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which are "leviable or chargeable": see *De Lassalle v. Guildford*.⁽¹⁾

In this view of the case the other points which have been argued do not arise, and I concur both in the judgment delivered and the decree proposed by my Lord.

Decree reversed.

Attorneys for the plaintiff—*Messrs. Ardeshir, Hormasji, Dinsha & Co.*

Attorney for the defendant—*Mr. E. F. Nicholson*, Government Solicitor.

(1) (1901) 2 K. B. 215.

APPELLATE CIVIL.

Before Sir L. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

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July 31,
August 7
and 14.

JETHABHOY RUTTONSEY (ORIGINAL PLAINTIFF), APPELLANT, v.
COLLECTOR OF BOMBAY (ORIGINAL DEFENDANT), RESPONDENT.*

Land Revenue in Bombay—Assessment—Enhancement of assessment—Bombay Act II of 1876—Purchase of land from Government—Encroachment—Acquisition of land under section 26 of Bombay Act II of 1876—Vendor and purchaser—Estoppel.

The plaintiff was the owner of certain land in Bombay consisting of three separate plots which had been bought from Government at different times. Plot No. 1 had been bought by the plaintiff's father in 1880, to whom the Collector of Bombay, with the sanction of Government, had sold it at "the rate of Re. 1 a square yard and ground rent at 30 pies per *burga* of 60 square yards per annum." Plot No. 2 was acquired by encroachment, and was sold in 1884 to the plaintiff's father by the Collector under clause 2 of section 26 of Bombay Act II of 1876, five times the value of the land being paid and assessment being charged as provided by that section. Plot No. 3 was bought in 1885 for the sum of Rs. 208-14-3, the rate of valuation being stated as "Re. 1 per square yard and rent at 30 pies per *burga* of 60 square yards."

Assessment was duly paid at the rates originally agreed until 1899. In August of that year the Collector served the plaintiff with a notice enhancing the assessment to three annas per square yard per annum. The plaintiff thereupon filed

* Revenue Suit No. 21 of 1899; Appeal No. 13 of 1901.

this suit under section 14 of Bombay Act II of 1876. The Revenue Judge dismissed the suit with costs. On appeal,

Held, reversing the decree that the Government had no right to enhance the assessment. The sale of plot No. 1 was expressly stated to be at a ground rent of 30 pies per *burga*, and this established a specific limit to the assessment. Plot No. 2 was sold by the Collector under section 26 of Bombay Act II of 1876, and the Collector having charged the maximum price and imposed the maximum assessment without reserving to himself any right could not now enhance the assessment. As to plot No. 3, the reasonable inference from the known facts was that the limit was fixed as in the case of plot No. 1.

APPEAL from the decision of the Revenue Judge, W. Webb, Esq., Acting Chief Presidency Magistrate.

By a notice dated the 18th August, 1899, but served on the plaintiff on the 30th August, 1899, the Collector of Bombay, under section 8 of Bombay Act II of 1876, gave the plaintiff notice that he had fixed the assessment for land revenue payable by the plaintiff in respect of certain land belonging to the plaintiff, consisting of 944½ square yards, situate at Mahá laxmi in Bombay at three annas per square yard per annum, such assessment to come into force on 1st October, 1899, and to be guaranteed for thirty years from that date. The assessment on the said land up to that time had been at the rate of thirty pies per *burga* of sixty square yards.

The plaintiff immediately (on the 29th September, 1899) filed this suit in the Court of the Revenue Judge of Bombay under section 14 of Bombay Act II of 1876, contesting the legality of the assessment.

On the 17th October, 1900, the Revenue Judge dismissed the plaintiff's suit with costs. The plaintiff now appealed.

The land in question consisted of three plots which had been acquired at different times.

Plot No. 1 was bought by the plaintiff's father (Ruttonsey Khimjee) in 1880 from Government. On the 3rd May, 1880, he addressed the following letter to the Collector offering to purchase and reclaim it.

To H. E. JACOMB, Esquire, Collector of Bombay.

Sir,—I wish to reclaim a piece of sea ground to the westward of my bungalow at Breach Candy, Warden Road, No. 92, as shown by pink colour in the accompanying plan and request that you will be pleased to grant me the necessary

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permission on payment of usual valuation for the ground: I may further state that the reclamation is not likely to interfere with any public or private interests.
(Signed) RUTTONSEY KHIMJEE.

On the 13th August, 1880, the Collector wrote as follows to Government requesting its sanction to the sale of the land :

13th August, 1880.

To J. NUGENT, Esquire, Acting Secretary to Government,
Revenue Department.

Sir,—I have the honour to inform you that Mr. Ruttonsey Khimjee has applied to me for permission to reclaim a piece of Government waste land at Warden Road, near his bungalow, containing 701 square yards and coloured pink on the accompanying tracing, and to request you will be good enough to obtain the sanction of Government to my selling the land to Mr. Ruttonsey at the rate of rupee one a square yard and ground-rent at (30) thirty pies per burga of sixty square yards per annum.

2. A reference was made by me to the Public Works Department, the Consulting Engineer for Railways and the Municipal Commissioner, and they have stated that the land is not required by them.

(Signed) H. E. JACOMB, Collector.

On the 1st September, 1880, the Government finally sanctioned the sale by the following Resolution :

No. 4593.

REVENUE DEPARTMENT.

Bombay Castle, 1st September, 1880.

Letter from the Collector of Bombay, No. 1259, dated 13th August, 1880, reporting that Mr. Ruttonsey Khimjee has applied to him for permission to reclaim a piece of Government sea land at Warden Road, near his bungalow, containing 701 square yards, and requesting sanction to his selling the land to Mr. Ruttonsey at the rate of rupee one a square yard and ground-rent at 30 pies per burga of sixty square yards per annum, the Public Works Department, the Consulting Engineer for Railways and the Municipal Commissioner to whom a reference was made having intimated that the land is not required by them.

RESOLUTION.—Sanctioned.

(Signed) J. NUGENT, Acting Secretary to Govt.

On the 9th September, 1880, the Collector communicated the sanction to Mr. Ruttonsey Khimjee as follows :

Sir,—With reference to your letter dated 3rd May, 1880, I have the honour to inform you that Government have, in their Resolution No. 4593, dated 1st instant, Revenue Department, sanctioned the sale of the land at Warden Road applied for by you at the rate of one rupee a square yard and ground-rent at 30 pies per burga of sixty square yards per annum. I therefore request you will

be good enough to send me the sum of Rs. 701 on account of 701 square yards of land in question. On receipt of the money a surveyor will be sent from this office to make over the land to you.

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The price was duly paid by Ruttonsey Khimjee, and he took possession of the land.

Plot 2, consisting of $34\frac{2}{3}$ square yards, was acquired by plaintiff's father as follows:—He had erected certain steps and a projecting gallery from his house, which constituted an encroachment over the Government land. He was called upon to remove this encroachment in November, 1883, but failing to do so, the Collector, under clause 2 of section 26 of Bombay Act II of 1876, charged him with five times the value of the land and fixed an assessment upon it of five times the ordinary annual land revenue. This sum was paid on the 22nd January, 1884, and the land was thereupon entered in the Collector's record in the name of Ruttonsey Khimji.

The following was the receipt given for the money:

	Rs. a. p.
Receipt No. 497 for Rs. 171-9-0, viz., on account of valuation for the encroached land at Mahaluxmi containing $34\frac{2}{3}$ square yards at Rs. 5 per square yard as five times, single rate, being one rupee per square yard	171 1 0
Rent for ditto at 12 annas and 6 pies per square burga per annum as five times, single rate, being 30 pies per burga of sixty square yards per annum for 1883-84	0 7 0
	171 9 0
Paid for realization on the 22nd January 1884.	

(Signed) J. H. GRANT, Collector.

Rupees 171-9-0 received and credited on 24th January 1884.

(Signed) J. H. GRANT, Collector.

Plot No. 3 consisted of $208\frac{3}{8}$ square yards. On the 14th February, 1885, Ruttonsey Khimjee wrote to the Collector as follows, proposing to purchase it:

Sir,—I beg most respectfully to inform your honour that you will be good enough to grant me on payment of your usual valuation, as you have granted me once before, a piece of Government sea land about 100 by 5 feet at Mahaluxmi. In granting this request I shall feel highly obliged.

(Signed) RUTTONSEY KHIJEE.

On the 2nd May, 1885, a report was made to the Collector by his surveyor as to this plot, which stated:—"It is a portion $208\frac{3}{8}$

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square yards) of the sea land. Rate of valuation is rupee one per square yard and rental thirty pies per burga of sixty yards."

On the 8th May, 1885, the sum of Rs. 208-14-3 was paid by Ruttonsey Khimjee to the Collector, and the following receipt was given :

Rupees 208-14-3 on account of valuation of a piece of vacant ground at Warden Road containing 208 $\frac{3}{4}$ square yards at one rupee per square yard assessed under section 8 of Act II of 1876, received and credited on the 8th May, 1885.

(Signed) J. H. GRANT, Collector.

Possession of the land was then given to Ruttonsey Khimjee.

Upon the land acquired as above stated assessment had been paid at the rates mentioned up to the time of the receipt of the above mentioned Collector's notice of enhancement dated 18th August, 1899.

The plaintiff in his plaint alleged that he had a right in limitation of the right of Government to hold the said land at the said fixed and uniform ground-rent or assessment, and he contended that Government had no right to increase such ground-rent or to exceed such assessment, and he prayed for a declaration to that effect, and that the order enhancing the said assessment might be cancelled.

At the hearing before the Revenue Judge the following issues were raised :

1. Whether the plaintiff is not barred by limitation from seeking any inquiry into the original assessment of the said land in the plaint mentioned.
2. Whether the Government guaranteed the assessment or the ground-rent originally fixed should continue for ever or for any fixed time.
3. Whether the plaintiff has any right in limitation of the right of Government to hold the said land at the amount of the assessment or ground-rent at which he has hitherto paid.
4. Whether the plaintiff has any right in limitation of the right of Government to assess the said land at the rate now claimed.
5. Whether the plaintiff has not a right in limitation of the right of Government to hold 701 square yards, a portion of the land in the plaint mentioned, at the fixed ground-rent of thirty pies per burga of sixty square yards.
6. Whether the plaintiff is not entitled as to the remainder of his said land to hold the same at the specific limit of assessment or rent he has hitherto paid.
7. Whether the notice by the Collector, dated 18th August, 1899, was issued under the orders or with the authority of Government.
8. If not, whether such notice is not illegal.

9. Whether the plaintiff is entitled to the relief prayed for or any part thereof.

Rivett-Carnac for plaintiff.

Starling for defendant.

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The Revenue Judge dismissed the plaintiff's suit with costs. In his judgment he said :

With respect to plot No. 1, Mr. Carnac, for the plaintiff, argued that it was held by the plaintiff's father outright; that his application, which was accepted, was for sanction to hold the land on a payment of ground-rent and was so granted to him and which rent is not an assessment, and that the fact of the Collector's bills, although exhibiting the notice that their issue was under the Bombay Revenue Act, calling for the payment, and the payment thereof by the plaintiff or his predecessor in title of the Collector's assessment, cannot alter the tenure of the land: that plot 2 is held under section 26 of the Bombay Revenue Act enforcing the plaintiff's father to pay for it a highly penalized value and which cannot be considered an assessment, and therefore cannot be enhanced at the will of Government, and he asks that the Court should hold that the plot 3 is held under the same tenure as plot 1. He relies on the correspondence arising during the negotiations connected with the acquirements by the plaintiff's father of the land between the Collector and himself, which notwithstanding that the Collector did subsequently in his bills treat the same as assessed land, shows that he then treated it as a matter only of the payment of rent and not of assessment. I am not asked for a finding with respect to issue 1. I find issues 2, 3 and 4 in the negative. With respect to issues 5 and 6, I am of opinion that the plaintiff is now precluded, if he ever possessed the right to hold that portion of land here described as plot No. 1 at fixed ground-rent of 30 pies per burga of sixty square yards, from claiming any right he may have concluded he possessed after his acceptance of the assessment made by the Collector as evidenced by the payment thereof from the time when the assessment was first levied to the notice of August of last year, and that nothing has been shown in the hearing of this suit which empowers me to affirm the statement in argument that the tenure of the holding of the land by the plaintiff has ever been accepted or acknowledged by Government to be for any fixed period of time; or that he should hold any portion of it at any specific assessment or for a sum not exceeding the limit of the assessment of the ground-rent he has hitherto paid.

I decide issue 7 in the affirmative and issue 8 in the negative and for the reasons given I dismiss the plaint with costs.

The plaintiff appealed.

Rivett-Carnac for the appellant.

Scott (Acting Advocate General) and *Kirkpatrick* for the respondent.

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The arguments were similar to those in the case of *Dadoba Janardhun & Co. v. The Collector of Bombay* (see *supra*, page 714).

JENKINS, C.J. :—The plaintiff is the owner of a piece of land at Mahalaxmi and he has brought this suit under Bombay Act II of 1876 against the Collector, praying that it may be declared that there is a right on his part, in limitation of the right of Government, to possess and hold the piece of land at the fixed and uniform rent mentioned in the plaint.

The piece of land consists of three plots acquired at different times. The first was bought from the Collector in 1880. On the 3rd of May in that year Ruttonsey Khimjee, the plaintiff's father, wrote to the Collector as follows :

Bombay, 3rd May 1880.

To H. E. JACOMB, Esq., Collector of Bombay.

Sir,—I wish to reclaim a piece of sea ground to the westward of my bungalow at Breach Candy, Warden Road, No. 92, as shown by pink colour in the accompanying plan, and request that you will be pleased to grant me the necessary permission on payment of the usual valuation for the ground. I may further state that the reclamation is not likely to interfere with any public or private interest.

I have the honour &c.,

RUTTONSEY KHIJEE.

On the 13th of August the Collector placed by letter this offer before Government for their sanction. He said :

I have the honour to inform you that Mr. Ruttonsey Khimjee has applied to me for permission to reclaim a piece of Government sea land at Warden Road near his bungalow containing 701 square yards and coloured pink on the accompanying tracing, and to request you will be good enough to obtain the sanction of Government to my selling the land to Mr. Ruttonsey at the rate of rupee one a square yard and ground rent at 30 pies per burga of 60 square yards per annum.

A reference was made by me on the subject to the Public Works Department, the Consulting Engineer for Railways and the Municipal Commissioner, and they have stated that the land is not required by them.

On the 1st September, 1880, a Government Resolution was published according the required sanction. On the 9th September the Collector wrote to Mr. Ruttonsey Khimjee :

No. 1398 of 1880.

Bombay Collector's Office, 9th September, 1880.

To RUTTONSEY KHIJEE, Esq.

Sir,—With reference to your letter dated the 3rd May, 1880, I have the honour to inform you that Government have in their Resolution No. 4593, dated 1st

instant, Revenue Department, sanctioned the sale of land at Warden Road applied for by you at the rate of one rupee a square yard and ground rent at 30 pies per burga of 60 square yards per annum. I therefore request you will be good enough to send me the sum of Rs. 701 on account of 701 square yards of land in question. On receipt of the money a surveyor will be sent from this office to make over the land to you. I have the honour, &c.

H. E. JACOMB, Collector.

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The purchase price was paid and possession was delivered.

The acquisition of the second plot was the result of an encroachment. It seems that Mr. Ruttonsey having erected steps and a gallery projecting from his house over Government sea land at Mahalaxmi, failed to remove the encroachment as required. Thereupon the Collector, purporting to act under the second paragraph of section 26 of the Bombay City Land Revenue Act, 1876, charged Mr. Ruttonsey with five times the value of the land and fixed an assessment of five times the ordinary annual land revenue on the land, and caused it to be entered in his records in the name of Mr. Ruttonsey Khimjee.

The third plot was bought from the Collector. On the 14th February, and again on the 26th March, 1885, Mr. Ruttonsey applied by letter for a grant of a piece of land about 100 feet by 5 feet at Mahalaxmi. A report was submitted to the Collector, evidently under his direction, in which it was said:—"It is a portion of the sea land. Rate of valuation is Re. 1 per square yard and rent at 30 pies per burga of 60 square yards." Rs. 208-14-3 was paid by Mr. Ruttonsey as the purchase price and possession was delivered to him.

It was thus that Mr. Ruttonsey became entitled to the piece of land to which this suit relates. Assessment was paid at the rates originally agreed until 1899, and then the following notice was sent by the Collector:

Bombay Collector's Office, 18th August, 1899.

To Mr. RUTTONSEY KHI MJEE.

Sir,—I hereby on behalf of Government give you notice that under section 8 of Bombay Act II of 1876, I have fixed the assessment for land revenue on the marginally noted land in your possession at Rs. 0-3-0 (three annas) per square yard per annum. The assessment will come into force on 1st October, 1899, and is guaranteed for thirty years from that date.

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Thereupon this suit was commenced. It was heard by the Revenue Judge, who dismissed it with costs, and from his decision the present appeal has been preferred.

The appellant has urged before us as in the companion appeal *Dadoba Janardhan v. Collector of Bombay*⁽¹⁾: (1) that the action of the Collector in enhancing the assessment was invalid as he did not obtain the previous sanction of Government; (2) that there was no such settlement as is required by section 9 of the Act; (3) that the plaintiff is not a superior holder, and therefore does not come within the operation of the Act; (4) that the assessment is unreasonable, and therefore open to revision by this Court; and (5) that a specific limit to enhancement has been established and preserved.

The question on the merits is whether the Collector is entitled to enhance the revenue to the extent, it is said, of seventy-two times its amount without giving the plaintiff any opportunity of being heard; for that, we have been told, is the somewhat startling result of his notice, if he has the power he claims.

Now the sale of the first plot was expressly stated to be at a ground rent of 30 pies per *burga*, and I fail to see why this should not be the establishment of a specific limit to the assessment. It was conceded in the argument that had there been a lease for a term of years at a ground rent of 30 pies per *burga* that would have been the establishment of a specific limit during that term, and it can make no difference that the grant is in perpetuity and not for a term of years, whereas here the purchaser has paid the full capital value of the property.

Taking the plots in the order of date, the next is that which was acquired by means of the encroachment. In connection with this plot the parties purported to proceed under section 26 of the Act, though it does not appear from the record that the previous sanction of Government was obtained. However, no point has been made of this in the pleadings or at the hearing, so that I will treat this part of the case as if all formalities had been observed. I think the meaning of the second paragraph of the section is that the Collector can, if the encroacher so desire,

(1) *Supra*, p. 714.

permit him to acquire the property at the price and at the assessment named in the section ; that is in effect, that, subject to the limitations imposed by the section, the Collector can sell to him the land on which the encroachment has been made. This is what was done in relation to this particular encroachment, and the Collector having charged the maximum price and imposed the maximum assessment, and that without reserving to himself any right, cannot now enhance as he claims to do.

There is, I think, another objection to the enhancement. By section 26 a limit is imposed on the assessment the Collector can fix ; it must not exceed five times the ordinary land revenue on the land, that is the land revenue of similar land in the vicinity. We know from the documents in the case that the assessment on this encroachment was fixed at its maximum, so that we have to see what right the Collector has to enhance this maximum rate. Clearly he could not the next day have enhanced, that would be in contravention of the provisions of section 26 and there is nothing in the case which goes to show any alteration of circumstances that would justify the increased assessment now fixed by the Collector.

The circumstances as to the third plot only differ from those of the first in the fact that the Collector did not, prior to completion, write and inform the purchaser what the ground rent was to be. From the record, however, it may be inferred that Mr. Ruttonsey saw the Collector in reference to this purchase. Unfortunately Mr. Ruttonsey is dead and the defendant has produced no evidence as to what passed at the interview, so that here, too, we have to rely on such inferences as the facts suggest. What we find is that the circumstances of the first and the third plots are alike ; they in fact now are part and parcel of the same piece of land. Then again we find that the purchase price and the assessment actually imposed are precisely the same.

From this I think it is the reasonable inference that as in the first, so in the second purchase, the limit of the assessment was fixed. The learned Revenue Judge regarded the form in which the receipts were given and taken as a circumstance adverse to the plaintiff ; it is a matter to be taken into account, but it seems to me to be outweighed by the other facts of the case.

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The result is that in my opinion a specific limit has been imposed on the assessment of each of the three plots, so that the decree of the Revenue Judge should be reversed; and a declaration made in the terms of the first part of paragraph (a) of the prayer to the plaint; and the enhanced assessment should be set aside. The plaintiff should get his costs throughout.

By agreement of the parties Appeal No. 12 of 1901 follows the result of Appeal No. 13 and in it the like decree will be passed.

CHANDAVARKAR, J.:—I concur. The case does not present any difficulty so far as plots 1 and 3 are concerned, and it is clear to my mind that those plots were sold to the plaintiff by Government for their full price subject to the payment of a fixed ground rent without any intention to reserve the right of enhancing it. The only doubt I had was as to plot No. 2, because that did not form the subject of a contract proper between Government and the plaintiff's father, but was encroached upon by the latter. The Collector under section 26 of Bombay Act II of 1876 levied the full penalty and the ground rent. The question is whether that action of the Collector taken under the section amounts to a sale of the land to the plaintiff's father. He came in at first as a wrong-doer and a wrong-doer is liable to have every presumption made against him. But the Collector's action taken under section 26 seems to me to have the same effect as a sale of the plot for its full price. The Collector could have either removed the encroachment and resumed the land or proceeded under that section. When adopting the latter alternative, he proposed that the plaintiff's father should retain possession of the plot upon payment of five times the value of the land and five times the ordinary land revenue and a fixed amount as annual ground rent, and the plaintiff's father was allowed to remain in possession under it, there was a proposal and there was an acceptance amounting to a contract by which the Government and the plaintiff are bound. The Revenue Judge in the Court below has decided this case against the plaintiff on the sole ground that by paying for a number of years to Government the rent under receipts purporting to be passed for land assessable under section 8 of Bombay Act II of 1876 the plaintiff has estopped himself from raising the contention that the land cannot be

re-assessed to the land revenue at the discretion of the Collector. But I fail to see where the estoppel comes. The receipts were in a printed form prescribed by the Collector and mere payments made under them cannot estop the plaintiff because, in the first place, such payment cannot amount to a representation by the plaintiff's father that he held on a tenure liable to the enhancement of assessment at the Collector's discretion, in the second place if it did amount to that, there is no evidence that the Collector acting on behalf of Government was misled by such representation or in any way acted upon it so as to alter their position to their prejudice. I agree, therefore, to the decree proposed.

Decree reversed.

Attorneys for plaintiff-appellant—*Messrs. Sorabji and Jehangir.*

Attorney for defendant-respondent—*Mr. E. F. Nicholson,*
Government Solicitor.

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