1956

September 20

BACHHARAM DATTA PATIL AND ANOTHER
v.
VISHWANATH PUNDALIK PATIL AND OTHERS.

[JAGANNADHADAS, VENKATARAMA AYYAR, B. P. SINHA and S. K. DAS JJ.]

Watan lands—Resumption by Government—Dispensing with the services and levying of full assessment—Lands subsequently described as Japti Sanadi Inam lands—Whether retain character of Watan lands.

Certain lands which were originally Watan lands were resumed by the Government after dispensing with the services that were being rendered and full assessment was levied thereon. The lands were subsequently described as "Japti Sanadi Inam" lands.

Held, that the lands had lost their character as Watan lands and had become ryotwari lands of the holder.

Ramijyabi Muktum Saheb v. *Gudusaheb*, (54 Bom. L.R. 405), approved.

The very description of the lands as Japti Sanadi Inam lands means that the lands were once the subject matter of an Inam grant by virtue of a Sanad and have been resumed or confiscated by the Government and have been left in the hands of the holder as ryotwari holding.

The Government may commute the services to be rendered and it will then depend on the terms of the agreement between the holder of the Watan lands and the Government entered into at the time of the commutation whether the lands are to retain their character as Watan lands or not.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 249 of 1953.

On appeal from the judgment and decree dated the 1st day of September, 1949, of the Bombay High Court in Appeal No. 23 of 1947 from original decree arising out of the decree dated the 28th September 1946 of the Civil Judge, Session Division at Belgawn in Suit No. 360 of 1945.

K. R. Bengeri, *J. B. Dadachanji* and *Sri Narain Andley for A. C. Dave* for the appellants.

H. B. Datar and *Naunit Lal* for respondent No. 1.

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1956. September 20. The Judgment of the Court was delivered by

SINHA J.—This is an appeal by leave of the High Court of Judicature at Bombay from the decision of a Division Bench of that Court reversing that of the trial court in respect of items 3, 4 and 6 in the list of the properties attached to the plaint as the subject-matter of the dispute. In respect of the other items of property in dispute the courts below have given concurrent decisions and that part of their judgments is no more in controversy at this stage. The three items aforesaid of the property along with the others in dispute had been decreed in favour of the original plaintiffs 2 and 3 as Watan property. But on appeal by the third defendant, the High Court reversed the decision of the trial court only in respect of those three items and confirmed the decision of the trial court in respect of the rest of the plaint properties.

The propositus was one Shreemant who died on the 23rd November, 1941 leaving him surviving his wife Radhabai. Radhabai died on the 9th May 1945 and on her death the dispute arose between the reversioners on the one hand including the plaintiffs 2 and 3, appellants in this Court, and the defendants on the other who claimed by virtue of alleged adoptions said to have been made by Radhabai aforesaid. The first plaintiff is out of the picture now on the concurrent finding by the courts below that he had no right to the estate left by the propositus by virtue of the adoption found in his favour, inasmuch as before he was adopted the estate had already vested in the actual reversioners, plaintiffs 2 and 3, the agnatic relations of Shreemant. The estate of Shreemant, so far as it related to Watan lands, vested in plaintiffs 2 and 3 aforesaid under the provisions of Bombay Act V of 1886. If either defendant 2 or defendant 3 had proved his alleged adoption by Radhabai aforesaid, he would have been entitled to the estate as the adopted son of the propositus, thus excluding the agnatic relations, namely, plaintiffs 2 and 3. But both the courts below have concurrently found that

neither of the two defendants 2 and 3 had succeeded in proving the adoption respectively pleaded by them. The trial court had substantially decreed the suit in respect of all the items of property in dispute including the three items which, as indicated above, are the only properties now in controversy in this Court, on the finding that these also were Watan properties which like the rest of the plaint properties were inherited by the reversioners aforesaid, namely, plaintiffs 2 and 3. The High Court on appeal held that the three items of property now in dispute, though originally Watan properties, had lost their character as such by reason of the fact that they had been resumed by Government after dispensing with the service and after levying full assessment on those lands. Those lands have been called "Japti Sanadi Inam lands" in the records of the courts below and it is by that name that we shall refer to the disputed lands in the course of this judgment.

It would thus appear that the controversy has narrowed down to the question whether the Japti Sanadi Inam lands still retain their character as Watan lands as held by the trial court, or have lost their character as such in view of the events that had happened as decided by the High Court. It is not disputed that in the former case the plaintiff-appellants will be entitled to them also even as they have been adjudged to be entitled to the rest of the properties in dispute which were admittedly Watan lands. It is equally undisputed that if the Japti Sanadi Inam lands are no more Watan lands, this appeal must fail. On this question both the courts below have been rather cryptic in their remarks. The trial court held them to be Watan lands, with the following observations:—

"The lands at serial Nos. 3, 4 and 6 are Japti Sanadi lands. They still retain the character of Sanadi lands in spite of the fact that services have been temporarily dispensed with and full assessment levied. Sanadi lands have been held to be Watan lands governed by the Watan Act".

The trial court has made no attempt to support its conclusions with reference to any statutory rules or

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precedents. The lower appellate court has disposed of this question in these words:—

"Now it is conceded before us that there is no evidence to support the observation made by the learned trial Judge, that the services *were temporarily dispensed with* by the Government. If, therefore, the Record of Rights show that the full assessment is being levied in respect of these lands, and that services are not required to be performed and they are described as Japti Sanadi Inam lands, meaning thereby that they were once Sanadi lands, but in respect of which there has been resumption by the Government, the conclusion must inevitably follow that these lands have ceased to be lands held on Sanadi tenure and are held in ordinary occupancy rights".

The learned counsel for the appellants has vehemently argued that the High Court was in error in concluding that the lands in question had ceased to be Watan lands simply because the service attaching to them had been dispensed with and full assessment levied by Government. This argument was based on the provisions of the Bombay Hereditary Offices Act (Bombay Act III), 1874. Apart from authority, therefore, we have to examine the relevant provisions of that Act in order to determine whether those provisions support the conclusions of the High Court. In section 4, "Watan property", "Hereditary office" and "Watan" have been defined as follows:—

" 'Watan Property' means movable or immovable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise. It includes cash payments in addition to the original watan property made voluntarily by Government and subject periodically to modification or withdrawal.

'Hereditary office' means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or with the settlement of boundaries, or other matters of civil administration.

The expression includes such office even where the services originally appertaining to it have ceased to be demanded.

The watan-property, if any, and the hereditary office and the rights and privileges attached to them together constitute the watan".

From these definitions it is clear that in order that there may be a Watan it is necessary that there should be a hereditary office and Watan property which is assigned to the "Watandar" by way of remuneration for the performance of the duty appertaining to his office. But it has been argued on behalf of the appellants that it is common ground that the Sanadi Inam lands were once Watan property and that once the property is impressed with the character of inam lands, they continue to bear that character, because the Government have not been authorised by any law to change their character. No precedent or statutory provisions directly supporting this wide proposition have been brought to our notice. But our attention was called to the provisions of section 15 which make it permissible for the Collector to commute the service and relieve the holder of the Watan and his heirs and successors in perpetuity of their liability to perform the service on such conditions as may be agreed upon. If we have been able correctly to appreciate the argument based upon section 15, it was sought to be made out that the service in respect of the Watan lands in question may have been commuted, but even after the commutation of the service the Watan remained and the lands continued to retain the character of Watan lands. This argument assumes that even upon the service being entirely dispensed with in perpetuity, the Watan character of the land continued. That is begging the question. Furthermore, clause (1) of section 15 contemplates commutation "upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon by the Collector and such holder". Thus the conditions to be agreed upon between the holder of land which was once part of a Watan and the Government at the time of the commutation may be of

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so many varieties that in some cases the Watan character of the land may be maintained, whereas in others the conditions agreed between the parties may themselves contemplate the cessation of that character. In the present case, apart from the entries in the Record of Rights, we have no other evidence to indicate as to on what terms the service had been completely dispensed with in perpetuity and the full assessment levied upon those lands. It is not therefore clear upon the findings of the courts below that there were any such conditions attaching to the holding of the lands in question which could be consistent with the continuance of the original Watan tenure. It is possible to conceive of a case where the conditions agreed upon provide for the continuance of the Watan tenure in spite of the fact that the holders have been excused the performance of the customary service. On the other hand, it may be that there were no conditions agreed between the parties continuing the Watan character of the land after dispensing with the service.

On the findings of the courts below there was no hereditary office any more and therefore the question of remunerating any service with the usufruct of Watan property or otherwise did not arise. On the other hand, the provisions of section 22 of the Act clearly predicate that a Watan may lapse in part or in whole or may be confiscated or otherwise lawfully resumed by Government and that in such cases it is lawful for Government to attach such land to a newly created Watan in favour of such persons as may be appointed by Government. That being so, it is impossible to contend that Government have not the power to destroy the Watan character of a Watan land. Such an argument completely ignores the legal position that an authority which has the power to create an office and to provide for its remuneration in cash or in kind has also the power to revoke the grant, and upon such revocation, if any land has been assigned for remunerating the office so abolished it must revert to the source from which it came; that is to say, ryotwari land subject to land revenue assess-

ment. That is what appears to have happened in the present case. The very description of the land as Japti Sanadi Inam land would mean that that which was once the subject matter of an inam grant by virtue of a sanad has been resumed or confiscated by Government and the land left in possession of the holder as ryotwari holding. As pointed out by the courts below, there is no evidence as to the original character of the grant or as to how and when the grant was resumed and the land thus became subject to ordinary occupancy rights. But they have proceeded on the basis that it was the subject matter of a Watan by sanad which has been subsequently resumed by Government as service was no more required and the necessity for the grant was no more there. They have only differed on the legal result of the resumption.

A similar question arose for decision in the Bombay High Court in the case of *Ramijyabi Muktum Saheb* v. *Gudusaheb*(1) after the present case had been decided by that Court. In that case property which was originally Watan was continued with the holder thereof but without the obligation to render any service and with the full levy of assessment in respect of the land. The question arose whether such land continued to be Watan land with its special incidents as regards alienation, etc., or whether it was ordinary occupancy holding. A single Judge of that Court who heard the appeal in the first instance came to the conclusion that the land continued to be Watan land. On Letters Patent Appeal, the Division Bench after a very elaborate examination of the relevant rules and precedents came to the contrary conclusion and held that the land had ceased to have the character of Watan and was subject to the ordinary law of land tenures in that State. We are in agreement with the conclusion reached by the Letters Patent Bench in that case, the facts of which were similar to those of the present case. Hence it must be held that there is neither authority nor principle in favour of the contention raised on behalf of the appellants.

The appeal is accordingly dismissed with costs.

(1) 54 Bom. L. R. 405.