

**(1916) 08 BOM CK 0025**

**Bombay High Court**

**Case No:** Appeal No. 46 of 1915

Raoji Fakira

APPELLANT

Vs

Dagdu Hanmata Mahar

RESPONDENT

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Date of Decision: Aug. 24, 1916

Acts Referred:

- Hereditary Offices Act, 1874 - Section 25

**Citation:** AIR 1916 Bom 166 : (1916) 18 BOMLR 779 : 36 Ind. Cas. 562

**Hon'ble Judges:** Stanley Batchelor, J; Shah, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

Stanley Batchelor, Kt., Ag. C.J.

1. The only question involved in this appeal is whether the lower appellate Court was right in its view that it is competent to the civil Court to grant a declaration that the plaintiffs are Vatandars of a Mharki Vatan. In our opinion the lower appellate Court was right. It is conceded that, as numerous decided cases show, no objection could be offered to the civil Court's making such a declaration in the case of plaintiffs claiming to be Vatandars of a Kulkarniki or a Patilki Vatan. But it is urged on behalf of the present appellants that the same rule does not hold in regard to the Mharki Vatan, and the reason is" that the Kulkarniki and the Patilki Vatan are regulated by Sections 25 and 36,, of the Hereditary Offices Act, which sections, occurring in Part VI of the Act, do not apply to the case of a Mharki Vatan. This kind of Vatan, proceeds the argument, is governed by Sections 63 and 64 which constitute Part X of the Act, and by Section 64 it is provided that the power of deciding who are the Vatandars of these inferior village Vatan is vested in the Collector. But the only support which can be discovered for this contention is to be found in Clause (a) of Section 64, and that clause goes no further than to say that, subject to the general control of Government, the Collector is empowered to register the names of

individual Vatandars as holders of the office. But the distinction between the power to register the Vatandars and the power to determine who are the Vatandars to be registered seems obvious, and Section 64 says nothing on the point as to where the power to determine the Vatandars is to reside. That being so, there is no reason to think that this power is withdrawn from the jurisdiction of the civil Court. For that jurisdiction, if it is to be withdrawn, must be withdrawn by clear words, and not by doubtful inferences. This conclusion is confirmed by Mr. Justice West's decision in *Ramchandra Dabholkar v. Anant Sat Shenvi* ILR (1883) Bom. 25. It is true that, as an accidental circumstance, the Vatan there under consideration happened to be a Gavki or Patilki Vatan. That accident, however, had no influence upon the decision, which proceeds generally to consider the case of all Vatan, and the learned Judge observes that the discretion of the Collector comes into play only after those who are to be its subjects have been determined. That case was decided in 1883, and has ever since been consistently followed. It seems to us not a probable supposition that Mr. Justice West and all succeeding Judges have overlooked the provisions of Section 64 of the Act. On these grounds we think that the lower appellate Court's decision is right and this appeal is dismissed with costs.