

The Secretary of State for India in Council and another - - *Appellants*

v.

Anant Krishnaji Nulkar and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 27th NOVEMBER, 1933.

Present at the Hearing :

LORD THANKERTON.

LORD ALNESS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD ALNESS.]

The appellants in this case were defendants in a suit at the instance of the respondents before the District Judge of Khandesh. He decided in favour of the appellants, but his decree was reversed in the High Court of Judicature at Bombay. Hence this appeal.

The first respondent had rendered certain war service, and in 1919 he applied to the Government for a grant of certain lands which are now in suit. On 21st May, 1919, the Collector of the District of East Khandesh, Mr. Monteath, made an order, granting him the lands in question, subject to two conditions. These were (a) that the lands should be held free from payment of occupancy price, and (b) that the lands should be free of assessment till they were brought under cultivation. The lands were Government lands within the meaning of Section 37 of the Bombay Land Revenue Code, 1879 (Act V). The first respondent duly entered into possession of them. On 6th December, 1921, the Commissioner for the District made an order, directing that the proper occupancy price according to the full market value of the lands on the date when the grant was originally made—viz., 21st May, 1919—should be recovered from the first respondent, and that the ordinary land revenue (consolidated) should be recovered from the year 1919–20.

The first respondent paid the assessments, but not the occupancy price; and in consequence the Assistant Collector, on 29th August, 1922, made an order, forfeiting the occupancy holding of the first respondent. He was evicted from the lands on 11th September, 1922. The Government thereupon resumed possession of them.

The first appellant is the Secretary of State for India in Council. The second appellant is Abdul Razak Gani Miya Deshmukh, to whom, on 1st November, 1922, the Collector made a fresh grant of the occupancy rights in the lands in suit. It falls to be added that, on 26th July, 1921, the first respondent had made a gift of the lands in suit to his deceased wife, the original second respondent.

On 27th August, 1923, the first and second respondents instituted the present suit before the District Judge of Khandesh against the appellants. Their plaint *inter alia* contained a claim to recover from the Government possession of the lands in dispute. That claim manifestly postulated a title in them to these lands. The appellants lodged a defence to the suit.

The District Judge, as already stated, decided in favour of the appellants, and dismissed the respondents' suit. He held that the Collector's order was *ultra vires*, and that the Commissioner had, under Section 211 of the Code, power to revise the order. On appeal, the High Court of Judicature at Bombay were equally divided—Beaumont C.J. being of opinion that the appeal succeeded, and Baker J. being of opinion that the appeal failed. Thereupon they referred to a third Judge (Blackwell J.) the following questions for decision :—

(1) Whether the order of the Commissioner of the 6th December, 1921, was valid? and

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

The learned Judge answered both questions in the negative. He decided in favour of the respondents, and pronounced a decree to that effect. Against that decree the present appeal is taken.

After the full argument which their Lordships heard, it became apparent that, on the fringe of the case, there lie many and difficult problems. Their Lordships, however, for reasons presently to be assigned, think that the controversy between the parties can be solved once this question is answered :—

Was the order of the Collector (Mr. Monteath), dated 21st May, 1919, a valid order? There can be no doubt that the title of the respondents—and, indeed, their sole title to the lands in suit—depends on the validity of that order. That order is the respondents' sheet anchor, and, if it drags, their claim fails. In these circumstances it is indeed surprising that this point of view does not seem to have been emphasised in the Courts below. The reference to Blackwell J. entirely ignores the validity or otherwise of the Collector's order.

Before their Lordships a double attack was made by the appellants upon that order. In the first place, they contended that the preamble upon which it proceeded—viz., that the lands were given to the first respondent in respect of war services—was incompetent, and vitiated the grant. It was argued that such extrinsic considerations as war service were beyond the legitimate purview of the Collector. Their Lordships think that there is much to be said for the soundness of this contention; but they find it unnecessary to determine it, as they are of opinion that the second contention proffered by the appellants is fatal to the validity of the order in question.

That contention is of this nature. The grant was admittedly made under the Bombay Land Revenue Code (1879). Rule 19 of that Code, which was in force at the time, and which corresponds to Rule 39, which is now in force, provides as follows:—

“Where it appears that the bringing of any survey-number under cultivation will be attended with large expense, or where for other special reasons it seems desirable, it shall be lawful for the Collector (*with the previous sanction of the Commissioner, in cases where the assessment on the land included in the total grant exceeds one hundred rupees*) to give the occupancy of the survey-number revenue-free or at a reduced assessment for a certain term, or revenue-free for a certain term and at a reduced assessment for a further term, and to annex such special conditions to the occupancy as the outlay or other reasons aforesaid may seem to him to warrant:

“Provided always that, on the expiry of the said term or terms the survey-number shall be liable to full assessment under the rules then in force for lands to which a survey-settlement has been extended.”

That rule admittedly governs the transaction.

The rule, it will be observed, requires, as a condition of the lawfulness of a grant by the Collector, that the previous sanction of the Commissioner should be obtained, provided that, as is the case here, the assessment on the land in the grant exceeds one hundred rupees. Now, no one pretends that that sanction was in this instance obtained. It would seem inevitably to follow that the grant made by the Collector was an invalid grant. Their Lordships find it impossible to accede to the view that the grant was partially bad and partially good—that is to say, that it was bad as regards freedom from assessment, but good as regards occupancy price. In their Lordships' opinion, the grant must be treated as a whole, and, if a part is bad, the whole is bad. Thus the respondent's title to the lands disappears.

That is, in their Lordships' opinion, sufficient for the determination of the appeal. But, as they have formed a clear opinion on a second contention by the appellants, they do not hesitate to express that opinion. That contention is of this nature. The appellants point out that the Commissioner, under Section 211 of the Code, was entitled to modify, annul or reverse the order of the Collector. The relevant part of that section is in these terms:—“If in any case it shall appear to the Governor in Council, or to such officer aforesaid (the officer includes the

Commissioner) 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." The amplitude of the powers conferred on the Commissioner by that section is striking. Now, the order of the Commissioner purported to modify the order of the Collector. In their Lordships' opinion, it effectively did so. The order *inter alia* 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 . . . should be recovered from Capt. Nulkar, and the ordinary land revenue (consolidated) should be recovered from the year 1919-20." The Collector had given the first respondent the lands in suit, on certain conditions. The Commissioner decreed that the first respondent should continue to occupy the lands, but he varied the terms of occupation. If this be not a modification of the Collector's order, their Lordships are at a loss to apprehend the import of what the Commissioner did. Their Lordships entertain no doubt that the Commissioner's order fell within the powers conferred upon him by Section 211. Accordingly, even if—contrary to their Lordships' opinion—the Collector's order was valid, it was competently modified by the order of the Commissioner. In this view, the first respondent, therefore, who failed to implement the Commissioner's order, and who was subsequently evicted from the lands, had no right to claim the possession which his plaint postulates. In short, their Lordships are of opinion that the respondents have failed to qualify such a title as would enable them to maintain this suit. On this ground also the case for the respondents, in their Lordships' opinion, fails.

Their Lordships abstain from offering an opinion on a third argument which was proffered by the appellants, based upon the order of forfeiture of the lands in suit, which followed as a sequel to the earlier proceedings. The appellants' contention in this matter is attended with difficulty; but, inasmuch as the problem before their Lordships can be solved by the affirmance of the first two contentions of the appellants, they find it unnecessary to determine the soundness of the third contention to which reference has just been made.

For the reasons stated, their Lordships will humbly advise His Majesty that the appeal should be allowed, that the decree of the High Court should be set aside with costs, and that the decree of the District Judge of Khandesh should be restored. The respondents will pay the appellants' costs before this Board.



In the Privy Council.

THE SECRETARY OF STATE FOR INDIA IN
COUNCIL AND ANOTHER

2.

ANANT KRISHNAJI NULKAR AND OTHERS.

DELIVERED BY LORD ALNESS.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1933.