Shrimant Sardar Chandrojirao Angre vs State Of Madhya Pradesh on 4 October, 1967

Equivalent citations: 1968 AIR 494, 1968 SCR (1) 761, AIR 1968 SUPREME COURT 494, 1968 2 SCJ 98, 1968 MPLJ 279, 1968 JABLJ 432

Author: J.M. Shelat

Bench: J.M. Shelat, J.C. Shah

PETITIONER:
SHRIMANT SARDAR CHANDROJIRAO ANGRE

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT:
04/10/1967

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
SHAH, J.C.

CITATION:
1968 AIR 494 1968 SCR (1) 761

ACT:
Madhya Bharat Abolition of Jagirs Act (Madhya Bharat 28 of 1951), s. 5(b)(iv)--Grove, meaning of.

HEADNOTE:
After the resumption of the appellant's Jagir lands in the State by the enactment of the Madhya Bharat Abolition of Jagirs Act, he claimed the mango trees, planted by him on both sides of a long road, as constituting a "grove" within the meaning of s. 5(b)(iv) of the Act, and therefore continued to belong to him.
HELD: A grove irrespective of where it was situate, but belonging to or held by the jagirdar was to continue to belong to or to be held by him. To secure the full and proper use and enjoyment of such a grove, if it was on land other than that which was allowed to be retained by him,

sub-clause (iv) of s. 5(b) further provides that the land on which such a grove stood with the areas appurtenant thereto also shall be settled upon him in accordance with the M. B. Revenue Administration and Ryotwari Land Revenue and Tenancy Act Samvat 2007. The intention of the legislature appeared to be that properties which the jagirdar was in personal use and possession of or in respect of which he had paid valuable consideration were to be retained by him. [764 H; 765 A].

The language of sec. 5(b) (iv) does not require that the trees need be fruit-bearing trees nor does it require that they should have been planted by human labour or agency. But they must be sufficient in number and so standing in a group as to give them the character of a grove and to retain that character the trees would or when fully grown preclude the land on which they stand from being primarily used for a purpose other than that of a grove-land. Cultivation of a patch here and a patch there would have no significance to deprive it of its character as a grove. Therefore, trees standing in a file on the road side intended to furnish shade to the road would not fulfil the requirements of a grove even as understood in ordinary parlance. [766 C-E].

Daropadi v. Mannu Lal, A.I.R. 1929 All. 557. Kashi v. Jagoo Bai. A.I.R, 1934 All. 290, Shiv Sahai v. Hari Nandan, A.I.R 1963 All. 413, Hasan v. State of Bombay, 62 Bom. L.R. 617, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 98 of 1965. Appeal by Special Leave from the Judgment and Order dated the December 7, 1961 of the Madhya Pradesh High Court (Gwalior Bench) in Civil Misc. Petition No. 77 of 1959. A. K. Sen, B. D. Gupta, Rameshwar Nath and Mahinder Narain, for the appellant.

I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by Shelat, J. The appellant is the ex-jagirdar of certain villages called Jagir Nevri Bhorasa. It appears that while the jagir was in his possession he had constructed roads one of which is the road connecting Bhorasa with Dewas Astha Road. The road about 1 1/2 miles in length was lined on both sides with mango trees. In 1951 the Madhya Bharat Abolition of Jagirs Act, 28 of 1951 (hereinafter referred to as the Act) was passed for resumption of jagir lands in the State. Under that Act, the right, title and interest of the appellant in his said jagir were extinguished and the jagir lands vested in the State. In 1955, the Tehsildar put up the mangoes grown on the said trees for public auction. By his application dated February 8, 1955 the appellant objected to the said auction claiming that the said trees were planted and reared by him, that they constituted a "grove" within the meaning of s. 5(b)(iv) of the Act and therefore continued to belong to him. The Tehsildar rejected the application. The appellant's appeal and thereafter a revision

before the Board of Revenue were also likewise rejected. The appellant then filed a writ petition in the High Court of Madhya Pradesh but that also was dismissed on the ground that the said trees could not be said to constitute a "grove". The appellant has filed this appeal after obtaining special leave.

The only question arising in this appeal is whether the said trees standing on the two sides of the said road can be said to be a "grove" within the meaning of sec. 5(b)(iv). The Act was passed for resumption of jagir-lands in the State and to carry out certain land reforms in the jagir areas. Section 3 provides for the date of resumption and sec. 4(1) lays down the consequences of resumption. Under sub-section (1) of that section, the right, title and interest of a jagirdar in his jagir lands including forests, trees, fisheries, tanks, wells, ponds, etc., stand resumed to the State as from the date of resumption. The section also provides for resumption of the right, title and interest of the jagirdar in all buildings on jagir lands used for schools, hospitals and other public purposes. Section 5, however, provides that notwithstanding anything contained in sec. 4 the jagirdar shall continue to remain in possession of land cultivated personally by him; of open enclosures used for agricultural or domestic purposes and in continuous possession for twelve years immediately before the date of resumption, all open house-sites purchased for valuable consideration, all private buildings, places of worship, and wells situated in, and trees standing on lands included in the aforesaid enclosures and house sites and /or land appertaining of such buildings or places of worship within the limits of village sites. Sub-cl. (iv) of sec. 5

(b) reads as under:

> "all groves wherever situate belonging to or held by the Jagirdar or any other person, shall continue to belong to or be held by such Jagirdar or other person, as the case may be, and the land thereof with the areas appurtenant thereto shall be settled on him by the Government according to the provisions of the Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act, Samvat 2007."

Under cl. (c) also the jagirdar is allowed to continue to remain in possession of all tanks, trees, wells and buildings in or on occupied land belonging to or held by the jagirdar or any other person.

These provisions show clearly that the legislature has used the word "trees" at three places in three different contexts, in secs. 4(a), 5(b) and 5(c) apart from the expression "all groves wherever situate" in sub-cl. (iv) of sec. 5(b). Whereas under sec. 4(a) the trees are to vest in the State Government along with the forests, fisheries etc., the trees mentioned in sec. 5(b)(iii) and (c) are allowed to continue to belong to and be held by the jagirdar. Obviously, the word "trees" in these provisions has not been used in any uniform sense and therefore has to be construed in the context in which it is used. For instance, the word 'trees' in sec. 5(b)(iii) and (c) is placed in juxtaposition with other properties such as private buildings, places of worship, wells situated in lands included in the said enclosures and house sites referred to in sub-cls. (i) and

(ii). It appears that the policy of the legislature was that jagir lands including forests, trees in such forests, fisheries, wells, tanks, ponds, ferries, pathways, village sites etc., which were used by, the

public and in which the members of the public were interested were resumed while the land in personal cultivation of the jagirdar, enclosures used for agricultural and domestic purposes, house sites purchased for valuable consideration, private buildings, places of worship, wells, trees standing on lands in such enclosures and house sites and tanks, trees, private wells and buildings in or on occupied land belonging to or held by the jagirdar were allowed to continue to belong to and be held by him. It will be seen that groves in sub-cl. (iv) of sec. (b) are included amongst properties allowed to continue to belong to and be held by the jagirdar. Subclause (iv) also shows that such groves need not be of fruit trees nor need the trees thereof have been planted by the jagirdar. The words "wherever situate" indicate that it is not necessary that they should be on lands or properties allowed to be retained by the jagirdar under s. 5. If a grove belonged to or was held by him, whether planted by him or of natural growth and wherever situate it is allowed to continue to belong to him and be held by him. The intention of the legislature appears therefore to be that properties which the jagirdar was in personal use and possession of or in respect of which he had paid valuable consideration are to be retained by him. It is in this context that we should construe subcl. (iv) of sec. 5(b). A grove irrespective of where it is situate, but belonging to or held by the jagirdar is to continue to belong to or to be held by him. To secure the full and proper use and, enjoyment of such a grove, if it is on land other than that which is allowed to be retained by him, sub-clause (iv) further provides that the land on which such a grove stands with the areas appurtenant thereto also shall be settled upon him in accordance with the M.B. Revenue Administration and Ryotwari Land Revenue and Tenancy Act, Samvat 2007.

What then is the meaning of the word "grove" within the meaning of sec. 5(b)(iv)9 Though the Act contains a definition section the legislature has not chosen to include therein any definition of a "grove". It intended therefore that it should be understood in its ordinary dictionary sense. In Webster's New World Dictionary, p. 641, a grove has been defined as a small wood; groups of trees standing together without undergrowth. The Shorter Oxford English Dictionary, Vol. 1, 838 also defines it as a small wood, a group of trees affording shade or forming avenues or walks. In Corpus Juris Secundum, Vol. 98, p. 688 a grove is defined to mean a cluster of trees not sufficiently extensive to be called a wood; a group of trees of indefinite extent but not large enough to constitute a forest; especially such a group considered as furnishing shade for avenues and walks. Though a grove in this sense may consist of a group of trees of indefinite extent it cannot be divorced from the idea of a homogeneous or at any rate. a substantially homogeneous unit consisting of a cluster of trees close to each, other so as to serve as a shade to walks or avenues. Apart from the meaning that the dictionaries offer the word "grove" has also been the subject-matter of a number of decisions. The case of Daropadi v. Mannu Lal(1) was, of course an extreme case of only 4 fruit trees in an area of 3 bighas and that too on the boundaries. Ashworth J. could therefore easily discard the contention that the said trees formed a grove or that the land on which they stood was a grove land within the meaning of sec. 3 of the Agra Tenancy Act, 1926 which provided that so long as any considerable portion of a plot had a sufficient number of trees to prevent that plot from being cultivated, assuming the trees to have reached their full size, the entire plot would retain the character of grove but not otherwise. It is true that when the learned Judge made, this observation he had in mind the definition of grove in s. 3 of that Act, but he also observed that that was the sense in which a "grove" and "grove land"'were ordinarily understood and that the definition did no more than to bring out the sense in which these terms were generally understood. In Kashi v. Jagoo Bai(2)

also, Bennet J. held that isolated trees cannot be said to constitute a grove. But unlike these two cases, the land in Shiv Sahai v. Hari Nandan(3) had 13 mango trees fully grown, big in size and covering a major part of it. It was held that the land was a grove-land within the meaning of sec. 3(5) of the U. P. Tenancy Act, 1939, in spite of the fact that there was some cultivation on the land. The Court there observed that the definition merely (1) A.I.R. 1929 All 557 (2) A.I.R. 1934 All 290. (3) A.I.R. 1963 All 413.

required that the trees must be in sufficiently large number to preclude the land from being used primarily for a purpose other than as grove-land. In Hasan v. State of Bombay(1) the High Court was concerned with s. 5(h) of the Madhya Pradesh Abolition of Proprietory Rights (Estates, Mahals, Alienated Lands) Act, 1 of 1951 which is in almost identical terms as S. 5(b)(iv) of the present Act. The Court interpreted the word "grove" to mean an area covered by a cluster of trees specially planted by human agency but not large enough to constitute a forest.

It would seem therefore that the word "grove" conveys com- pactness or at any rate substantial compactness to be recognized as a unit by itself which must consist of a group of trees in sufficient number to preclude the land on which they stand from being primarily used for a purpose, such as cultivation, other than as a grove-land. The language of sec. 5(b)(iv) does not require however that the trees needs be fruit bearing trees nor does it require that they should have been planted by human labour or agency. But they must be sufficient in number and so standing in a group as to give them the character of a grove and to retain that character the trees would or when fully grown preclude the land on which they stand from being primarily used for a purpose other than that of a grove-land. Cultivation of a patch here and a patch there would have no significance to deprive it of its character as a grove. Therefore, trees standing in a file on the road sidle intended to furnish shade to the road would not fulfil the requirements of a grove even as understood in ordinary parlance. Counsel, however, contended that although the trees in ques- tion are situate on the road sides along the said road there may at some places be a group or groups of trees sufficiently large in number and closely standing together to preclude that particular area from being used for cultivation or for any other purpose. In that case, be argued, there was nothing in subcl. (iv) to prevent such a cluster of trees from being regarded as a grove. We think there is some force in this argument which requires consideration. Neither the revenue authorities nor the High Court approached the question from this point of view and no inquiry at any stage seems to have been made whether there are at any place or places such group or groups of trees to constitute a grove or groves. All of them appear to have dismissed the appellant's claim only because of the fact that the trees stand along the two sides of the road. It is possible that the road might have been constructed in this particular area because of a number of trees standing on both sides of it which would provide shade over it and form an avenue. In fairness to the appellant, we think it necessary that he should have an opportunity to establish that at some place or places along the said road there are trees sufficient in number and proximity to constitute a grove or groves.

(1) 62 Bom. L.R. 617 The appeal is allowed, the judgment and order of the High Court are set aside and the case is remanded to the High Court to decide the writ petition in the light of the observations hereinabove made after calling a finding from the Board of Revenue on the question whether there are trees at any place or places along the said road sufficient in number and proximity

to constitute a grove or groves. The Board will give an opportunity to the parties to adduce on the aforesaid question such further evidence, as they may think necessary. In the circumstances, there will be no order as to costs.

Y.P. Appeal allowed.