

Krishnarao Anandrao Bargal Vs The Secretary of State for India

Court: Bombay High Court

Date of Decision: Jan. 18, 1935

Acts Referred: Bombay Land Revenue Code, 1879 " Section 217
 Criminal Procedure Code, 1898 (CrPC) " Section 888

Citation: AIR 1935 Bom 265 : (1935) 37 BOMLR 349 : 159 Ind. Cas. 518

Hon'ble Judges: N.J. Wadia, J; John Beaumont, J

Bench: Division Bench

Final Decision: Allowed

Judgement

John Beaumont, Kt., C.J.

This is a second appeal from the decision of the District Judge of West Khandesh, which raises a question under

the Bombay Land Revenue Code. The lands in suit were seven survey numbers, four of which were in the possession of a man named Keahav,

another was in the possession of a man named Balaji, and the remaining two were in the possession of a man named Yeshvant. The plaintiff is the

inamdar of the village in which the survey numbers are situate, and he is entitled both to the land revenue and the, soil. In the year 1917 the three

persons in occupation of the lands in suit were alleged to have been concerned in a criminal offence, and they absconded. Proclamations were

issued, and the survey numbers were eventually attached and forfeited u/s 88 of the Criminal Procedure Code, the order of forfeiture being dated

November 28, 1924. The plaintiff then applied to the Collector for restoration to himself of the suit lands on the basis that the occupiers were

tenants-at-will tender himself as inamdar, and that if their interest had been forfeited, the lands reverted to him. His application was dismissed by the

Collector, and on appeal by the Commissioner, and ultimately by Government. This suit was filed on August 27, 1926, Claiming possession of the

suit lands and mesne profits. Before the trial Judge the claim failed, but on appeal it was held by the District Judge that four survey numbers

belonged to the plaintiff since the tenants were tenants-at-will, and came upon the land after the year 1904, when for the first time a survey

resettlement was introduced into the village in which the lands are situate, and the learned Judge held that as the tenants held under an express

agreement created after the introduction of the survey settlement, their rights were governed by those agreements. Against this part of the decision

cross-objections have been filed. But as to the other three survey numbers, 387, 390 and 391, the District Judge held that the tenants had been in

possession as tenants before the introduction of the survey settlement, and that, having regard to the provisions of Section 217 of the Bombay

Land Revenue Code as it existed in the year 1904, the interest of the tenants had been converted into that of permanent occupancy, and the

Government were therefore entitled to succeed to those rights, and the plaintiff's claim to possession of those survey numbers failed. Against this

part of the decision plaintiff appeals.

2. Section 217 of the Bombay Land Revenue Code, before its amendment in 1913, provides that when a survey settlement has been introduced

into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same

responsibilities in respect of the lands in their occupation as occupants in unalienated villages have, or are affected by, under the provisions of the

Act, and all the provisions of the Act relating to occupants and registered occupants shall be applicable, so far as may be, to them. So that one has

to turn to other provisions of the Act in order to see what were the rights of occupants in unalienated villages ; and those rights are denned in

Section 68, which provides that an occupant is entitled to the use and occupation of his land for the period, if any, to which his occupancy is

limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity conditionally on the payment of the amounts

due on account of the land revenue for the same. An occupant is defined in the Code as signifying a holder of unalienated land. The contention on

behalf of Government is that u/s 68, where a survey settlement has been extended to the land, then whatever the rights of the tenants may have

been at the date, the tenants take in perpetuity conditionally on payment of the amounts due on account of the land revenue, and if this section had

stood as it was originally drafted, I think there would have been a good deal of force in that contention. But in the year 1901, that is to say, before

the introduction of the survey settlement to the village in question in this case, a proviso to Section 68 was added to the effect that ""nothing in this

section or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector at any time to grant permission to any

person to occupy any unalienated unoccupied land, for such period and on such conditions as he may, subject to rules made by the Governor in

Council in this behalf,, prescribe, and in any such .case the occupancy shall, whether a survey settlement has been extended to the land or not, be

held only for the period and subject to the conditions so prescribed". The proviso comes to this, that if the Collector has granted a particular

interest in unalienated land to a tenant, that interest is to continue, notwithstanding the introduction of a survey settlement. Now in applying the

provisions of Section 217, under which we have to give to the holder of land in an alienated village the same rights as occupants have in an

unalienated village, I think that we must apply the proviso to Section 68, with the necessary alterations to fit the case of alienated land. Unalienated

land could only be held from Government. Alienated land must be held from the inamdar, and I think that, reading Sections 217 and 68 together,

we must apply the proviso to the latter section to alienated land substituting the inamdar for the Collector. So that if the tenants in the present case

were tenants-at-will or tenants from year to year under an agreement made with the inamdar, then the introduction of the survey settlement would

not affect that interest. The learned District Judge held that the tenants of these three survey numbers were tenants-at-will, and I agree with him in

so holding. I think that the rent-notes in the case make that quite clear. Therefore, in my opinion, u/s 217 of the Code as it existed in 1904 the

tenancies-at-will of these tenants were not converted into permanent occupancy.

3. I have dealt with the case so far on the footing that the Code has to be applied in the condition in which it was in the year 1904. But in the year

1913 extensive amendments were made, and amongst other amendments the definition of occupant was altered so as to mean a holder in actual

possession of unalienated land other than a tenant, and in Section 217 the expression "holders of land" was substituted for the word "occupant". In

my opinion under the section as it exists now it could not be argued that the tenancies-at-will possessed by these tenants had been converted into

permanent occupancy. Mr. Rao contends that the rights of Government should be controlled by the Act as it previously existed. He argues that

Government acquired certain rights in 1904 under the Code as it then existed, and that to construe the amendment in the Act retrospectively so as

to take away vested rights would be to offend against well-settled canons of construction. That contention, I think, has not much weight in a case

of this sort, in which Government in the first instance arbitrarily converted, according to the argument of Mr. Rao, tenancies-at-will into rights of

permanent occupancy. Having done that, I see no particular hardship in holding that Government afterwards by legislation restored the status quo.

In three cases in this Court on which Mr. Kane relies, *Suryajirao Ganpatrao Jahagirdar Vs. Sidhanath Dhonddeo Garud*, 5, *Kondi v. Vithalrao*

(1925) 28 Bom. L.R. 424 and *Ntiaji v. Nagindas* (1932) 35 Bom. L.R. 150 this Court seems to have assumed that the rights of "the parties in a

case of this sort have to be governed by Section 217 in its amended form, and I think that view is correct. The plaintiff alleges and proves that the

tenants of the land held as tenants-at-will, and to answer that case Government have to assert that the tenants acquired some other right. To do

that they must rely on Section 217 of the Bombay Land Revenue Code, and prima facie, they must rely on that section as it existed on the date

when the suit was started. In order to succeed, they would have to rely on the Code as it formerly existed, and, allege that when the Code was

amended their existing rights were maintained. I can see nothing in the Code to support that contention. I think, therefore, that even apart from the

proviso to Section 68, they must also fail on the ground that their rights are governed by Section 217 in its present form. Under that section it is

really unarguable that these tenants have any interest which can be forfeited to the Crown. On those grounds I think that the appeal . must be

allowed with costs throughout, and the cross-objections dismissed with "costs. There will be a decree for possession of these seven survey

numbers with mesne profits from the date of suit. There will be an enquiry as to mesne profits by the first Court. Plaintiff will get his costs

throughout including costs of cross objections in this Court.

N.J. Wadia, J.

4. u/s 217 of the Bombay Land Revenue Code, as it now stands, it is clear that the introduction of a survey settlement into an inam village would

riot confer on persons who were holding as tenants from the inamdar the status of occupants. The section was expressly amended in 1913 in order

to make this clear. There is nothing in the section as it now stands which could suggest that it would not apply in the case of inam villages into which

survey settlements had been introduced prior to 1913. It is in fact doubtful whether it was the intention of the Legislature, even under the section as

it stood prior to the year 1913, that contractual rights between the inamdar and his tenants should be affected by the introduction of a survey

settlement into an inam village. If Section 217 as it now stands were applied, it is clear that the holders of the three survey numbers with regard to

which the appeal has been filed, viz., survey Nos. 387, 390 and 391 of Taloda, were mere tenants-at-will holding under agreements passed by

them to the inamdar, and they would continue to be so even after the introduction of the survey settlement. It was urged by the learned Assistant

Government Pleader that the rights of Keahav Ganpat, the holder of these three survey numbers, prior to the introduction of the survey settlement

into the village, were the rights of an occupant and not merely of a tenant-at-will, and it was argued on the strength of the ruling in The Secretary of

State Vs. Bai Rajbai, . that the words in the agreement which show that the tenants were to hold the lands so long as the inamdar desired, did not

necessarily convert them into tenants-at-will. The case relied on, however, is clearly distinguishable from the present case. In the case cited the

agreement was that the lands were to be held during the pleasure of Government, but there was also a clause which showed that the lease had

been granted for seven years, and it was held that because of this latter clause the tenancy could not be considered merely as a tenancy-at-will. In

the present case there is absolutely nothing in the language of the agreement which could suggest that the tenancy was anything but a tenancy-at-

will.

5. The view that Section 217 of the Bombay Land Revenue Code, as it now stands, applies also to inam villages in which survey settlements were

introduced prior to the amendment of the section in 1913, is supported by the decisions of this-Court in Suryajirao Ganpatrao Jahagirdar Vs.

Sidhanath Dhonddeo Garud, and Kondi v. Vithalrao (1925) 28 Bom. L.R. 424. Even if we were to take the view which the learned District Judge

has taken that Section 217, as it stood prior to the amendment of 1913, applied to the facts of this case, the position of the holders of these three

lands could not be said to be that of permanent tenants. Section 217, as it stood prior to the amendment, gave to the holders of lands in alienated

villages, into which a survey settlement had been introduced, the rights, and imposed upon them the responsibilities, of occupants in unalienated

villages. The rights of an occupant in an unalienated village are denned in Section 68, and by the proviso to that section, which was introduced in

1901, and was therefore in force at the time when the survey settlement with which we are dealing was introduced, the survey settlement could not

affect the terms of the agreement which had been entered into between the inamdar and his tenants. On either view the appellant was entitled to

succeed with regard to these three survey numbers also. I agree, therefore, that the appeal should be allowed and the cross-objections dismissed.