

in law no award." In *Debendra Nath Shaw v. Aubhoy Churn Bagchi* (1), it is to be observed that the objection taken to the award was that the three arbitrators who signed it could not, under the circumstances, make an award; in other words, that there was no award made, having legal effect *ab initio*; and it appears to us that the judgment of the Privy Council in *Maharajah Joymungul Singh Bahadoor v. Mohun Ram Marwaree* (2) is irreconcilable with any other view than that it is only where the award is not a legal award in the above sense that the appeal will lie.

In the present case, one of the objections taken by the appellant is that the decision by three of the arbitrators, when four were appointed, is illegal; and, if established, it would render the award illegal *ab initio*. We must, therefore, remand the case for a decision on that issue.

Case remanded.

17 B. 362.

[362] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

CHANDRA NAIK (*Applicant*) v. BAHINABAI AND ANOTHER
(*Opponents*).^{*} [22nd April, 1892.]

Watandars Act (Bombay Act III of 1874), s. 10 †—Certificate issued by Collector more than twelve years after death of last holder—Court bound to act on certificate—Limitation—Limitation Act (XV of 1877), art. 178.

In execution of a decree against Nijaling Naik his lands were sold in February, 1876, and Hanmantbhatt purchased them and took possession on 10th August 1876. Nijaling Naik died in July 1877, and in February 1888, his son and heir, alleging that the lands were *watan*, applied to the Collector for a certificate under s. 10 of the *Watandars Act* (*Bombay Act, III of 1874*). The Collector referred the matter to his subordinates for inquiry, and the certificate was not issued until the 13th March 1890.—that is more than twelve years after the death of the last holder, Nijaling Naik.

Held, that, although more than twelve years had elapsed, the Court could not refuse to act on the certificate of the Collector, as provided by s. 10 of the *Watandars Act*.

THIS was a reference made by Rao Sabeb Raghavendrarao Ramchandra Gangoli, Subordinate Judge of Bagalkot, under s. 617 of the *Civil Procedure Code (Act XIV of 1882)*.

^{*} Civil Reference No. 10 of 1891.

† Section 10 of the *Watandars Act (Bombay Act III of 1874)*:—When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any *watan* or any part thereof, or any profits thereof, recorded as such in the revenue-records or registered under this Act, and assigned under s. 23 of this Act as remuneration of an officiator, has or have after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such *watan* or any part thereof, or any of the profits thereof, not so assigned has or have passed or may pass into the ownership or beneficial possession of any person not a *watandar* of the same *watan*, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a *watan* or part of a *watan*, or that such property constitutes the profits or part of the profits of a *watan*, or is assigned as the remuneration of an officiator, and is, therefore, inalienable, remove any attachment or other process then pending against the said *watan* or any part thereof, or any of the profits thereof, and set aside any sale or order of the sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said *watan* or any part thereof, or any of the profits thereof.

(1) 9 C. 905.

(2) 23 W.R.C.R. 429.

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[363] On the 18th February, 1876, certain lands were sold in execution of a decree dated the 29th August, 1874, passed by the Subordinate Judge of Bagalkot against one Nijaling Naik in Suit No. 797 of 1874. At the Court sale the lands were purchased by Hanmantbhatt *bin* Bhimabhatt, who took possession of them on the 10th August, 1876.

Nijaling Naik died on the 4th July, 1877, leaving behind him his son and heir, Chandra Naik. On the 19th February, 1884, Chandra Naik applied to the Collector of Bijapur for a certificate under s. 10 of the Hereditary Offices Act, otherwise called the Watan Act (Bombay Act III of 1874). The Collector having referred the matter to his subordinates for inquiry and report, issued the certificate on the 13th March, 1890,—that is, more than twelve years after the death of the last holder, Nijaling Naik.

While the above proceedings were going on, Hanmantbhatt, the auction-purchaser, died, and his widow, Bahinabai, and a minor son having refused to part with the lands, and the Collector to whom the certificate was returned by the Subordinate Judge for reconsideration, having declined to cancel it, the Subordinate Judge referred the following question to the High Court:—

Whether he was bound to set aside the sale as desired by the Collector in the certificate issued, as it was, after twelve years from the death of the last holder?

The opinion of the Subordinate Judge was that the Collector's certificate was null and void.

Shivram Vithal Bhandarkar (amicus curiae), for the applicant Chandra Naik:—The certificate is void, and cannot be acted upon, as it does not state the particulars required by s. 10—*Ramangowda v. Shivapa* (1). Further, the Collector cannot now take any action in the matter owing to the provisions of the Limitation Act (XV of 1877). He ought to have taken steps to set aside the sale within three years from its date—art. 178, sch. II of the Limitation Act (XV of 1877).

[SARGENT, C.J.—The provisions of the Limitation Act refer to applications. There is no application in the present case.]

[364] The Collector is not a party to this reference; the parties are the representatives of the purchaser at the auction-sale and the original judgment-debtor. Even if it be supposed that the Collector has of his own motion taken action in the matter, still the judgment-debtor or his representative cannot claim the benefit of sixty years' limitation under art. 149, sch. II of the Limitation Act, which applies, strictly to Government. If he is acting on behalf of the *watandar* (judgment-debtor), he can claim only such limitation as the *watandar* himself could have claimed—*Gunga Gobind v. The Collector of the Twenty-four Pergunnahs* (2). Section 10 of the Watan Act must be read in connection with the provisions of the Limitation Act.

The right to get the sale set aside accrued when the auction-purchaser took possession on the 10th August 1876. Ever since that time, that is for more than twelve years, the auction-purchaser and his representatives have been in possession without any objection on the part either of the Collector or the *watandar*, who himself was the judgment-debtor. The auction-purchaser's title therefore is good by reason of his adverse

(1) P. J. (1890), p. 263.

(2) 11 M.I.A. 345.

possession. The property has been in the possession of the auction-purchaser and his representatives for more than twelve years; it has therefore lost its *watan* character—*Radhabai v. Anantrao Bhagvant* (1).

Rao Saheb Vasudeo Jagannath Kirtikar (Government Pleader), for Government.—Article 178, sch. II of the Limitation Act (XV of 1877), is not applicable to the present case, as no application has been made to set aside the sale. The Collector having held certain inquiry came to a judicial decision that the property was service *watan*, and that decision he communicated to the Subordinate Judge. It is not correct to say that the auction-purchaser's title has become complete by twelve years' adverse possession. It is true that the Collector granted the certificate after the expiration of that period; but the judgment-debtor's son began to move in the matter in the year 1884, that is, about eight years after the auction sale. His right, title, and interest cannot therefore be allowed to be prejudiced simply because the period of twelve years expired while inquiries were being made by the Collector.

[365] As against the Collector no one can acquire a title by adverse possession till the expiration of the period of sixty years under art. 149, sch. II of the Limitation Act. The provisions of the Watandars Act are similar to the provisions of the Bhagdari Act (Bombay Act V of 1862), and there are rulings to show that under the Bhagdari Act there was no period of limitation prescribed for making an application, and, therefore, such applications were not governed by any particular period under the Limitation Act—*The Collector of Broach v. Rajaram Laldas* (2); *The Collector of Thana v. Bhaskar Mahadev* (3).

JUDGMENT.

SARGENT, C.J.—The sending the certificate by the Collector as contemplated by s. 10 of the Watandars Act is not an application to the Civil Court, but only a proceeding in the nature of a notification which, the Watandars Act itself provides, shall be acted upon by the Civil Court in a certain manner. Clause 178 of the Limitation Act has, therefore, no application to it. We think that the Subordinate Judge cannot refuse to act on the certificate of the Collector, as expressly required by s. 10 of Bombay Act III of 1874. If the purchaser has, since his purchase, acquired a title by adverse possession, it will be for him to take the proper measures to assert it as against the Collector or any other party, as the case may be.

Order accordingly.

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