

Goswamini Shri Kamala Vahooji Maharaj of Kutch Mandvi,
by her Attorney Dharamdas Tribhovandas - - - *Appellant*

v.

The Collector of Bombay - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 17TH JUNE, 1937

Present at the Hearing:

LORD MACMILLAN.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by LORD MACMILLAN.*]

On 26th October, 1926, the Collector of Bombay addressed to the appellant a notification that the Government had been pleased to sanction, under section 8 of the Bombay City Land Revenue Act of 1876, the assessment of certain property in Bombay belonging to her described as "Land at Bora Bazar Street, bearing N.S. [New Survey] No. 8841 and C.S. [Cadastral Survey] No. 1356." The notification indicated the scale on which the property had been assessed and stated that the assessment would come into force from the 1st of November, 1926, and would be guaranteed for 99 years from that date.

Availing herself of the provisions of section 14 of the Act of 1876, the appellant instituted a suit against the respondent contesting the legality of the assessment. She prayed for a declaration "that there is a right on the part of the plaintiff in limitation of the right of Government to possess and hold her said land free from assessment and that the defendant has no right to levy any assessment." The learned Revenue Judge on 20th October, 1927, gave judgment for the plaintiff and granted her a declaration as craved. On 3rd August, 1933, the High Court of Judicature at Bombay reversed the decree of the Revenue Judge and dismissed the suit. Hence the present appeal.

The only question before their Lordships is whether the appellant is entitled to total exemption from assessment to

land revenue in respect of the property mentioned. Section 8 of the statute of 1876 under which the assessment purports to be made reads as follows:—

“8. It shall be the duty of the Collector, subject to the orders of Government, to fix and to levy the assessment for land revenue. When there is no right on the part of the superior holder in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector subject to the control of Government. When there is a right on the part of the superior holder in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit.”

“The words ‘land revenue’ signify any sum of money legally claimable by Government from any person on account of any land . . . held by or vested in him . . .” and “The words ‘superior holder’ signify the person having the highest title under Government to the land in respect of which land revenue is payable” (section 3 (2) and (4)).

It is remarkable that the statute contains no provisions relating to exemption from payment of land revenue (although their Lordships are given to understand that cases of total exemption exist and are recognised) other than the words of section 8 just quoted which appear to apply rather to the case of a limitation on the right to assess than to the case of a complete exemption from assessment. Learned counsel for the Crown, however, informed their Lordships that it was in virtue of these words in section 8 that total exemption where established was in practice recognised.

The burden is plainly on the appellant to show that as the superior holder of the property in question she has “a right in limitation of the right of Government in consequence of a specific limit to assessment having been established or preserved,” and that that specific limit is nil. However awkward and inartistic, that is the only way, as parties are agreed, in which the issue between them can be fitted into the statute.

The property is owned by the appellant as spiritual head of a Hindu Vaishnava temple situated at Cutch Mandvi. The earliest title deed is dated 1788 and is a conveyance to two persons. The property appears to have descended to the daughter of one of them who in 1828 devised it to her spiritual guru and the appellant claims under that guru. It is not necessary for the present purpose to explore the early history of land tenure in the Island of Bombay of which the learned Revenue Judge gives an interesting summary. It suffices to note that the plaintiff alleges and the Crown admits that “no land revenue has ever been charged in respect of the said property”; that the property has not been entered in the Rent Rolls of the Collector; and that in the Survey Register of 1813 the entry against it in the rent column is “no ground rent” and in the Survey Register of 1869 the entry against it in the tenure column

is "O." It further appears that the question of the assessability of the property was raised in 1913 when, after inquiry, the Department minuted in the following year that "the land cannot be assessed since it is held without assessment for more than 60 years under G.R. No. 1976 dated 12th March, 1904. A note to this effect may be made in this Register." The Government Resolution of 12th March, 1904, was to the effect that no assessment should be imposed where lands had remained unassessed for 60 years. The entry made in the Register recorded that the "land is charitable and is held free of rent and cannot now be assessed"; but this entry is deleted and there is added: "This note has been struck off in view of" two opinions of the Advocate-General. All this amounts, however, to no more than a revelation of the vacillation of the Crown's advisers as to the assessability of the property, for their Lordships agree with both the Courts below that there is nothing in the nature of an estoppel or bar to prevent the present assessment if it is otherwise justified, and indeed no argument to a contrary effect was submitted.

The appellant has not been able to produce any deed or grant conferring the exemption which she claims. But she maintains that she has a prescriptive right of exemption and that in virtue of its long enjoyment a lost grant conferring it must be presumed. If so, her right in order to be effectual must, in terms of section 8 of the 1876 Act, have been "established and preserved". Without pausing to consider the meaning of these words, their Lordships proceed to examine the claim as founded on prescription or lost grant.

Counsel for the appellant referred first to Bombay Regulation I of 1823 which in its preamble recites *inter alia* that "it is expedient that the enjoyment of exemption from revenue for a period of 60 years should in certain cases be held as proof of sufficient title to the exemption" and proceeds in section 4 to provide that "Whenever land has been enjoyed without payment of the public revenue for more than 60 years in succession by any person, his heirs or others deriving right from him, such enjoyment shall be considered as sufficient title to the exemption". Counsel for the Crown maintained that this Regulation had no application to the City of Bombay but was applicable only to the mofussil. It is not necessary to consider the point for the Regulation was repealed by Regulation I of 1827. In the latter year a number of Regulations were made of which Regulations XVII and XIX are material. Regulation XVII, which is entitled "A Regulation for the Territories subordinate to Bombay", in chapter IX, section 36, repeated in terms section 4 of the repealed Regulation of 1823 above quoted. The period of 60 years therein mentioned was reduced to 30 years by Regulation VI of 1833. In 1863 chapters IX and X of Regulation XVII of 1827 and Regulation VI of 1833 were repealed by section 1 of the Bombay Act VII of that year which substituted in section 21 a similar

provision requiring claims to exemption from payment of land revenue in virtue of prescription to be admitted, in the case of lands in certain districts, if proved to have been held exempt from payment of land revenue under a tenure recognized by the custom of the country for 60 years prior to the date of the Act and in the case of other lands if proved to have been held in like manner for 30 years. All that was left of Regulation XVII of 1827 was finally repealed by the Bombay Land Revenue Code, 1879, section 2 and schedule A. The learned Revenue Judge was of opinion that under the provisions of chapter IX, section 36, of Regulation XVII of 1827, there was acquired a vested right of exemption from land revenue as regards the property in question inasmuch as for at least 60 years exemption had in fact been enjoyed. But the Crown submits that Regulation XVII of 1827 did not apply to the City of Bombay and the High Court has so held. Apart from intrinsic indications in the Regulation itself, which are elaborated by Beaumont C.J., a conclusive argument against the applicability of Regulation XVII to the City of Bombay is to be found in the fact that on the same day another Regulation, namely Regulation XIX of 1827, was made which is entitled "A Regulation for the Presidency, prescribing rules for the assessment and collection of the land revenue." "The Presidency" clearly means the Island of Bombay. The 3rd section of Regulation XIX provides that "the land revenue of the Presidency shall be assessed and levied by the Collector and his assistants accordingly to the principles laid down in Regulation XVII, A.D. 1827, section III, the three first clauses of section IV, section V and the first clause of section VI." If Regulation XVII were applicable to the Presidency it would be quite inappropriate in Regulation XIX, which applies to the Presidency, to adopt and apply to the Presidency selected provisions of Regulation XVII. It would clearly appear that at any rate from 1827 onwards the land revenue legislation for the Presidency and for the mofussil ran on separate lines. Their Lordships therefore agree with the High Court in holding that Regulation XVII does not apply to the property in question. But Regulation XIX, which does apply, contains no provision for recognising a prescriptive right to exemption from land revenue such as is contained in chapter IX, section 36, of the Regulation XVII, and while adopting some of the provisions of Regulation XVII has not adopted chapter IX, section 36. The appellant therefore cannot rely on any statutory prescriptive title to exemption.

But the appellant submits that in the circumstances a lost grant should be presumed and that this lost grant should be presumed to have contained an exemption from land revenue or a "right in limitation of the right of Government" to assess the property. The law may presume the existence of a grant which has been lost where it is sought to disturb a person in the enjoyment of a right which he and his predecessors have immemorially enjoyed, but

it is a different thing to seek to presume that the Crown has by some lost grant deprived itself of the prerogative power to tax the property of its subjects, and their Lordships are of opinion that this plea is untenable.

The appellant having thus failed to discharge the burden of proving the existence of an "established and preserved" right on her part in limitation of the right of Government to assess her property the Collector was entitled to fix an assessment at his discretion, subject to the control of Government, as he has done.

Their Lordships will accordingly humbly advise His Majesty that the appeal should be dismissed and the decree of the High Court of Judicature at Bombay of 3rd August, 1933, affirmed. The appellant will pay the respondent's costs in the appeal.

GOSWAMINI SHRI KAMALA VAHOJI
MAHARAJ OF KUTCH MANDVI
BY HER ATTORNEY
DHARAMDAS TRIBHOVANDAS

v.

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