inam Commissioner''s decision, that the villages " be continued in Inam for so long as there may be in. existence any male lineal descendant of Bhau Maharaj".

100. It may be added that in the Schedule to the treaty of 1826, the title to the four villages is shown as based on the Sanad of Sir Thomas Munro, confirmed by subsequent Sanads of the Honourable Mount Stuart Elphinstone (App. 10, item 15, columns 4 and 8, pp. 22 and 23): and as the talukas were re-ceded to the British Government in the same state in which, "the Raja received, them", that title would (as already pointed out) survive.

101. That being so, it seems to me that the lands cannot properly be treated as "held under treaty" within the meaning of Section 1 of Bom. Act II of 1863. The treaty of 1827 is not the foundation of the holder''s title, nor does the treaty itself specify the terms on which the lands were to be held, as would ordinarily be done in the case of such lands (cf. Clause 3rd of Section 2 of Bom. Act VII of 1863). In other words the treaty is not "the root of the title" of Bhau Maharaj and his descendants. This distinguishes the case from one like that which was dealt with in Shekh Suttan Sani v. Shekh Ajmodin (1892) 17 Bom. 431, where a treaty of July 1820 was held to be the root of the grantee''s title (see at bottom of pp. 446, 456 of the report). In such a case the lands granted by the treaty would of course be "held under treaty ".

102. This case Shekh Sultan Sani v. Shekh Ajmodin (1892) 17 Bom. 431 helps to show why the guarantee of the British Government regarding the enjoyment of the lands

and rights conferred on Bhau and Baba Maharaj was inserted in the treaties of 1826 and 1827. The judgment (p. 446 of the report) shows that in a similar treaty with the Raja of Satara in 1819" it was provided that the possessions of the Jaghirdars within the Raja''s territory were to be under the guarantee of the British Government, which engaged to secure the performance of the service due to the Raja according to established custom". The guarantee was obviously for the protection of the grantees; there was an agreement given by the Raja of Kolhapur to respect their rights accordingly; and in the treaty of 1827 the pith of the matter is contained in the engagement of the Raja "never to molest" the descendants of Bhau and Baba Maharaj in the possessions guaranteed them. This was necessary, as a large number of Inams specified in the Schedule to the treaty of 1826 still iremained in the Kolhapur State. Col. Btheridge, the Alienation Settlement Officer, whose opinion is entitled to great weight, took this view of the effect of Article 3 of the treaty of 1827. In his letter of 2nd December 1863 to Tatya Maharaj (App. 30, p. 54) he says: "If your objection is that Government have guaranteed the possessions (villages) granted to you by the Maharajah of Kolhapur by an article of the treaty, that treaty is not applicable in the present case at all. The Maharajah of Kolhapur constantly interfered with the possessions of Baba Maharaj and Bhau Maharaj and therefore, so long as the villages were continued to them, the Maharajah of Kolhapur was not to disturb their possessions. That is the only provision in the treaty." Similarly, Sir W. Lee Warner, in summarising this treaty, says: "in 1827 the Kolhapur Government began to oppress certain landed proprietors who possessed claims on British protection, and a right of intervention on their behalf was secured by treaty" (see Protected Princes of India, p. 185). The guarantee of the British Government was subsidiary to this object.

103. The passage in Shekh Sultan Sani''s (1892) 17 Bom. 431 referring to Sir Thomas Munro''s minute of 15th March 1822 was cited in support of the view that the guarantee, and not the Sanads, formed the basis of the hereditary title to these lands. That minute, however, appears to refer to Sanads granted by pre-British authorities, and cannot rightly be applied to a Sanad granted by Sir Thomas Munro himself. Even in the case of Jaghirs, granted by the British Government, which prima facie is an estate only for life, the rule laid down is that where there is a grant to a man and his heirs, and nothing to control the ordinary meaning of the word, the grantee takes an absolute interest. In this case the grant in terms was to Bhau Maharaj and his lineal male descendants (''son to grandson, &c.''), and this condition is specified in the Schedule to the treaty of 1826 (App. 10, p. 23). The Sanads were confirmed by Government; and therefore their hereditary nature had to be recognised under Act XI of 1852, Section 4 and Schedule B, Rule 2.

104. I am, accordingly, of opinion that the lands cannot be treated as " lands held under treaty," so as to be excepted under Bom. Act II of 1863, Section 1, Clause 2.

105. Even if the lands were "held under treaty," I do not think this would suffice to invalidate the application of the Summary Settlement, made with the consent of the then holders. The effect of Section 1 Clause 2, of the Act is that the Governor in Council would not then have the authority of adjustment and guarantee conferred upon him by Clause 1 of the section. Such authority is one derived from the Government of India and the Secretary of State, who under 21 & 22 Vict., c. 108, Section 40, and 22 & 23 Vict. c. 41, Section 1, had the main power to dispose of Immovable property vesting in Her Majesty for the purposes of the Government of India. If the authority conferred by Section 1, Clause 1, of the Bombay Act II of 1863 is wanting, still it can be conferred by ratification, as is recognised in The Collector of Masulipatam v. Cavaly Venkata Narainapah (1861) L.R. 8 IndAp 529 Such ratification would almost necessarily be given, in view of the circumstances and the lapse of time since the settlement was made. And as the settlement was assented to by the then holders of the lands, with full knowledge of their rights and all the material facts, and such assent was the real basis of the contract constituting the settlement cf. The Secretary of State for India v. Sheth Jeshingbhai Hathisang (1892) 17 Bom. 407, it is not, in my opinion, open to any legal representatives of those holders to impeach the validity of the transaction on the ground of want of authority by the Governor in Council to make the contract. It is not as if any repudiation of the contract by superior authority had been made or threatened, or is in any way probable. The stricter rule that applies to public agents as opposed to private agents is one based on the public interest and not the private interest of any person with whom the public agent may contract--see Story''s Law of Agency, 9th edition, Section 307(a), cited in The Secretary of State for India in Council v. Kosturi Reddi (1902) 26 Mad. 268 The objection of want of actual authority (not expressly or impliedly repudiated by the principal) is, therefore, one which, in my opinion, is open only to the Government of India or the Secretary of State for India in Council, and not to a party, who has freely contracted with the public agent and been in no way prejudiced by the latter''s want of authority. Such an objection by a person, who is not shown to be a legal representative of the party to the contract, is still less maintainable.

106. I, therefore, concur in the decision that the application of the Summary Settlement to the lands in question was valid and legal.