

## [APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 4 of 1873.*1873  
October 2.VA'SUDEV PANDIT ..... *Plaintiff and Appellant.*THE COLLECTOR OF PU'NA... *Defendant and Respondent.**Act XI. of 1852—Inam Commissioner's decisions.*

The Inam Commissioner's decisions, under Act XI. of 1852, on matters falling within his jurisdiction, are final, except when, and as modified by an appeal to Government in its judicial capacity under the Act; and binding not only upon the *Inámdar*, but upon the Government itself in its executive capacity: and where a Government officer infringes the rights of an *Inámdar* thus determined, an action lies against him in the Civil Court.

THIS was a special appeal from the decision of R. H. Pinhey, Judge of the district of Púna, confirming the decree of M. B. Baker, Assistant Judge.

The facts of the case are briefly these:—

The British Government, by their representative, Sir Thomas Munro, granted in 1818 the village of Kerur, in the Belgaum Collectorate, as *Inám* to Bháu Máháráj, the plaintiff's ancestor. In 1838 the Government were pleased to effect an exchange between that village and the village of Vadgam in the Púna district, and a *sanad* was duly issued by Mr. Mill, the Collector, granting to Tátíá and Dádá, the sons of Bháu Máháráj, "the village of Vadgam, including the garden and pasture lands and the stream in *Inám*, on the same footing as the grant of Kerur." Under the provisions of Act XI. of 1852, the Inám Commissioner instituted inquiries with respect to the village of Vadgam, and determined that "the whole of that village, excepting only the rights and privileges of ancient *Hákdárs* and *Inámdárs*, should be continued in *Inám* to the male descendants of Bháu Máháráj." In 1869 the Collector of Púna opened a

1873  
 VASUDEV  
 PANDIT  
 v.  
 THE COL-  
 LECTOR OF  
 PU'NA.

quarry, and removed some stones and sand from Vadgam. The plaintiff, therefore, sued him in the Assistant Judge's Court to recover damages, and obtain an injunction, restraining the Collector from interfering with the plaintiff's proprietary rights.

Both the Courts below rejected the plaintiff's claim on the ground that the grant of the village of Vadgam did not include a proprietary title to the bed of the stream from which the stone and sand were removed, but gave to the plaintiff only the revenues of the village.

The special appeal was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

*Bahiravnáth Mangesh* for the special appellant, the original plaintiff:—The real question in this case is not what was granted to the plaintiff under his *sanad*, but what was determined by the Inám Commissioner to have been granted under it; for the determination of the Inám Commissioner is conclusive, and cannot be avoided by the Civil Courts: Act XI. of 1852. According to the proper construction of the *sanad* itself, the whole village, including the lands, is granted, and not merely the revenues. The only exception is made in favour of petty *Hákdárs* and *Inámdárs*, who have in a measure acquired prescriptive rights. The grantees have besides agreed to pay a *nazaráná*, in consideration of which the Government have conveyed to them absolute proprietorship of the entire village.

*Dhirajlál Mathurádás*, Government Pleader, for the respondent:—The decision of the Inám Commissioner is not conclusive. The Government can always resume grants; and by their action in opening the quarry and defending this suit they have shown their intention of resuming a part of what they had given, even supposing that they had given the whole village without any reservation. But the Inám Commissioner could not grant more than what had been granted to the plaintiff by Mr. Mill's *sanad*, which conveys

the revenues only. At any rate, no suit lies against the Government : Regulation XXIX. of 1827.

The judgment of the Court was delivered by WEST, J :—The judgments of the Courts below in this case have proceeded upon their interpretation of the grant made to Bháu Máháráj by Sir T. Munro in 1818, confirmed by the Honourable Mountstuart Elphinstone, of the village of Kerur in the Southern Maratha Country, and of the subsequent grant of the village of Vadgam in the Púna District in exchange for Kerur. The latter grant refers to the former and embodies its terms. If we felt ourselves free to dispose of the case on a construction of these documents, we should have considerable difficulty in saying that they were meant to convey more than the revenue arising from the village. The view taken by the Courts below was, that their operation was thus limited, and this appears to be supported by the case of *Váman v. Collector of Tháná* (a) and the case of *Krishnaráv Ganesh v. Rangráv* (b) there referred to. But the disposal of the present case is to be governed by wholly different considerations—considerations which we cannot but think would have had a decisive effect in the District Court, had they been duly pressed upon the attention of the Judge presiding there. The rights of the *Inámdár* have been weighed and adjudicated on by the Inám Commissioner under Act XI. of 1852. The duty of that officer, as laid down in Rule 1 of Schedule A to the Act, is “to investigate \* \* \* the titles of persons holding or claiming against Government the possession or enjoyment of Ináms or Jahgeers, or any interest therein, or claiming exemption from the payment of land revenue.” According to Sec. 7 of the Act, “no decision or order of the Inám Commissioner \* shall be questioned or avoided in any Court of law.” His judgment is final on the matters that fall within his jurisdiction, and by Rule 13 of Schedule A “Decisions affecting any lands, or any interests therein, passed under this enactment shall be carried into execution by the Collector or

1873

VASUDEV  
PANDITv.  
THE COL-  
LECTOR OF  
PU'NA.

(a) 6 Bom. H. C. Rep. A. C. J. 191.

(b) 4 Ibid 1.

1873  
 VASUDEV  
 PANDIT  
 v.  
 THE COL-  
 LECTOR OF  
 PU'NA.

chief revenue authority of the district in which the lands to which they relate are situated, at the requisition of the Inám Commissioner or his Assistant, in any manner which may from time to time be prescribed by the Governor of Bombay in Council.” The Inám Commissioner’s decree of 1859, therefore, which is contained in a document which we have before us, is conclusive as to the rights of the *Inámdár* as against the Government. The document containing the Collector’s intimation to the *Inámdár* of the terms on which he is thenceforth to possess and enjoy the property to which it relates, must be taken, as against the Collector, to be an execution of the Inám Commissioner’s decree in the manner prescribed by Government.

The real question for decision thus becomes: What was it that was awarded to the *Inámdár* by the Commissioner and placed in his possession and enjoyment by the Collector? What the reasons were, which moved the Inám Commissioner to such or such a decision, and whether they were logically sound ones or not, are not matters that can be controverted in any other Court. The judgment of the Inám Commissioner, after a statement of the circumstances under which the village of Vadgam had come into the possession or *vahivát* of the claimant, Tātiá Máháráj, and of the authority vested in the grantor (Sir T. Munro) of the village taken in exchange for it, proceeds to award to the *Inámdár* the whole village saving only the rights of the ancient (or prescriptive) *Hákdárs* and *Inámdárs*. The words employed are *báki darobast gáv chálvává*: “Let the whole remainder of the village continue” (in the enjoyment or possession of the *Inámdár*’s family); and these words, following the express exception of the charges in favour of *Hákdárs* and petty *Inámdárs*, would naturally be construed as an adjudication of all proprietary rights free from exceptions of any kind, except those specified. But further, the order purports to be made under Schedule B, Rule I. of the Act. That rule is as follows:—

“All lands held under a specific and absolute declaration by the British Government, or any competent officer acting

under it, that they were to be continued hereditarily or in perpetuity exempt, wholly or partially, from the payment of revenue, are to be so continued, according to the purport of such declaration."

What it refers to is the right to hold lands, not to collect revenue, and the two things, besides being easily distinguishable in their own nature, are separately specified in Schedule A, Rule I. of the Act, as matters for the investigation of the Inám Commissioner. When, therefore, with express reference to a rule applicable only to lands, he says that, saving particular charges, the whole village is to go on, or for the future be in the possession or enjoyment of the *Inámdár's* family, we must necessarily construe this order as adjudging the lands and not merely the revenues of the village to the claimant. A minute specification of the several items comprised, or meant to be comprised, in the aggregate awarded, is not to be looked for in the final order of a tribunal, before which the claimant was not allowed to argue his own case out, and could not be represented for this purpose by an advocate. However, it may have been early in the century, it is certain that by the year 1859 the value of the rights of Government, apart from the right of taking revenue from the holders of land for agricultural purposes, was thoroughly understood. Questions suggesting the distinction between the two must have continually arisen in the inquiries conducted by an Inám Commissioner, and no reasonable doubt can be entertained that, when the whole village was awarded to Tātiá Máháráj, nothing less than the whole was really meant, saving only the charges on its proceeds expressly excepted.

The order (21) issued in June 1861, is not only consistent with this view of the Inám Commissioner's award, but seems inconsistent with any other. "The village of Vadgam," it says, "has been (granted to or) held in *Inám* by you."

\* \* "The Inám Commissioner has passed an order continuing the enjoyment of the said land to you hereditarily." Then, after stating the inconveniences of a tenure dependent

1873

VASUDEV  
PANDIT

v.

THE COL-  
LECTOR of  
PU'NA.

1873  
 VASUDEV  
 PANDIT  
 v  
 THE COL-  
 LECTOR OF  
 PU'NA.

on lineal succession, the Collector continues: "In order to remove these obstacles, the Government has resolved to take an annual *nazaráná* of one anna per rupee on the assessment" \* \* "and to raise no objection to (the treatment or enjoyment of) the said land as private property by yourself, your heirs, &c." Further on, the payment of 'occasional' is allowed as a substitute for the 'annual' *nazaráná*: and if this alternative be adopted, it is said that "whenever there shall be a transfer of the land from the possession of one person to another, notice will have to be given to the Government." To what "land" do these expressions apply, or can they apply except to the land of the village? And what ground is there for a distinction amongst the several portions of that land? What the Inám Commissioner had awarded was the "whole village"; what the Collector gives over, or abandons all claim to, is the land, which he identifies with the village. Not a word is said about a limitation of the grantee's rights to the collection of the Government revenue, either in the award or in the order or intimation based on it.

Another point in the case is that the reduction of the estate to the condition of purely private property is proffered by the Collector in consideration of an undertaking for the payment of the annual *nazaráná*. A rejection of this offer had to be intimated within two months; otherwise it was to be held accepted. It is stated and not denied that no rejection was intimated, and the acceptance of the proposed terms constitutes a good consideration for the advantages held out in exchange for it—ownership of the land comprised in the "whole village" subject to an annual payment of one-sixteenth of the full assessment on the same land. The whole of the village, that is, the whole of its lands, having been thus recognized as the private property of the *Inámdár*, it was an invasion of his rights to quarry stone, or take sand from within its circuit, without his permission or a right derived from him. He has claimed Rs. 100 for the injury inflicted on him, and it has not been contended before us that, sup-

posing his right to be established, the damages claimed for the infringement of that right are excessive. It is not necessary, therefore, to send the case back for a precise appraisal of their amount at an expense, probably, exceeding any advantage that might thus be obtained. We shall, therefore, award to the plaintiff the amount claimed.

An argument was raised against the jurisdiction of the Civil Courts in this case on the provision of Regulation XXIX. of 1827, which excludes from their cognizance all claims against Government on account of *Ináms*. By taking the land in this case, and by defending the action, Government, it was urged, has pronounced that so much of the pretended *Inám* as it has appropriated is not really *Inám* property and its action cannot be reviewed by the Civil Courts. But the intention of the Regulation was not to exclude *Inámdárs'* claims from all adjudication whatever. Chapter X. of Regulation XVII. of 1827 made provision for the trial of such claims by the Collector, before whom the claimant in each case had a right to appear and sustain his cause. It was the right of appeal to the Zillah Court under Sec. 49 and that only which was withdrawn by Regulation XXIX. of 1827. Act XI. of 1852 replaced the Collector by the *Inám* Commissioner. The advantage of an open inquiry and the liberty of refuting the evidence that told against him were withdrawn from the claimant. He had to abide by such an adjudication as the intelligence of the Commissioner, unaided by argument, might enable him to pronounce, by such an execution of the decree as the Government might prescribe. But the new law having been once thus carried out, the Government was *functus officio*. The law solemnly enacted was meant to have effect as law, and when Government, in its legislative capacity, constituted the *Inám* tribunal and declared its decrees final, except when and as modified in appeal under the Act, it submitted itself, in its executive capacity, to the decisions of that tribunal. If, indeed, it were at liberty to treat the decision of the *Inám* Commissioner as binding on the *Inámdár*, but not on itself,

1873

---

VASUDEV  
PANDIT  
v.  
THE COL-  
LECTOR OF  
PU'NA.

1873  
 VASUDEV  
 PANDIT  
 v.  
 THE COL-  
 LECTOR OF  
 PU'NA.

the whole proceeding would be no more than a cruel mockery. The unfettered discretion, which Mr. Dhirajlál claims for the Executive under the Act, could equally and less invidiously have been exercised without it. The claim to an *Inám* has, in this case, been actually adjudicated on. The land has been constituted "private property," and for the Collector's invasion of this "private property," the Civil Courts must provide a remedy, as in the case of any other trespass. The Government, indeed, must not be considered in a matter of this kind as identifying itself with the Executive officer who does a wrong rather than with the tribunal which tries the complaint of the person injured. By expressly subjecting Collectors to the Civil Courts for official acts (Regulation XVI. of 1827, Sec. 6) it identifies itself for the announcement of its higher will with the Courts, not with the Executive officers, and thus the Collector, whom the Courts find to be a trespasser, must be deemed, not only to have infringed some abstract law, but to have disobeyed the commands of Government in its legislative and all controlling capacity.

We reverse the decrees of the Courts below, and award to the plaintiff the amount claimed with costs in all Courts.

*Decrees reversed and claim awarded.*