Privy Council Appeal No. 149 *of* 1924.

Laxmanrao Madhavrao Jahagirdar - - - - - *Appellant*

v.

Shriniwas Lingo Nadgir and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH JUNE, 1927.

Present at the Hearing:

LORD ATKINSON.
LORD CARSON.
SIR JOHN WALLIS.
SIR LANCELOT SANDERSON.

[*Delivered by* SIR JOHN WALLIS.]

This is an appeal from a judgment and decree of the High Court of Bombay reversing the decree of the District Judge of Dharwar and dismissing the suit brought by the plaintiff, Laxmanrao jahagirdar of Hebli, for declarations (1) that the plaintiff and defendants 12 and 13 are and that the Nadgirs are not watandar patils and kulkarnis of Hebli village, (2) that the lands measuring 120 mars entered in the Watan Register of the village prepared under Bombay Act III of 1874 are not watan lands, (3) for a cancellation of the Register, (4) for a declaration that these lands were not liable for the remuneration of patils and kulkarnis, and (5) for the recovery of Rs. 969-0-8 levied from the plaintiff under Bombay Act III of 1874.

The plaint alleged that the grant to their ancestors in 1748 of the village included 200 mars of land assigned for the remuneration of the patil kulkarni and nadgir offices in the village, and also the offices themselves, that as the defendants' ancestors who were the previous owners of these watans had failed to pay the judi and raised a rebellion, their watans had been resumed

long before 1723, and so the watani nature of the lands came to an end ; that ever since the establishment of the British Government the plaintiff's family had been in possession of all the said 200 mars, except 7¼ mars and 3 bighas and except 22 mars of which they had been deprived in a Civil Suit filed by defendants 7 to 11 in 1867, and also had been in possession of all patilki and kulkarniki rights. They alleged that they were watandars of patilki and kulkarniki under the sanad of 1748, and, if not, were entitled to their offices by virtue of long possession. The proceedings of Government recognising the family of defendants 2 to 11 as watandars, and framing the Watan Register accordingly, and imposing a contribution on the plaintiff under Act III of 1874, were accordingly wrongful.

In paragraph 15 it was pleaded that the 200 mars were not new watan land, " the reason being that in the year 1858 the Inam Commissioner decided that the whole of the village of Hebli, including the land measuring 200 mars, is not watan, but that it is another kind of estate, and on date the 6th March, 1863, Government passed final orders to that effect in resolution bearing number 676. Although Jahagirdars and Nadgirs (meaning the family of defendants 2 to 11) were (the only) parties to that matter (*i.e.* inquiry) (still) the Government, Jahagirdars and Nadgirs are bound by this decision and the decision passed by the Settlement Officer in the year 1864 that only 7¼ mars and 3 bighas of land is liable to settlement." The cause of action, it was alleged arose in the 7th October, 1908, when Government passed Resolution 10129 deciding that the Nadgirs were watandars depriving the plaintiff and defendants 12 and 13 of their rights, and making the lands in possession of the plaintiff's family liable for the remuneration of the patil and kulkarni although they were not watani lands.

The first defendant, the Secretary of State in Council, filed a separate written statement pleading that the suit was barred by Bombay Act X of 1876, s.4 (a), Bombay Act III of 1874, s. 25, and articles 14, 120 and 124 of the Limitation Act. He also pleaded that the family of defendants 2 to 11 were the real watan patils, kulkarnis and nadgirs, and that the 200 mars of land were kadim inam, of which 120 were assigned for patilki and kulkarniki, and the rest for the nadgir office. They had been in the possession of the Jahagirdars, under kamavishi or temporary arrangement, because the watandars were unable to pay judi, and not because the Jahagirdars were patils, kulkarnis or nadgirs. The Jahagirdars had admitted this and were estopped from questioning it. Further the orders passed by Government were legal and proper. The allegations in paragraph 15 of the plaint were not admitted, and the plaintiff was put to strict proof of them.

As regards the Nadgirs, defendants 2 to 11, the principal written statement was filed by defendant 4. Defendants 2 and 3 and 5 to 11 filed written statements to the same effect, defendants 5 to 11

contending further that the suit was bad for misjoinder of defendants 5, 6 and 7. Defendant 12 was ex parte and defendant 13 filed a written statement supporting the plaintiff.

The contentions of the parties sufficiently appear from the principal issues settled in the case, which were as follows :—

(1) Is the jurisdiction of the Civil Court barred by Section 4A of Bombay Act X of 1876 ?

(2) Is it barred by Section 25 of Bombay Act III of 1874 ?

(3) Is it barred by the Pensions Act XXIII of 1871 ?

(4) Is it in time ?

(10) Are the decisions of the Inam Commissioner and Settlement Officer under Act XI of 1852 binding on the parties ?

(13) Is the land in suit (120 mars) watan property ?

(14) Have plaintiff and defendants 12 and 13 acquired by adverse possession a title to the offices of watandar patil and kulkarni, and to the watan land ?

The District Judge found for the plaintiff on all the issues except that he held that the claim for the cancellation of the Watan Register was barred under Section 4 (*a*) of the Bombay Revenue Jurisdiction Act, 1876. The High Court allowed the appeal and dismissed the suit on grounds which will be considered later.

The history of this litigation is long and complicated, but the facts which are material for the decision of the case may be stated as follows :—

In the village of Hebli there were in former times the usual service watans, or hereditary offices of patil or headman, kulkarni or accountant, and nadgir, which were vested in the family of defendants 2 to 11, who held the watan lands of 200 mars in the village, subject to the payment to Government of a fixed judi instead of the full assessment, the revenue thus remitted being remuneration for the discharge of their duties. It would appear further from records of the early part of the eighteenth century that this judi fell into arrears, and that the ruling power entered into possession of the watan lands and treated them as kamavishi, or under management, for the purpose of realising the arrears. This was apparently the state of things when in 1748 the ruling power granted the village to the plaintiff's predecessor in jaghir. The sanad conferred upon him " the kasba of Havur Hebli, together with the hamlet Vatanhal and lands appertaining to zabt (*i.e.* attached) inams of muccadum and nadgirs and others." The effect of these words is in dispute, but it may be observed that Mountstuart Elphinstone, in his well-known Report on the territories conquered from the Peishwa (1821), includes among the sources of revenue of the former Government (p. 31, 2nd edition), a heading " Wuttun Zubtee—Produce of Lands belonging to Zemindars sequestrated by Government," and the reports of his subordinates, on which his report was founded, show the extreme reluctance of the rulers in ancient times to forfeit absolutely watan and mirasi lands for the non-payment of revenue, and that even where the owners deserted their lands and fresh culti-

vators had been admitted, the descendants of the former owners were not wholly barred of their right to reclaim them until the lapse of 100 years. These facts tend to support the construction placed by the Bombay High Court in a suit which will be referred to on the words of the sanad, which they held did not amount to a fresh grant of the watan to the plaintiff's ancestor after confiscation from the Nadgirs, because the word " zabt " was capable of meaning " under attachment." It is, however, unnecessary to pursue this point. The District Judge refused to act on the defendants' evidence tending to show that they were in possession in certain years subsequent to the grant of the sanad to the plaintiff's ancestor ; and it appears clearly from the accounts produced for the plaintiff, that, ever since the annexation of the Peishwa's territories and the introduction of British rule, these lands continued in possession of the plaintiff's family, and were entered in the accounts under the heading of kamavishi, or under management, though the defendants' family made unsuccessful efforts to recover them.

This was the state of things when the Inam Commission was set up under Act XI of 1852 for the adjudication of titles to lands claimed to be wholly or partially rent free in the Presidency of Bombay.

After reciting that claims against Government in respect of inams and other estates, wholly or partially exempt from payment of land revenue, were excepted from the cognisance of the ordinary civil courts (which, it may be observed, had sole competence as to titles to the land itself), and that it was desirable that the said claims should be tried and determined without further delay. the Act proceeded to set up the Inam Commission for that purpose. Schedule A of the Act contained rules prescribing the duties of each Commissioner and his assistants, and Schedule B " Rules for the adjudication of titles to estates claimed as inam or exempt from the payment of land revenue." Speaking generally, in cases coming under Rules 1 to 5, the exemption was to be confirmed and to become final, while Rule 6 provided that in other cases the lands were to be resumed. Rule 7 then provided for the continuance of holdings for the support of mosques and temples, and Rule 8 for the continuance of holdings by official tenure meant to be hereditary. This Rule would undoubtedly have included the watan offices of patil and kulkarni but for the fifth proviso which was as follows :—

> " The provisions of this rule are not in any way to apply to emoluments continued for service performed to the State, as the service watans of desáís . . . patils kulkarnis . . . whose claims are to be disposed of according to the rules which are or may be established for the regulation of such holdings."

Under this Act the question, whether the jahagirdar's grant was a serva inam—that is to say, a permanent revenue-free grant, or was held on sarinjam tenure—came before the Inam Commissioner, who, on the 31st July, 1858, recorded his decision

(Ex. 312) that the claimant's title to hold the villages in serva inam was invalid, but that its enjoyment was not to be interfered with in consequence of this decision. This was in accordance with Rule 10 of Schedule B of the Act, which provided that the rules were not to be necessarily applicable among other tenures to sarinjams, the titles and continuance of which were to be determined as theretofore under such rules as Government might issue.

With reference to watan inams in the village, Ex. 451 of the 9th February. 1863, which is a communication from the Jahagirdar to the Mamlatdar or local Revenue officer, shows that Major Etheridge, apparently, as Inam Commissioner, had taken up the general question of the kadim inams in this village, that is to say, of the inams which existed before the grant to the plaintiff's family, and not being included in that grant, were liable to be dealt with under the Act.

Major Etheridge's proceedings on this question are unfortunately not forthcoming, but in Ex. 471 of the 12th November, 1864, which was a reply to a reference from the Revenue Commissioner, he states that in 1862 he had settled certain items on the best evidence available to be kadim. In their Lordships' opinion, the inference is that in so deciding he was acting as Inam Commissioner, and that the reference related to that decision. In his reply, Ex. 471, he deals with 21 items, all of which he had settled (apparently as Inam Commissioner) to be kadim or old inams. Of these, he found on the fresh evidence which was available that only two items, with which we are not now concerned, one being the gramjoshi's or village astrologer's inam, were kadim, that is in existence prior to the grant to the Jahagirdars. He went on to observe, however, that the Jahagirdars had not received items 15, 16 and 17 (the 200 mars to which the suit relates) as *bona fide* khalsat but as " coomavisee " (*i.e.*, kamavishi). In explanation of these terms, reference may be made to the following passage in Sir Charles Sargent's judgment in Regular Appeal 3 of 1876, the suit already referred to, with reference to other items of this watan land which are not now in suit. " Now there can be no dispute about the term ' khalsat,' which means when applied to (? unalienated) lands ' those of which the revenue remains the property of Government not being made over in jagheer or inam to any other parties. (Wilson's Glossary of Indian Terms.) ' When used in regard to a jagheer village, it means land which is absolutely the property of the jagheerdar not being made over in inam to any other parties." With reference to the term kamavishi, the learned Judge observed, " It seems very clear that land entered as kamavishi is land which for some reason or other has come under the management of the Government or its assignee for the purpose of collecting the revenue but which has not been incorporated with the khalsat land, which is the absolute property of the Government or its assignee."

Major Etheridge's reply went on to state that it appeared from certain records of 1796 that the kamavishi management remained as before, and that, as there was nothing to show that it had been subsequently altered, with the exception of $7\frac{1}{4}$ mars and 3 bighas which at some time had reverted to the Nadgir (the defendant's family), it might be allowed that the kamavishi management of the remaining $192\frac{1}{2}$ mars 6 bighas had assumed a permanency of tenure which could not justly be interfered with. He accordingly recommended that the Nadgirs' land of $7\frac{1}{4}$ mars and 3 bighas, with one other item with which we are not concerned, should alone be made amenable to settlement as held from Government when the order for the settlement of alienated villages should be authorised. The remainder, he considered, should belong to the Heblikars or Jahagirdars.

What was done on this recommendation appears from Ex. 477, an entry in the Revenue outward register of the Dharwar Talequa for 1864–5 containing a précis of a communication sent to the Mamlatdar or subordinate revenue officer of Dharwar. This recites the recommendation of Major Etheridge that only $7\frac{1}{4}$ mars and 3 bighas should be treated as liable to settlement and that all the remaining lands except those lands should be continued with the Heblikars. The entry goes on "and His Honour the Revenue Commissioner has approved of this in his letter No. 5056 dated the 30th of the month of December, 1864 A.D. Therefore the order has been sent to you for (Daklala) reference in order to give effect to this and the Heblikars have also been informed."

It was admitted by Government in answer to interrogatories that Major Etheridge's recommendation to which effect was thus given, was approved by Government, and in their Lordships' opinion the inference is that it was approved by them on appeal from Major Etheridge's original decision as Inam Commissioner. Under Schedule A, Rule 2, the Governor in Council was authorised to modify, reverse or annul the decision of the Inam Commissioner, and under Schedule B, Rule 11, to relax the rules in favour of claimants and to interpret the precise meaning of any of the rules as to which a question might arise. Their Lordships, therefore, see no sufficient reason for differing from the District Judge's finding that the decision that the suit lands, with the exception of the 7 mars, were not to be treated as kadim, and so amenable to settlement, must be taken to have been made in the exercise of the powers conferred by the Act, a finding which is not questioned in the reversing judgment of the learned Chief Justice, who proceeded on the view that such a decision having regard to proviso 5 to Rule 8 was without jurisdiction. In their Lordships' opinion, however, it was within the jurisdiction of the Government as the supreme authority under the Act to decide whether these lands should be dealt with in the one way or the other.

Before considering the effects of this decision it is necessary to complete the narrative of the events which led up to the filing of the present suit.

There were partitions in both families, and in 1867 some members of the defendants' family instituted a suit against some of the plaintiff's family, to which the plaintiff was not a party so that the decision is not binding on him as *res judicata*, to establish their right to the patil and kulkarni offices, and in particular to recover certain items of watan lands which were in possession of the members of the plaintiff's family who were defendants in that suit.

The High Court in R.A. 3 of 1876 held that up to a period within twelve years of the institution of the suit the possession of the defendants (the Jahagirdars) was not adverse to the plaintiff (the Nadgir), and that the latter was entitled to recover the lands in suit on payment of such arrears of judi as might be found due on taking an account. It was found that no arrears of judi were due and he accordingly recovered possession.

The other Nadgirs, represented by defendants 2, 3 and 5 to 11 in the present suit, did not then institute any suit to recover from the family of the present plaintiff and defendants 12 and 13 the watan lands in their possession.

In 1873 the Bombay Hereditary Offices Act III of 1874 was enacted to declare and amend the law relating to hereditary offices ; and in 1884 the District Deputy Collector of Dharwar passed an order Ex. 295 on an application by members of the Nadgirs' family, which appears to have been made in 1875, under Part VI of that Act for the preparation of the patilki and kulkarniki watans of the village of Hebli. He held that neither the plaintiffs' nor the defendants' families had established their claims and that the appointment should be treated as amani or stipendiary. This decision was afterwards reversed by the Bombay Government, who directed a fresh enquiry, Ex. 324 of 22.11.1890.

The Collector in 1893 reported, Ex. 323, that he was not competent to decide whether the Nadgirs or the Jahagirdars were watandars and referred the parties to a civil suit. Suits were filed on both sides but not prosecuted ; and in 1904 the Commissioner, Ex. 321, directed the Collector to submit his opinion as to which of the two families was entitled to the watan (including lands and rights of service). If it should be found that neither side had any valid claim, the Collector was to report what the watan lands were, and whether they should revert to Government, and if they were sufficient to maintain stipendiary village officers.

The Deputy Collector, to whom the matter was referred, was of opinion that the judgment of the High Court already referred to, conclusively showed that the Nadgirs were the watandars, and the Collector of Dharwar prepared the patilki and kulkarniki Watan Register of the village on this basis, Ex. 316 of 28th November, 1906, deciding, pursuant to the provisions of the Act, which members of the Nadgirs' family were to be representative watandars. The Jahagirdars appealed and the Commissioner of the Southern Division passed orders on the appeal, Ex. 315 of 17th July, 1907.

He held that Section 25 of the Act made it imperative for the Collector to determine who were to be representative watandars, and register their names without waiting indefinitely until one or other of the rival claimants to the office of watandars procured a decision of the Civil Court, and that the Nadgirs were shown to be the watandars as decided by the High Court in the suit already referred to, and that the representative watandars had been rightly selected from their family.

He consequently upheld the Collector's decision in determining members of the Nadgir family to be representative watandars. He was further of opinion that the whole of the watan lands should be entered as such in the Watan Register, 80 mars for the patilki watan and 40 for the kulkarniki as shown in Major Etheridge's letter of 9th January, 1865, but that it would not be necessary to recover for the watan, from the Jahagirdars in possession more than was required for the endowment of the officiators under the Act.

This order was confirmed by Government Resolution 10129 of 1908, and in 1913 the sum of Rs. 969.0.8, which it is now sought to recover, was levied under the Act from the appellant for the emoluments payable to the representative watandars. Thereupon the plaintiff filed the present suit.

On the merits, the District Judge was of opinion that the decision of the Governor in Council confirming the recommendation of Major Etheridge was binding on the parties and entitled the plaintiff to hold the suit lands free of assessment, and that they had ceased to be watan lands, and were not liable to contribution for the remuneration of officiators under the Act.

He held further that the plaintiff's family had acquired the offices of watandar patils and kulkarnis by adverse possession, but that under Section 4A of Bombay Act X of 1876 the Court had no jurisdiction to cancel the Register.

The first defendant, the Secretary of State in Council, did not appeal from the judgment, but both the plaintiff and the other defendants 2–7 preferred appeals, and the High Court, as already stated, allowed the defendants' appeals and dismissed the suit. The judgment was delivered by the learned Chief Justice, who, after reviewing the evidence, and examining the judgment of the High Court in A.S. 3 of 1876, held that by reason of the fifth proviso to Rule 8 of Schedule B of the Act excepting service watans from the rules, there was no valid decision under Act XI of 1852. Their Lordships have already given their reasons for not accepting this ruling. He also came to the conclusion that in the appeal to the High Court in the previous suit no reliance had been placed on Major Etheridge's decision or its confirmation, but the learned counsel for the appellant have satisfied their Lordships that the Ex. 337 in that case which was referred to in the High Court's judgment is Ex. 471 in the present case. With regard to it, the learned Judges remarked, "This entry no doubt correctly described the existing state of facts, and it is not clear

that the Inam Commissioner arrived at the conclusion that the land was absolutely the property of the Jahagirdars. But even if such were his conclusions, the plaintiff is not bound by a decision to which he was not a party, and the object of which was simply to settle the respective rights of the Government and the Jahagirdars." In the present case therefore the learned Chief Justice was mistaken in supposing that no reliance was placed on this document in the previous suit or that the High Court ignored it.

The learned Chief Justice was further of opinion that the District Judge's finding that the plaintiff's family was entitled to the watan offices could not be supported because it was founded on a wrong view as to the effect of Major Etheridge's recommendation and a wrong appreciation of the evidence on which he found that the Jahagirdars had acquired a title to the lands and offices by adverse possession.

He also held that the suit was barred under article 120 of the Limitation Act, except as to the claim for a refund of the contribution as it was not brought until more than six years after the Collector's order of the 26th November, 1906, and the framing of the Watan Register.

As the order could no longer be set aside, he also held that the contribution levied under it could not be recovered and accordingly allowed the appeal and dismissed the suit.

The plaintiff then preferred the present appeal to His Majesty in Council. The first defendant, the Secretary of State in Council, who, as already stated, did not appeal from the judgment of the District Judge, has not entered appearance or instructed counsel to support the judgment of the High Court dismissing the suit; nor have any of the other defendants, except the sixth defendant and the representatives of the seventh defendant, now deceased. These are respondents 4, 5A and 5B. Mr. Dunne, who appeared on their behalf, intimated that they were only concerned to defend their title as watandars and oppose the cancellation of the Watan Register, and that they were not interested in supporting the order imposing a contribution upon the plaintiff, or opposing the recovery of the contribution actually levied.

In these circumstances it will be convenient in the first place to deal with Mr. Dunne's contention on behalf of these respondents that Section 4 of the Bombay Revenue Jurisdiction Act X of 1876 bars not only the claim for the cancellation of the Watan Register but the claim for a declaration that the plaintiff and defendants 12 and 13, and not the Nadgirs' defendants 2 to 11, are watandar patils and kulkarnis of the village. The section is as follows:—

> 4. Subject to the exceptions hereinafter appearing no Civil Court shall exercise jurisdiction as to any of the following matters:—
>
> (*a*) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognised

> under Bombay Act No. III of 1874, or any other law for the time being in force, or of any other village officer or servant, or
>
> claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or
>
> suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorised in that behalf, or
>
> * * * * * * *

In their Lordships' opinion these words are wide enough to preclude the Courts from entertaining any claim to the watan offices in opposition to the claim of the hereditary officers recognised or appointed under the Act, and also any claim for the cancellation of the Watan Register. To this extent, therefore, the plaintiff's case must fail.

As regards the other part of the case, as to which their Lordships unfortunately have not had the advantage of hearing arguments on behalf of the respondents, they are unable to agree with the ruling of the learned Chief Justice that the plaintiff is barred by limitation from suing for a return of the contribution levied on him, and for a declaration that the suit lands in his possession are not liable for such a contribution because he failed to file a suit to set aside the order imposing it within the period limited for filing such a suit. In their Lordships' opinion, if the order was illegal, the plaintiff was not bound to file a suit to set it aside, but was entitled to wait until it was enforced against him, and the attempt to enforce it against him gave him a good cause of action which was admittedly within time.

It has, however, to be considered whether these claims are not barred under Section 4 of the Bombay Revenue Jurisdiction Act set out above, a question not dealt with by the High Court.

The District Judge was of opinion that they were not because of the proviso to the section that

> "If any person claim to hold wholly or partially exempt from payment of land revenue under . . . (k) . . . an adjudication duly passed by a competent officer . . . under Act XI of 1852 which declares the particular property in dispute to be exempt; such claim shall be cognisable in the Civil Courts."

Land revenue in Section 3 is defined as including "any cess or rate authorised by Government under the provision of any law for the time being then in force," and the suit for a refund of the contribution levied under Act III of 1874 would, therefore, be barred unless exemption is claimed by virtue of an adjudication under Act XI of 1852, which declares the particular property to be exempt. According to the view taken by the District Judge from which their Lordships see no reason to differ, there was in this case an adjudication under Act XI of 1852 securing the revenue of the suit lands to the Jahagirdar and if this be so it has been pointed out by Sir George Lowndes that Act III of 1874, under which the contribution was levied, only extends to this village "so far as its provisions may not conflict with the terms on which

any such alienated village may have been secured to its proprietor." In these circumstances their Lordships see no sufficient reason to differ from the District Judge's conclusions that the effect of the decision was to render the suit lands in the hands of the plaintiff not liable to contribution under Act III of 1874, and to avoid the bar to a suit for its recovery under Section 4 of Act X of 1876.

Their Lordships do not consider it necessary or desirable for the due disposal of the suit to enter on any other question; and they will accordingly humbly advise His Majesty that the plaintiff's appeal be allowed and the decree of the High Court set aside, and that the plaintiff be given a decree declaring that the suit lands in the possession of plaintiff are not liable to contribution under Act III of 1874, and ordering a refund of the contribution sued for and that otherwise the suit be dismissed.

As regards the costs, their Lordships think that the senior Nadgirs and the Secretary of State should pay the costs of the appellant in the lower Courts and of this appeal, and that the appellant should pay the costs of the junior Nadgirs, represented by Mr. Dunne, in the lower Courts and of this appeal. The order will therefore be that respondents 1, 2, 6 and 7 are to pay the appellant's costs in the lower Courts and of this appeal, and that the appellant is to pay the costs of the respondents 4, 5A and 5B in the lower Courts and of this appeal.

In the Privy Council.

LAXMANRAO MADHAVRAO JAHAGIRDAR

v.

SHRINIWAS LINGO NADGIR AND OTHERS.

DELIVERED BY SIR JOHN WALLIS.

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