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State of Maharashtra Vs. Narayan Laxman Thatte and ors.

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Court : Mumbai

Decided On : Jul-02-1981

Reported in : 1982(1)BomCR52

Judge : Sharad Manohar, J.

Acts : Bombay Personal Inams Abolition Act, 1952 - Sections 9; Bombay Land Revenue Code, 1879 - Sections 37; Maharashtra Land Revenue Code, 1966 - Sections 20 and 48

Appeal No. : Second Appeal No. 919 of 1974

Appellant : State of Maharashtra

Respondent : Narayan Laxman Thatte and ors.

Advocate for Pet/Ap. : A.B. Naik, A.G.P.

Disposition : Appeal dismissed

Judgement :

Sharad Manohar, J.

1. An interesting question arises in this appeal relating to the interpretation of section 9 of the Bombay Personal Inams Abolition Act, 1952 and its effect upon the facts of this case. However, in the ultimate analysis it is found that having

regard to the particular document of title of the plaintiff in the instant case it has got to be held that decree passed by the Lower Court is correct and valid.

2. The facts of the case are very simple. The suit lands were originally Inam lands. Admittedly in a portion of the said land there is a stone quarry. The plaintiffs and their predecessors, who belonged to Inamdar family, admittedly used to sell the right to quarry the stones from the land. The Inam was abolished by virtue of the Bombay Personal Inam Abolition Act 1952, which came into force with effect from 1-8-1955. The Inam stood extinguished and the suit land vested in the Government. The Government even went to the extent of assigning the suit land to the Group Gram Panchayat of the village and on 29-10-57 even the possession of the lands including the suit land having quarry was given to the Group Gram Panchayat. It appears that the plaintiffs who are admittedly the last Inamdars moved various authorities for the purpose of establishing their right over the stone quarry in the suit land contending that it was a mine and that the stones gigged out from the mine were minerals products within the meaning of section 9 of the said Inam Abolition Act. Their contention was that the plaintiffs' right over the mines and minerals from the suit land had remained unaffected by virtue of section 9 of the Act, the extinguishment of this Inam notwithstanding. When the plaintiffs moved the Collector in this behalf, it appears, that an enquiry was ordered to be made by the Circle Officer. The Circle Officer made a report dated 22-6 -1960 which forms part of the papers called from the Court. In the said report the Circle Officer had stated that the ownership of the stone mine in Survey No. 99 which is the suit land are vested in Inamdar Thatte. It was further stated that the Inamdar himself gave permission to other to extract stones from the mine. It was further stated that after the abolition of the Inam the suit land Survey No. 99 vested in the Government and on that account Survey No. 99 was given into the possession of the group Gram Panchayat of Panwale. It was further stated that at present the Gram Panchayat is looking after the management of the mine. Although the plaintiffs were not furnished with the copy of the said report, the said report forms part of the record in these proceedings and the correctness of the report is not disputed before me.

As a matter of fact they had started proceedings before the Collector under the Inam Abolition Act, for payment of compensation to the Inamdar. The Inamdar was paid compensation so far as the land was concerned. But so far as the stone mine was concerned the Dy. Collector who gave the award dated 31st January, 1961, in that behalf observed in his award as follows :---

'As the subsidising mineral rights are saved, there is no question of granting compensation for the right granted under any contract, grant or law for the time being in force.'

The matter did not rest there. There was an appeal against the said order and the Appellate Authority remanded the case to the Deputy Collector and the Deputy Collector was required to give award for the second time. Even in the second award the Deputy Collector observed as follows :---

'The applicant has stated that his father had received Rs. 125/- as income from the stone quarry, But as the subsisting mineral rights are saved, the question of granting any compensation does not arise.'

It may be thus seen that the Government itself took the stand :---

(a) that the land in question was stone mine;

(b) that the Inamdar's right pertaining to the stone made remained unaffected under the Inam Abolition Act;

(c) that the Inamdar was held not entitled to any compensation in connection with the stone mine because the property in the stone mine continued with the Inamdar.

It was presumably in this view of the matter that the plaintiffs who were the erstwhile Inamdars filed the suit out of which the present appeals arises for recovery of the possession of the suit land Survey No. 99, admeasuring 92 Acres 6 Gunthas in village Tathevade, Taluka Mulshi, District Pune, from the Government contending that the suit land should not have been taken into their possession by the Government and possession of the same could not have been

handed over to the Gram Panchayat. To the said suit, State of Maharashtra and the Group Gram Panchayat in question were impleaded as defendants Nos. 1 and 2 respectively. It appears that one of the Inamdars who could not be impleaded as defendant plaintiff was also impleaded as No. 3 However, it is unnecessary to refer that aspect of the matter any further.

3. The contention of the plaintiffs are already set out above. The defence of the Government, defendant No. 1, was that the suit land was not a land within the meaning of section 9 of the Inam Abolition Act. The contention was that on the date of the Inam Abolition Act suit land was entered into the Revenue Record as Gairan (free grazing land). The contention, therefore, was that it could not be said to be a mine within the contemplation of section 9 of the Inam Abolition Act. It was contended that the suit land vested in the Government with effect from 1st August, 1955 and that all the rights of the Inamdars such as the plaintiffs stood extinguished with effect from that date. Plea of the bar of limitation was also raised.

4. So far as defendant No. 2, Group Gram Panchayat was concerned no defence was filed by the Gram Panchayat and in fact no part was taken by the Gram Panchayat in these proceedings and hence the suit proceeded ex parte against the Gram Panchayat.

5. The learned trial Judge accepted the defendant's contention that the suit field by the plaintiff was not within limitation. He further held that only an area of five Gunthas out of the suit land which was used as quarry could be said to be the query. The trial Court accepted the Government's contention that the entire suit land had vested in the Government by virtue of the Inam Abolition Act. In this view of the findings recorded by the learned Judge the suit filed by the plaintiffs was dismissed by him with costs.

6. In appeal, the learned District Judge took the view that the suit could not be said to be learned by limitation at all. The learned Judge further held that section 9 of the Inam Abolition Act specifically saved the suit land being vested in the Government. As regards the contention that only a small portion of the suit land was used as quarry the learned Judge took the view that it was not proved that the

remaining portion is not capable of being used as quarry. He negatived the defendant's contention that the suit land was a free grazing land and that there was no stone quarry in the suit land. The learned Judge examined the view taken by the Government itself on the previous occasions which clearly showed that the plaintiff's were recognised by the government, even after the abolition of the Inam, to have continued to be the owner of the stone quarry contained in the suit land and after examining the entire evidence the learned Judge came to the conclusion that it could not lie in the mouth of the Government to contend now that the land was not a mine and that the right of the plaintiffs had not remained unaffected. The appeal was, therefore, allowed by the learned Judge and a decree for possession and means profits was passed by him against the defendant as prayed for by the plaintiffs in the plaint.

7. Against this decree this appeal has been filed by the State Government only. No appeal has been filed by defendant No. 2, Group Gram Panchayat nor the defendant No. 3.

8. Mr. Naik, the learned Assistant Government Pleader appearing on behalf of the Government, contended that the decree passed by the District Judge was not justified. His first contention was that although under section 9 of the Inam Abolition Act, the rights of the Inamdars vis-a-vis mines and minerals in the Inams lands remained unaffected, still in order to claim the protection of said section 9, it was necessary for the Inamdar to establish that the right over or pertaining to the lands or mineral products had been given to the Inamdars by virtue of specific grant in that behalf or by virtue of its being specifically recognised in that behalf. He contended that the general grant of Inam would not be deemed to include the grant of the right for the mines an minerals in the Inam land.

9. To my mind this question can be easily answered. Amere look at the grant, Exhibit 76, is enough too show whether there was a grant of the minerals in the land in favour of Inamdars or not. Ex. 76 clearly shows that there did exist a grant so far as the stones lying deposited in the land were concerned. The words used in the grant, leave no room for doubt in this behalf. They state that the land has been granted to the Inamdars along with water, trees and stones lying deposited in

the land. (ty r: dky&ik;'kk.k fuf/k fu{ks; lfgr1/2. This means that not only those of the stones on the surface of the land but even those lying deposited in the land were subject matter of the grant. The very use of the words (ty r: dky&ik;'kk.k fuf/k fu{ks; lfgr1/2 would indicate that even the deposits in the land were subject matter of grant. For instance, if we take the illustration of water, it could not seen that the Inamdar might dig a well in the land and the water could be found at the depth of 30 feet. That water in that well could not be said to be the water on the surface, but at the same time it could not be conceived that the water in the well did not nylon to the Inamdar. Water in this case was lying deposited deep in the land but still that deposit water belonged to the Inamdar. In this view of the matter the contention that only the stone on the land and not inside the land were subject matter of the grant cannot be accepted.

10. But this petition is further made clear by the way in which the Inamdars enjoyed the land over a long stretch of years. The report made by the Circle Inspector is mentioned above. The report clearly states that the Inamdars had been selling the right to dig stones from the suit land to others. This means that the Inamdars' right over the stones which were lying as minerals in the land was recognised by the Government at all times. Besides this, the Dy. Collector had himself taken decision, not once but twice, that the Inamdars right vis-a-vis the minerals in the land had remained unaffected and as a matter of fact on that account compensation was denied too the Inamdar so far as the stone mine was concerned. It is, therefore, difficult to accept the Government's contention taken almost as a somersault that the land containing the stone mine also became vested in the Government by virtue of the Inam Abolition Act.

11. It will be also interesting to find out the legal and Constitutional position relating to the right of the Government to the mineral deposit before the advent of the Maharashtra Land Revenue Code, 1966. The law that governed the entire legal position in this behalf was the Bombay Land Revenue Code which was enacted in the year 1879. Section 37 of the Bombay Land Revenue Code is relevant in this behalf. Section 37 of the said Code provided that all lands within the State of Maharashtra which were not of private ownership vested in the State Government. However, there was no reference to the deposits in the land. It was doubtful as to

whether section 37 as it stood did express an intention to own also the mineral products lying deposited in the land. The doubt, however, was removed by the existing Land Revenue Code. What was done was that the Bombay Revenue code was later on repealed in the year 1966 giving way to the existing Maharashtra Land Revenue Code, 1966. Old section 37 of the Bombay Land Revenue Code, was however, re-enacted practically verbatim in section 20 of the new Maharashtra Land Revenue Code. But what is significant is that another section 48 was included in the new code. The said section 48 of the new Code provided that the mineral deposits in all the lands in the state grant of which is not made in favour of any other person shall vest in the state Government. The marginal one of section refers to the Government's title to the mines and minerals. It will thus seen that section 20 and section 48 in between them give title to the Government to all lands in the State and also to all the mineral deposit in the said lands. The point is that this situation is brought about, at least in the State of Maharashtra, for the first time in the year 1966 by virtue of the advent of the Maharashtra Land Revenue Code and particularly by section 48 of the said Act. No provision corresponding to said section 48 is to be found in an earlier statue. At least my attention was not invited to any such provision. Said section of the Bombay Land Revenue Code was subsequently repealed by the Maharashtra Land Revenue Code, 1966. Just a casual glance at the provisions of section 20 of the Maharashtra Land Revenue Code is enough to show that the said section 20 of the New Code is practically the re-enactment of section 37 of the old Bombay Land Revenue Code. But what is significant is the enactment of section 48 in the Maharashtra Land Revenue Code. As per section 48 of the New Code it is stated that 'unless it is otherwise expressly provided by the terms of the grant made by the state Government, 'the right to all minerals at whatever place found, whether on surface or underground is and is hereby declared to be expressly reserved and shall vest in the State Government. What is significant and noteworthy about this provision is that it finds place on the statue for the first time in the 1966. No provision corresponding to this provision in any other earliest statue is brought to my notice. It, therefore, follows that the law relating to ownership of the mineral deposits being with the Government saw light of the day at least in the State of Maharashtra for the first time in other year 1966 by virtue of the new Land

Revenue Code. It is equally significant that the provisions of section 37 of the Bombay Land Revenue Code which was in existence on the data when Inam Abolition Act came into force have been practically reproduced in section 7 of the Inam Abolition Act, but significantly enough no provision corresponding to provision of section 48 of the New Land Revenue Code had been incorporated, by suitable amendment in the old Bombay Revenue Code before the advent of the Inam Abolition Act nor has it been incorporated in any part of the said Inam Abolition Act. Reading these status together, no room can be said to have been left for doubt that on the day when Inam Abolition Act came into force it was not in the contemplation of the legislature that the deposits lying in the Inam lands were to vest the State. To my mind this is the rational of section 9 of the Inam Abolition Act. Until the year 1966, it was not with in the contemplation of the State Government to claim ownership of the mineral deposits even in respect of the unlimited lands. Not to claim ownership of the minerals lying deposited in the Inam lands which were after all the alienated lands was therefore, a gesture evidently in keeping with the policy of the law in Maharashtra. This being the position, to my mind, it cannot be contended by the Government that the stone mine lying in the suit lands stood vested in the Government.

12. The next contention urged by Naik did not detain me very long at all. The contention is that what is to be found in the suit land is a quarry and not a mine. To my mind the distinction is without any principle. The learned Judge has given very good reasons for discarding this distinction. The learned District Judge has examined the definition of the word 'mine' and 'minerals' and has found that even stone in the quarry is mineral product within the meaning of section 9 of the Act. I find no justification for finding any fault with the view taken by the learned judge in that behalf.

13. The next contention of Mr. Naik is that only an area of 6 gunthas was being used for the quarrying purposes. The contention, therefore, is that the entire land bearing Survey No. 99, admeasuring about 92 acres should not be considered to be as stone quarry. To my mind the learned Judge's answer even to this question is quite unexceptionable. The learned Judge has pointed out that none of the defendants has pleaded that stone mine is located in my particular portion of the

suit land. This is what the leaned judge observed in para 13 of his judgement in that behalf :---

'It was next urged that plaintiff's have not proved that the entire Survey No. 99 is being used as a stone mine and that, therefore, the plaintiffs cannot claim his ownership under section 9 with respect to the entire area. It may be noted that the defendant has not pleaded that the stone mine is covered by a particular portion of Survey No. 99, and that the remaining portion will not, therefore, be governed by section 9. Of course, in spite of an omission of such a pleading, certain questions were asked to the plaintiffs' witnesses and from the statements made by these witnesses viz. Dhondiba Pawar (Exh. 55), Dashrath Laxman Sapkal (Exh. 56) and Mahadu Gaikwad (Exh. 61), it can be said that these witnesses have admitted that the area of about 2 to 4 Acres is covered by the stone mine. It was, therefore, urged that the plaintiff could not claim title to the remaining area. It may be noted that the important question that has to be seen is as to whether there is a mine and the mineral products are being enjoyed by the plaintiffs. The fact that the mine in the rest of the area of Survey No. 99, is not as yet dug and worked by the plaintiffs would not necessarily mean that there is no mine in the rest of that area. This is more so when the defendant has not taken a specific plea that the mine is covered only by 5 Gunthas of land. The only thing that can be said is that the plaintiffs have not operated or worked the mine in the remaining area. But this would be a different thing from saying that there is no mine in the remaining area'.

I am in complete agreement with the reasoning of the learned Judge. Moreover, in this connection I may refer to the well known dictum of the Privy Council in Siddik Mohammed Shah v. Mt. Saran and others, reported in , wherein it has been held that where a claim was never made in the defence no amount of evidence can be looked into upon a plea which was never put forward. If such a plea was raised by the Government in the first instance evidence could have been easily led by the plaintiffs to prove that not only the portion of the suit land where the quarrying operations were in fact carried on, but even the other portion of the same contained stone deposits and that quarrying operations could be carried on in the said remaining portion as well. In this view of the matter, even the third contention of Mr. Naik cannot be accepted.

No other contention was urged before me in support of the appeal.

14. The appeal, therefore, fails and the same is hereby dismissed.

Since there was no appearance on behalf of the respondents, there shall be no order as to costs.

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