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MARCH 10.

4 B. 432.

APPELLATE CIVIL.

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LATE
CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, Mr. Justice
M. Melvill and Mr. Justice Pinhey.

4 B. 432.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS,
*Applicants v. KHEMCHAND JEYCHAND, Decree-holder.**
[10th March, 1880.]

*Pensions Act (XXIII of 1871, s. 11—Pension—Grant of money or land revenue—
Attachment—Tora-garas hak.*

A *tora-garas hak* is not exempted from attachment under a decree of a Civil Court by s. 11 of the Pensions Act of 1871.

The word "pension" in s. 11 of the Pensions Act is used in its ordinary and well-known sense, *viz.*, that of a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite or office, but on account of past service or particular merits or as compensation to dethroned princes, their families and dependants. A *tora-garas hak* does not come within the meaning of the word "pension," which denotes something different from "a grant of money or land revenue" as defined in s. 3 of the Act.

Parbhudas Rayaji v. Motiram Kalyandas (1), *Maharaval v. The Government of Bombay* (Regular Appeal No. 10 of 1877) (3), and *Mansang Madhavsang v. The Government of Bombay* (Regular Appeal No. 23 of 1877) (3) referred to.

[F., 31 A. 382=6 A.L.J. 519=5 M.L.T. 398=2 Ind. Cas. 100; 5 M. 272; 80 M. 153=2 M.L.T. 33; R., 26 A. 617=1 A.L.J. 333=A.W.N. (1904) 144; 16 B. 731 (735); 21 M. 105 (107); (1902) A.W.N. 161; 8 C.W.N. 665.]

THIS case was referred for the opinion of the High Court by Rao Sahab Ranchorlal Desai, Subordinate Judge of Nadiad, in charge of the Kapadvanj Subordinate Court, under s. 617 of 1877. The following are the facts of the case as stated by him:—

Khemchand Jeychand obtained a decree in suit No. 423 of 1878 for Rs. 94-1 against Jeyasangbhai Ajubhai and others in the [433] Subordinate Judge's Court at Kapadvanj. In execution of that decree the decree-holder on the 10th March, 1879, applied to the Court for the attachment of a sum of Rs. 99 in the hands of the Mamlatdar of Kapadvanj, due to the judgment-debtors as *tora-garas* allowance for the year 1878. The Court, accordingly, attached the money by sending a notice to the Mamlatdar, under s. 272 of the Civil Procedure Code (Act No. X of 1877), and by requesting him to hold it in deposit subject to further orders. The Collector of Kaira thereupon, in the name of the Secretary of State for India in Council, applied for the removal of the attachment under s. 278 of the Code, on the ground that the money was exempted from attachment under a decree of a Civil Court by s. 11 of the Pensions Act (XXIII of 1871). The Subordinate Judge was of opinion that it was not. He observed:—

"There is no doubt that the expression, 'grant of money or land revenue' includes a *tora-garas* allowance (*Parbhudas Rayaji v. Motiram Kalyandas* (1), and, therefore, it does fall under the provisions of s. 4 of the Pensions Act. This section expressly bars the institution, in the Civil Courts, of suits relating both to pensions and grants of money or

* Civil Reference, No. 3 of 1880.

(1) 1 B. 203.

(2) 4 B. 437, *infra*.

(3) 4 B. 443, *infra*.

land revenue, whereas s. 11 prohibits the attachment of pensions alone. In that section no mention is made of grants of money or land revenue.

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"In the course of the judgment in *Ravji Narayan Mandlik v. Dadaji Bapuji Desai* (1) it has been observed by Westropp, C. J., that an enactment of a character so arbitrary as Act No. XXIII of 1871, which purports to deprive the subject of his right to resort to the ordinary Courts of Justice for relief in certain cases, ought to be construed strictly, and the Courts should not extend its operation further than the language of the Legislature requires. Construing the words of s. 11 of Act XXIII of 1871 as stated above, I submit that the said section cannot operate against the attachment of a *tora-garas hak* that has become payable to the judgment-debtors.

"Considering that this question is of great importance to the holders of decrees against the recipients of the *garas* allowances as [434] well as to Government, and that the processes of Civil Court are likely to be obstructed in their due enforcement until the question is finally determined by the High Court, I have thought this reference necessary. My opinion on the question referred, is in the negative."

The Hon'ble *F. L. Latham* (Acting Advocate-General) and *Nanabhai Haridas*, Government Pleader, appeared for the Secretary of State.—The Subordinate Judge has given a very narrow interpretation to the word 'pension' as used in s. 11 of the Pensions Act. The term is not defined in the Act. It is, however, sufficiently large to include within its several significations an allowance granted or continued by Government on political considerations. That *tora-garas haks* were so granted, appears from the *sanads* issued by Government to the *garasias*, as in the present case. The condition in the *sanads* was, that they (*garasias*) were not to disturb the peace of the country, and to render service, if required, in return for the allowances received by them. Under this view a *tora-garas hak* comes within the scope of, and is of the same nature with, a pension. If this view of the definition of the term 'pension' be correct, it is exempted from attachment by s. 11 of the Pensions Act. In *Parbhudas Rayaji v. Motiram Kalyandas* (2) the High Court has ruled that *tora-garas haks* are within the scope of the Pensions Act, and that a suit in respect of them cannot be brought, without a certificate, under s. 6. The Court took the same view of this *hak* in two subsequent cases, *Maharaval v. The Government of Bombay* (3) and *Mansang Madhavsang v. The Government of Bombay* (4). [WESTROPP, C. J.—Are not the term "pensions," "and grants of money or land revenue," as used in the Act, distinguishable from each other?] It is difficult to distinguish them. They are not mutually exclusive. Counsel referred to *Vasudev Sadashiv Modak v. The Collector of Ratnagiri* (5), *Ramchandra Sakharam Vagh v. Sakharam Gopal Vago* (6).

Gokaldas Kahandas, for the decree-holder.—In the Act the terms "pension" and "grant of money or land revenue" are not [435] used as synonymous. This appears from the different sections of it. While the word "pension" is used with the expression "grant of money or land revenue" in the other sections of the Act, it stands alone in s. 11. No suit can be brought in respect of a "pension" or "grant of money or land

(1) 1 B. 529.

(2) 1 B. 203.

(3) *Infra* 4 B. 437.

(4) *Infra* 4 B. 443.

(5) 2 B. 99.

(6) 2 B. 346.

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revenue" without a certificate under s. 6. While this restriction is provided alike for pensions and grants of money or land revenue exemption from attachment or sequestration or seizure by process of a Civil Court is limited to pensions only. The Legislature had provided similar protection for civil and military pensions against attachment or seizure by a Civil Court in Act VI of 1819. The wording of the latter part of s. 1 and the whole of s. 2 of that Act is almost similar to that of ss. 11 and 12 of the Pensions Act. It is essential to a pension that there should be no condition attached to it. Government has treated pensions as distinct from *garas haks*. He referred to Selections from the Records of the Bombay Government, No. CXXXII, p. 53 (New Series); Hope's Manual, pp. 106, 191, 282.

JUDGMENT.

The judgment of the Court was given by

MELVILL, J.—The question referred for our decision in this case is whether a *tora-garas hak*, in the lands of the Mamlatdar, is exempted from attachment by virtue of s. 11 of the Pensions Act, 1871.

That section is as follows :—“No pension, granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of the creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.”

It is contended by the learned Advocate-General, on behalf of the Government, that a *tora-garas hak* is of the nature of a pension continued by Government on political considerations.

The Pensions Act, 1871, is an Act to consolidate and amend the law relating to pensions and grants, by Government, of money or land revenue. The expression “grant of money or land revenue” is defined in s. 3 as including “any thing payable on the part of Government in respect of any right, privilege, [436] perquisite or office.” In *Parbhudas Rayaji v. Motiram Kalyandas* (1) it was considered that *tora-garas haks* fell within this definition; and in the subsequent cases of *Maharval v. The Government of Bombay* (2) and *Mansang Madhavsang v. The Government of Bombay* (3), decided, on the 10th October, 1877, the contention of the Government was that the decision in *Parbhudas'* case was correct and that decision was virtually approved and followed. In neither of those two cases was it ever contended that a *tora-garas hak* could be regarded as a pension. The term “pension” is not defined in the Pensions Act, nor, so far as we are aware, in any other Act. Giving to the word its widest etymological sense, it might be construed as including all payments of every kind and description; but that it must have some much more narrow signification than this, is clear from the circumstance that in the Pensions Act the word is used with, but distinguished from, grants of money or land revenue, and must, therefore, be supposed to denote money payable otherwise than in respect of a right, privilege, perquisite, or office. It is true that the second division of the Act is headed “rights to pensions” only, although the sections contained in that division deal with grants of money or land revenue, as well as with pensions; but this appears to us to be due merely to the carelessness of the draftsman, and not to affect the general tenor of the Act, which

(1) 1 B. 203.

(2) *Infra.* 4 B. 437.

(3) *Infra.* 4 B. 443.

clearly points to distinction between pensions and all other grants. It follows that, in our opinion, the word, "pension" in s. 11 is used in its ordinary and well-known sense, viz., that of a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite, or office, but on account of past services or particular merits, or as compensation to dethroned, princes, their families, and dependants. It seems to us impossible to bring a *tora-garas hak* within this meaning of the word "pension;" and, indeed, if we are right in our conclusion, that the word "pension" denotes something different from "a grant of money or land revenue," it follows that, as we have already, in the cases referred to, held that a *tora-garas hak* comes within the definition of a grant of money or land revenue, we could not now consistently hold that it comes within the meaning of the word "pension."

[437] We may observe that the term "grant of money or of land revenue" appears to be borrowed from the Madras Reg. IV of 1831, which is one of the statutes repealed by the Pensions Act. In that regulation the term is made to include pensions; and, read in combination with Act XXIII of 1838, the regulation exempts from attachment for debt not only pensions, but also other allowances, some of which would, perhaps, fall within the definition of a grant of money or land revenue in the Pensions Act, as well as within the same term in Reg. IV of 1831. But in passing the Pensions Act the Legislature seem to have thought it desirable that exemption from attachment for debt should be confined to pensions, properly so called, and should not be extended to other grants of money or land revenue. And it does not appear to us difficult to understand why the State should have thought it right to secure the pensions of its old servants and of dethroned princes, but should not have cared to protect from attachment grants made to families of freebooters as compensation for the loss of their blackmail.

Our answer to the question referred to us, will be that a *tora garas hak* is not exempted from attachment under a decree of a Civil Court. The Secretary of State for India must pay the costs of this reference.

4 B. 437.

APPELLATE CIVIL.

Before Sir Michael Roberts Westropp Kt., Chief Justice and Mr. Justice M. Melvill.

MAHARAVAL MOHANSANGJI JEYSANJI (Plaintiff) v. THE GOVERNMENT OF BOMBAY (Defendant).* [10th October, 1877.]

A suit against Government upon an alleged agreement by Government to pay moneys from its treasury in lieu of *tora-garas haks*, falls within the prohibition in s. 4 of Act XXIII of 1871, to Civil Courts to entertain any suit relating to any grant of money made by the British Government, whatever may have been the consideration for such grant, and whatever may have been the nature of the payment, claim, or right for which such grant may have been substituted.

Cessation of the collection of *tora-garas* by Government.

Quere.—Whether Government bound itself to act perpetually as agent of the *garasias* in the collection of *tora-garas*?

Quere.—Whether the Civil Courts would compel the specific performance of such an agreement?

[Affirmed, 5 B. 408 = 8 I.A. 77 = 4 Sar. P.C.J. 280; R., 4 B. 432 (436).]

*(Regular Appeal, No. 10 of 1877.)

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