BHAVNAGAR MUNICIPALITY

v.

UNION OF INDIA AND ANR.

NOVEMBER 17, 1989

[LALIT MOHAN SHARMA AND V. RAMASWAMI, JJ.]

Limitation Act, 1963—Article 65—Suit for possession based on title—Principle that possession follows title—When can be relied upon.

The plaintiff-appellant had filed a suit against the defendents-respondents for a declaration of its title and for possession of the suit property mentioned in the schedule to the plaint which consisted of two parts; the first part related to a large extent of vacant land known as parade ground and the second part pertained to survey Nos. 162 to 165 on which stood structures of old Lancer's Lines and certain evacuees were occupying the same at the time of institution of the suit. The second part is known both as Lancers Quarters and Rasala Lines. In the suit the plaintiff also claimed damages for wrongful occupation of a portion of the property and rent for another portion for the period from 1st January 1964 till delivery of possession. The Plaintiffs' case was that by virtue of Resolution No. 37 dated 19.1.1984 and Resolution No. 77 dated 29.2.48 published in Bhavnagar Darbar Gazette the entire suit lands vested in and belonged to the plaintiff who entered into and remained in possession thereof. According to the plaintiff the Government of India claiming to be the owner of the Parade Ground, in or about June 1961, fixed the boundary marks and thus the entry of the Government of India constituted wrongful encroachment. As regards the Lancers' Quarters, it was stated in the plaint that they did not belong to the plaintiff, that the same were occupied by the State Lancers and subsequently by the refugees and that the plaintiff allowed the land and the structures thereon to be used free by the Government. However the plaintiff asserted that it was entitled to recover rent or compensation in respect thereof from 1.1.54 till delivery of possession.

The defendents denied the claim of the plaintiff and pleaded that consequent upon the Bhavnagar State acceding to the Indian Union and consequent on the Federal Financial Integration of State, the accommodation, lands and buildings in the use or occupation of the Ex-State forces were transferred to the Government of India and became its property. The defendents-respondents denied that the suit land vested in the plaintiff on the strength of the Resolution aforesaid.

A The Trial Court held that the plaintiff had proved its title to the suit land and that it was in possession of the suit property till 7.7.1952. It also held that the suit having been filed on 3rd March 1964, the same was not barred under section 65 of the Limitation Act. As regards Rasala Lines, the trial Court did not uphold the claim of the plaintiff, because of its admission that it did not own the buildings standing B thereon. As such the Trial Court decreed the suit for possession in respect of Parade Ground alone and dismissed the same in respect of Rasala Lines.

The first defendant Union of India preferred an appeal to the High Court against the decree of the trial Court and the plaintiff filed cross-objections in so far as the suit was dismissed in respect of Rasala C Lines. The High Court dismissed the cross-objection filed by the appellant but allowed the appeal of the Union of India holding *inter alia* that there was nothing on record to show that the Municipality was formally handed over the land in question and that its right over the land was never recognised by the Union of India or the State Government. The D High Court also held that the suit was liable to be dismissed as being time-barred. Hence this appeal by the plaintiff-Municipality by Special Leave.

Dismissing the appeal, this Court,

E HELD: With the accession and completion of territorial and financial integration and part 'B' states forming part of Indian Union, the lands and buildings in the use or occupation of the former Indian State Government, as distinguished from the private properties of the Rulers, were transferred and vested in the Government of India and became its property. [226D]

F

The right to sell such lands of the State Government were with the Government concerned. It is that right that was given to the Municipalities after the formation of the Union of the United States of Saurashtra. It cannot be treated therefore, as a transfer of title in respect of those lands to the municipality but the right to execute the G sale deed in respect of those lands of the Government was transferred or vested in the municipalities concerned. This authorisation itself was later cancelled by the Government of Gujarat under Order dated 26.3.63. [229C-D; G]

Possession of the land was also not taken by the municipality at H any time. It is not open to the appellant to rely on the principle that possession follows title. [232B]

Not only there is evidence to show that physical possession was with the defendants but also there could not be any legal possession with the plaintiff as the title to the land is not vested in them. Since the suit itself is for possession based on title and the plaintiffs have not proved title it is not necessary for the defendent to plead or prove adverse possession. [232C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 365 of 1981.

From the Judgment and Order dated 23.3.1978 of the Gujarat High Court in First Appeal No. 236 of 1971.

R.F. Nariman, P.H. Parekh and M.K. Pandit for the Appellant.

R.P. Bhatt, C.V. Subba Rao, P.P. Srivastava, Mrs. H. Wahi and M.N. Shroff, (NP) for the Respondents.

The Judgment of the Court was delivered by

V. RAMASWAMI, J. The plaintiff-Bhavnagar Municipality are the appellants. The suit was filed by the plaintiff for a declaration of its title and for possession of the suit property described in the schedule to the plaint. They had also prayed for damages for wrongful occupation in respect of a portion of the property and rent for another portion, for the period from 1st January, 1964 till possession of the property is delivered to the plaintiff. The defendants are the Union of India and the State of Gujarat. The suit property is described in two parts in the schedule to the plaint. The first part consist of a large extent of vacant land which is referred to in these proceedings as Parade Ground. The second part is covered by Survey Nos. 162, 163, 164 and 165 on which structures of old Lancer's lines, are standing and certain evacuees were occupying at the time of the suit. This second part is sometimes referred to as Lancers quarters and also sometimes as Rasala Lines. The plaintiffs' case was that by Resolution No. 37 dated 19th January, 1984 published in the Bhavnagar Darbar Gazette dated 24th January, 1948:

> "... The Bhavnagar State bestowed the rights of the State of Bhavnagar to effect sales of land in the Municipal area of Bhavnagar City in Bhavnagar Municipality and by a further Order No. 77 of dated the 29th of February, 1948 the State vested the said lands except four plots of land mentioned therein in the Bhavnagar Municipality ..."

A The further case of the plaintiff was that by virtue of these orders the entire suit lands mentioned in the plaint have:

> "vested in and belongs to the plaintiff who entered into and remained in possession thereof till recently."

B And that subsequent to the erstwhile State of Bhavnagar merging in the United States of Kathiawar which was subsequently known as the State of Saurashtra, the Government of Saurashtra recognised the aforesaid Resolutions dated 19th January, 1948 and 29th February, 1948. The further case of the plaintiff was the Government of India claiming to be the owner of the Parade Ground, in or about June, 1961 fixed the boundary marks and that the Government of India's entry C into possession constitute wrongful encroachment. The plaintiff claimed damages for this wrongful occupation of the Parade Ground from 1st January, 1964 till they vacate the wrongful encroachment and hand over possession to the plaintiff.

D So far as the Lancer quarters or Rasala Lines is concerned it was stated in the plaint that the structures in the land coverd by the Survey numbers referred to in part 2 of the schedule to the plaint did not belong to the plaintiff, that the same were occupied by the State Lancers and subsequently by the refugees, and that the plaintiff allowed the land and the structures thereon to be used free by the E Government. However, they were entitled to recover rent or compensation in respect of this land for the period from 1st January, 1954 till delivery of possession.

The Union of India filed a written statement which was adopted by the State of Gujarat. it was contended by the defendants that the F Parade Ground was used by the Ex-Bhavnagar state forces and that barracks and other military buildings used for accommodation of the Ex-Bhavnagar state forces known as Lancer's Lines were in existence for a long time prior to 1948 in the suit property known as Rasala Lines and that consequent upon the Bhavnagar State acceding to the Indian Union and consequent on the Federal Financial Integration of States, G the accommodation, lands and buildings in the use or occupation of the Ex-state forces were transferred to the Government of India and became its property. The Board of officers consisting of six members including Executive Engineer, Public Works Department as representative of the State of Saurashtra was constituted and the buildings known as infantry lines and Lancer's lines were taken over on 7th H June, 1951 by the Government of India. They further stated that the

State of Saurashtra admitted the ownership of the suit property and the structures vested in the Defence Ministry from the date of Financial integration and when the State of Saurashtra, (as it was then known) required the land of the Parade Ground for this use that was handed over to the Saurashtra Government on 7th July, 1952 by the military engineers of the Government of India. The defendants denied that either the Resolution No. 37 dated 19th January, 1948 or Resolution No. 77 dated 29th February, 1948 vested in the plaintiff the land of the Parade Ground or the lands and buildings known as Rasala Lines. The defendants also deined that they were trespassers or liable to pay damages and rent in respect of the suit property.

The Trial Court held that the plaintiff had proved its title to the suit land and that they were in possession in the suit property till 7th July, 1952 when physical possession was handed over by the military engineers of the Government of India to the State Public Works Department of the State of Saurashtra. Since the suit was filed on 3rd March, 1964 the suit was not barred under section 65 of the Limitations Act, 1963. However, on the ground that in respect of Rasala Lines the plaintiff have admitted that they did not own the buildings thereon, they are not entitled to recover possession of the lands covered by the Survey numbers described in the second part of the schedule to the plaint. Accordingly, the suit for possession was decreed in respect of the Parade Ground and dismissed in respect of the Rasala Lines.

The first defendant-Union of India, filed an appeal to the High Court of Gujarat against this judgment and decree of the Trial Court and the Bhavnagar Municipality filed cross-objections in so far as the suit was dismissed in respect of the land comprised in the Rasala Lines. The High Court dismissed the cross-objections filed by the Municipality holding that Resolution No. 37 dated 19th January, 1948 was confined to open lands and not to lands below standing structures and that, therefore, the cross-objections relating to the Rasala Lines could not be sustained. The High Court however allowed the appeal of the Union of India in the view that even assuming that by virtue of the Resolution No. 37 dated 19th January, 1948 the title to the Parade Ground had come to be vested in the Municipality, there was nothing on record to show that the Municipality was formally handed over the land in question, that its right over the land was never recognised by the Union of India or the State Government and that the various documents filed in this case, would go to show that as early as July, 1950 these lands and other properties which were in occupation of the

A erstwhile state military had been taken over and remained under the control of the Defence Ministry of the Union of India and that the possession was handed over by the Union of Inida to the State Government on 7th July, 1952 for use. The High Court also held since the plaintiff had not shown possession of the suit building within 12 years prior to 3rd March, 1964 when the suit was filed, the suit was also B liable to be dismissed as barred by limitation, and that therefore it was not necessary either to deal with the argument of the defendants that the vesting that was contemplated in the Resolution 37 dated 19th January, 1948 and Resolution 77 dated 29th February, 1948 was not intended to be vesting in its full amplitude, but was meant only to appoint the Municipality as agent of the State to dispose of the land. C The plaintiff-Municipality have filed this appeal under Article 136(1) of the Constitution against this judgment of the High Court of Gujarat.

The learned counsel for the appellant contended that the High Court should have given a finding on title as Article 65 of the Limita- D tion Act, 1963 is applicable to this case since the suit was filed on 3rd March, 1964, and that on the finding of the Trial Court in favour of the plaintiff on the question of title in respect of 'Parade Ground', and in the absence of specific plea of adverse possession in the written statement, the Trial Court's decree should have been confirmed. He also assailed the finding of the High Court on the question whether the E plaintiff was handed over or taken possession of the suit property in pursuance of the Resolution dated 19th January, 1948. We are of opinion that the learned counsel for the appellant is well-founded in his contention that Article 65 of the Limitation Act, 1963 is applicable in this case as the suit was filed on 3rd March, 1964 but the Act had come into force on 1st January, 1964. Therefore, since the suit is for F possession based on title to the suit property and the defendants had denied title of the plaintiff, it is necessary for the Court to give a finding on title of the plaintiff even if the defendants in possession had not pleaded adverse possession. We also think that it is just and necessary that we ourself consider the question of title and that it is not necessary to remand the case for that purpose. We, therefore, proceed G to consider the question of title of the plaintiff to the suit properties.

In order to understand the nature and implication of the Resolution No. 37 and the other documents relied on by the learned counsel for the appellants in support of the claim of title of the Municipality for the Parade Ground and the land in Rasala Lines or Lancer quarters it H is necessary to trace briefly the constitutional history of accession and

integration of the Indian States with the Union of India. The federal scheme embodied in the Government of India Act, 1935, was the first effort to provide for a constitutional relationship between the Indian States and the Government of India on a federal basis. Section 311 of the Government of India Act, 1935 defined as 'Indian State' as meaning any territory not being part of 'British India', whether described as a State, an Estate, a Jagir or otherwise. Part II of the Government of India Act, 1935 provided for the establishment of a Federation of India by accession of Indian States. In spite of the protracted negotiations that followed the enactment of Government of India Act, the Federation envisaged under the Act could not come into existence in view of the States not opting for accession. But by the setting up of the new dominions under the Indian Independence Act, 1947 the suzerainty of the British Crown over Indian States lapsed along with it all functions, obligations, powers, rights, authority or jurisdiction exercisable by the Crown. However, the proviso to section 7 provided that effect shall, as nearly as may be continued to be given by the Dominion Government, to the provisions of any agreement between the Indian State and the Crown in regard to matters specified therein until the same are denounced by either of the parties. It was in this background the Dominion Government of India created a new department called the State Department on the 5th July, 1947 to deal with matters arising between the Central Government and the Indian States. This department was in charge of Sardar Patel. After persistent negotiations and persuation, barring three States, all the Indian States in the geographical limits of India had acceded to the Indian Dominion by 15th August, 1947. The integration of States however did not follow uniform pattern in all cases. Merger of States in the provinces geographically contiguous to them was one form of integration; the second was the conversion of States into Central administered areas. The third category are those cases where several small groups of States which could be consolidated into sizeable units by uniting them to form unions of States on the basis of full transfer of power from the rulers to the people. This form of consolidation of States was adopted in Kathiawar covering 222 States and Estates with varying territories and jurisdiction. The scheme for the constitution of the United State of Kathiawar, later known as Saurashtra was finalised and the covenant was signed on 23rd January, 1948 and the new State of Saurashtra inaugurated on the 15th February, 1948, vide Government of India, Ministry of States, "White Paper on Indian States".

The financial integration was simultaneously taken up with accession and territorial integration. The Indian States Finances

A Enquiry Committee headed by Shri V.T. Krishnamachari was constituted by Resolution dated 27th October, 1948 of the Government of India and the recommendations were incorporated in the Constitution. On the adoption of the new Constitution of India the process of territorial integration of States thus became complete. Under the new Constitution all the constituent units both Provinces and States were
B classified into three classes. namely, Part 'A' States which correspond to the former Governor's Provinces; Part 'B' States which comprised the Union of States and the States of Hyderabad, Mysore and Jammu and Kashmir; and Part 'C' States which correspond to the former Chief Commissioners' Provinces. This territorial integration of States is effected by defining in Article 1 of the Constitution that the territories of India include the territories of all the States specified in Parts A, B
C and C of the First Schedule. Thus with the inauguration of the new Constitution on the 26th November, 1949 the merged States have lost all vestiges of existence as separate entities.

With the accession and completion of territorial and financial
D integration and the Part 'B' States forming part of Indian Union, the lands and buildings in the use or occupation of the former Indian State Governments, have distinguished from the private properties of the rulers, were transferred and vested in the Government of India and became its property.

E The documents which the learned counsel for the plaintiff strongly relied in support of title to the suit property are Resolution No. 37 dated 19th January, 1948 and Resolution No. 77 dated 29th February, 1948. A translation of these documents which are in Gujarati, have been marked as Ex. 87 and they reads as under:

F "It may be noted by your Honourable Highness that we have personally made application regarding some matter regarding our Bhavnagar State in respect of the Scheme of making one State of Saurashtra: Kathiawar: and the following arrangement is required to be made.

G 1, 2, 3, 4.

5. The right of the State to sell the land in the limit of the Municipalities of Bhavnagar City and of the District Towns (Kasba) vested hereby in the Municipalities concerned henceforth; and the amount of the rent and lease of the
H Town Planning area shall be given to the Bhavnagar City

Municipality henceforth. Sheth Abdul Hussain Gulamhussain and Sheth Masumali Zafarali has given their plot for Mahatma Gandhi Mandir. And they have made application for getting the plot of the land of the same area for building their own houses. I have made recommendation thereunder for giving the same to them without taking Premium (Sukhadi). And if the recommendation which I have made is accepted the said approval may not get disturbed in these rights are given to Municipality.

6, 7, 8, 9, 10, 11, 12, 13, 14.

Forwarded with compliments to the Honourable Your Highness for passing necessary order in favour with kindness, regarding the implementation accordingly in respect of the approval of the scheme of the above stated Paragraphs No. 1 to 14 after going through the above stated facts.

Sd/-Anantrai Prabhashanker,
Chief Diwan
Sansthan Bhavnagar

H.D.R. No. 37

Upon considering all the facts stated above, under the above recommendation, the schemes according to the Darakast made in the aforesaid paragraphs from 1 to 14 are sanctioned.

Papers returned to Chief Diwan for information and for necessary action to be taken.

Dt. 19.1.1948

Sd/-Krishkumarsinhji
Maharaj
S. Bhavnagar."

"The right of the State to sell the land in the limits of the Municipalities of Bhavnagar City and of the District Towns (Kasba) has been vested in the Municipalities concerned under the Di. R. No. 37 dated 19.1.1948 of His Highness.

A It is deemed proper to make clarification that the council of Ministers had decided to keep in reserve the below mentioned lands in Bhavnagar for the use of the State. Therefore the same are not included in the lands handed over to the Municipality. Particulars of the lands:—

B 1. Open land of Gangajalia Talav situated at South side of the theatre and the temple and wire fencing done near Gangajalia Talav.

2. The open square plot (Chogan) situated opposite to Gangnath Mahadev Towards Darbar Hall and Nakubag.

C 3. The open square plot (Chogan) opposite to Darabari Motor Garrage.

4. A triangular piece of the land opposite to Sir Takhatsinhji Hospital near Kailasbaug.

D Information regarding this resolution may be sent to the parties concerned.

Dt. 29.3.48

Sd/-Jadanji K. Mode
E Chief Minister"

The translation also does not appear to be accurate, as in another translation made, which were filed with the special leave petition the first operative portion is translated as follows:

F "the right of the State to sell the land be transferred to the Municipalities of proper Bhavnager and other Municipalities of Kasbas, and the rent which is being realised of the plots of Town Planning Area henceforth be realised by Bhavnagar Municipality."

G Again the first paragraph of Resolution No. 77 is translated as:

"Proper Bhavnagar and Kasba Municipalities have been given the right of the State to sell the land within the limits of the Municipality as in H.D.R. No. 37 dated 19.1.1948."

H In fact, in the suit notice under section 80, Civil Procedure Code the

plaintiff have stated that these orders "bestowed the rights of the then State of Bhavnagar to effect the sales of land in the Municipal area." A

We have already noticed that the Saurashtra State was formed by consolidation of several small States. The scheme referred to in the first paragraph was the scheme of consolidation of the States into United States of Saurashtra. The 14 proposals in that letter were the B arrangements that were required to be made in order to give effect to the scheme. There should have been number of Municipalities in the States which had merged into a union under the covenant. The land within the limits of Municipalities referred to in the orders extracted above were the lands of the Government of the States concerned because obviously the covenants of accession and integration under the scheme of forming Union of States could not deal with the private C properties of the rulers. The right to sell such lands of the State Government were with the Government concerned. It is that right in our view, that was given to the Municipalities after the formation of the Union of the United States of Saurashtra. It cannot be treated, therefore, as a transfer of title in respect of those lands to the munici- D pality but the right to execute the sale deed in respect of those lands of the Government was transferred or vested in the Municipalities concerned. It amounts conferring an authority or authorising the Municipalities to execute the sale deeds in respect of Government lands situate within the Municipality, which should normally have been done by the State Government. The subsequent correspondance E and orders of the Government also show that the Government of India understood and treated these orders only as authorisation or transferring of power to execute sale deeds and collect rent in respect of Government lands situated within the Municipality. The Government had treated those orders as liable for cancellation or modification. If the effect of those orders were transfer and vesting of title in the F Municipalities, no question divesting of title would or could arise. Resolution 77 itself was subsequent to Resolution 37 but excluded certain lands from the scope of Resolution 37. This could only be on the basis that the title had not vested in the Municipalities under Resolution 37.

G

Again this authorisation itself was cancelled by the Government of Gujarat under Order No. LMN 546-14576-A.G. dated 26.3.63. But since a number of Municipalities made representation to the Government to reconsider the same, the Government reconsider the entire case and decided that the right to sell plots of land given under Resolution No. 37 dated 19th January, 1948 by the State of Bhavnagar to all H

A the Municipalities of Old Bhavnagar States, and the right to give the same on rent-lease and to take the income therefrom shall be enjoyed by the Municipalities subject to the conditions mentioned in the letter of the Government dated 10th August, 1965. These conditions read as follows:

B "1. The right to sell the land and to give it on rent-lease and to get the out come therefrom shall apply to the land of the Government coming within the limit to the Municipality decided fixed on the date of the Order of the State of Bhavnagar i.e. dt. 19.1.48. And the same shall not apply to the land falling within the extended limit if the limit of the Municipality is increased.

C

2. The procedure to be followed for giving this land in sale or on rent-lease shall generally be followed according to the rules of Government, that is to say public auction shall be made.

D

3. If the approximate value of the land to be given on sale or on rent-lease comes to Rs.25 per sq. metre or it is more than that the sale or the lease-land shall be considered final after permission of the revenue department of the Government for sale or lease is obtained.

E

4. The sale or rent-lease of this land shall be done according to the purpose decided in the scheme following the Town Development Scheme of the Municipality, that is to say if the locality is fixed in the development scheme for industrial or residential purpose the land of the suit locality shall be given for that particular purpose. And if some lands are fixed to be reserved for keeping open or for the purpose of garden or for some public purpose in the development scheme, the said land shall not be given on sale or on lease for private purpose.

F

G 5. The Municipalities shall have to deposit the income obtained from sale or rent-lease of the land of the aforesaid land of the Government, in a separate fund and the same shall be used for the work of the development of the city town."

H These conditions are inconsistent with the plaintiff's case of absolute

ownership in themselves. We have, therefore, no doubt that what was conferred on the Municipality under Resolution 37 dated 19th January, 1948 was only a right or an authorisation to sell the land as representing the Government but not a vesting of the title itself in the Municipality. A

The other documents relied on by the learned counsel in support of his contention that the title itself should have been vested in the Municipality may now be noticed. Ex. 95 dated 21st July, 1950 is a copy of the proceedings of the Board of Officers of the Defence Department in which they have described detailed inventory of Defence department assets, accommodations, installations, furniture, fitting and connected stores pertaining to Saurashtra state forces in Bhavnagar. In this while referring to the suit lands which was stated to be in their possession a remark has been made to the effect: B C

> "The Bhavnagar Municipality claims the land in question on the basis that the whole assets of the Bhavnagar town planning Department had been transferred to them by the orders of his Highness, Bhavnagar, State in 1948 and they are collecting the Revenue from the farmers. The claim will subsequently have to be verified." D

We are unable to see how on the basis of this letter the Municipality could claim a title. At best it may be treated as evidence that in July, 1950 the Municipality made a claim for the land. But at the same time it may be pointed that the document is evidence against the Municipality in so far as it treated the properties as belonging to the Defence Department of the Government of India and that the Defence Department were in possession of the same. In the two letters Ex. 73 dated 30.11.1950 and Ex. 72 dated 15.6.1951 which are communications from the Government of Saurashtra it is only stated that suit lands do not vest to the Government of Saurashtra. As seen earlier, possession of the lands were handed over by the Government of India to the State Government only on 7.7.1952 and, therefore, these letters cannot be of any help to the appellant. However, it may be mentioned, that the Government of Saurashtra have corrected themselves in their communication dated 6th May, 1952 and stated that the claim of the plaintiff that the lands were vested in Bhavnagar Municipality was erroneous and that the land is vested and is in the possession of Government of India. The plaintiff have also admitted that the structures in Rasala Lines are not shown to be that of the Municipality in the Municipal records and even in the plaint they did not claim the E F G H

A structures as belonging to the Municipality. In the suit notice the plaintiff have also not claimed that they "entered into and remained in possession" of the land as stated in the plaint para 5. It is also in evidence that these buildings were there long before 1948 and that, therefore, the land alone could not have been vested in the Municipality without buildings. In fact, the Resolution No. 37 dated 19th
B January, 1948 which is relied on does not make any distinction and it refers to only lands and not buildings. We, therefore, agree with the finding of the High Court that possession of the land was also not taken by the Municipality at any time. It is not open to the appellant to rely on the principle that possession follows title. In this case not only there is evidence to show that physical possession was with the
C defendant but also there could not be any legal possession with the plaintiff as the title to the land is not vested in them. Since the suit itself is for possession based on title and the plaintiff have not proved title it is not necessary for the defendant to plead or prove adverse possession.

D In the result the appeal fails and it is dismissed. However, the parties will bear their respective costs in this Court.

Y. Lal Appeal dismissed.