not been established that the Chief Customs Authority made its order under s. 190 of the Act with the consent of the respondent.

This will not preclude the State from establishing by relevant evidence that the penalty was imposed under s. 190 of the Act with the consent of the owner of the goods in an appropriate proceeding.

In the result the order of the High Court is correct and the appeal is dismissed.

Appeal dismissed.

DAJI KRISHNAJI DESAI TAMBULKAR

v.

GANESH VISHNU KULKARNI AND OTHERS

(K. SUBBA RAO, RAGHUBAR DAYAL and J. R. MUDHOLKAR, JJ.)

Khoti Land—Transfer prior to 1946 without consent of Khot—Rights of purchaser—Bombay Tenancy Act, 1939 (Bom. 29 of 1939), s. 31—Khoti Settlement Act, 1880 (Bom. 1 of 1880), ss. 3, 9.

The land in suit was Khoti land and s. 9 of the Khoti Settlement Act, 1880, prior to its amendment prohibited the transfer of the occupancy right without the consent of the Khot. Section 31 of the Bombay Tenancy Act, 1939, which came into force from April 1946, amended s. 9 of the Khoti Settlement Act by which no consent of the Khot was necessary for transferring the occupancy rights in the land. In 1892, R sold his occupancy right without the consent of the Khot to L, the predecessor-in-interest of respondent No. 1. In 1945, R's successor again sold the same occupancy right to the appellant also without the consent of the Khot. The appellant's case was that the sale deed in 1892 in favour of the predecessor-in-interest of respondent No. 1 was void as the transfer of the occupancy right was made without consent of the Khot; whereas respondent No. 1 contended that R by the sale deed in 1892 had already lost his right to the property in suit and therefore R's successors had no title to pass in 1945 in favour of the appellant.

Held, that the occupancy right in a Khoti land could not be transferred without consent of the Khot prior to April 1946, when the Bombay Tenancy Act, 1939, came into force.

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Held, further, that in the present case as both the sales of 1892 and 1945 were without the consent of the Khot, it was not necessary to determine whether such a transfer was void or voidable, If void, the plaintiff had no title. If voidable, the first sale in 1892, validly conveyed title to respondent No. 1's predecessor-in-interest, and consequently no title passed to the plaintiff under the sale deed in 1945, as the transferor had no title.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 90 of 1956.

Appeal by special leave from the judgment and decree dated August 5, 1953, of the Bombay High Court in Appeal from the Appellate Decree No. 915 of 1951.

M. S. K. Sastri, for the appellant.

A. G. Ratnaparkhi, for respondent No. 1.

1961. April 12. The Judgment of the Court was delivered by

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—This appeal, by special leave, is against the judgment and decree of the High Court of Bombay, dismissing the suit of the plaintiff-appellant.

The plaintiff sued for a declaration that the property in suit which is situate at Mouje Digvale, a village held by khots in the district of Ratnagiri, was owned by him, was under his management and that the defendants had no right or interest therein. He claimed title to the property on the basis of the sale of occupancy rights under the sale deed executed in his favour by Sitabai on February 10, 1945. Sitabai was the widow of Vishram Anna Shirsat, who succeeded Ram Raghu Shirsat, the occupancy tenant of the land in suit. Ram Raghu Shirsat sold the occupancy rights in the land in suit to Laxman Chandba Raut by a deed dated March 8, 1892. By a compromise in a civil suit between the heirs of Laxman Chandba Raut and Tanu Daulat Gavade Sakaram, the heir of Laxman Raut got 3/5ths share and Tanu Daulat got 2/5ths share in these occupancy rights. Dattatraya Bhikaji Khot Kulkarni, a paternal uncle of respondent no. 1, purchased the shares of these persons by

the sale deeds dated December 14, 1903, and February 13, 1904. On Kulkarni's death, respondent no. 1 became the owner of the property. Respondents nos. 2 to 4 are the tenants of respondent no. 1.

The land in suit is khoti land as defined in cl. (10) of s. 3 of the Khoti Settlement Act, 1880 (Bom. Act I of 1880), hereinafter called the Act. It is not disputed that Ram Raghu Shirsat was the occupancy tenant of the land in suit and that he could not transfer his tenancy right without the consent of the khot, which, according to cl. (2) of s. 3, includes a mortgagee lawfully in possession of khotki and all co-sharers in a khotki. It is also admitted that the transferors of the afore-mentioned sale deeds of 1892 in favour of the predecessor-in-interest of respondent no. 1, or of the sale deed of 1945 in favour of the appellant, did not obtain the consent of the khot before executing the deed of transfer.

The plaintiff alleged that the sale deed in favour of respondent no. 1 was void and that therefore he had title to the suit land on the basis of the sale deed in his favour.

Respondent no. 1 contended that Ram Raghu Shirsat lost his rights in the property in suit after he had executed the sale deed on March 8, 1892, and that, therefore the plaintiff obtained no title on the basis of the sale deed in his favour.

The trial Court held the sale deed of 1892 to be good sale deed and binding on the plaintiff and dismissed the suit. On appeal, the Assistant Judge reversed the decree and decreed the suit holding that a transfer of the occupancy rights in the suit lands by Ram Raghu Sirsat in favour of Laxman Raut was void and that the plaintiff obtained good title under the sale deed in his favour in view of the amendment of s. 9 of the Act by s. 31 of the Bombay Tenancy Act, 1939 (Act XXIX of 1939), by which no consent of the khot was necessary for executing the sale deed in 1945. Respondent no. 1 preferred a second appeal to the High Court which set aside the decree of the Assistant Judge and restoring the decree of the trial Court, dismissed the suit. It held that the sale deed in favour

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Raghubar Dayal J.

of the plaintiff too would be hit by the provisions of s. 9 of the Act. It further held that the provisions of s. 9 indicate that there was no absolute prohibition against a transfer of the occupancy right. A transfer by an occupancy tenant without the consent of the khot cannot be held to be void for all purposes and it would be invalid only in so far as it would be contrary to the right of the khot and not otherwise. It therefore held the transfer in favour of the respondent no. 1's predecessor-in-interest in 1892 not to be void. It is the correctness of this order that is challenged in this appeal.

This appeal has no force. Section 31 of the Bombay Tenancy Act, 1939, made amendments to s. 9 of the Act and the section after amendment reads:

> "The rights of khots and privileged occupants shall be heritable and transferable".

'Privileged occupant' included a permanent tenant under cl. (5) of s. 3 of the Act. The Bombay Tenancy Act received assent of the Governor of Bombay on April 2, 1940, but it came into force in April 1946 when the Government issued the necessary notification in exercise of the powers conferred under sub-s. (3) of s. 1 of that Act. It is clear therefore that s. 9, as it stood on February 10, 1945, when Sitabai executed the sale deed in favour of the appellant, made the rights of permanent tenants non-transferable without the consent of the khot, and that therefore the sale in favour of the appellant was as much hit adversely by the provisions of s. 9 of the Act as the sale of the land in suit in favour of the predecessor-in-interest of respondent no. 1. It is therefore not necessary to determine the question whether the sale was absolutely void or voidable as held by the Court below, as neither of the two sales has been challenged by the khot whose consent for the transfer was necessary. The plaintiff has no title whether a transfer by a permanent tenant without the consent of the khot be void or voidable. If such a transfer is void, the sale in favour of the appellant did not convey any title to him. If such a sale was merely voidable at the instance of the khot, the first sale in favour of the

respondent no. 1's predecessor-in-interest was not avoided by the khot, and therefore validly conveyed title to him. Consequently no title passed to the plaintiff under the sale deed in his favour as his transferor had no title. In either case the plaintiff fails to prove his title to the land in suit. The dismissal of his suit is therefore correct.

We accordingly dismiss this appeal with costs.

Appeal dismissed.

ABDUL GAFOOR

v.

STATE OF MYSORE

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Motor Transport—Scheme published and approved—Permits—Application for by State Transport Undertaking—Publication of application and notice of date for making representation by other Transport Services, if necessary—Motor Vehicles Act, 1939 (IV of 1939), ss. 68-C, 68-F (1), Ch. IV-A.

After a scheme was published by the Mysore Transport Undertaking under s. 68-C of the Motor Vehicles Act, 1939, and approved by the State Government the State Transport Undertaking made applications for permits under s. 68-F(1) of the Act to the Regional Transport Authority but before the permits were granted the second respondent made an application for a Writ of Certiorari prohibiting the Regional Transport Authority from dealing with the second respondent's application for permit unless and until they were duly published and notice was given to him for making representations. The contention on his behalf was that the publication of the applications with notice of the date for submitting the representations was necessary under s. 57(3) Ch. IV of the Act and that he was entitled to notice as the Regional Transport Authority acted in a quasi-judicial capacity while dealing with applications for permits.

Held, that when a scheme prepared and published under s. 68-C has been approved and an application has been made in pursuance of the scheme and in the proper manner as specified in Ch. IV nothing more remains to be decided by the Regional