

Bombay High Court

Anant Krishnaji Nulkar And Ors. vs Secy. Of State on 21 August, 1930

Equivalent citations: AIR 1931 Bom 238

Author: Beaumont

JUDGMENT Beaumont, C.J.

1. This is an appeal from the decision of the District Judge of Khandesh at Dhulia who dismissed the suit. The first three issues raised were:

(1) Whether the suit is barred by Section 11, Bombay Revenue Jurisdiction Act.

(2) Whether the plaintiff proves that he became the owner of the land in suit in virtue of the Collector's order.

(3) Whether the plaintiff proves that the subsequent demand of any occupancy price and his dispossession, on failure to pay the same were illegal.

2. The facts are not in dispute and can be shortly stated. In May 1919, appellant 1 (whom I will refer to as the appellant, appellant 2 being his wife who claims under him by deed of gift), who had been serving in the Indian Medical Service, applied to the Collector for a grant of land under the Land Revenue Code, and on 22nd May 1919, the Collector made an order, which is Ex. 31, in which he granted the appellant certain survey numbers on certain conditions which included freedom from payment of occupancy price and freedom for a limited time from assessment to land revenue. The order was followed by a kabuliyat or agreement Ex. 41. The plaintiff entered into possession and spent a certain amount of money on cultivating the land. On 6th December 1921, the Commissioner who is the superior officer of the Collector appears to have taken the view that the Collector's order was wrong and he framed a document entitled "order" which is Ex. 34. In that document after stating the effect of the Collector's order and that the order was illegal and that the Commissioner was not inclined to withdraw the grant from the appellant altogether, he directed that the proper occupancy price according to the full market value of the land on the date on which the grant was originally made, i.e., in May 1919, should be recovered from the appellant and the ordinary land revenue (consolidated) should be recovered from the year 1919-20, and he directed that the appellant should be informed of the issue of the orders. The document is addressed to the Collector and there is nothing to show that the appellant ever saw the document. On 15th December 1921 the appellant was informed (Ex. 35) of the Commissioner's order to recover from the appellant the full occupancy price of the land according to the full market value on the date on which the grant was made, that the value of the land on the date on which the grant was made was estimated at Rs. 12,075, that the consolidated land revenue from the year 1919-20 came to Rs. 355-3-3 and the local fund on Rs. 12,075 came to Rs. 754-11-0 and the notice finished up:

Thus the total amount you have to pay is Rs. 13,184-13-3. You are therefore requested to remit the amount into the Government Treasury, within a period of one month,

3. The only order of the Commissioner served on the appellant was an order to pay money simpliciter, and was not an order to pay money or go out of possession of the land. The appellant paid under protest the land assessment, but he did not pay the sum charged against him as occupancy price. On 29th August 1922, an order was made by the Assistant Collector (Ex. 38) that the appellant having been served with notice to pay up the occupancy price of the land in question and the period of notice having expired, the lands were thereby declared to be forfeited to Government. The forfeiture of the land for non payment of occupancy price is justified by Government Under Section 62, Bombay Land Revenue Code which provides that occupancy price shall be recoverable as an arrear of land revenue. On 23rd September 1923 the appellant was actually dispossessed. The appellant did not appeal from the order of the Commissioner of 6th December 1921, and he did not present an effective appeal from the order of the Assistant Collector of 29th August 1922.

4. The first point taken against him is that the suit does not lie having regard to the terms of Section 11, Revenue Jurisdiction Act, which provides:

No civil Court shall entertain any suit against Government on account of any act or omission of any revenue officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

5. Being a section which deprives the subject of a right to litigate against the Government, it must be construed strictly although not unfairly.

6. The first point taken by Mr. Coyajee for the appellant is that the cause of action is not in respect of the orders to which I have referred but the dispossession which followed the orders and that a mere act is not appealable Under Section 203, Land Revenue Code. I think, however, that if the order of forfeiture, was valid, the dispossession was merely ancillary to the order and this action would not lie having regard to Section 11, Revenue Jurisdiction Act. This conclusion is strengthened by the unreported case of Dongar Dagdu Patil v. Secy. of State First Appeal No. 252 of 1915 decided on 39th Jan. 1918 by Beaman and Henton, JJ., to which the learned Government Pleader, drew our attention. If however the order of the Commissioner and the order of forfeiture founded upon it were invalid, that then appellant was not bound to appeal from them but was entitled to wait until he was attacked. This has been laid down in many cases the last of which is Laxmanra, Madhavrao v. Shrinivas Lingo, the passage in question being at p. 39. (of 54 I.A.). The real question in this appeal therefore in my view turns on whether the Commissioner's order of 6th December 1921, was valid or ultra vires. Government rely on Section 211, Land Revenue Code, which provides, so far as material, that the Commissioner may call for and examine the record of any proceedings of any subordinate revenue officer for the purpose of satisfying himself as to the legality or propriety of any decision or order and as to the regularity of the proceedings of such officer and if in any case it shall appear to the Commissioner that any decision or order or proceeding so called for should be modified, annulled or reversed, he may pass such order thereon as he deems fit. It has been held in Parappa Virupakshapa Hundekar v. Secy. of State [1891] P.J. 230 and in Dattatraya v. Secy. of State A.I.R. 1990 Bom. 95 that there is no time limit within which the Commissioner must modify, annul or,

reverse the order of the Collector, and these decisions which are binding upon us seen to show that a title to land acquired under an order of the Collector is never secure. But however that, may be, Section 211 in my view only entitles the Commissioner to pass an order which is a modification, annulment or reversal of the, Collector's order and does not entitle him to make an entirely new order which the Collector himself could not have made. The Collector's order was an order that the appellant should be granted certain land free of occupancy price. The order of the Commissioner does not reverse or annul this order, because it leaves the appellant still in occupation of the land.

7. The Commissioner's order of 6th December 1921, so far as the operative part was concerned, was simply a direction that the appellant pay a certain sum of money to be ascertained be the occupancy price of the land on a particular date, that is to say, it is an order for payment pure and simple and it was only of this part of the order that notice was given to the appellant. It appears to me to be an order which the Collector could not himself have made, and not to be in any sense a modification of the Collector's order. The Collector in May 1919 might of course have offered to grant the land to the appellant if the appellant would pay Rs. 13,000 and the appellant could have either accepted or rejected such offer. But the Collector could not have made an order Under Section 62, Land Revenue Code, or otherwise requiring the appellant to pay Rs. 13,000 against the appellant's will. The Government Pleader has argued that the real effect of the Commissioner's order is to modify the Collector's order by charging the occupancy price which in the Commissioner's view should have been charged originally. But that is not the form of the order, nor was that the order of which notice was served upon the appellant. He was directed to pay a specific sum, and was not told that he might pay that sum or give up possession of the land. In my view in considering whether to appeal from a revenue order so as to avoid the bar contained in Section 11, Revenue Jurisdiction Act, the subject is entitled to look strictly at the words of the order served upon him and is not bound to speculate on what the revenue authority may have meant. The appellant, when he received the notice of 15th December 1921, and the order of 29th August 1922, was entitled in my opinion to say that the Commissioner had no power to order him to pay Rs. 13,000 which he had not agreed to pay and then to forfeit his land for nonpayment, and to ignore the orders. The Commissioner's order is treated by the Government as an order for payment of occupancy price Under Section 62, Land Revenue Code, and as such recoverable as an arrear of land revenue Under Section 150.

8. Under that section land revenue may be recovered not only by forfeiture of the land (the remedy adopted in this case), but amongst other remedies by distraint and sale of the defaulter's moveable property and by sale of the defaulter's immovable property and by arrest and imprisonment of the defaulter. Under the Commissioner's order, if valid, the Government could have enforced payment of the sum which the appellant was directed to pay either by forfeiting the land or by selling the appellant's property or imprisoning him. If the Government's contention is right it seems to follow logically that once a person has been granted unoccupied land by the Collector, the Commissioner may at any distance of time afterwards require that person to pay any sum as occupancy price and recover the amount by execution. The Government Pleader admitted that his argument went as far as this, though he naturally repudiated any desire on the part of Government to act in an unreasonable or arbitrary manner. In view however of the conduct of the Commissioner in this case in repudiating the order of his Collector made two and half years before, as to the bona fides of which no question has been raised, I am not disposed to assume that if Commissioners have the

wide powers contended for, they will never exercise them unreasonably.

9. A further difficulty in the way of the Government has been suggested. Section 62, Land Revenue Code, applies in my opinion only to unoccupied land. I think this is clear partly from the powers conferred by the section, partly from the reference in the section to Section 60 which relates only to unoccupied land, and partly from the side note which refers to unoccupied land. When the Commissioner made his order in December 1921 the land in question was not unoccupied. It was and had been since 1919 occupied by the appellant. It is argued that although the order of the Commissioner Under Section 211 may relate back to the order of the Collector, yet the Commissioner cannot alter the facts and deal with land as unoccupied which is in fact occupied. I think that there is some force in this argument but I prefer to rest my judgment on the view that the Commissioner's order of 6th December 1921 served on the appellant on 15th December 1921, was not authorized by Section 211, Land Revenue Code. In my opinion the order of the Commissioner of 6th December 1921, and the order of the Assistant Collector of 29th August 1922, were in valid. That being so, I think that this suit lies, and the appellant is entitled to an order against both the defendants for delivery of the land included in the original grant to him and for mesne profits. Defendant 2, who was let into possession of the land after the eviction of the appellant admits that he is in the same position as the Government.

Baker, J.

10. Appellant 1, who held a temporary commission in the I.M.S. during the war, was granted certain lands near Jalgaon by the Collector of East Kandesh free of occupancy price and with certain concessions as regards assessment, on 22nd May 1919. Two and a half years later, on 6th December 1921, the Commissioner, C.D., in the exercise of his powers Under Section 211, Land Revenue Code set aside the order of the Collector and directed that the full occupancy price amounting to over Rs. 13,000 should be recovered from the appellant, together with arrears of assessment. The appellant paid the assessment, but not the occupancy price, and the land was consequently forfeited, and the appellant dispossessed. The appellant and his wife, to whom he passed a deed of gift of the land brought the present suit for a declaration that the order of forfeiture was illegal and for possession.

11. The suit was dismissed as barred by Section 11, Revenue Jurisdiction Act, as the plaintiffs had not appealed against the order of the Commissioner, and also on the merits, and they have appealed.

12. There is no dispute as to the facts, but the ease raises important questions of law. No appeal was made against the order of the Commissioner directing the recovery of the full occupancy price, and an appeal to the Collector against the order of forfeiture was dismissed as time barred. It was at one time conceded by Mr. Coyajee for the appellants that he could not press the appeal as regards the declaration that the order of forfeiture is illegal, i.e., para, (a) in the plaint, as no appeal was made against the Commissioner's order, but he contends that on the authority of *Sakharam v. Secy, of State* [1904] 28 Bom. 332, he can claim that the order of dispossession should be set aside without an appeal being preferred against the Commissioner's order. That case lays down that the expression "all such appeals" in Section 11, Revenue Jurisdiction Act (10 of 1876), means appeals in respect of the act or omission. Therefore the bar of Section 11 would not apply to a suit wherein the

cause of action is not an order in respect of which there was a right of appeal under the Land Revenue Code. And the argument put forward by Mr. Coyajee is that as the Land Revenue Code, Section 203, provides only for appeals against the decision or order of a revenue officer, whereas Section 11, Revenue Jurisdiction Act, refers to an act or omission of a revenue officer, the bar of Section 11 would not apply to the present case. I am unable to accept this argument. The present case, as the learned Government Pleader has pointed out, is the case of an order followed by an act. The case of *Sakharam v. Secy. of Stale* [1904] 28 Bom. 332 was one of an act, the leasing of lands by Government and not of an order. The whole of the present case turns on the order of the Commissioner directing full occupancy price to be recovered. The order of forfeiture and of subsequent dispossession are merely ancillary to the order of the Commissioner and are necessary consequences of it, and the present case appears to me to fall within the principle laid down in an unreported case of *Dongar v. Secy. of State* First Appeal No. 252 of 1915 decided on 39th Jan. 1918 by Beaman and Henton, JJ. to which the learned Government Pleader has referred. The real question in this appeal is whether the order made by the Commissioner was one which he had power to make Under Section 211, Land Revenue Code. As has been pointed out by the learned Chief Justice, whose judgment I have had the advantage of perusing, it is settled law that when an order is invalid, it need not be set aside: vide *Laxman rao Madhavrao v. Shriniwas Lingo* .

13. In order to decide this point it is necessary to see what the powers of the Commissioner are under the Land Revenue Code and what exactly are the terms of the order in this case.

14. Under Section 4, Land Revenue Code, the Commissioner is the chief controlling revenue authority. The Collector is Under Section 8 subordinate to him. Under Section 211 the Governor in Council, and any revenue officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer," and "if in any case, it shall appear to the Governor in Council, or to such officer as aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, he may pass such order thereon, as he deems fit.

15. The section therefore, as it stands, gives the widest powers to a superior revenue officer in dealing with the orders passed by his subordinates, and it is admitted that there is no limitation with regard to the time within which the powers may be exercised: vide *Parapet Virupakshapa Hundekar v. Secy, of State* [1891] P.J. 230 and *Dattatraya v. Secy, of State* A.I.R. 1990 Bom. 95. There can therefore be no doubt as to the general powers of the Commissioner to revise an order of the Collector granting the lands to the appellant free of occupancy price Under Section 62, Land Revenue Code. As I have the misfortune to differ from the learned Chief Justice as regards the validity of the Commissioner's order, I will set out the two orders. The order of the Commissioner, which is Ex. 31, at p. 29 of the record, dated 6th December 1929 is as follows: After reciting the facts and stating that the grant is opposed to the order of Government in respect of the grants of land for war services, it says:

The grant can therefore only be held to have been made by the Collector under the Land Revenue Code. As such it contravenes the provisions of the old Rule 19 Under Section 214, Land Revenue Code, which was then in force (corresponding to the new Rule 39). The grant is therefore illegal as the Collector had not the power to make the grant without the sanction of the Commissioner. The Commissioner however is not inclined to withdraw the grant from Capt. Nulkar altogether. He therefore directs that the proper occupancy price according to the full market value of the land on the date on which the grant was originally made, i.e., in May 1919, should be recovered from Capt. Nulkar and the ordinary land revenue (consolidated) should be recovered from the year 1919-20.

16. The question is whether this is an order which the Commissioner had power to make, and, with great respect, I regret that I cannot agree with the view taken by the learned Chief Justice. Under Section 211, Land Revenue Code, the Commissioner has power to modify, annul or reverse the order of the Collector and to pass such order thereon as he deems fit. Although in form the order calls on Capt. Nulkar to pay a sum of money, the order in fact modifies the order of the Collector, and annuls that part of it which refers to the grant of the land free of occupancy price and the exemption of land revenue till the land is brought under cultivation. In view of the terms of Section 211 which authorizes the Commissioner to pass such order thereon (that is, on the order of his subordinate) as he deems fit, I am unable to agree with the view that he could not pass an order which the Collector himself could not have passed. But it seems to me, with respect, that Under Section 62 the Collector himself could pass such an order demanding the full occupancy price and the full assessment at the time of the grant of the land. The fact that Capt. Nulkar had entered into possession does not seem to me to make any difference. He could have refused to take up the land on these terms and after entering into occupation he could have refused (as in fact he did) to pay the occupancy price demanded by the Commissioner. It may be that the revenue authorities could have recovered the arrears of land revenue from him in some other way but if he chose to give up the land on receipt of the Commissioner's order, I do not suppose the revenue authorities would have taken any steps beyond recovering the assessment for the period during which he had been in possession. Supposing the Commissioner had annulled the grant altogether, as he could have done, the matter would be simpler, but in my opinion the order must be construed as a modification of the Collector's order which, Under Section 211, the Commissioner had power to make. The gist of the order is that full occupancy price and assessment must be paid, which is an order the Commissioner in question had power to make, and the order for payment necessarily follows on that.

17. I agree that Section 62 refers only to the grant of unoccupied land. That must be so because under the Land Revenue Code an occupant cannot be dispossessed within the term of his occupancy so long as he pays the assessment, and it is only when his occupancy ceases which may happen for various reasons, that the land is at the disposal of the Collector. Putting aside such formalities such as execution of a kabuliyat and the like, the creation of an occupancy depends on two circumstances, First Appeal No. 252 of 1915 decided on 39th Jan. 1918 by Beaman and Henton, JJ. payment of occupancy price, if any; (2) payment of assessment. In the present case, although Capt. Nulkar was in possession of the land from the date of the Commissioner's order, these conditions were not fulfilled, because he had not paid the occupancy price (as ultimately fixed by the Commissioner) and the assessment for the first year of his occupation. In any opinion the order of the Commissioner must be regarded as dating back to the time when Capt. Nulkar entered into occupation. It is a

modification of the Collector's order under which he entered on the land and dates back to it just as a decree of an appellate Court has retrospective effect on the rights' of the parties who may be in possession under the original decree. With great respect, it seems to me that to hold otherwise would involve difficulty. The effect would be that where a party, as in the present case, has entered into possession of unoccupied land under the order of the Collector, to hold that the Commissioner in revision could not deal with the land as unoccupied would practically amount to holding that the Collector's order granting the occupancy free of occupancy price could not be revised, which seems to be against the provisions of Section 211, Land Revenue Code. As the Commissioner has a very large area under him and a great many revenue cases to deal with, it may often happen, as in the present case, that considerable delay may take place before his orders modifying the Collector's order are passed, and in the interval a party may have entered into possession under the Collector's order. But I do not think that this can deprive the Commissioner of his authority to revise the Collector's order under which possession is taken, and to determine the conditions under which the occupancy is granted, a power expressly conferred on him by statute. I fully recognize the hardship which may ensue and which I think has ensued in the present case, but in view of the provisions of the statute which seem to me plain, and the admitted absence of any limitation for the exercise of his revisional powers by the Commissioner the only remedy would be by a change in the law. In these circumstances, I must with great respect, hold that the order of the Commissioner was a legal and valid order in exercise of his statutory powers Under Section 211 and that the subsequent proceedings for forfeiture and dispossession are merely ancillary to the order. That being so, the appellant's remedy was by way of appeal against the order and as he did not avail himself of that remedy, the present suit is barred by Section 11, Revenue Jurisdiction Act.

18. No question of estoppels has been argued or could arise in the circumstances.

19. Even if a suit were not barred, it would in my view of the Commissioner's order, fail on the merits, as, if the Commissioner has powers, as I think he has, to revise the proceedings of the Collector and to pass such order thereon as he may deem fit, the merits of the order cannot be called in question in a civil Court, as the question of whether the full occupancy price should or should not be levied or whether the assessment should be levied from the commencement of the occupancy or not, is a matter entirely within the discretion of the Commissioner, The appeal on the merits against such an order is by law provided to the Governor in Council, but no such appeal has been made. In my opinion therefore the appeal fails, and should be dismissed with costs.

Per Curiam.

20. As we differ on a point of law, we refer to a third Judge the following questions for his decision:

1. Whether the order of the Commissioner of 6th December 1921, Ex. 34, (the substance of which was communicated to the appellant Capt. Nulkar by the document Ex. 3D) was valid?

2. Whether the order of the Assistant Collector dated 29th August 1922, was valid?

21. The reference was heard by Blackwell, J., on 7th August 1930.

Blackwell, J.

22. The Chief Justice and Baker, J., having differed on a point of law, the following questions have been referred to me for decision:

Whether the order of the Commissioner of 6th December 1921, Ex. 34, (the substance of which was communicated to the appellant Capt. Nulkar by the document Ex. 35) was valid?

2. Whether the order of the Assistant Collector dated 29th August 1922 was valid?

23. The facts necessary for the determination of these questions may be stated shortly. Plaintiff 2 in the suit out of which the present appeal arises (hereinafter referred to as the appellant, plaintiff 2 being his wife who claimed under him by virtue of a deed of gift) applied to the Collector of East Khandesh for a grant of land. On 21st May 1919 the Collector passed an order, Ex. 31, granting to the appellant the land therein mentioned subject to certain conditions, of which the material conditions are:

(1) Freedom from payment of occupancy price and (3) freedom of assessment till the land is brought under cultivation, afterwards payment of the land revenue and local fund cess as usual.

24. At this date the land was unoccupied. On 10th July 1919 an agreement was signed by the appellant accepting the land on these terms: Ex. 41. Thereupon the appellant went into occupation and spent money in developing the land.

25. On 6th December 1921 the Commissioner for the District passed an order addressed to the Collector of East Khan, dash, Rule 31, which after setting out the terms of the grant, stated that the grant was opposed to the order of Government in respect of the grants of land for war service, that it could only be held to have been made by the Collector under the Land Revenue Code, and that as such it was illegal as the Collector had no power to make the grant without the sanction of the Commissioner. The order then stated as follows:

The Commissioner however is not inclined to withdraw the grant from Capt. Nulkar altogether. He therefore directs that the proper occupancy price according to the full market value of the land on the date on which the grant was originally made, i.e., in May 1919, should be recovered from Capt. Nulkar and the ordinary land revenue (consolidate) should be recovered from the year 1919-20;

and it directed that the appellant should be informed of the issue of these orders. It does not appear that the appellant was ever served with this order, which was addressed not to him, but to the Collector of East Khandesh.

26. Next the appellant received a letter dated 15th December 1921, Ex. 85, which omitting formal parts, is in the following terms:



I have the honor to inform you that the Commissioner C.D. has ordered to recover from you the full occupancy price of the land of Asoda granted to you according to the full market value of the land on the date on which the grant was made and the consolidated land revenue from the year 1919-20. The value of the land on the date on which the grant has been made is estimated by the panchas at Rs. 12,075 and the consolidated land revenue of the land from the year 1919-20 comes to Rupees 355-3-3. The local fund on Rs. 12,075 comes to Rs. 750-11-0. Thus the total amount you have to pay is Rs. 13,184-14-3. You are therefore requested to remit the amount into the Government Treasury within a period of one month.

27. The appellant did not appeal against the order of the Commissioner as communicated to him in this letter. He did not pay Rs. 12,075 as demanded. He paid under, protest Rs. 855-11-0 on account of land revenue: Ex. 37.

28. On 29th August 1922 the appellant was served with an order issued by the Assistant Collector, Ex, 38, declaring the lands to be forfeited to Government for nonpayment of the occupancy price and local cess fund. From this order, the appellant appealed to the Collector, but this appeal was dismissed by the Collector as time barred: Ex. 42. The appellant preferred no appeal against this order of the Collector.

29. The appellant and his wife having been dispossessed of the lands, brought the suit out of which this appeal arises against the Secretary of State for India in Council and defendant 2 to whom the lands were granted after they were dispossessed.

30. The answers to the questions submitted to me depend upon the true construction of Section 211, Bombay Land Revenue Code of 1879. That section empowers the officers therein mentioned to call for the records and proceedings of a subordinate revenue officer for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and it authorizes the superior officer, if it should appear to him that any decision or order or proceedings so called for should be modified, annulled, or reversed, to pass such order thereon as he deems fit. The Government Pleader relies upon this section as justifying the order of the Commissioner dated 6th December 1921 and submits that if that order was valid, the suit out of which this appeal arises would not lie having regard to Section 11, Bombay Revenue Jurisdiction Act of 1876. Mr. Coyajee for the appellant admits that there is no time limit to the Commissioner's power Under Section 211, Land Revenue Code, and he concedes that, if the order of 6th December 1921 was valid, his suit will not lie, as he preferred no appeal against that order. He contends however that that order was ultra vires and invalid, and, if that be so, he submits on the authority of *Laxmanrao Madhavrao v. Shrinivas Ling* that he was not obliged to appeal against the order and could bring his suit if he was dispossessed. The Government Pleader concedes that if the order was ultra vires and invalid, it could be disregarded, and that the suit would then lie.

31. In order to determine the validity of the order it is necessary to refer to certain sections of the Land Revenue Code. Section 60 requires any person desirous of taking up unoccupied land which has not been alienated to obtain the permission in writing of the mamlatdar or mahalkari. Section 62 empowers the Collector (inter alia) to require the payment of an occupancy price in connexion

with the grant of unalienated land, and provides that such price (if any) shall be recoverable as an arrear of land revenue. Sections 56 and 57 provide that failure to pay arrears of land revenue shall render the lands liable to forfeiture, and that the Collector may take possession of lands so forfeited and dispose of the same. Section 153 empowers the Collector to declare the land in respect of which an arrear of land revenue is due to be forfeited to Government, and to sell or otherwise dispose of it under the provisions of Sections 56 and 57. Section 150 sets out the various processes by which arrears of land revenue may be recovered among them being distraint and sale of the defaulter's moveable property, sale of the defaulter's immovable property, and arrest and imprisonment of the defaulter. If then the order of 6th December 1921 is valid, in addition to the other penalties above referred to, the appellant was liable to arrest and imprisonment for noncompliance with the order.

32. The Government Pleader admits that in exercising his powers Under Section 211, Land Revenue Code, the Commissioner can only pass such an order as he could properly pass under the Code itself and the Rules made there under. The question therefore arises as to whether the Commissioner could make the order of 6th December 1921, without giving the appellant as an alternative the option of vacating the land. The answer to this question seems to me to depend upon another question namely whether either the Collector or the Commissioner could, in the first instance, have insisted upon the appellant taking the land upon the terms that he should pay Rs. 12,075 as the occupancy price. In my opinion it is plain that they could not have done so. A person desirous of taking up unoccupied land must obtain permission to do so, and Section 62 authorizes the Collector to require the payment of an occupancy price. But, if the payment of an occupancy price is sought to be imposed as a condition of taking up the land the applicant is perfectly free to decline to take it up. Neither the Collector nor the Commissioner could insist upon an applicant signing an agreement and taking up the land on the terms sought to be imposed by them, if he were unwilling to do so. The result therefore of the order made by the Commissioner on 6th December 1921, is that the appellant has had forced upon him lands subject to terms which he might never originally have been willing to agree to, and such terms must be treated as written into the agreement which he originally signed. In my opinion the making of such an order was beyond the powers of the Commissioner. It is, in my judgment, in no sense a modification of the Collector's order. It is a new order, imposing upon the appellant terms which he has never been given an opportunity of refusing. Such an order is, in my opinion, entirely outside the scope of Section 62, Land Revenue Code, and this is the only section under which an occupancy price can be fixed. I hold therefore that the order of 6th December 1921, is for this reason invalid. It follows that the second order of 29th August 1922, which was founded upon the first order is equally invalid.

33. The Government Pleader has contended that a right to vacate the land, if the appellant should be unwilling to pay the occupancy price, is implied in the order of 6th December 1921. I do not agree with this contention. So far from this being the case, the order states that the Commissioner is not incline to withdraw the grant, and it directs that the occupancy price should be recovered from him. Moreover the letter dated 15th December 1921, which was sent to the appellant called upon him to pay the occupancy price and other sums therein mentioned within one month. As regards that document it certainly cannot be contended that any right to vacate the land could be implied. If the appellant had been arrested for nonpayment, he could not, in my opinion, have been heard to say that a right to vacate the land was implied either in the letter served upon him, or in the order of 6th

December 1921, and that he wished to vacate the land. Further in my judgment, an order of this character must be plain in its terms, and the person served ought not to be driven to speculate as to whether any term is implied which will give him some right which is not plainly stated in the order. In my opinion, the only direction communicated to the appellant was that he was to pay a sum of money, and nothing more.

34. The Government Pleader further contended that any person taking up unoccupied land must be deemed to know that he takes it subject to the power of revision conferred upon a superior officer by Section 211, Land Revenue Code, to pass such order in regard to the land as he deems fit. This is no doubt the case, but it does not affect the question whether, in purporting to modify the original order, the Commissioner is entitled to pass an order, the effect of which will be to force upon the occupant terms which he might never have been willing to agree to originally. It may well be that the Commissioner might have annulled the Collector's order and have required immediate possession of the land, or he might, as an alternative, have offered to permit the appellant to continue in occupation upon certain terms. This he did not do. He merely called upon the appellant to pay a large sum of money. This, in my opinion, can in no sense be described as a modification of the original order, but amounts to the making of a fresh order. For the reasons already given by me, I hold that the Commissioner had no power to make such an order without giving the appellant as an alternative the option of vacating the land, and thus placing him in the position in which he would have been originally if the offer had then been made to him to take up the land on those terms, or not, as he pleased.

35. I answer both the questions submitted to me in the negative.