

Privy Council Appeal No. 101 of 1914.

Merwanji Muncherji Cama and another - *Appellants,*

v.

The Secretary of State for India in Council - *Respondent.*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 29TH JUNE 1915.

Present at the Hearing :

VISCOUNT HALDANE.

SIR JOHN EDGE.

LORD SHAW.

MR. AMEER ALI.

SIR GEORGE FARWELL.

[*Delivered by* VISCOUNT HALDANE.]

The facts in this case are really not in controversy. The appellants have advanced on mortgage of land in the City of Bombay Rs. 80,000. They claim against the respondent, the Secretary of State, that they advanced this sum to Abdul Hussein Ibrahimji, the mortgagor, relying on statements in certified extracts from the Rent Roll of Quit and Ground Rent Land, kept in the office of the Collector of Bombay, to the effect that the land was of quit and ground rent, and not of Sanadi tenure. The question to be decided is whether the appellants, who were plaintiffs in the courts below, are entitled to a declaration that the respondent is estopped from treating the land as of Sanadi tenure. In

Bombay both of these tenures exist. The land in question is in fact held under a Sanad which purports to enable the Government to resume possession for public purposes on giving six months notice and providing compensation for buildings and other improvements. For the purposes of the question to be decided their Lordships assume, although the point is not conceded, that if the land were held on the other tenure it would be contrary to the practice of the Government, if not to the law, to resume possession, and that the land would be in consequence more valuable as a security. It is not, however, clear that such a view has always prevailed or that the difference between the two tenures was regarded as important at the time of the mortgage.

The Sanad was granted by the Government of Bombay in 1824, a rent of 11 reas per square yard being reserved. Such a rent would have been the usual rent had the land been of the other tenure.

In January 1892 the mortgagor had granted a security over the land for an advance from the Chartered Mercantile Bank. A Mr. Gostling, partner in the firm of Gostling and Morris, land surveyors in Bombay, had been employed to report on the security and the title. He inspected certain entries in the Collector's rent rolls and in what was called Laughton's Revenue Survey Register, both of which were kept in the office of the Collector. In the entries which he inspected there were express references to the Sanad with which the title originated. He applied to the Collector for "certified extracts" from the rolls and register. These extracts were, in accordance with the rules which obtained, made by his own clerk, and were

formally certified by an assistant of the Collector as correct. The extracts were, however, inaccurate in certain points. In one of them the title given was "Rent Roll of Quit and "Ground Rent," instead of, as it should have been in accordance with the book from which it was taken, "Rent Roll of Land situate in "New Town or Camatipura." In another of the extracts, the entry in the rent roll from which it was taken contained a reference to the Sanad of 1824, and this was omitted in the extract. Mr. Gostling, in addition, obtained from the mortgagor a notice in which the Collector required payment of a small sum as rent for "the quit and ground rent land situate "at New Town." He also inspected the title deeds. These did not go back as far as the Sanad of 1824, but on one of them, dated in 1843, there was an indorsement to the effect that the registration of deeds of transfer did not imply any relinquishment of the right of ownership in, or the power to resume, the land at the pleasure of the Government, but that the sole object of the register was to enable the Collector to apply to the proper person for the payment of the rent.

Mr. Gostling does not appear to have been deterred by this indorsement, or by the references to a Sanad, from recommending the title. Their Lordships think that in 1892, when he made the investigation, importance was not attached in the same degree as later on to the difference between the two tenures. It appears to have been thought that in neither case was there substantial likelihood of the Government resuming the land.

On the 25th October 1892, some ten months after the first advance, the mortgagor obtained

advances on second mortgage from the appellants. The latter employed a solicitor named Shroff to investigate the title and advise as to the security. His evidence shows that he inspected the title deeds at the bank and also got hold of the certified copies of the extracts from the Collector's rent rolls and the Collector's notice to which reference has been made. He appears to have applied to the Collector for access to certain of the records and to have obtained it. At all events he searched the records, which not only did not indicate that the tenure was quit and ground rent, but which contained a reference to the Sanad of 1824. It is probable that he was not paying more attention to the difference between quit rent and Sanadi tenure than had Gostling or the Collector's clerk who checked the extracts made by Gostling's clerk. In the end he advised the appellants to proceed with the mortgage.

The case made for the appellants, who were plaintiffs at the trial, was that by reason of the references and omissions in the copies of the extracts, as well as in the Collector's notice and in certain bills sent in by the Collector for the rent due, the action of the Collector has estopped the respondent, the Secretary of State, from denying that the land is of quit rent as distinguished from Sanadi tenure, and that the appellants are entitled to a declaration of title on that footing. In order to determine whether this is so it is necessary to ascertain what was the duty of the Collector and his position in relation to the Government and the public. The Collector, prior to 1876, kept in his office what were called rent rolls of land, on whatever tenure held. After 1876 this practice continued, but was regulated by the Bombay Act No. 2 of that year, known as the Bombay City Land Revenue Act, 1876.

Under this Act, which extends only to the City of Bombay, the controlling authority in all matters connected with the land revenue is vested in the Collector of Bombay, subject to the Governor in Council. The duty imposed on him is to fix and levy the assessment for land revenue. The liability is to be settled with the superior holder of the lands, subject to an appeal to the Revenue Judge, who is to be the Senior Magistrate of Police. There is a further appeal to the High Court on its appellate side. The existing survey and the demarcation of lands already made, and all the records of this survey are to be *primâ facia* evidence. Corrections of such demarcation or of entries in the records of the survey may be made by the Collector, or by order of a competent court.

Part VIII. of the Act relates to transfer of lands. Section 30 provides that whenever the title to immoveable property subject to the payment of land revenue to the Government is transferred, the transferor and transferee are to give notice to the Collector. Any transferor who fails to give notice is, in addition to being liable for a penalty, to continue liable for the payment of land revenue until notice is given or transfer is effected in the Collector's records. In case of dispute as to the making or completion of any entry or transfer, the Collector may summon the parties and take evidence and decide summarily what entry should be made. Section 35 provides that the registration or transfer of any title in the Collector's records shall not be deemed to operate so as in any way to affect any right, title, or interest of the Government in the property in respect of which such transfer is made or registered. In the final part of the Act, which is headed "Miscellaneous," it is provided that it shall be the duty of the Collector to

prepare and keep, in such form as the Government shall from time to time sanction, a separate register and rent roll of every description of land, according to the nature and terms of the tenure on which such land is held. All maps, registers, and other records are to be kept in the office, and to be open to the inspection of the public, who are to be entitled to obtain extracts or certified copies.

Their Lordships are of opinion that the Act must be treated as defining the extent of the rights of any one who consults the maps, register, and records at the office, and that in order to ascertain these rights the Act must be read as a whole and its purpose ascertained. When it is so read their Lordships think that this purpose and the nature of the rights conferred are not doubtful. The Act is one which makes provision for the administration and collection of the land revenue of the Government in the city of Bombay. It is for this purpose only that it sets up machinery. The object is to ascertain who is liable to pay. The Collector is a revenue official, and it is only in so far as the collection of revenue is concerned that he is entrusted with the duty of preparing a register and keeping records. The public are given access to these only in order to satisfy themselves that they are being properly assessed. The Act does not purport to establish a system of registration of title, which is to supersede other means of conveying or registering the title to land or to relieve purchasers or mortgagees from the ordinary obligation to see that they get what they have contracted to get. No doubt the register is of considerable use even for conveyancing purposes. But neither the language of the statute nor the character of the officials, who have the duty of

keeping it, is such as to indicate an invitation to the public to rely on statements in the records as to title which may have to be made incidentally, but which are not expressed and do not purport to be decisive either of the rights of the Government or of those of the individual as to matters which go beyond liability to contribute to land revenue.

From this conclusion as to the scope of the Act it follows that what has taken place in the present case has not given the appellants any right to claim that the Government is prejudiced in any right it has to treat the land in question as of quit rent as distinguished from Sanadi tenure. Nor are their Lordships satisfied that at the time of the investigation of the title in 1892 the parties themselves really attached much importance to the statements as to tenure in the extracts and other documents produced. They appear to have inspected the deeds in the usual fashion, and to have concerned themselves with the question of who was the owner of the land rather than with the question of the rights of the Government. In the view which has been taken, it is not necessary to deal separately with the question raised under section 35 of the Act as to whether any right, title, or interest of the Government could be affected by the registered entry.

Their Lordships will humbly advise his Majesty that the appeal fails and ought to be dismissed with costs.

In the Privy Council.

**MERWANJI MUNCHERRJI CAMA AND
ANOTHER**

2.

**THE SECRETARY OF STATE FOR INDIA
IN COUNCIL.**

JUDGMENT

DELIVERED BY VISCOUNT HALDANE.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1915.