

## Nathuram Hiraram Thakor Vs The Secretary of State for India

**Court:** Bombay High Court

**Date of Decision:** Dec. 23, 1921

**Acts Referred:** Bombay Revenue Jurisdiction Act, 1876 " Section 11

**Citation:** (1922) 24 BOMLR 402 : 67 Ind. Cas. 842

**Hon'ble Judges:** Shah, J; Norman Macleod, J

**Bench:** Division Bench

### Judgement

Norman Macleod, C.J.

The plaintiffs filed this suit praying for a declaration that Survey No. 656 in the limits of the Talukdari village of

Kanj was of their absolute ownership, and that the Talukdar defendants had no right of any kind whatever over it, and that the first defendant, the

Secretary of State, had no right of any kind whatever to sanction the relinquishment of the said Survey Number by the said Talukdars, and had no

right to assess any kind of claim or tax on it, and for further and other relief.

2. A preliminary issue was raised whether the suit was barred u/s 11 of the Bombay Revenue Jurisdiction Act. The learned Judge held that the suit

was barred on the ground that an order had been passed within the meaning of Sections 203 and 204 of the Bombay Land Revenue Code, and

that as the plaintiffs had not appealed against that order their suit could not lie.

3. Now it appears that in the previous litigation between the Talukdars and the plaintiffs, the plaintiffs were able to establish their right to hold this

particular land rent free. Thereafter the Talukdars relinquished this particular survey number in favour of Government, although it does not appear

that the plaintiffs were heard on the question whether the relinquishment was or was not subject to their rights.

4. The next step taken by the Revenue Authorities was a notice of demand issued by the Mamlatdar that a certain amount was due for the payment

of the land revenue, and that if it was not paid within ten days from the receipt of the notice, steps would be taken according to law to forcibly

recover the whole amount for the current year's land revenue which had not been paid.

5. One would presume that the notice of demand of the Mamlatdar was based on an order by the Collector directing that this particular Survey

Number was liable to pay assessment and that evidently was the view taken by the first defendant when the written statement was filed, because in

the first paragraph thereof it is said :

The jurisdiction of the Court to entertain the suit is barred by Section 11 of the Bombay Revenue Jurisdiction Act 1876, since the plaint does not

state that the plaintiffs have preferred any appeals against the orders of the Collector imposing and levying assessment on the land in suit as

provided by Sections 203 and 204 of the Bombay Land Revenue Code.

6. Now it is admitted that no such order of the Collector can be produced. Consequently there could be no order from which an appeal lay. It

seems that the first defendant urged that in the absence of the order of the Collector assessing the land, the notice of demand by the Mamlatdar

was an order within the meaning of Sections 203 and 204. Now the plaintiffs could have appealed to a higher authority objecting to the notice of

demand issued by the Mamlatdar, but it does not follow that because they could have endeavoured by a resort to higher authority to get that notice

of demand revoked, therefore, it was an order within the meaning of Sections 203 and 204 of the Bombay Land Revenue Code. The learned

Judge on this question says :

Then it was contended that the notice of demand issued by the Mamlatdar was not an "order". Considering the number of years for which the

dispute about these lands has been continuing one would suppose that before the Mamlatdar issued this notice there must have been a formal order

by some Revenue Officer directing this to be done. But if there was such an order it has not been brought to the notice of the Court, and the

learned pleader for the defendants, in arguing the issue, treats the demand notice as if it was the order and nothing else. In my opinion it is an order

within the meaning of Sections 203 and 204 of the Land Revenue Code. I see no reason to hold that the word "order" used in those sections was

meant to be understood in a narrow or technical sense, as a formal order passed after judicial inquiry or anything of that kind. A notice of demand

is in effect an order to pay.

7. Now it may be said that a notice of demand which, if not complied with, can be made effective by execution proceedings, may be considered as

akin to an order, but that could only be because of the results following from it. But it is not strictly logical to find that because the same results

follow from two particular kind of documents, therefore the documents are of the same kind also. One has to look to the wording of the document;

and it appears to us that it would be going too far to say that this notice of demand, which admittedly is the natural consequence of an order

imposing assessment upon land, can be treated as an order or decision within the meaning of Sections 203 and 204 of the Bombay Land Revenue

Code. The whole question regarding this demand of land revenue is somewhat involved in mystery, as the plaintiffs were allowed to continue to

hold the land rent free, and yet apparently no opportunity was given to them, after the demand to pay land assessment was issued to state their

case for their being allowed to continue to hold rent free, whether the land was relinquished or not. It seems to us this is a case to which Section 11

of the Bombay Revenue Jurisdiction Act does not apply, and that the suit would lie. The decree dismissing the suit must be set aside, and the suit

must be remanded to the lower Court to be heard on its merits. The plaintiffs to get their costs of the appeal. Costs in the lower Court to be costs

in the cause.