

A

STATE OF MAHARASHTRA

v.

LAXMAN CHIMAN NAIK & ANR.

August 2, 1973.

B

[K. K. MATHEW AND M. H. BEG, JJ.]

Bombay Bhil Naik Inam Abolition Act, 1955, s. 7(1)— Compensation for abolition of inams—When inamidar is entitled.

C

On the question whether the High Court was right in holding that the respondents, who were inamidars, were entitled to compensation on the abolition of the Bhil Naik Inams under the provisions of s. 7(1) of the Bombay Bhil Naik Inam Abolition Act, 1955,

HELD : A grant of the profits of land as remuneration for an office is resumable but a grant of land burdened with service cannot be resumed unless there is a specific provision in the grant to that effect. [302 G]

D

In the present case, since the grants were intended to be of the soil and not to provide remuneration for any specific services and there was no specific provision in the grant entitling the government to resume, their abolition has the effect of extinguishing or modifying rights in property and hence the decision of the High Court was right. [302 G-H]

E

(a) The object of the grants, which date from pre-British period was not so much to provide remuneration for services which were being rendered or which were to be rendered, as to induce the Bhils to give up their predatory anti-social activities by settling them on lands. The grants were continued on political considerations by the British Government. The grantees were to render services mentioned in clause (2) of the Sanad; but there was no provision for resumption even if no services were required or for failure to render them. The fact that express provision has been made for resumption only on the failure to observe the three conditions specified in clause (3) of the sanad would show that there was an implied prohibition for resumption in any other contingency. [302 E-F, H to 303A]

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(b) Further, the grantees were expressly precluded from alienating the inams or any portion of their income by mortgage or otherwise, thus making a distinction between the inam and the income. The definition of 'Bhil Naik Inam' makes it clear that the grants were of the villages or lands and not of the income or revenue. The conclusion that there was a transfer of land itself is strengthened by the provision in the sanad that the Secretary of State had reserved to himself all the rights which he had to all the mines and minerals and all powers for working and exploring them as he liked. [303 A-C]

Lakhamgouda Basavorabhu Sardesai v. Baswantrao and Others, A.I.R. 1931 P.C. 157, applied.

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First Appeal No. 326 of 1953 of Bombay High Court, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1550-1551 of 1967.

Appeal by certificate from the judgment and order dated February 5, 1965 of the Bombay High Court in S.C.A. Nos. 770 and 771 of 1963.

H

M. N. Phadke, and *S. P. Nayar*, for the appellant.

N. D. Kharkhanis and *A. G. Ratnaparkhi*, for the respondent (in C.As. No. 1551).

The Judgment of the Court was delivered by

A

MATHEW, J. The respondents filed two applications before the Additional Collector, Nasik, under s. 7 of the Bombay Bhil Naik Inam Abolition Act, 1955, (hereinafter called the Act) for compensation. On the basis of the applications, the Additional Collector, Nasik, passed two awards negating the claims. The respondents filed two appeals against the awards, but they were confirmed by the Maharashtra Revenue Tribunal. To quash these orders, the respondents filed applications under article 227 of the Constitution before the High Court of Bombay. The High Court quashed the orders and held that the respondents were entitled to compensation and remitted the cases to the Additional Collector, Nasik for determination of the quantum of compensation payable to the respondents. These two appeals, by certificate, are directed against the common judgment of the High Court quashing the orders passed by the Maharashtra Revenue Tribunal.

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The question for consideration in these appeals is whether the High Court was right in holding that the respondents, who were inamdars, were entitled to compensation on the abolition of the Bhil Naik Inams under the provisions of s. 7(1) of the Act.

D

The object of the Act was to abolish the Bhil Naik Inams held for service useful to Government on political considerations. Section 4 states that all Bhil Naik Inams shall be deemed to have been abolished and that any liability to render service and all other incidents appertaining to such inams are extinguished and that all inam villages and inam lands are resumed and shall be deemed to be subject to the payment of land revenue. Section 5 provides for the re-grant to the inamdar of the lands which, on the appointed date, that is, the date on which the Act came into force, were not uncultivated lands and which were in the actual possession of the inamdar or in the possession of a person holding through or from him other than an inferior holder on payment of the occupancy price. Section 6 provides that all uncultivated and waste lands and all other kinds of property referred to in s. 37 of the Land Revenue Code situate in an inam village or inam land, which are not the property of the individuals or of any aggregate of persons legally capable of holding property and except in so far as any rights of such persons may be established in or over the same shall together with all rights in and over the same or appertaining thereto be the property of the State Government. Then comes section 7.

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Sub-section (1) of s. 7 states that if any person is aggrieved by the provisions of this Act as abolishing, extinguishing or modifying any of his rights to or interest in, property, such person may apply to the Collector for compensation. Sub-section (3) of this section provides that nothing in this section shall entitle any person to compensation on the ground that any land, which was wholly or partially exempt from the payment of land revenue, has been under the provisions of this Act made subject to the payment of full assessment in accordance with the provisions of the Land Revenue Code.

G

H

The origin of the Bhil Naik Inams dates back to the pre-British period. These inams were continued by the British Government and

A from the facts mentioned in the letter of the Commissioner, Central Division, dated August 19, 1901 referred to in Government Resolution, Revenue Department dated August 19, 1902, it is clear that the Government decided to continue these inams with the holders on political considerations. In para 3 of his letter, the Commissioner stated that the villages were granted to the Bhiils in order to induce them to abandon their predatory habits and to protect the country from robberies and that the grants were intended for service to be rendered towards preservation of peace in the country, although no specific service appears to have been exacted from the Bhiils up to that date. In para 4, the Commissioner stated that summary settlement had not been made applicable to the holdings of the Bhil Naiks and that these had been entered in the accounts of Government as Saranjam or as held for service and that the lands had been held from remote time on the condition of service though probably the service rendered had never been anything more than a general obligation. In paragraph 5 he suggested that the alienations should be treated as service inams. By the Government resolution dated August 19, 1902, the suggestion of the Commissioner was accepted. In pursuance of this resolution, sanads were issued to the ancestors of the respondents in 1904. The sanads provide as follows :—

D “Whereas the village Dharde-digar in Taluka Kalyan in Nasik District has been entered as inam in the accounts of the village for the year 1900-1901.

<i>Name of the holder</i>	<i>Whole village number of the lands</i>			
E Kalu Laxman	Whole village	xx	xx	xx

It is hereby resolved as follows :

The said village will be continued as inams for service for political reasons by the British Govt. on the conditions mentioned below :—

F “1. The said grant will be continued from generation to generation with the male lineal descendants (these include the adopted issue for whose adoption the Government have granted permission) in the male line of the person who was the holder on the 1st day of the month of January 1901.

G If there is not alive a male lineal descendant in the male line of the holder of the said grant, the said grant will be discontinued till the Government will proclaim their intention. Then, it will be in the discretion of the Government to acknowledge a reversioner, as they think proper or to forfeit the whole or part of the grant.

H 2. The holder of the said grant from time to time shall render such service as the Collector of the District and Magistrate and his Assistant may order from time to time appropriate to the grant and amount under this Sanad. And he shall pay to the Government regularly the amount of judi or other taxes which have been mentioned as above as payable to the Government.

3. The said grant shall be continued subject to the following conditions, that is, the holder who is entitled to hold the grant from time to time shall—

- (1) Behave with British Government honestly and faithfully.
- (2) He shall not be proved to be a robber or a harasser of travellers or as having assisted in such matters.
- (3) He shall assist the officers of the Government in the matter of keeping the peace, and
- (4) He shall not alienate the said inam or any portion of the income of the said inam in any way by mortgage or otherwise. The said village is being held subject to the terms (1), (2) or (3). If any of the said conditions are contravened in any way the said grant will be liable to be forfeited to Government or to be attached by Government for so long as it may deem proper.

The sanad has been granted by the Secretary of State for India in Council, after reserving to himself all rights which he has to all mines and minerals and all powers for working and exploring them as he likes.”

Ultimately, the question to be asked and answered is whether the grants had the effect of conveying right in property and whether their abolition has the effect of extinguishing or modifying rights in the property.

The object of the grants appears to have been not so much to provide remuneration for services which were being rendered or which were to be rendered as to settle the Bhils on lands so as to induce them to give up their predatory anti-social activities. This would suggest that the grants were intended to be of the soil and not to provide remuneration for any specific services.

The terms of the sanad make it clear that these are grants burdened with service as distinguished from grants of revenue or profits as remuneration for an office. In *Lakhamgouda Basayprabhu Sardesai v. Baswanirao and Others*(¹) the Privy Council said that the grant of the profits of land as remuneration for an office is resumable but a grant of land burdened with service cannot be resumed unless there is specific provision in the grant to that effect.

Looking to the terms of the sanad we are inclined to think that the sanads evidenced grants of land burdened with service. It is clear from the sanads that the grants were continued on political considerations by British Government. The grantees were to render services specified in clause (2). But there is no provision for resumption even if no services were required or for failure to render them. The fact that express provision has been made for resumption only on the failure to observe the three conditions specified in clause (3)

(1) A.I.R. 1931 P.C. 157.

A would show that there was an implied prohibition for resumption in any other contingency.

The grantees were expressly precluded from alienating the inams or any portion of their income, by mortgage or otherwise. A distinction has been made between the inam and the income in this provision. The conclusion that there was transfer of land itself is strengthened by the provision in the sanad that the Secretary of State had reserved to himself all the rights which he had to all mines and minerals and all powers for working and exploring them as he liked. No reservation would have been made or necessary if only the profits or income of the lands were granted in the inam. The fact that it was considered necessary to reserve the rights of the State to mines and minerals would go a long way to show that the grant was intended to be a grant of the soil. The definition of "Bhil Naik Inam" makes it clear that the grants were of the villages or lands and not of the income or revenue. Section 2 of the Act defines "Bhil Naik Inam";

"Bhil Naik Inam" means the *grant of a village or land* for service useful to Government on political considerations in accordance with the terms and conditions specified in Government Resolution in the Revenue Department No. 5763, dated the 19th August 1902 and entered in the alienation register kept under s. 53 of the Code as "Class VI—Village Servants useful to Government" and includes the land granted in Narod village of Navapur taluka under Government order in the Revenue Department No. 288, dated the 11th January, 1919."

E In First Appeal No. 326 of 1953 decided by the Bombay High Court and referred to in the judgment under appeal, the question related to Bhil Naik Inam. The sanad which fell for consideration was also in the same form. The dispute in that case was in regard to the claim made by the inamdar to the trees standing on the land. The appeal was argued on the assumption that there was a grant of the soil and the question which was raised and decided was whether the trees were or were not excluded from the grant. It was held that they were not excluded from the grant and that the inamdar had a right to the trees. This holding could have been arrived at only on the basis that it was the soil that was the subject matter of the grant.

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G In these circumstances we think that the decision of the High Court was right and we dismiss the appeal with costs.

V.P.S.

Appeal dismissed.