

**Niranjanshing Vs. Bhagatrai and anr.**

**Niranjanshing Vs. Bhagatrai and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/343129](http://sooperkanoon.com/343129)

**Court :** Mumbai

**Decided On :** Sep-01-1965

**Reported in :** AIR1967Bom136; (1966)68BOMLR167; ILR1966Bom992

**Judge :** Chainani C.J. and ;Kotwal, J.

**Acts :** Tenancy Law; Hyderabad Abolition of Inams and Cash Grants Act, 1955 - Sections 3 and 6; Hyderabad Abolition of Inams and Cash Grants Act, 1956 - Sections 3 and 6; Hyderabad Land Revenue Act, 1317 - Sections 2(8C) and 2(7)

**Appeal No. :** Spl. Civil Appln. No. 1804 of 1964

**Appellant :** Niranjanshing

**Respondent :** Bhagatrai and anr.

**Advocate for Def. :** G.H. Guttal and ;V.S. Deshpande, Asst. Govt. Pleader

**Advocate for Pet/Ap. :** S.P. Kurdukar, Adv.

**Judgement :**

ORDER

(1) Opponent No. 1 (hereinafter referred to as the opponent) was the inamdar of the lands in dispute survey Nos. 65 and 66. This inam was abolished by the Hyderabad Abolition of Inams and Cash Grants Act 1954 (hereinafter referred to as the Act) with effect from 20-7-1955. The lands were then in possession of the

Court Receiver who had been appointed in a suit between the opponent and some other persons. The possession of the lands was restored to the opponent some time in 1956. At that time there was no tenant on the lands. On 5-4-1957 the opponent leased the lands to the petitioner. On 6-9-1961 the petitioner made an application to the Tahsildar that he should be recognised as having become the occupant of the lands under Section 6 of the Act. The Tehsildar held an enquiry. He was of the opinion that as the opponent was in possession of the lands in 1955, he was entitled to occupancy rights. He therefore, rejected the application made by the petitioner. Against this order the petitioner appealed to the State Government, but Government declined to interfere with the order made by the Tahsildar. Thereafter the present application was filed.

(2) It has been urged by Mr. Kurdukar, the learned advocate for the petitioner, that as the petitioner was in possession of the lands as a tenant on 1-7-1960, he is entitled to occupancy rights in the lands under Section 6 of the Act. Mr. Guttal, who appears on behalf of the opponent, has on the other hand contended that no tenancy could have been created by the opponent in favour of the petitioner in 1957 when the lands were leased to the petitioner and that consequently the petitioner cannot be said to have been in possession of the lands as a tenant on 1-7-1960.

(3) Section 5 and 6 of the Act, which deal with the grant of occupancy rights in an inam land, came into force on 1-7-1960. It has therefore, been held by a Full Bench of this High Court in *Dattatrava Sadashiv v. Ganpati Raghu* : (1965)67BOMLR521 that the material date for determining who is entitled to the rights of an occupant is 1-7-1960 and not 20-7-1955. The section applicable in the present case is Section 6. Sub-section (1) of Section 6 states that in the case of an occupied land comprised in an inam other than land to which the provisions of Section 5 apply:

'(a) Where such land is in the possession of the inamdar, or kabiz-e-kadim or of a permanent tenant holding from the inamdar, then such inamdar, kabiz-e-kadim, permanent tenant or tenant shall, in respect of the land which is in his possession, be primarily liable to the State Government for the payment of land revenue and

shall, subject to the provisions of sub-sections (2),(3), (4) and (5), be entitled to all the rights and be liable to all the obligations as an occupant in respect of such land under the Land Revenue Act, 1317 Fasli and the rules made thereunder,' Under this section the petitioner will therefore, be entitled to occupancy rights if he was in possession of the land as a tenant on 1-7-1960.

(4) In the present case the date of vesting, that is, the date which the lands vested in the State after the abolition of the inam is 20-7-1955. The lands were leased to the petitioner in April 1957. The question for determination therefore, is whether the opponent could have leased the lands to the petitioner after the lands had vested in the State on 20-7-1955.

Sub-section (1) of Section 3 of the Act provides:

'Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant, sanad, order or other instrument, Act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil Revenue or Atiyat Court, and with effect from the date of vesting all inams to which his Act is made applicable under sub-section (2) or sub-section (2-A) of Section 1 of this Act shall be deemed to have been abolished and shall vest in the State.' Sub-section (2) of this section states that save as expressly provided by or under the provisions of this Act and with effect from the date of vesting, the following consequences shall ensue, namely:

'(b) all rights, title and interest vesting in the inamdar . . . . .in respect of the inam land other than the interests expressly saved by or under the provisions of this Act. . . . . shall cease and be vested absolutely in the State free from all encumbrances.' Except Section 33, there is no other provision in the Act which saves any interest which vested in an inamdar before the date of vesting. Section 33, which saves the mutual rights and obligations of an inamdar and his tenant, has no application in the present case, because there was no tenant on the lands on the date of vesting 20-7-1955. On this date, under Section 3 all rights, title and interest in the lands vesting in the opponent ceased and vested absolutely in the State free from all encumbrances. The opponent then lost all his rights in the lands, including his rights to their possession. No interest of any kind was left in

him.

(5) In 1956 the Act was amended by the Hyderabad Abolition of Inams (Amendment) Act, 1956 with retrospective effect from 20-7-1955, S. 4 of this Act is in the following terms:

'Notwithstanding anything contained in the principal Act, with effect from the date of publication of that Act in the official Gazette and till the commencement of the provisions mentioned in Clause (b) of sub-section (3) of S. 1 of that Act, the full land revenue payable in respect of every inam abolished and vesting in the Government under Section 3 of that Act, shall be recovered from the inamdar of such inam as if he were the occupant of such land and, on the commencement of the said provisions of that Act is shall be recovered in accordance with those provisions.'

The principal Act, that is, the Hyderabad Abolition of Inams and Cash Grants Act. 1954, was published in the Official Gazette on 20-7-1955. The provisions mentioned in Clause (b) in sub-section (3) of Section 1 came into force on 1-7-1960. Section 4 of the amending Act makes the inamdar liable to pay land revenue in respect of the inam land from 20-7-1955 till 1-7-1960. The liability to pay land revenue imposed on the inamdar necessarily implies the right in him to continue in possession of the land upto 1-7-1960, for unless he was to derive some benefit from the land, he could not reasonably be saddled with the liability to pay the land revenue. There is also no provision in the Act for the Government's taking possession of the land before 1-7-1960, the date on which Section 5 and 6, which provide for the grant of occupancy rights, came into force. The inamdar, who was in possession of the inam land on 20-7-1955, could therefore, lawfully continue to be in possession of the land until 1-7-1960.

(6) The next question to be considered is about the character of possession held by the inamdar between 20-7-1955 and 1-7-1960. The significant word in Section 4 of the amending Act are 'as if he were the occupant of such land' These words make it clear that the right to possession given to the inamdar was not that of an occupant. The words 'as if' create a legal fiction and emphasise that even though the inamdar was not the occupant of the land, for purposes of payment of land

revenue he was to be regarded as the occupant of the land. The word 'occupant' is defined in Clause (8-C) in Section 2 of the Hyderabad Land Revenue Act to mean a holder in actual possession of unalienated land other than an asami shikmi. Clause (7) in the same section provides that to hold land or to be a landholder or holder of land means to be lawfully in possession of land, whether such possession is actual or not. Even though, therefore, Section 4 impliedly gave a right to the inamdar to continue in possession of the land upto 1-7-1960, this possession was not that of an occupant. All his rights, including his right to the possession of the land, had vested in the State on 20-7-1955 under Section 3 of the Act. His possession after 20-7-1955, though lawful, was without any interest in the land, because all the interest which he had in the land had vested in the State on 20-7-1955. Consequently, the position of the inamdar during the period 20-7-1955 to 1-7-1960 was analogous to that of a licensee with no interest in the property.

(7) In the present case the lands had vested in the State on 20-7-1955. the opponent was in possession of the lands in April 1957 when he leased them to the petitioner. He had, however, no title to or any interest in the lands. Consequently he could not have created any tenancy in respect of these lands. The petitioner cannot therefore, be regarded as a tenant of the lands on 1-7-1960. Under Section 6 of the Act, the opponent and not the petitioner was therefore, entitled to all the rights of an occupant of the lands. The order made by the Tahsildar confirmed in appeal by the State Government does not therefore, call for any interference.

(8) Rule discharged. No order as to costs.

(9) Petition dismissed.