Privy Council Appeal No. 50 *of* 1938

Shankarrao Dagadujirao Jahagirdar - - - *Appellant*

v.

Sambhu Wallad Nathu Patil - - - - - *Respondent*
and 5 appeals (consolidated)

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD JULY, 1940

Present at the Hearing:

VISCOUNT MAUGHAM
LORD WRIGHT
SIR GEORGE RANKIN

[*Delivered by* SIR GEORGE RANKIN]

In this case six appeals have been consolidated. They are brought from a decision of the High Court of Bombay dated 4th October, 1934, in suits by the appellant for ejectment of the respondents from the lands of their tenancies under him. In each case the basis of the claim was that the tenancy is an annual tenancy determinable at the end of the agricultural year, namely 31st March, upon three months' notice. The lands in question are arable land in the inam village of Khed Digar. This village is in the Shahada Taluka of the West Khandesh District in the Presidency of Bombay, and lies upon the extreme northern boundary of the Deccan where it abuts upon the Barwani State. The total area of the village would appear to be under 1,400 acres and the population about 400 persons of whom a little more than a quarter are Bhils.

The appellant is the inamdar of the village and traces his title back to an inam grant by the Maratha ruler in 1798. This title was confirmed by the British Government in 1843 and in 1880 a sanad was granted by the Government of Bombay to the appellant's father showing that, subject to the deduction of some 120 acres alienated by grants of earlier date than 1798, the village was the grantee's permanent heritable property held subject to payment to Government of a *judi* or quit rent of 13 rupees per annum, and *nazarana* of rupees 14, annas 8, in all rupees 27, annas. 8. It has been contended for the respondents that the appellant is not shown to be a grantee of the village but only of a certain share in the revenue of the village but the finding of the High Court that

he is grantee of the soil appears to their Lordships to be so well founded that it is unnecesary to discuss the question afresh.

Each of the six suits was brought against a single defendant as sole tenant but this appeal has been contested by one only of the six defendants, namely by the respondent Sambhu Nathu (herein called the first respondent), who was in possession of a large area of 770 acres. He was sued in the Court of the First Class Subordinate Judge of Dhulia on the 26th June, 1928, and he succeeded in that Court upon the ground (which their Lordships think to be erroneous) that the appellant had no title to the soil but only to the revenue of the village. From this decision the appeal to the High Court was a first appeal in which questions of fact as well as of law were open. The other respondents were sued in the Court of the Second Class Subordinate Judge at Nandurbar on the 6th July, 1928. These suits were decreed and ejectment ordered by the trial Judge (20th March, 1930) and on first appeal the District Judge affirmed this decision (8th January, 1931). The High Court dealt with all six cases by one judgment and dismissed the suits (4th October, 1934).

The appellant's father had succeeded to the inam by 1857. He lived till 1904 and was succeeded by the appellant who was then aged eight years. The Collector of West Khandesh was appointed by the District Judge as the appellant's guardian in 1905 and acted as such till the appellant came of age in 1917.

Such documentary evidence as there is of the history of the agricultural tenancies in this village has reference almost entirely to the lifetime of the appellant's father. It consists mainly of documents produced by the appellant to show that the tenancies in question cannot be traced back beyond a certain number of years. The result of the documents in this respect has been found by the High Court to be as follows: that Sambhu Nathu, who has acquired an interest in a large part of the village through purchases of the rights of other tenants made from time to time by his father and by himself, has shown that one of his tenancies goes back to 1855-56 and another to 1856-57, but that he cannot be held to have traced his other tenancies back to a period earlier than the year 1892; and the tenancies of the other respondents likewise are traced only to 1892. By a village ledger (*khatavani*) for the year 1856 it would appear that the lands in the village under cultivation in that year were measured as 15 ploughs (*auts*) and no more. (It is agreed that the original meaning of *aut* as a measure of land is as much as could be cultivated by means of a plough with two bullocks.) From other documents it would appear that in 1851, 1852, 1859-1860 the village was deserted (*ujad*). The tenants at this period would seem all to have been Bhils and to have possessed a single plough each. By the late seventies of last century the village had become one of 50 ploughs, and by the early nineties the number of ploughs had increased to about 80, a number which has never been exceeded.

Before the year 1890 the payment made by the tenants to the inamdar at a time when the tenants were Bhils was 4 rupees per plough. A few persons not Bhils were charged 6 rupees per plough in later years, but by 1890 the amount obtained per plough by the inamdar was 12 rupees and this was the position at the time when the appellant succeeded in 1904. It is plain that all the tenancies now in question began under a system of *autbandi*; and the question whether any of them have permanent rights is rendered difficult of solution by the fact that evidence of the nature or character of the *autbandi* system of cultivation as it has obtained in this village is neither plentiful nor clear. Their Lordships are not entitled or prepared to assume that it had any necessary similarity to practices which may go by similar names in other parts of India, nor do they know whether it is a system in general use in the Presidency of Bombay. It may originally have been—what the learned Subordinate Judge at Dhulia thought it—a system of assessment to land revenue, or a mere method of measurement and not a kind of tenancy at all. What it became in the village of Khed is the relevant question —a somewhat special question to which the answer must in large measure depend upon what was done and permitted in the time of the appellant's father.

In 1908 the Collector of Khandesh suggested to the Local Government that a survey should be made of the lands of the village and by resolution of the Government of India dated 26th January, 1909, it was decided that such a survey should be undertaken and a record of rights prepared. This resulted in 1915 in a record of rights, of which it is sufficient to say that it treated the tenants as having permanent tenancies, and on the basis of the survey the proper rents payable to the inamdar were fixed as 1 rupee per acre. This was to obtain only until 1917-18 when a general revision of the rates of the whole of the taluka was due to be made. The result of this survey settlement appears to have been a slight increase in the revenue of the inamdar. In 1918 this settlement was revised and the tenants' rents raised by about one-third to a figure of rupee 1, annas 6 or thereabouts. The appellant who came of age in 1917 accepted rents from the respondents on the footing of these settlements but at the end of 1927 he appears to have decided to evict them and gave notice to quit accordingly.

The oral evidence produced by the appellant in support of his claim amounts to very little. He gave evidence himself but claimed to know little or nothing about the documents produced or the history of the village. Thus in the suit against the first respondent Sambhu Nathu he said that he did not know until the day on which he was giving evidence that the village had been surveyed, or whether a record of rights had been prepared, or if any revision survey had been made, or any assistance suits filed on his behalf. Under cross examination for the defendants in the other cases he appeared, however, to know a little more, admitting that there had been a survey settlement, that he had certain lands

in the village in his own name let out to tenants upon leases for rents that are at higher rates than the respondents' rents. He admitted also that holders of land in the village had built wells some of which had been made by money lent by himself. His main witness was his clerk Keshav Ganesh, whose evidence is of small value in view of the fact that before 1922 he had no connection with the village though he appears to have officiated as village accountant in some other villages before that period. In the suit against Sambhu Nathu the appellant called a village accountant of the name of Mahadev Ramakant who professed to know about the *autbandi* system. He described it as meaning assessment charged on the basis of so much on each *aut* of land, the quality of the land not being considered in settling the assessment. A tenant, he said, cannot be ousted of his *aut* lands as long as he is cultivating: only fallow lands could be given to fresh tenants. He claimed to make this statement about *autbandi* from what he had seen, though he had not worked as a village accountant in any village where this system was prevailing. He claimed to know the system from a village accountant (*talati*) who had worked in such a village. The system, he said, was in vogue in villages mostly occupied by Bhils, the papers of such villages being in the office of the Shahada Taluka. This witness gave his evidence before the First Class Subordinate Judge at Dhulia on the 17th September, 1929, but he was not called by the appellant in the other five cases. Evidence was called for the respondents to the effect that under the *autbandi* system the lands of the tenant were not changed though there were no survey numbers before the survey and settlement was completed in 1915. Sambhu Nathu gave evidence in the suits against the other respondents as well as in his own. He stated in cross examination that one Ganesh Lakshman "was cultivating some land in Khed and plaintiff has retaken it from him" explaining in re-examination that "the land of Ganesh that was retaken was taken by him on new tenure system". A witness Dullav Vedu who explained that his father had four *auts* in Khed, three of which were exchanged by him for land in another village with the father of the first respondent, mentioned also that he was cultivating some other land of the village Khed near the boundary of the village and "it was retaken by the plaintiff". No evidence of either of these two transactions was offered sufficient to enable any Court to ascertain its character. Had there been any case in which the appellant or his father by giving notice had terminated a tenancy and retaken possession of the lands as of right definite evidence to that effect would doubtless have been adduced. No instance of the sort has been proved.

The High Court came to the conclusion that the tenancies in all six cases attracted the provisions of the second paragraph of section 83 of the Bombay Land Revenue Code 1879:—

> "And where by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom

> they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him."

The learned judges, as already mentioned, found that as regards a part of the land of Sambhu Nathu, his tenancy is traced back as far as 1855-56, and that of the other lands all were held in possession of one respondent or another in 1892, the period between 1856 and 1892 being a blank. Hence they were of opinion that the tenancies can reasonably be called ancient and that all that has been shown with regard to the commencement of the tenancies found to have been existing in 1892 is that they must have commenced some time during the period of 36 years between 1856 and 1892. Learned counsel for the appellant did not accept these findings contending that a number of the tenancies now in question can be traced back to a more definite origin in the seventies. Apart from this line of criticism, which it is not necessary to follow in detail, their Lordships think that there is some difficulty in the reasoning of the High Court since on any view a number of the tenancies are not proved to have originated before the nineties. Some cases have been cited to their Lordships to show the interpretation put upon this provision of section 83 by the High Court of Bombay. (*Maneklal Vamanrao* v. *Bai Amba* (1920) I.L.R. 45 Bom. 350, *Sidhanath Martand* v. *Chiko Bhagivantrao* (1921) 23 Bombay Law Reporter 533 and I.L.R. 46 Bom. 687, *Narayan Ramchandra* v. *Pandurang Balkrishna* (1922) I.L.R. 47 Bom. 4, *Ramchandra Trimbak* v. *Dattu Rama* (1925) 27 Bombay Law Reporter 1258, *Shripadbhat Anantbhat* v. *Rama Babaji* (1926) 29 Bombay Law Reporter 274.) Their Lordships think that for the purposes of the present case it is sufficient to note that the particular presumption mentioned in the clause is not directed to be made save upon these two conditions (among others): first, that there is no satisfactory evidence of the date of the commencement of the tenancy, and secondly, that this lack is due to the antiquity of the tenancy. They cannot agree that the first condition is excluded by showing that the tenancy had its origin at some date within a period of twenty years which cannot be more precisely ascertained. This is not satisfactory evidence of the date of its commencement, and the view taken in *Narayan's* case (*supra*) fails in their Lordships' opinion to give effect to the ordinary meaning of the language of the clause. Again, by a tenancy's antiquity the section does not in their Lordships' opinion intend any reference to remote ages in the past or to "time immemorial" in the sense of the English law. It is to be given the practical meaning appropriate to its context and afforded by the limits within which living testimony to past facts is necessarily restricted. As a number of the lands in suit are held under tenancies which are not proved to have been in existence before 1892 their Lordships do not think that the presumption can properly be applied to them, notwithstanding that the evidence by no means excludes the possibility of

an earlier origin. They do not proceed as regards any of the respondents upon the presumption authorised by section 83.

It is clear, however, and it is not disputed on behalf of the appellant, that the respondents have by the record of rights been recorded as having a permanent interest. This entry is entitled to the full benefit of the provision of section 135J of the Bombay Land Revenue Code of 1879:—

> "An entry in the Record of Rights and a certified entry in the Register of Mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor."

This provision is the same in character as that which has long prevailed in Bengal under section 103B of the Bengal Tenancy Act and it is most important that proper effect should be given to such a statutory presumption. The suggestion that it is materially weakened by the mere consideration that when the record was made the appellant was a minor and that his property was being managed by the Collector on his behalf cannot be accepted; and if it be the case that at the time of the preparation of the record the permanency of the interest of the tenants was not disputed this circumstance of itself in no way detracts from the force of the presumption. So far as regards the five cases which came before the High Court on second appeal the findings of fact of the District Judge, though not his conclusions as to their effect in law, would *prima facie* be conclusive in view of sections 100 and 101 of the Code of Civil Procedure. (*Dhanna Mal* v. *Moti Sagar* (1927) L.R. 54, I.A. 178, 185.) But the existence of the record of rights does not appear from the judgment of the learned District Judge to have been appreciated by him, and as he has given no effect whatever to the statutory presumption their Lordships are unable to regard the appellant as taking any advantage from the circumstance that five of the cases were dealt with in the High Court upon second appeal. The questions of fact as well as of law were open to the High Court and must be considered by the Board. The broad question before their Lordships is whether the record of rights is shown to be untrue, and the view arrived at by the learned District Judge as entitling the plaintiff to succeed in ejectment is that under the *autbandi* system there was no settled tenancy in the village, the same lands not being cultivated in different years by the same people, cultivation and tenancy being "quite uncertain and fluctuating." The evidence of the plaintiff's witness Mahadev is directly opposed to such a finding; and, though it is not clear from his own evidence whether his knowledge of the system is extensive or gained at first hand, it cannot be regarded as insignificant, coinciding as it does with other evidence firmly pointing to the conclusion that *autbandi* tenants had permanent interest in specific land.

The main features in this other evidence must now be indicated. In a *jarib-kharda* or rough draft of a land survey it is entered by the mamlatdar of the Shahada Taluka for the year 1901-02 that Nathu, father of the contesting

respondent, possessed 38 ploughs in the village, "35 permanent as of the last year and three additional in the current year." In similar documents for the years 1897-98 and 1898-99 the same reference to permanent ploughs is to be found. In 1912 when enquiries were being made as to the position of the cultivators in the village the assistant manager, who was acting as an officer of the Collector during the plaintiff's minority, stated before the mamlatdar that the khatedars had always been in management of the same lands, that there was no practice of cultivating lands in one place in one year and in another place in another year, but from the time when lands came to be cultivated they have been in the management of the respective tenants only and their lands have been fixed. He stated also that on this understanding the khatedars had executed purchases as well as mortgages and that decrees of Civil Courts had recognised these rights. This witness is shown by one of the documents to have been khulkarni of the village in 1901-02 and their Lordships are of opinion that his statement was rightly admitted under section 13 of the Indian Evidence Act. The transactions of sale and mortgage entered into by tenants in respect of lands held on the *autbandi* system are, as the High Court notes, too numerous and important for it to be supposed that the inamdar or those acting on his behalf did not come to know of them or considered themselves entitled to object to them. It appears that in the case of Sambhu Nathu eleven purchases took place between 1894 and 1899 in the lifetime of the plaintiff's father. Three mortgage deeds are also shown to have been entered into. These transactions are difficult to explain on the supposition that the tenancies were annual tenancies and the absence of objection on the part of the inamdar reinforces this consideration. It is proved that in 1909-13 (during the minority, it is true, of the appellant), compensation for lands compulsorily acquired by the Government was on two occasions paid not to the inamdar but to the tenant. Not only were the tenants before 1890 charged for their land at a uniform rate of 4 rupees per *aut* if they were Bhils and a uniform rate of 6 rupees per *aut* if non-Bhil or *Shahu* tenants, but after that year 12 rupees per *aut* was recovered from all tenants without discrimination until the introduction of the survey. Again, the appellant himself holds about 180 acres of land in the village which he has let out to tenants at rates which are substantially higher than the rates charged in respect of the tenancies in suit. From these tenants of his own land he has taken "rent notes" or tenancy agreements though in respect of the tenancies in suit or other *autbandi* tenancies no rent notes would appear to have been taken at any time. It is clear, further, that the interest of the *autbandi* tenant has been treated in numerous cases as heritable, descending from father to son without objection; and at the time of the trial the recognition of the heritable character of the tenants' interest had continued for a very long time. The appellant has from time to time lent money to tenants to sink wells;

and it is difficult to think that a tenant who was removable at the end of a year would have undertaken the liability for a capital sum in order to improve his land. The first respondent and at least one other has sublet his lands to others at substantial rents.

These circumstances are sufficient to show that the presumption in favour of the truth of the record of rights derives support from a number of independent considerations the cumulative effect of which must be regarded as strong. Unless, therefore, there be something in the documents, produced by the plaintiff to show the history of tenancies in suit and the precarious character of the *autbandi* system, sufficiently strong to overthrow the tenants' claim to have a permanent interest in their lands, it is difficult to refuse agreement to the conclusion of the learned Judges of the High Court that the inamdar over a long period of years has treated the tenancies as permanent. The documents produced by the plaintiff are in some respects difficult to interpret; and in their Lordships' view the difficulty arises mainly from the fact that village accountants and other officers, accustomed to accounts which in form are applicable to holders of land paying land revenue to Government, have tended to apply the same language and the same forms to an inam village, notwithstanding that what the tenant pays to the inamdar is not revenue assessed upon it by Government but rent. Ledgers (*khatavanis*) and lists of tenants (*lavani-patraks*) use the word *akar* (assessment) for the payment and *khatedar* for the tenant. In particular the local fund cess, which is to be calculated on the assessment to land revenue, has in this village been calculated on the *akar*. Outside an inam village, persons similar in occupation to the respondents were paying land revenue to Government and holding as occupants with permanent rights in the land; and it is not difficult to see, if only from the documents produced on behalf of the plaintiff, that the fact of the village having been granted in inam, or alienated, would not readily be regarded as implying that the position of the tenant as against the inamdar was very markedly different from the position of the khatedar in an unalienated village. A good deal of the history of the village is consistent only with the assumption that it had not occurred to the appellant's father that he should put his tenants in a position lower than their neighbours.

The clear and forceful argument of Mr. Page upon the documents was to the effect that it is necessary to look to the inception of each tenancy, and that, as in each case it is clear that the tenancy was granted for the purposes of agriculture, it should not be held that the landlord had parted with so large an interest for an agricultural purpose and at so small a rent. The smallness of the rent, however, adds considerably to the force of the other indications that the tenants were being treated as having permanent right. It is true that many of them were Bhils, a class of persons who have to be treated leniently and are unlikely to be able to support a high rate of rent. In the appellant's favour is

the fact that though at one time Bhils were charged 4 rupees only per plough, after the year 1890 a uniform charge of 12 rupees is found to be collected. Their Lordships think that detailed and reliable evidence of the manner in which and the basis on which this increase of rent was made might have had great effect in the present case. From section 83 of the Bombay Land Revenue Code of 1879 it appears that a right on the part of the landlord to enhance a rent payable is not unknown in the Province; as otherwise it would have been unnecessary to enact a saving of this right on the part of the landlord "if he have the same either by virtue of agreement, usage or otherwise." A right of enhancement, though well understood in Bengal under the permanent settlement and not inapplicable to tenures which are perpetual (*Bama Sundari* v. *Radhika* (1869) 13 Moo., I.A. 248; *Krishnendra Nath Sarkar* v. *Kusum Kamini Debi* (1926) L.R. 54, I.A. 48), has not so far as their Lordships know come before the Board in any case arising from the Presidency of Bombay. It might have been much to the interest of the appellant to show the circumstances under which the rent was raised to 12 rupees: whether it was done upon the footing that the appellant had a right to terminate an annual tenancy and to impose such charge as he pleased as a condition of granting a new tenancy, or upon the footing that he was entitled to a customary or other reasonable rate whether based on the value of the staple crops or otherwise. No evidence at all upon this subject was adduced at the trial and their Lordships are wholly unable to accept any of the documents which have been produced as showing that the plaintiff year in and year out determined what the rent chargeable should be for the year. In these circumstances the fact that the tenancies were granted for the purpose of agriculture cannot be regarded as sufficient either in fact or in law to negative the conclusion indicated by so many strong circumstances that the tenancies were of a permanent character. Their Lordships would not willingly cast doubt upon the principle that the fact that a tenancy is for agricultural purposes does not *prima facie* indicate that it is permanent or indeed that it is more than an annual tenancy. The inference of permanence is an inference which it is difficult to make and which requires the presence of circumstances explicable when taken as a whole only on the hypothesis of permanence. A full exposition of the principles upon which such inference is to be made or rejected has been given by the Board in previous cases and need not here be repeated (*cf. Secretary of State for India* v. *Maharajah Luchmeswar Singh* (1888) L.R. 16, I.A. 6; *Nabakumari Debi* v. *Behari Lal Sen* (1907) L.R. 34, I.A. 160). Their Lordships agree with the High Court in thinking that the inference in the present case is fully warranted.

Considerable discussion took place before the Board upon the effect of the survey and settlement made between 1909 and 1916 in view of section 111 of the Bombay Land Revenue Code of 1879. Attention was drawn to the terms of section 216 and to the amendments made in 1929 to the

provisions of this section. Had their Lordships been of opinion that, independently of the settlement of 1915 and the revision settlement in 1918, the respondents were unable to show a permanent interest in their lands, it would have been necessary to give careful consideration to the question whether the Collector in acting upon the survey settlement and the plaintiff in accepting rents fixed thereunder after he came of age had not given to the respondents a right to claim that they had become permanent tenants. In the result, however, this question does not require to be decided, and their Lordships must not be taken as expressing or as accepting any opinion as to the limits of a Collector's powers under these sections. Their Lordships will humbly advise His Majesty that this consolidated appeal should be dismissed. The appellant will pay to the respondent Sambhu Wallad Nathu Patil his costs of the appeal.

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In the Privy Council

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