

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.*

1910.  
July 22.

MESSE<sup>S</sup>. LADDHA EBRAHIM AND CO. (ORIGINAL PLAINTIFF), APPELLANT,  
v. THE ASSISTANT COLLECTOR, W. D., POONA, AND ANOTHER.  
(ORIGINAL DEFENDANT AND ADDED RESPONDENT).\*

*Land Acquisition Act (I of 1894), section 18—Hereditary Offices Act (Bom. Act III of 1874), sections 10 and 13<sup>(1)</sup>—Maharki Vatan land—Acquisition by Government—Award—Compensation—Title by adverse possession against Vatan-dars—Collector's certificate—Jurisdiction.*

Certain land with buildings thereon having been acquired by Government under the Land Acquisition Act (I of 1894), the Assistant Collector passed an award whereby he awarded, by way of compensations, one sum to the owner of the buildings on the land and another to certain Mahar Vatan-dars on account of the land being Maharki Vatan. The owner of the buildings having objected to the award, the Assistant Collector at the instance of the objector referred the matter to the District Court under section 18 of the Act.

\* Appeal No. 220 of 1908.

(1) Sections 10 and 13 of the Hereditary Offices Act (Bom. Act III of 1874) are as follows:—

10. 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 of the profits thereof, recorded as such in the revenue records or registered under this Act, and assigned under section 23, 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 so passed or may pass into the ownership or beneficial possession of any person not a watan-dar 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 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.

13. Watan property assigned as remuneration of an officiator under section 23 and the profits of such watan property are not liable to process of any Civil Court.

On receipt of a certificate under the hand and seal of a Collector, to the effect that certain property designated therein is watan property so assigned, the Court shall remove any attachment or other process placed on, or set aside any sale of, or affecting, such property or the profits thereof.

The District Judge found that the objector had acquired title to the land by adverse possession and thus became entitled to the compensation on account of the land as against the Mahar claimants. Subsequently the Collector forwarded to the District Court a certificate issued under section 10 of the Hereditary Offices Act (Bom. Act III. of 1874) that the order for the payment of the compensation to the objector should be set aside 'in accordance with the provisions of sections 10 and 13 of the Act.' Thereupon the District Judge, holding that he had no jurisdiction to decide whether the property was Vatan or not in the face of the Collector's certificate, cancelled his order.

The objector having appealed against the said order,

*Held*, restoring the award of the District Court, that an award under the Land Acquisition Act (I of 1894) was not a decree or order capable of execution under the Civil Procedure Code (Act V of 1908) and was therefore not within the purview of section 10 of the Hereditary Offices Act (Bom. Act III of 1874).

*Held*, further, that the award of the District Court, which was the cause of the certificate, made it clear that the Mahars' property had been acquired by the objector by adverse possession before the commencement of the proceedings for the acquisition of the land by Government.

*Per curiam*.—Even if it could be said that there was any danger of the passing of the ownership by virtue or in execution of a decree or order in the Land Acquisition proceedings it could not be said that that result was arrived at without the sanction of Government who set the machinery of the Act in motion for the acquisition of the land.

*Nilkanth v. The Collector of Thana*(1), *Collector of Thana v. Bhaskar Mahadev*(2), *Rachapa v. Amingoda*(3), referred to.

APPEAL from the decision of C. A. Kincaid, District Judge of Poona, in Reference No. 13 of 1906, made by the Assistant Collector of Poona under section 18 of the Land Acquisition Act (I of 1894).

The facts were as follows:—

The dispute was with respect to the ownership of Survey No. 29 of Nisbat Manjre in the Poona Collectorate and the valuation of the buildings standing on the said land.

In the year 1906 the Government of Bombay, wishing to acquire the said land for an extension to the Sassoon Hospital

(1) (1897) 22 Bom. 802.

(2) (1884) 8 Bom. 264.

(3) (1893) 5 Bom. 233.

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at Poona, directed Mr. Bolus, the First Assistant Collector of Poona, to take the action requisite under the Land Acquisition Act (I of 1894). On the 9th March 1905 Mr. Bolus issued notices to all the persons interested in the property to appear before him to state their claims, and on the 17th March 1906 he awarded Messrs. Laddha Ebrahim and Co. Rs. 10,777 for the buildings standing on the land, and a sum of Rs. 4,508 to certain Mahars who claimed to be Vatandars of the land. The latter sum was invested in the Government Treasury to provide for the service allowances of the said Mahar Vatandar.

Messrs. Laddha Ebrahim and Co., being dissatisfied with the said award, moved the Assistant Collector to refer the matter to the District Court at Poona under section 18 of the Land Acquisition Act (I of 1894). The Reference was registered in the District Court as Suit No. 13 of 1906.

Messrs. Laddha Ebrahim and Co. contended *inter alia* that the Assistant Collector did not, at the time of making the award, make any inquiry as to whether the Mahars had any interest in the land, therefore, it was an error to award to them the compensation on the ground that the land was given to them for service, that the Company had become full owner of the land and thus extinguished the claim of the Mahars, that the Company were in enjoyment of the land as owner for more than twelve years and, lastly, that the land and the buildings had been undervalued, the value of the entire property being Rs. 45,000.

The District Judge found (1) that the land was Maharki Vatan, but had become by prescription the property of Messrs. Laddha Ebrahim and Co. and the Court had jurisdiction to hear the case, (2) that Messrs. Laddha Ebrahim and Co. had acquired full ownership of the land, and (3) that the Mahars' title, if any, had been extinguished by twelve years' adverse possession.

As regards the compensation for the land and the buildings, the award of the Assistant Collector was confirmed by the District Judge, who made no order with respect to the costs of Messrs. Laddha Ebrahim and Co. "in view of the extravagance

of their demand." The District Judge pronounced his decree on the 22nd August 1907.

Messrs. Laddha Ebrahim and Co. preferred an appeal, No. 15 of 1908, to the High Court. In this appeal the Company contested the amount of the compensation, and it claimed Rs. 2,816 in addition to that awarded by the District Judge.

After the District Judge had passed his decree on the 22nd August 1907, the Collector of Poona, on the 23rd November 1907, forwarded to the District Judge the following certificate :—

"CERTIFICATE.

Whereas the property hereinbelow described, namely :—

Village.	Survey No.	Area.	Assessment.
		A. g. a.	Rs. a. p.
Nisbut Manjiri ...	Part of Survey No. 29.	2 18 0	4 8 0

forms part of a Mahar Vatan and has been recorded as such in the revenue records and has been assigned as remuneration of the officiators for the time being under section 23 of Bombay Act III of 1874 and is therefore inalienable without the sanction of Government under section 7 of the said Act. And whereas the said land has been acquired by Government under the Land Acquisition Act and compensation amounting to Rs. 4,508 has been awarded therefor. And whereas it appears to me, G. Carmichael, Collector of Poona, that the said compensation which now represents or is part of the said Vatan property or the profits thereof may pass without the sanction of Government into the ownership of a person or persons other than the officiator for the time being by virtue of an order passed by the Court of the District Judge, Poona, in Civil Suit No. 13 of 1906, declaring Messrs. Laddha Ebrahim and Co. to be entitled to the payment of the said compensation.

Now, therefore, I, G. Carmichael, Collector of Poona, hereby certify to the Court of the District Judge, Poona, that the said property is Vatan property recorded, assigned, inalienable and not liable to process or order of any Civil Court as aforesaid in order to the setting aside of the order for the payment of the said compensation in accordance with the provisions of sections 10 and 13 of the said Act.

Poona, dated this 23rd day of November 1907.

(Signed) G. CARMICHAEL,  
Collector of Poona."

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On receipt of the said certificate the District Judge sent for the parties and after hearing them passed the following order on the 27th July 1908:—

Such a certificate has now reached me concerning the compensation money for the land in Civil Suit No. 13 of 1906. I therefore cancel my former order in which I directed the said compensation money to be paid to Messrs. Laddha Ebrahim and Co.

Messrs. Laddha Ebrahim and Co. preferred an appeal, No. 220 of 1908, which was heard by Scott, C. J., and Batchelor, J.

*Branson* with *D. A. Khare* for the appellant (plaintiff, Messrs. Laddha Ebrahim and Co.).

*G. S. Rao* (Government Pleader) for the respondents (defendants, Assistant Collector, and Collector).

SCOTT, C. J.:—In the year 1906 the Government of Bombay took action to acquire by the machinery of the Land Acquisition Act, 1894; part of Survey No. 29 of Nisbat Manjre in the Poona Collectorate with the buildings thereon.

The land, the subject of the acquisition, was registered in the Revenue Records as Maharki Vatan. It was in the occupation of Messrs. Laddha Ebrahim and Co., to whom the buildings erected upon it admittedly belonged.

On the 19th of March the Assistant Collector passed an award whereby he awarded to Messrs. Laddha Ebrahim and Co. for the buildings Rs. 10,777 and to the Mahars collectively, who claimed to be interested as Vatandars, Rs. 4,508 for the land. He directed that the latter sum should be credited in the Government Treasury in the names of the Mahar claimants and that the interest accruing thereon should be paid to them by the Mamlatdar. There is nothing to indicate that this was under any arrangement come to with the Mahar claimants under clause (4) of section 31 of the Land Acquisition Act but for the purposes of this judgment we will assume that these directions were not *ultra vires*.

The award was not accepted by Messrs. Laddha Ebrahim and Co., and the Assistant Collector accordingly, as required by them, referred the matter to the Court under section 18 of the Act.

The objections of Messrs. Laddha Ebrahim and Co. were both as to the amount of the compensation and the persons to whom it was payable. Under the latter head the objectors claimed the whole of the compensation for the Maharki land on the ground that they had acquired it by adverse possession. This claim was decided in their favour by the award of the Court delivered on the 22nd of August 1907. Messrs. Laddha Ebrahim and Co. thus became entitled as against the Mahar claimants to the compensation money Rs. 4,508. On the 23rd of November 1907, however, the Collector of Poona forwarded to the Court of the District Judge a certificate purporting to be issued under section 10 of the Vatan Act in order that the 'order for the payment' of the compensation amounting to Rs. 4,508 to Messrs. Laddha Ebrahim and Co. might be set aside 'in accordance with the provisions of sections 10 and 13' of Bombay Act III of 1874. The District Judge holding that the Court had no jurisdiction to decide whether property is Vatan or not in face of the Collector's certificate cancelled his former order directing the compensation money to be paid to Messrs. Laddha Ebrahim and Co.

From this decision Messrs. Laddha Ebrahim and Co. appeal contending that the Collector's certificate was issued without jurisdiction and is of no effect.

Section 10 of the Vatan Act of 1874 empowers the Collector to issue a certificate when it appears to him that by virtue of or in execution of a decree or order any Vatan property has passed or may pass without the sanction of Government into the ownership or beneficial possession of any stranger to the Vatan.

In considering whether the action of the Collector in the present case was within his powers various questions arise.

Is there a decree or order in this case such as is contemplated by the section: if so has any property passed or can it conceivably pass by virtue or in execution of such decree or order: and if so has it passed or may it pass without the sanction of Government?

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With regard to the first question we think the reasoning of the majority of the Court in *Nilkantk v. Collector of Thana* <sup>(1)</sup> sufficiently establishes that an award under the Land Acquisition Act of 1894 is not a decree or order capable of execution under the Civil Procedure Code and is therefore not within the purview of the section. As regards the second question the award of the Court which was the cause of the certificate made it quite clear that the Mahars' property had been acquired by Messrs. Laddha Ebrahim and Co. by adverse possession before the commencement of the proceedings for the acquisition of the land by Government under the Land Acquisition Act.

The Collector is called upon to make some inquiry before issuing his certificate "and thus exercising a judicial function is subject to control by this Court, should he make his authority a mere cloak for illegal and wholly unreasonable proceedings." See *The Collector of Thana v. Bhaskar Mahadev Sheth* <sup>(2)</sup>. It could not appear to the Collector if he had perused the award of the Court which he wished to have set aside that Messrs. Laddha Ebrahim and Co. were in ownership of the land at the date of its acquisition by Government otherwise than by adverse possession. Even if it could be said that there was any danger of the passing of the ownership by virtue or in execution of a decree or order in the Land Acquisition proceedings it could not be said that that result was arrived at without the sanction of Government who set the machinery of the Act in motion for the acquisition of the land.

Moreover, it has been said by a Full Bench of this Court in *Rachapa v. Amingovda* <sup>(3)</sup> that it cannot be supposed that the "Bombay Legislature had any such purpose in its contemplation, when enacting section 10 of the Act, as to take advantage of the errors of the Civil Courts by maintaining a possession obtained by their wrongful operation, or to interfere with the jurisdiction of the High Court to reverse and prevent the execution of erroneous decrees of Courts subordinate to it." Yet, if we allowed the Collector to intervene and say as in effect he does

(1) (1897) 22 Bom. 802.

(2) (1884) 8 Bom. 164 at 165.

(3) (1880) 5 Bom. 283 at 293.

"I wish the award of the Assistant Collector to stand and that of the Court on the reference under section 18 to be set aside," we should be crediting the Legislature with such an intention.

For these reasons we restore the award of the Court and direct the District Judge not to act on the certificate of the Collector.

The Government must pay the costs of the appellant.

Laddha Ebrahim and Co.'s Appeal No. 15 of 1908, as to the amount of compensation, is dismissed with costs.

*Award of the District Court restored.*

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APPELLANT, v. SHIVAPPA *alias* ISHWARAPPA BIN BASAPPA AND  
OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 2, 3, 4), RESPONDENTS.\*

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*Arbitration—Award—Bona fide mistake of law committed by arbitrator—  
Minor party receiving a smaller share—Award binding upon the minor.*

The arbitrators to whom a dispute was referred by parties, one of whom was a minor, took *bona fide* an erroneous view of law and ordered an unequal division of the property in dispute, awarding the smaller share to the minor. The lower Court set aside the award on the grounds that the arbitrators had taken an erroneous view of the law, and that as the minor had received a smaller share under the award it was not to his benefit, and therefore not binding upon him:—

*Held*, that the award was valid and binding upon the minor. The validity of the award must be determined according to the circumstances as they existed at its date; and not by what transpired some years after it had been passed by the arbitrators.

*Rajunder Narain Rae v. Bijai Govind Singh*(1), followed.

SECOND appeal from the decision of T. D. Fry, District Judge of Dharwar, confirming the decree passed by T. V. Kalsulkar, Subordinate Judge at Hubli.

\* Second Appeal No. 285 of 1909.

(1) (1839) 2 M. I. A. 181, 249, 251.