Thakoreshri Naharsinghji ... vs State Of Gujarat & Ors on 17 August, 1979

Equivalent citations: 1980 AIR 59, 1980 SCR (1) 290, AIR 1980 SUPREME COURT 59, 1979 UJ (SC) 769, 1979 (1) SCR 290, (1980) 1 SCR 290 (SC), 1979 (4) SCC 291

Author: N.L. Untwalia

Bench: N.L. Untwalia, A.P. Sen

PETITIONER:
THAKORESHRI NAHARSINGHJI DOLATSINGHJI & 2 ORS.

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT17/08/1979

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
SEN, A.P. (J)

CITATION:
1980 AIR 59 1980 SCR (1) 290
1979 SCC (4) 291

ACT:
Bombay Merged Territories & Areas (Jagirs Abolition) Act 1953-Section 5(1)(b)-Scope of

HEADNOTE:
The lands in dispute, which were part of a former Princely State, were unalienated lands so long as the land revenue in respect of them was collected by the Princely State. They became alienated lands when the Princely State granted proprietary jagir to the jagirdars. The jagirdars made settlement of the lands in dispute with the appellants in 1949.

In the year 1936 survey settlement was made in the State and the land revenue payable by the jagirdars was assessed. When the State territory was merged with the

province of Bombay the Land Revenue Code was made applicable to the lands in dispute.

In 1953 Jagirs were abolished by the Bombay Merged Territories and Areas (Jagir Abolition) Act, 1953. A proprietary jagir, as defined by this Act, is a jagir in respect of which the jagirdar was entitled to any right or interest in the soil. Section 5(1)(b) of the Act made the jagirdar primarily liable to the State Government for the payment of land revenue due in respect of such land as an occupant under the Land Revenue Code or any other law for the time being in force. The term "occupant" is defined in the Code to mean "a holder in actual possession of unalienated land other than a tenant". As a result of these two provisions the appellant, having been in actual possession of unalienated land, became "occupant", (that is to say, holder in actual possession of the land under the State).

After the land was settled by the ffiagirdar upon the appellant, new survey numbers were given to the lands in place of the old. With the coming into force of the Jagirs Abolition Act the appellant claimed that he became an "occupant" of the land together with the forest trees standing thereon. Before the year 1965, he was allowed to cut and remove the forest trees in his land; but after the decision of this Court in U. R. Mavinkurve v. Thakor Madhav singhji Gambhirsingh & Ors. [1965] 3 SCR 177 the authorities concerned took the stand that the forest trees had vested in the State and that the appellant was not entitled to cut or remove them.

The appellant filed a writ petition in the High Court. Purporting to follow the decision of this Court in Mavinkrve the High Court held that there being no survey settlement of any of the lands, the former Jagirdars or their settles did not acquire any right or interest in the forest trees. The High Court also took the view that under s. 5(1)(b) of the Jagirs Abolition Act a person who became an occupant of the land was entitled to all the rights and liable to all the obligations in respect of such land under the Land Revenue Code and since there was no settlement, the appellant could not fall back upon any provision of the Land Revenue Code for claiming a right in the trees.

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In appeal to this Court it was contended that if a survey settlement was carried out by some authority, though not under the provisions of the Land Revenue Code and was accepted and acted upon by the State Government, it became a survey settlement under the Code itself. No reservation of any trees having been made at the survey settlement or at any time thereafter the trees belonged to the former jagirdars or their settles.

Allowing the appeals,

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HELD: (a) The appellant became occupant of the land in

question together with the forest trees standing thereon and the governmental authorities had no right to interfere with the appellants dealing with the forest trees, at any rate, before the passing of the Gujarat Private Forests (Acquisition) Act, 1972.

(b) The High Court has taken too narrow a view of the procedure for survey settlement In the writ petitions there was not only a specific averment that there was a survey settlement but documents had been filed to show that there was a survey settlement in the State in 1936. There being no reservation of the trees in favour of the State the occupant became entitled to the same on the abolition of the jagirs. [296C-D]

(c) By legal fiction as introduced in s. 216(2) of the Code the survey settlement should be deemed to have been completed in 1936 which was after the passing of the Land Revenue Code in 1879. The alienated lands became unalienated on the abolition of the jagirs. Therefore, the right to own the trees must be deemed to have been conceded to the occupant of such land as there was no reservation made by the Government or the Survey Authority.

[297 F-G]

State of Gujarat and another v. Ibrahim Akabarali and others AIR 1974 Gujarat, 54 approved.

(d) The case of Mavinkurve is distinguishable. In that case the dispute related to cutting of teak and other trees standing in the forest land, that is to say, a special kind of trees in respect of which a notification under the Indian Forest Act had been issued. The view of the High Court that the occupants, on the abolition of the jagirs, became entitled to trees standing on the forest lands was rejected by this Court. In the instant case there was survey settlement and the occupants were entitled to the benefit of para 2 of s. 40 of the Land Revenue Code. [297H]

The State of Gujarat v. Kumar Shri Ranjit Singhji Bhavansinghji and others AIR 1971 S.C. 1645=[1971] 3 S.C.C. 891 referred to.

2. There is no force in the contention that on the abolition of the jagirs the occupant was given permission to occupy the land and such permission shall be deemed to include the concession of the right of the Government to all trees growing on that land. Permission means factual permission and not giving a right to a person as an occupant under s. 5(1)(b) of the Abolition Act. [299-D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2469- 2471 of 1969.

From the Judgment and Order dated 4th/5th May, 1967 of the Gujarat High Court in SCA Nos. 1234, 1242 and 1244/65.

Dr. Y. S. Chitale, K. J. John, C. D. Patel and J. Sinha for the Appellant.

M. N. Shroff for the Respondent.

The Judgment of the Court was delivered by UNTWALIA, J.-Several Writ Petitions were heard together by a Division Bench of the Gujarat High Court involving interpretation of certain provisions of the Bombay Land Revenue Code, 1879, herein after referred to as the Land Revenue Code, and The Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953, hereinafter called the Jagirs Abolition Act. They were disposed of by a common judgment whereby all the Writ Petitions were dismissed. In the present three appeals brought to this Court by certificate the facts and law involved are almost identical. In our common judgment disposing of these three appeals, we shall discuss the law with reference to the facts of Civil Appeal No. 2469 of 1969.

All the three sets of appellants in the three appeals were proprietary Jagirdars under Idar State. Survey settlement had been made in that State in the year 1936 and the land revenue payable by the Jagirdars was assessed. In the year 1948 the Land Revenue Code was applied by the province of Bombay to the lands in question under the Extra Provincial Jurisdiction Act. The territory comprising the lands in question was merged in the Bombay State, first by an ordinance promulgated in 1949, followed by the Merged State Lands Act, Bombay Act 6 of 1950. The father of the appellant in Civil Appeal No. 2469, the old Jagirdar, made a settlement of certain land in village Torda with the appellant in this appeal on the 5th of June, 1949. The Survey number of this land in Idar State was 42 but after merger it comprised of two numbers i.e. 42-B and 355. On the Ist of August, 1954 came into force the Jagirs Abolition Act abolishing the Jagirs. According to the case of the appellant he became an occupant of the land together with the forest trees standing thereon. Before 1965 the appellant was allowed to cut and remove the forest trees in his land but after the decision of this Court in Shri U. R. Mavinkurve v. Thakor Madhavsinghji Gambhirsingh and others the authorities concerned changed their view and took the stand that the forest trees had vested in the State and the appellant was not entitled to cut or remove them. The Divisional Forest Officer intended to sell the trees by a public auction.

The appellant set a telegram to him on the 15th of October, 1965 protesting against his proposed action and eventually along with many others filed his Writ Petition in the High Court on the 4th of November, 1965. Some of the Writ Petitioners in the High Court were contractors from the ex-jagirdars. But we are not concerned with their cases. As stated above in these three appeals we are concerned with the land which at one time was in the proprietary Jagir of the Jagirdars of the Idar State.

The facts in these three appeals do not admit of any controversy. The trees were a part of the private forest. Neither it was a reserved forest nor a protected forest within the meaning of the Indian Forest Act, 1927. Mr. M. N. Shroff appearing for the State of Gujarat drew our attention to the Gujarat Private Forests (Acquisition) Act, 1972 which was passed during the pendency of these

appeals whereunder, it appears the appellants' right, title or interest in the forest seems to have been acquired. We have not examined the provisions of the said Act and its effect on the right of the appellants. We, however, proceed to decide these appeals dehors the said Act and leave the parties for settlement of their disputes, if any, under the 1972 Act to a different forum.

When proprietary Jagir was granted by the former ruler of Idal State to the Jagirdar the lands became alienated lands. They were unalienated so long as the land revenue in respect of those lands was collected by the ruler. Under clause (xviii) of Section 2 of the Jagirs Abolition Act "proprietary Jagir" means a jagir in respect of which the jagirdar under the terms of a grant or agreement or by custom or usage is entitled to any rights or interest in the soil. As a consequence of that it has been provided in section 5(1) (b) of the Jagirs Abolition Act:-

> "In a proprietary jagir village,-.....
>
> (b) in the case of land other than Gharkhed land, which is in the actual possession of the jagirdar or in the possession of a person other than a permanent holder holding through or from the jagirdar, such jagirdar..... shall be primarily liable to the State Government for the payment of land revenue due in respect of such land and shall be entitled to all the rights and shall be liable to all the obligations in respect of such land as an occupant under the Code or any other law for the time being in force....."

The term 'occupant' is defined in section 3 (16) of the Land Revenue Code to mean "a holder in actual possession of unalienated land, other than a tenant: provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant." The effect of the two provisions aforesaid, therefore, was that the appellant became an occupant that is to say a holder in actual possession of the land directly under the State. Thus he was in actual possession of unalienated land. Section 3 (4) of the Land Revenue Code says:-

> " "Land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages, or other defined portions of territory."

On reading these provisions simpliciter one could say that the trees attached to the earth formed part of the land and the appellant became occupant of the land alongwith the trees. Under section 8 of the Jagirs Abolition Act all public roads etc. situate in Jagir villages vest in the Government. Indisputably the land or the trees in question are not covered by section 8. Under section 9 "the rights to trees specially reserved under the Indian Forest Act, 1927, or any other law for the time being in force...shall vest in the State Government....." In the present case neither the rights to trees were specially reserved under the Indian Forest Act nor was it a case where the State Government by any notification in the official gazette had declared any trees or class of trees in a protected forest to be reserved from a date fixed by notification. In the case of Mavinkurve (supra) it appears the State Government had issued a notification under section 34A (State Amendment) of the Indian Forest Act declaring all uncultivated lands in the 39 villages in question in that case to be

forests for the purposes of Chapter V of the Forest Act. No such thing seems to have been done in the present case. But the matter does not stop there. The High Court following the decision of this Court in Mavinkurve's case held that there was no Survey settlement of any of the lands in question before the High Court and hence the ratio of the case fully applied and the former Jagirdars or their settlees did not acquire any right or interest in the forest trees. This is on the basis of the view that under section 5 (1) (b) of the Jagirs Abolition Act a person who becomes an occupant of the land is entitled to all the rights and liable to all the obligations in respect of such land under the Land Revenue Code. And in absence of a Survey settlement the person aforesaid could not fall back upon any provision of the Land Revenue Code, such as, section 40 or section 41 for claiming a right in the trees. In our opinion the view so expressed by the High Court is not correct and the cases of the appellants in these three appeals are clearly distinguishable from the decision of this Court in Mavinkurve's case. We shall presently show that there has been a Survey settlement in these cases.

Along with the Writ Petition in the High Court was annexed a copy of the Jamabandi disposal Registrar of village Torda which showed that the land had been surveyed in the year 1936 under the ruler of the Idar State and permanent assessment had been made. Sub-section (2) of section 216 of the Land Revenue Code, which corresponded to subsection (4) of the earlier law, says:- "All survey settlements heretofore introduced in alienated villages shall be valid as if they had been introduced in accordance with the provisions of this section." Sub-section (1) says that "the provisions of Chapters VIII, VIII-A, IX and X shall be applicable to all alienated villages and alienated shares of villages subject to the following modifications."

Distinguishing Mavinkurve's case the argument put forward by Dr. Y. S. Chitley on behalf of the appellants was that if a survey settlement was carried out by some other authority not under the provisions of the Land Revenue Code and it was accepted and acted upon by the State Government it became a survey settlement under the Code itself and there being no reservation of any trees made at the said survey settlement or at any time thereafter the trees belonged to the former Jagirdars or their settlees. In the State of Gujarat and another v. Ibrahim Akabarali and Other, a Division Bench of the Gujarat High Court pointed out at pages 67-68 that the survey settlements carried out by the Chhotaudepur State and recognised, accepted and acted upon by the State of Bombay could not be said to be a survey settlement contemplated under section 112 of the Land Revenue Code. But it would be so in view of the provisions contained in section 216 (2). The High Court says:-

> "This section refers to the introduction of survey settlements in alienated villages. The relevant provisions of the Bombay Land Revenue Code relating to survey settlements have reference to unalienated villages. In order, therefore, to provide for the introduction of survey settlements in alienated villages, sub-section (2) of Section 216 was enacted. Chimli and Kosum were alienated villages in Chhotaudepur State and if Chhotaudepur State had introduced survey settlements in those alienated villages we see no reason to take the view that they would not be valid under the provisions of the Bombay Land Revenue Code by virtue of Sub-section (2) of section 216. Kosum and Chimli were alienated villages in Chhotaudepur State and they were alienated villages in the State of Bombay until 1st August 1954. On the abolition of Jagirs under the Jagir Abolition Act with effect from the said date they became

> unalienated villages. Therefore, we are not inclined to take a narrow view of the matter so as to lay down that alienated villages contemplated by sub-section (2) of section 216 were alienated villages merely of British India and not alienated villages which in course of time came to be a part of the State of Bombay prior to the promulgation of record of rights in respect of them."

We think the above is a correct enunciation of law and we approve of the same. The High Court in the present cases has taken too narrow a view of the procedure for survey settlement and when the attention of the learned Judges was drawn to sections 107, 112, 117R and 216 of the Land Revenue Code to press the point that there was a survey settlement in the cases before the High Court the point was rejected on the ground of lack of pleading to that effect. But in the Writ Petitions with which we are concerned in these appeals there was not only a specific averment and it was not specifically denied but documents had been filed along with the Writ Petitions to show that there was a survey settlement in the Idar State in the year 1936. That being so, we hold that there being no reservation of the trees in favour of the State, the occupant became entitled to the same on the abolition of Jagirs.

Section 40 of the Land Revenue Code reads as follows:-

> "In villages, or portions of villages, of which the original survey settlement has been completed before the passing of this Act, the right of the Government to all trees in unalienated land, except trees reserved by the Government or by any survey officer, whether by express order made at, or about the time of such settlement, or under any rule, or general order in force at the time of such settlement, or by notification made and published at, or at any time after, such settlement, shall be deemed to have been conceded to the occupant. But in the case of settlement completed before the passing of Bombay Act I of 1865 this provision shall not apply to teak, black-wood or sandal-wood trees. The right of the Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.
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> In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of the Government to all trees in un-alienated land shall be deemed to be conceded to the occupant of such land except in so far as any such rights may be reserved by the Government, or by any survey officer on behalf of the Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate. When permission to occupy land has been, or shall hereafter be, granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of the Government to all trees growing on that land which may not have been, or which shall not hereafter be, expressly reserved at the time of granting such permissions, or which may not have been reserved, under any of the foregoing provisions of this section, at or about the time of

> the original survey settlement of the said village or portion of a village. Explanation.-In the second paragraph of this section, the expression "In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act" shall include cases where the work of the original survey settlement referred to therein was undertaken before the passing of this Act as well as cases where the work of an original survey settlement may be undertaken at any time after the passing of this Act."

This case is not covered by para 1 extracted above. But by legal fiction as introduced in section 216(2) the survey settlement should be deemed to have been completed in 1936, which was after the passing of the Land Revenue Code in the year 1879. The alienated lands became unalienated on the abolition of the Jagirs. Therefore, the right to own the trees must be deemed to have been conceded to the occupant of such land as there was no reservation made by the Government or the Survey Authority.

In Mavinkurve's case from the facts stated in the beginning of the judgment of this Court it would appear that the dispute related to cutting of teak and Pancharao trees standing in the forest lands, that is to say, special kind of trees in respect of which a notification under section 34A of the Indian Forest Act had been issued. The High Court in that case had expressed the view that the occupants on the abolition of the Jagirs became entitled to trees standing on the forest lands. But this Court did not countenance that view stating at page 184:-

> "In our opinion, the rights of the occupants under the Bombay Land Revenue Code do not include the right to cut and remove the trees from the forest lands. The reason is that the 36 villages in dispute have not been surveyed or settled and until there is completion of the survey and settlement there is no question of concession on the part of the State Government of the right to the trees in favour of the occupants. Section 40 of the Bombay Land Revenue Code provides that in the case of villages of which the original survey settlement has been completed before the passing of the Act, the right of the Government to all trees in un alienated land, except trees reserved by the Government or by any survey officer, whether by express order made at, or about the time of such settlement, or under any rule, or general order in force at the time of such settlement, or by notification made and published at, or at any time after, such settlement, shall be deemed to have been conceded to the occupant. The second para of s. 40 deals with concession of Government rights to trees in case of settlements completed after the passing of the Act. The second para states that in the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of the Act, the right of the Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land except in so far as any such rights may be reserved by the Government, or by any survey officer on behalf of the Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement.

> We distinguish this case on the ground that there was survey settlement in the cases before us and the occupants are entitled to the benefit of para 2 of section 40.
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> In passing we may also refer to another decision of this Court in The State of Gujarat v. Kumar Shri Ranjit Singhji Bhavansinghji and others where Shah J., as he then was, delivering the judgment on behalf of the Court pointed out that the High Court rightly held that the respondent was entitled to receive compensation in respect of the trees because the restriction on the power of alienation put upon the absolute grantee "did not limit the title of the respondent in the lands and in things attached thereto." Mavinkurve's case was distinguished on the ground that in that case "the State of Bombay which had at the relevant time jurisdiction issued a notification under Section 34-A of the Indian Forest Act, declaring all uncultivated lands in the villages of the Jagir to be forests for the purposes of Chapter V of that Act. On that account the forests were deemed protected forests and the Jagirdar had no right to cut and remove trees from the forest lands as owner and that under the Bombay Land Revenue Code, 1879, the rights of occupancy did not carry the right to cut and remove trees from forest lands."

Lastly we may just note that Mr. Chitley with reference to para 3 of section 40 of the Land Revenue Code argued that on the abolition of the Jagir the occupant was given permission to occupy the land, whether the permission was as a matter of law or in fact is immaterial and such permission shall be deemed to include the concession of the right of the Government to all trees growing on that land. We do not think that reliance on para 3 of section 40 by learned counsel for the appellant is correct. Permission means factual permission and not giving the right to a person as an occupant under section 5(1) (b) of the Jagirs Abolition Act.

For the reasons stated above, we allow these three appeals, set aside the decision of the High Court in them and allow the Writ Petitions filed by the appellants and declare that the appellants became occupants of the land in question together with the forest trees standing thereon and governmental authorities had no right to interfere with the appellants' dealing with the forest trees, at any rate before the passing of the Gujarat Private Forests (Acquisition) Act, 1972. In the special circumstances of these cases we shall make no order as to costs.

P.B.R. Appeals allowed.