

Shri U.R. Mavinkurve vs Thakor Madhavsinghji Gambhirsingh And ... on 24 February, 1965

Equivalent citations: 1965 AIR 1747, 1965 SCR (3) 177, AIR 1965 SUPREME COURT 1747, 1966 (1) SCJ 560, 1965 3 SCR 177, 1965 68 BOM LR 56, 1968 BOM LR 56

Author: V. Ramaswami

Bench: V. Ramaswami, P.B. Gajendragadkar, M. Hidayatullah, Raghubar Dayal

PETITIONER:
SHRI U.R. MAVINKURVE

Vs.

RESPONDENT:
THAKOR MADHAVSINGHJI GAMBHIRSINGH AND OTHERS

DATE OF JUDGMENT:
24/02/1965

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
DAYAL, RAGHUBAR

CITATION:
1965 AIR 1747 1965 SCR (3) 177
CITATOR INFO :
D 1971 SC1645 (4)
E 1980 SC 59 (2,4,6,8,9)

ACT:
Bombay Merged Territories and Areas (Jagirs Abolition) Act. 1953, 88. 3, 5 and 9--Jagirdars becoming occupants of Forest Areas under the Bombay Land Revenue Code after Abolition Act--Whether their rights included right to trees under s. 40 of the Code.

HEADNOTE:
The first eleven respondents were Jagirdars in a former

state which was merged with the State of Bombay in June 1948. In August 1953, these respondents entered into an agreement with respondent No. 12, whereby, the latter could cut and remove all species of trees from forest lands in 39 villages over which the first eleven respondents claimed full proprietary rights.

On August, 1, 1954, the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 came into force whereby all Jagirs in the merged territories in Bombay State were abolished. Under s. 5 of the Act, the Jagirdars became 'occupants' in the lands including forest areas which were then in their possession.

On July 6, 1956 the State Government issued a notification under s. 34(A) of the Indian Forest Act, declaring all uncultivated lands in the 39 villages to be forests for the purposes of Ch. 5 of the Act. Thereafter, in March and July 1958, the Divisional Forest Officer wrote to the respondents stating, inter alia, that all the rights of the Jagirdars having been abolished, the reserved species of trees on the lands belonged to the State Government and prohibiting them from cutting and removing the trees. The respondents thereupon filed a writ petition, seeking a direction to the appellants to cancel, and to restrain from enforcing the orders contained in the letters of the Divisional Forest Officer.

The High Court allowed the petition, mainly on the ground that as the Jagirdars became occupants within the meaning of the Bombay Land Revenue Code of the forest lands under s. 5(1)(b) of the Abolition Act, they, and not the State Government, were entitled to the trees standing on them. In the appeal to the Supreme Court it was further contended on behalf of the respondents that as s. 9 of the Act vested some of the rights to trees in forest areas in the State Government, by implication, all the remaining rights belonged to the Jagirdars.

HELD: Under s. 5(1)(b) of the Abolition Act, the only rights conferred on the Jagirdars were the occupancy rights of the Forest lands; under s. 40 of the Bombay Revenue Code the rights of occupants did not include the right to cut and remove trees from the forest lands except in the case of villages as which the original survey and settlement has been completed, whereupon the Government's rights to the trees, unless expressly or otherwise reserved, are deemed to have been conceded to the occupant. In the present case the villages in question had admittedly not been surveyed and
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settled and therefore the rights of the State Government to the trees could not be deemed to have been conceded to the respondents as occupants. [184 E-185 E]

By s. 3 of the Abolition Act all Jagirs and all the rights of a Jagirdar were extinguished unless there was any express provision in the Act saving any right. It could not be said that because s. 9 of the Act reserved certain rights to

trees of the State Government and by implication the Jagirdars had all the other rights, there was an express provision saving the rights of the Jagirdars within the meaning of s. 3. [185 F-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 281 of 1962.

Appeal by special leave from the judgment and order dated January 14, 1959 of the Bombay High Court in Special Civil Application No. 2145 of 1958.

S.G. Patwardhan and R.H. Dhebar, for the appellants. S.T. Desai, J.B. Dadachanji, O.C. Mathur and Ravinder Narain, for respondents no. 1, 2, 4, 6, 10 and 12. The Judgment of the Court was delivered by Ramaswami, J. Respondents nos. 1 to I 1 were the Jagirdars of Waghach State in former Sankeda Mewar in Reva Kantha Agency which now forms part of the State of Gujarat. They claimed that they were the full owners of all the land including forest areas in the said State and exercised full revenue power during their regime. There were 39 villages in Waghach State in all of which there were forests. Except for the lands which were cultivated, all the lands in the said villages were forest lands. Respondents nos. 1 to I 1 further claimed that they had full proprietary rights over the forest lands and enjoyed the produce as full owners thereof. By the agreement of merger dated June 1, 1948 the State of Waghach was merged with the State of Bombay with effect from June 10, 1948. On August 19, 1953, respondents 1 to 11 entered into an agreement with respondent no. 12 whereby respondent no. 12 became entitled to cut and remove all species of trees from the forest lands in the 39 villages for a period of ten years. On August 1, 1954, the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 (Act XXXIX of 1954) came into force. This Act was passed with the object of abolishing jagirs in the merged territories and merged areas in the State of Bombay and providing for matters consequential and incidental thereto. The jagirs were classified, under the Act, into two categories, namely, (1) Proprietary jagirs and (2) Non-proprietary jagirs. It is the undisputed position in the present case that the jagirs fell in the category of proprietary jagirs. Under s. 5 of the Jagirs Abolition Act the Jagirdars became occupants in the lands including forest areas which were in their possession before coming into force of the Act. On July 6, 1956 the State Government issued a notification under s. 34(A) of the Indian Forest Act. declaring all uncultivated lands in the said 39 villages to be forests for the purposes of Ch. 5 of the Act. On March 19, 1953 the Divisional Forest Officer wrote a letter to the respondents wherein he stated that all the rights of the jagirdars had been abolished by the Jagirs Abolition Act and that the reserved species of trees standing on the lands belonged to the State Government. He, therefore, asked the respondents to refrain from cutting teak and Pancharao trees standing in the forest lands. On July 11, 1958. the Divisional Forest Officer wrote another letter to the respondents in which he stated that the reserved species of trees--teak, blackwood and sandalwood--vested in the State Government and, therefore, prohibited the respondents from cutting and removing the material from those trees. He also warned the respondents that if they cut and removed the material of such trees they will be liable to prosecution. On the same date he wrote another letter to the respondents and informed them that the material obtained by cutting teak and blackwood trees which was lying in the forest lands, had

been advertised for sale. The respondents thereafter filed a Special Civil Application no. 2146 of 1958 in the High Court of Judicature at Bombay against the applicants for the grant of a writ in the nature of mandamus under Art. 226 of the Constitution directing them to cancel the orders contained in the fetters of the Divisional Forest Officer dated March 19, 1958 and July 11, 1958 and to restrain the appellants from enforcing the said orders. The High Court, by its judgment dated January 14, 1959, allowed the application of the respondents holding that after coming into force of the Jagirs Abolition Act the rights of the jagirdars in the forest lands and the trees were extinguished but at the same time jagirdars became occupants of the forest lands under s. 5(1)(b) of the said Act and they accordingly became entitled to the trees standing on the forest lands. The High Court held that all the trees standing on the forest lands belonged to the respondents 1 to 11 and the same did not belong to the State Government and consequently the State Government was not entitled to sell the material obtained by cutting the trees. Accordingly the High Court issued an injunction restraining the appellants from preventing the respondents from cutting any species of trees standing in the forest lands in the villages in question and from removing and disposing of the produce thereof. The High Court further held that this order would be without prejudice to the right of the State Government, if they had any, to reserve any class of trees under s. 40 of the Land Revenue Code or under any other law for the time being in force, or to impose such restrictions as it may be lawful for them to do, under the provisions of the Indian Forest Act and the Rules made thereunder.

The present appeal is brought by special leave on behalf of the State of Gujarat and the other appellants against the order of the High Court of Judicature at Bombay in the Special Civil Application no. 2146 of 1958.

The question presented for determination in this case is whether the trees standing in the forest lands of the 39 villages in question belong to the jagirdars--respondents 1 to 11 or to the State Government and whether the respondents have a right to cut and remove the trees including the reserved species of trees from the forest lands of these villages.

Section 3 of the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953 (hereinafter to be called the Jagirs Abolition Act) states:

"3. Notwithstanding anything contained in any usage, grant, sand, order, agreement or any law for the time being in force, on and from the appointed date,---

all jagirs shall be deemed to have been abolished;

(ii) save as expressly provided by or under the provisions of this Act, the right of a jagirdar to recover rent or assessment of land or to levy or recover any kind of tax, cess, fee, charge or any has, and the right of reversion lapse, if any, vested in a jagirdar, and all other rights of a jagirdar or of any person legally subsisting on the said date, in respect of a village as incidents of jagir shall be deemed to have been extinguished."

Under s. 4 all jagir villages are made liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder, and the provisions of the Code and the rules relating to unalienated lands are made applicable to such villages. Section 5 (1) (b) provides as follows:

"5. (i) 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 person other than a permanent holder holding through or from the jagir dar, 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:

Section 8 of the Jagirs Abolition Act states:

"8. All public roads. lanes and paths. the bridges. ditches. dikes and fences. on or beside the same. the bed of the sea and of harbours. creeks below high water mark. and of rivers. streams, nalas. lakes. wells and tanks and all canals and water courses. and all standing and flowing water. all unbuilt village site lands. all waste lands and all uncultivated lands (excluding lands used for building or other non-agricultural purposes) which are situate within the limits of any jagir village, shall. except in so far as any rights of any person other than the jagirdar may be established in or over the same and except as may otherwise be provided by any law for the time being in force. vest in and shall be deemed to be. with all rights in or over the same or appertaining thereto. the property of the State Government and all rights held by a jagirdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector. subject to the general or special orders of the State Government. to dispose them of as he deems fit. subject always to the rights of way and other rights of the public or of individuals legally subsisting.

Section 9 reads:

"9. The rights to trees specially reserved under the Indian Forest Act. 1927. or any other law for the time being in force. except those the ownership of which has been transferred by the State Government under any contract. grant or law for the time being in force. shall vest in the State Government and nothing in this Act shall in any way affect the right of the State Government to apply the provisions of the Indian Forest Act. 1927. as in force in the pre-Reorganisation State of Bombay. excluding the transferred territories to forests in a Jagir Village."

Section 10 provides as follows:

"10. Nothing in this Act or any other law for the time being in force. shall be deemed to affect the rights of any jagirdar subsisting on the appointed date to mines or mineral products in a jagir village granted or recognised under any contract. grant or law for the time being in force or by custom or usage."

Section 11 provides for compensation to Jagirdars in the manner provided therein.

Section 2(2) of the Jagirs Abolition Act states that any word or expression which is defined in the Code and not defined in the Act shall be deemed to have the meaning given to it in the Code.

Section 2(1)(ii) of the Jagirs Abolition Act defines the 'Code' to mean 'the Bombay Land Revenue Code, 1879'. Section 3(16) of the Bombay Land Revenue Code defines "Occupant" as 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 occupant. Section 3(17) defines "Occupancy" to mean a portion of land held by an occupant. Under s. 3(19) of the Code "Occupation" means possession. Section 40 of the Bombay Land Revenue Code provides as follows:

"40. 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 1 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.

"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 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 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 permission, 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."

Section 41 states:

"41. The right to all trees specially reserved under the provision of the last preceding section, and to all trees.

brushwood, jungle, or other natural product growing on land set apart for forest reserves under section 32 of Bombay Act I of 1865 or section 38 of this Act. and to all trees, brushwood, jungle or other natural product, wherever growing, except in so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in the State Government and such trees, brushwood, jungle or other natural product shall be preserved or disposed of in such manner as the State Government may from time to time direct."

Section 65 states:

"65. An occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenant, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid. But, if any occupant wishes to use his holding or any part thereof for any other purpose the Collector's permission shall in the first place be applied for by the occupant.

The Collector, on receipt of such application,

(a) shall send to the applicant a written acknowledgment of its receipt, and

(b) may, after due inquiry, either grant or refuse permission applied for;

When any such land is thus permitted to be used for purpose unconnected with agriculture it shall be lawful for Collector, subject to the general order of the State Government to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of section 48."

Section 68 states that the occupant's rights are conditional, and is to the following effect:

"68. An occupant is entitled to the use and occupation of his land for the period, if any, to which his tenure is limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law, for the time being in force, and on the fulfilment of any other terms or conditions lawfully annexed to his tenure; The High Court expressed the view that under s. 3 of the Jagirs Abolition Act the rights of the jagirdars in the forest lands and the trees which grew upon them were extinguished. The High Court further held that with the coming into force of the Jagirs Abolition Act jagirdars became the occupants in the forest lands under s. 5(1)(b) of that Act and the respondents 1 to 11 become, therefore, entitled to the trees standing on the forest lands. In our opinion, the view expressed by the High Court is erroneous and must be reversed. It is manifest that under s. 3 of the Jagirs Abolition Act all jagirs were abolished and all the rights of the jagirdars were extinguished, save those rights which are expressly provided by other provisions of the Act itself. It is also manifest that under s. 5(1)(b) of the Act the only rights conferred on the jagirdars are the rights of occupancy of the forest lands. 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 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. 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. The third paragraph of s. 40 relates to the concession of Government rights to trees in case of land taken up after completion of settlement. The section states that when permission to occupy land has been granted after the completion of the survey settlement of the village, 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 permission. In 'the present case, the

36 villages in question have admittedly not been surveyed and settled and the necessary conclusion to be drawn is that the rights of the State Government to trees cannot be deemed to be conceded to the occupants of the land. The assumption is implicit in s. 40 of the Bombay Land Revenue Code that all the trees standing and growing on the lands with the occupants belong to the State Government and not to the occupants and until there is a survey and settlement of the village the question of concession on the part of the State Government of rights to the trees does not arise. In other words, until there is survey and settlement of the land there is no implication in favour of respondents 1 to 11 that they had concession of the rights of the Government to the trees standing on the forest lands. On behalf of the respondents Mr. S.T. Desai referred to s. 9 of the Jagirs Abolition Act and stressed the argument that the right of trees mentioned in that section alone vested in the State Government and there was no other reservation in the Act or any other law, in favour of the State Government. It was contended that by implication it must be held that the jagirdars had rights to the trees in the forest areas apart from those mentioned in s. 9 of the Act. We do not accept this argument as correct. Section 3 of the Act provides for abolition of jagirs and under that section all jagirs shall be deemed to have been abolished on and from the appointed date i.e., August 1, 1954 and all rights of a Jagirdar, in respect of a jagir village as incidents of jagir, shall be deemed to have been extinguished by virtue of the section unless there is express provision in the Act saving such right. In our opinion, s. 9 of the jagirs Abolition Act is not an express provision saving the right of the jagirdars with regard to the trees and the argument of Mr. Desai must be rejected on this point. Our view is supported by the language of s. 10 of the Jagirs Abolition Act which expressly saves the right of the jagirdar to mines or mineral products in a jagir village subsisting on the appointed day. There is no provision in the Jagirs Abolition Act corresponding to s. 10 with regard to the saving of the right to the trees in favour of the jagirdars. We are accordingly of the opinion that after coming into force of the Jagirs Abolition Act respondents 1 to 11 became occupants in respect of the forest lands in the 36 villages and the only rights which they have are those of occupants under the provisions of the Bombay Land Revenue Code and such rights do not include the right to cut and remove the trees from the forest lands of the villages in question. In our opinion, the High Court was in error in holding that the respondents were entitled to cut and remove all species of trees standing in the forest lands of the 36 villages in question. We accordingly allow this appeal, set aside the order of the High Court dated January 14, 1959 in Special Civil Application no. 2146 of 1958 and order that the Special Civil Application should be dismissed. The appellants are entitled to costs both in this Court and in the High Court.

Appeal allowed.