State Of Gujarat vs Gujarat Revenue Tribunal & Ors on 8 August, 1979

Equivalent citations: 1980 AIR 91, 1980 SCR (1) 233, AIR 1980 SUPREME COURT 91, (1980) 1 SCR 233 (SC), 1979 UJ (SC) 683, 20 GUJLR 980, (1980) 1 SCWR 152, 1979 (4) SCC 40

Author: A.P. Sen

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

PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
GUJARAT REVENUE TRIBUNAL & ORS.

DATE OF JUDGMENT08/08/1979

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

CITATION:
1980 AIR 91 1980 SCR (1) 233
1979 SCC (4) 40
CITATOR INFO :
D 1992 SC 221 (2)

ACT:
Bombay Taluqdari Tenure Abolition Act, 1949-S. 6-Bombay Personal Inams Abolition Act, 1952-S. 7-Scope of.
Words & phrases-Waste lands-Meaning of.

HEADNOTE:
The object and purpose of the Bombay Taluqdari Tenure Abolition Act, 1949 and the Bombay Personal Inams Abolition Act, 1952 was to abolish taluqdari and inamdari rights as a measure of agrarian reform. Section 6 of the former Act and s. 7 of the latter Act (both of which are identical in terms) provide that among others "....all unbuilt village site lands, all waste lands and all uncultivated lands

(excluding lands used for building or other non-agricultural purposes), which are not situate within the limits of the wantas..... " shall vest in the Government. The Explanation to this section provides "for the purposes of this section land shall be deemed to be uncultivated, if it has nor been cultivated for a continuous period of three years immediately before the date on which this Act comes into force."

The respondents were former Taluqdars and Inamdars. Vast stretches of hilly tracks which were incapable of cultivation, but on which there was spontaneous growth of grass formed part of the taluqdari estates and inams. When grass was cut from these lands, care was taken not to cut stubs but they were allowed to remain in tact so that in the following year grass grew with the onset of rains. The respondents secured income from the grass grown on the lands; for earning income they kept watchmen so that unauthorised pasturing by cattle did not destroy the growing grass.

With the abolition of the taluqdari rights and inams the lands were regarded as having vested in the Government. The respondents thereupon sought a declaration that the lands were neither vacant lands nor uncultivated lands and being in their possession they became the occupants thereof. The Mahalkari held that the lands were not waste lands or uncultivated lands and since the respondents were in possession thereof they became occupants. The Collector reversed this order and held that by reason of Explanation to s. 6 of the Taluqdari Abolition Act and Explanation to s. 7 of the Inams Abolition Act, the lands should be treated as unoccupied lands and, therefore, they vested in tho Government. The Revenue Tribunal reversed the order of the Collector.

On further appeal the High Court held that the land were productive lands in the sense that grass grew naturally and that the Explanation contemplates only those lands which could be cultivated but which were left fallow and uncultivated for a continuous period of three years
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Dismissing the appeals;
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HELD: 1. The High Court as well as the Revenue Tribunal were right in holding that the disputed lands did not vest in the Government under s. 6 of the Taluqdari Abolition Act and s. 7 of the Inams Abolition Act. [242A]

2. It would be evident from s. 6 that the vesting is in respect of properties which could be put to public use. It leaves private properties, of the taluqdars untouched. Public properties situate in a taluqdar's estate vested in the Government because they were meant for public use. In spite of vesting of such property in the Government, the conferral of the rights of an occupant on a taluqdar under s. 5(1)(b) in respect of the lands in his actual possession

is saved. [239D-F]

3. The contention that the grass lands on hilly tracks which were incapable of cultivation were waste lands and uncultivated lands within the meaning of s. 6 cannot be accepted. The expression "all waste lands" has been joined by the conjunction "and" with the expression "all uncultivated lands". They indicate two distinct types of lands. If the legislature had intended that the aforesaid expression should indicate one class of lands the expression would have been "all waste and uncultivated lands" as against the expression "all waste and uncultivated lands". There are, therefor, two distinct categories of properties viz., waste lands and uncultivated lands. [240A-B]

4. The expression "waste lands" means lands which are desolate, abandoned and not fit ordinarily for use for building purposes. In the sequence in which the expression waste lands appears in the two sections it cannot but have its ordinary etymological meaning viz., lands Lying desolate or useless without trees or grass or vegetation, not capable of any use. [240C]

Rajanand Brahma Shah v. State of U.P. & Ors. [1967] 1 SCR 373, Ishwarlal Girdharilal Joshi etc. v. State of Gujarat & Anr., [1968] 2 SCR 267; referred to.

5(a). The grass lands on hilly tracts were not waste lands. They were productive lands in the sense that grass grew naturally and so they were not desolate, abandoned or barren waste lands with no vegetation. The expression "waste lands" in the context would be clearly in the original sense of the term waste as meaning barren or desolate lands which are unfit for any use or worthless. That test is not clearly satisfied. [240H]

(b) The expression "uncultivated lands" in s. 6 must in the context m which it appears means "cultivable but not cultivated", "allowed to lie fallow". It is uncultivable or unfit for cultivation. [241B]

6. The Explanation below s. 6 has a two-fold function: (1) to explain the meaning of the expression "uncultivated lands" in the substantive provision and (2) it is a key for ascertaining the meaning of the expression "uncultivated lands". Without the Explanation any land Lying uncultivated on the date of the vesting even for a year i.e. allowed to lie fallow according to the normal agricultural practice would vest in the Government. But the Explanation steps in and seeks to mitigate the rigour. It says that the land allowed to lie fallow continuously for a period of three years shall alone be deemed to be uncultivated land. meaning there-by that a piece of land allowed to lie
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fallow intermittently for a period of less than three years will not be deemed "uncultivated lands . [241 C-E]

7. In the instant case there were no basic operations as tilling of the land, sowing or disseminating of seeds and planting of grass. The subsequent operations viz., the act

of securing the income of the grass by engaging watchmen etc. by themselves would not tantamount to cultivation of the land. [241G]

8. The Acts make no provision for payment of compensation for the acquisition of the rights of the former Taluqdar and Inamdars in such lands. Section 7 of the former Act and s. 10 of the latter Act speak of the extinguishment of any right or interest in land which is waste or uncultivated but is culturable. The lands in question not benefit for cultivation were not culturable and therefore, they do not fall within the ambit of these provisions. If the contention of the appellants were to prevail it would have the effect of taking these lands out of the purview of s. 14 of the former Act and s. 17 of the latter Act though such lands are not governed by s. 17 and s. 10 respectively. This would result in deprivation of property without payment of compensation. [242B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2411- 2427 and 2431-2440 of 1969.

Appeals by Special Leave from the Judgment and Order dated 5-11-1968 of the Gujarat High Court in S.C.A. Nos. 570/63, 629, and 634/63. 283-286 of 1966 and 287-296 and 300-309/66.

G. A. Shah and M. N. Shroff for the Appellant. D. V. Patel, I. N. Shroff, P. V. Hathi and H. S. Parihar for the Respondents.

The Judgment of the Court was delivered by SEN J. These twenty-seven appeals, by special leave, directed against judgment of the Gujarat High Court dated November. 5 1968 raise a common question and are, therefore, disposed of by this common judgment.

The short question involved in these matters relates to interpretation of s. 6 of the Bombay Taluqdari Tenure Abolition Act, 1949, "the Taluqdari Abolition Act", and s. 7 of the Bombay Personal Inams Abolition Act, 1952, "the Personal Inams Abolition Act".

In the present appeals, certain facts are no longer in dispute. The respondents are the erstwhile taluqdars or inamdars what was known as Ghogha Mahal, which now forms part of the Bhavnagar district. There were vast stretches of hilly tracts described as 'Dunger', which were incapable of cultivation, but on which there was spontaneous growth of grass. These lands formed part of their taluqdari estates or inams. They used to sell the grass growing on these lands and it was a definite source of income to them. It appears that the lands were recorded as Kharaba in the record of rights and, therefore, consequent upon the abolition of taluqdari rights by the Taluqdari Abolition Act and with the Abolition of inams under the Personal Inams Abolition Act, the lands were recorded as having vested in The Government. Thereupon, the respondents made separate claims before the Mahalkari, Ghogha Mahal, seeking a declaration under s. 37(2) of the Bombay I and Revenue Code,

1879 that the lands were neither vacant lands nor uncultivated lands and being in their possession, they become the occupants thereof.

In an enquiry held under s. 3(2), the Mahalkari examined the claimants individually, the village talatis and the relevant entries in the records of rights which showed that the taluqdars and inamdars were deriving income from the grass growing on the lands. It was also in evidence that considerable effort and expenses had to be incurred by them for securing the income of this grass i.e., by keeping watchmen etc. to see that unauthorised pasturing by cattle brought on land or trespassing on it did not destroy the growing grass, but that it grew to full stature so as to give a fair and full yield. When operation for cutting of the grass used to commence, the stubs were not cut off but were allowed to remain intact so that the next year after The rains, the grass would grow naturally again. A portion of the grass-lands were also kept apart by the respondents for the grazing of their cattle by fencing of the area. The Mahalkari, Ghogha Mahal by his order dated October 28, 1958 held on this evidence that the lands could not be treated as waste lands or uncultivated lands, and since the respondents were in possession thereof, they became the occupants.

The Collector, Bhavnagar, in exercise of his suo motu powers of revision under s. 211 of the Code by his order dated February 28, 1961 set aside the orders of the Mahalkari and held in all these twenty-seven cases, that since the lands in question were not being cultivated by taluqdars or inamdars, they must, by reason of Explanation to s. 6 of the Taluqdari Abolition Act and Explanation to s. 7 of the Inams Abolition Act, be treated to be 'unoccupied lands', and, therefore, the lands vest in the Government. The Revenue Tribunal, however, by its two orders dated June 19, 1962 and March 26, 1965, reversed the order of the Collector and restored that of the Mahalkari holding the respondents to be the occupants of the lands in question. The State Government of Gujarat filed twenty-seven writ petitions in the High Court for quashing the orders of the Revenue Tribunal.

Agreeing with the Revenue Tribunal, the High Court held that there was evidence that the lands in dispute were not lying desolate, abandoned or barren with no vegetation, but were, in fact, productive lands, in the sense that grass grew naturally and so, they could not be regarded as 'waste lands', although they were wrongly recorded as such. It also held that the hilly tracts on which grass grew naturally, by their very nature were unfit for cultivation and, therefore, could not be treated as 'uncultivated lands'. It relied on the Explanation to the two sections and observed that it contemplates only those lands which could be cultivated but which were left fallow and uncultivated for a continuous period of three years. In its opinion, the expressions 'waste lands' and 'uncultivated lands', therefore, did not cover grass-lands on hilly tracts which by their very nature are incapable of cultivation, but which are not useless so as to be not capable of any use.

The question for consideration in these appeals is whether the High Court was right in holding that the respondents, who were taluqdars or inamdars, were entitled to settlement of these grass-lands on hilly tracts as 'occupants' thereof under s. 5(1) (b) of the Taluqdari Abolition Act and s. 5(2) (b) of the Inams Abolition Act.

Before dealing with the judgment of the Court below, it will be convenient to refer to the scheme of the two Acts and to set out the relevant sections. The provisions of the two Acts are identical in terms. It would source, for our present purposes, to generally refer to the provisions of the Taluqdari Abolition Act. The object and purpose of the Act, as is clear from the preamble, was to abolish the taluqdari rights as a measure of agrarian reform. Section 3 abolished the taluqdari tenure and extinguished all incidents of the tenure attached to any land comprised in a taluqdari estate save as provided in the Act. Under s. 4, all revenue surveys and settlements made under s. 4 of the Gujarat Taluqdars Act, 1888 are deemed to have been made under (Chapter VIII and VIII-A of the Land Revenue Code. By s. 5(1)(a) all taluqdari lands are henceforth liable to the payment of land revenue in accordance with the provisions of the Land Revenue Code.

The abolition of the taluqdari tenure, however, did not deprive the taluqdars of the lands in their possession, and s. 5(1)(b) provides that a taluqdar holding any taluqdari land shall be deemed to be an occupant within the meaning of the Land Revenue Code or any other law for the time being in force. Than comes s. 6 which provides that all public roads, lanes etc., not situate within the wants belonging to a taluqdar, shall vest in the government and all rights held by a taluqdar in such property shall be deemed to have been extinguished. Section 7 provides for payment of compensation to taluqdars for extinguishment of rights under s. 6 Clause (b) (i) thereof provides that if the property acquired is 'waste or uncultivated but is culturable land', the amount of compensation shall not exceed three the assessment of the land. Section 14 provides for payment of compensation to taluqdars for extinguishment or modification of any other right where such extinguishment or Modification amounts to transference to public ownership of such lands or any right in and over such land, i.e. in any land other than those in respect of which provision for the payment of compensation has been made under s. 7.

The scheme under the Personal Inams Abolition Act is more or less similar. Section 4 provides that notwithstanding anything contained in any usage, settlement, grant, sanad, or order or a decree or order of a Court or any law for the time being in force (1) all personal inams shall be deemed to have been extinguished, with effect from and on the appointed date; (2) all rights legally subsisting on the said date in respect of such personal inams shall be deemed to have been extinguished, save as expressly provided by or under the provisions of the Act. Similarly s. 5(2) (a) provides that an inamdar in resect of the inam land in his actual possession or in possession of a person holding from him other than an inferior holder referred to in cl.(b), shall be entitled to all the rights and shall be liable to all obligations in respect of such land as an occupant. Under cl.(b) an inferior holder holding an inam land is entitled to the same rights.

Turning now to s. 6 of the Taluqdari Abolition Act and s. 7 of the Personal Inams Abolition Act, which are identical in terms, the first thing to be noticed is that they deal with specific properties alone, which arc enumerated therein and in which all the rights of the taluqdars or inamdars are completely extinguished.

Section 6 of the Taluqdari Abolition Act reads:

"6. 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, nallas, lakes, wells and tanks, and all canals, and water courses, and all standing and flowing water, all unbuilt village sit lands, all waste lands and all uncultivated land (excluding lands used for building or other non-agricultural purposes), which are not situate within the limits of the wantas belonging to a taluqdar in taluqdari estate shall except in so far as any rights of any person other than the taluqdar may be established in and 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 Government and all rights held by a taluqdar 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 Commissioner, to dispose them of as he deems fit, subject always to the rights of way and of other rights of the public or individuals legally subsisting. Explanation-For the purposes of this section, land shall be deemed to be uncultivated, if it has not been cultivated for a continuous period of three years immediately before the date on which this Act comes into force". (Emphasis supplied) On a fair reading of the section, it would be evident that the vesting is in respect of properties which could be put to public use. It leaves the private properties of the taluqdar untouched. The legislative intent is manifested by clear enumeration of certain specific properties not situate within the wantas of a taluqdar. It begins by specifying 'All public roads, lanes, paths, bridges, etc.' and ends up with 'all village site lands, all waste lands and all uncultivated lands'. and these being public properties situate in a taluqdar's estate must necessarily vest in the Government because they are meant for public use. In spite of vesting of such property in the Government, however, the conferral of the rights of an occupant on a taluqdar under s. 5(1)(b) in respect of the lands in his actual possession, is saved.

Pausing there, it is fair to observe that the words in parenthesis 'excluding lands used for building or other non- agricultural purposes', exemplify the intention of the legislature not to deprive a taluqdar of such land, even though such property is uncultivated land, due to its inherent character as well as by reason of the Explanation.

lt is therefore, evident that the determination of the question whether a particular category of property belonging to a taluqdar in a taluqdari estate is vested in the Government or not, and the determination of the question whether the rights held by a taluqdar in such property shall be deemed to have been extinguished or not, will depend upon the category of that property. The expression 'all waste lands' has been joined by conjunctive 'and' with the expression 'all uncultivated lands'. They, therefore, indicate two distinct types of lands. If the legislature had intended that the aforesaid expression should indicate one class of lands, the expression rather would have been 'all waste and uncultivated lands' as against the expression 'all waste lands and all uncultivated lands" were we have, therefore, two distinct categories of

properties viz. (1) waste lands, and (2) uncultivated lands. The contention that the grass-lands on hilly tracts which are incapable of cultivation were 'waste lands' or 'uncultivated lands' within the meaning of s. 6 cannot be accepted.

Now, the expression 'waste lands' has a well-defined legal connotation. It means lands which are desolate, abandoned, and not fit ordinarily for use building purposes. In Shorter oxford English Dictionary 3rd Ed., vol. 2, p. 2510, the meaning of word waste' s given as "1. Waste or desert land, uninhabited or sparsely inhabited and uncultivated country; a wild and desolate region; 2. A piece of land not cultivated or used for any purpose, and producing little or no herbage or wood. In legal use, a piece of such land not in any man's occupation but lying common. 3. A devastated region."

In the sequence in which the expression 'waste lands' appears in the two relevant sections, it cannot but have its ordinary etymological meaning as given in the Shorter oxford Dictionary i.e.. land lying desolate or useless, without trees or grass or vegetation, not capable of any use. In Rajanand Bramha Shah v. State of Uttar Pradesh & Ors this Court, while discerning the meaning of 'waste and arable land' in s. 17(4) Of the Land Acquisition Act, 1894, observed that the expression 'waste land' as contrasted to 'arable land', would mean 'land' which is unfit for cultivation and habitation, desolate and barren land with little or no vegetation thereon. To the same effect is the decision in Ishwarlal Girdharilal Joshi etc. v. State of Gujarat & Anr.

It is clear that these grass-lands on hilly tracts were not waste lands. They were productive lands in the sense that grass grew naturally and so they were not desolate, abandoned or barren waste lands with no vegetation. The expression 'waste lands' in the context would be clearly, in the original sense of the term 'waste' as meaning barren or desolate lands which are unfit for any use or which are worthless. That test is not clearly fulfilled.

The appellants alternative contention raises, primarily, the question whether upon a proper construction of s. 6 these grass-lands on hilly tracts were uncultivated lands. That depends upon the terms of the section. The expression 'uncultivated lands' in s. 6, must, in the context in which it appears, mean 'cultivable but not cultivated' i.e. fit for cultivation, but allowed to lie fallow. It is uncultivable or unfit for cultivation.

The Explanation below s. 6 has a two-fold function. The purpose of the Explanation first is to explain the meaning of the expression 'uncultivated lands' in the substantive provision. It then seeks to curtail the effect of the section. It is a key for ascertaining the meaning of the expression 'uncultivated lands'. Without the Explanation, any land lying uncultivated, on the date of the vesting, even for a year. i.e., allowed to lie fallow according to the normal agricultural practice, would vest in the Government. But then the Explanation steps in and seeks to mitigate the rigour. It says that the land allowed to lie fallow continuously for a period of three years, shall alone be deemed to be uncultivated land, meaning thereby that a piece of land allowed to lie fallow, intermittently, for a period of less than three years will not be deemed 'uncultivated lands'.

In that view of the matter, the grass-lands on hilly tracts which ere incapable of any cultivation could not, in law, be treated to be uncultivated lands' within the meaning of s. 6, read with the Explanation thereto.

There seems to be no doubt on the facts of the case that there were no such basic operations as tilling of the land, sowing or disseminating of seeds, and planting of grass. The subsequent operations i.e., operations performed after the grass grew on the land, e.g., the act of securing the income of this grass by engaging watchmen etc. to see that unauthorised pasturing by cattle brought on land or trespassing on it did not destroy the growing grass but that it grew to full stature so as to give a fair and full yield, or when operations for cutting off the grass used to commence, the act of tending the stubs so that they were not cut off but were allowed to remain intact so that the next year after the rains, the grass would grow naturally again, by themselves would not be tantamount to cultivation of the land.

In our opinion, the High Court as well as the Revenue Tribunal were, therefore, right in holding that the disputed lands did not vest in tile government under s. of the Taluqdari Abolition Act and s. 7 of the Personal Inams Abolition Act.

In reaching. that conclusion, we cannot but take into consideration the fact that the Acts make no provision whatever for payment of any compensation for the acquisition of the rights of the former taluqdars and inamdars in such lands. They are not entitled to any compensation either under s. 7(1)(b)(i) of the Taluqdari Abolition Act and s.

10.(1) (b) (i) of the Personal Inams Abolition Act. These provisions speak of the extinguishment of any right or interest in land which is 'waste or uncultivated but is culturable'. The lands in question not being fit for cultivation, were not 'culturable' and. therefore, they do not fall within the ambit of these provisions. If the contention of the appellant were to prevail, it would lead to an anomalous position. It would have the effect of taking these lands out of the purview of s. 14 of the Taluqdari Abolition Act and s. 17 of the Personal Inams Abolition Act, though such lands are not governed by s. 7(1)(b)(i) of the former Act and s. 10(1)(i) of the latter Act. This would result in deprivation of property without payment of compensation.

Our attention was drawn to the decision in Ambabai Janhavibai v. State of Maharashtra. (1) That judgment proceeds on the footing that there was a conflict between s. S and s. 7 of the Personal Inams Abolition Act. There is no basis for this assumption. Further, the observation that 'since it is admitted that no agricultural operations were carried out on the lands for the purpose of raising or growing grass on the lands', the contention that 'the lands on which grass grew naturally could not be said to be uncultivated, cannot be accepted', even though the inamdars were making use of these lands and were realising income by selling the grass which grew thereon, appears to proceed on a wrongful assumption that the sine qua non for the applicability of s. 5 was actual cultivation. This observation, in our view, cannot be supported.

In the result, these appeals must fail and are dismissed with costs.

P.B.R. Appeals dismissed.