

out for condonation of delay. Now, the whole of the judgment makes it perfectly clear that what was argued before him was that the appeal was in time. It may be that in the alternative it was contended before him that if the appeal was out of time he should condone the delay as required by s. 30 (2). Therefore, the judgment of the Appellate Assistant Commissioner falls in two parts. There is a dismissal of the appeal on the ground that it is barred by limitation and there is also an order refusing to condone the delay as no sufficient ground was made out. To the extent that the appeal is dismissed on the ground that it is barred by limitation, the order is appealable and the Tribunal was competent to hear the appeal. To the extent the order refuses to condone the delay, that order is made by him under s. 30 (2) and is final and cannot be challenged before the Tribunal.

Therefore, the answer that we give to the question referred to us is that the appeals before the Appellate Tribunal were competent only to the extent the Appellate Assistant Commissioner held that the appeals were barred by limitation and were not competent in so far as he refused to condone the delay. The Commissioner to pay the costs of the Reference.

Attorneys for applicant: *Payne and Co.*

Attorney for respondent: *N. K. Petigara.*

Answer accordingly.

A. J. P.

APPELLATE CIVIL

Before Mr. Justice Bhagwati and Mr. Justice Vyas.

RAMIJABI MAKTUMSAHEB JAMADAR (ORIGINAL PLAINTIFF),
APPELLANT v. GHUDUSAHEB FARID AVATI (ORIGINAL DEFENDANT),
RESPONDENT.*

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Bombay Hereditary Offices Act (Bom. III of 1874), ss. 4, 5—Rules framed under Act XI of 1852, Rules 1, 3, 5†—Rules framed under Bom. Act VII

* Letters Patent Appeal No. 39 of 1950.

† The rules framed under Act XI of 1852 read as under:

"1. The Honourable the Governor in Council affirms the principle that the lands of a Shetsanadi are liable to be resumed and given to another if the holder misconducts himself. In reserving this right, however,

the Governor in Council rules that it shall be exercised only in cases of extreme misconduct.

3. In ordinary cases of misconduct the dismissed Shetsanadi will be allowed to remain

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of 1863, Rules 2, 4†—Watan land continued with holder without service and with levy of full assessment—Effect of such continuance—Whether land is converted into ryotwari holding—Rules framed under Bom. VII of 1863 whether abrogate rules framed under Act XI of 1852—Bombay Revenue Jurisdiction Act (Bom. X of 1876), s. 4.

The old set of rules framed by the Government regarding resumption and continuance of service lands under Act XI of 1852 was not abrogated.

in possession of the land, but the lands will be subjected to full assessment and to a further payment, if necessary, to make up the remuneration of the person employed to perform service.

5. Whenever a Shet-sanadi is discharged without fault because the service is no longer required the land will remain in his possession subject to the survey assessment and no further demand can be made."

† Rules framed under Bom. Act VII of 1863 ran as follows:

2. Lands originally held for service, which have been continued or may hereafter be continued, under s. 15, Bom. Act III of 1874, on condition of payment of certain portion of the assessment thereof in commutation of service, shall continue to be held in accordance with the terms of the *sanads* issued or hereafter to be issued in confirmation of the land commutation settlements.

4. Service lands which do not fall under No. 2 or 3 of these rules shall be continued, subject to the provisions of Bom. Act III of 1874, and of any other law for the time being in force relating thereto, to the heirs of the present holders or in the event of the same being at any time lawfully alienated, to the heirs of the alienees, without restriction as to adoption or female or collateral succession; but such lands shall be resumed in default of any heir in whom, in the ordinary course of descent, the deceased holder's private property would vest and shall not be liable to be dealt with, under the ordinary law for the time being in force relating to intestate property: provided that

if the Collector is at any time satisfied that the service, in respect of which any such lands are held, is no longer performed or that its performance is no longer necessary, or that for the service performed the remuneration derived from the profits of the enjoyment of such lands is unnecessarily high or, in the case of service lands, to which the provisions of Bom. Act III of 1874 do not apply, if it shall appear that the holder has been guilty of any serious offence or misconduct, or that such lands or any part thereof or any of the profits thereof have or has, by succession or otherwise, come into the possession of female or of any person other than the person, who for the time being is duly authorized to perform and does actually perform the service in respect of which such lands are held, the Collector may in his discretion direct either (1) the resumption of such lands, or (2) the continuance of the same, subject to such new conditions as he shall deem fit to impose, or (3) the resumption of a portion of such lands and the continuance of the rest thereof, subject to such conditions as aforesaid.

by the new set of rules framed under Bom. Act. VII of 1863. Therefore, once action is taken, whether that action is taken under the one set of rules or the other, the result of which is the continuance of a watan land in the possession of the original holder, without the holder having to render service and on his paying the full assessment, the effect of the continuance is the conversion of the original watan land into a ryotwari holding in which the holder is invested with the rights of an ordinary occupant.

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Yellappa v. Marlingappa⁽¹⁾ and *Vishnu v. Shankar*,⁽²⁾ followed.

Shivram v. Mahadeo,⁽³⁾ *Bhima v. Raghavendracharya*,⁽⁴⁾ *Appaji v. Keshav*⁽⁵⁾ and *Bhau v. Ramchandrarao*,⁽⁶⁾ distinguished.

Ibrahim v. Abdul,⁽⁷⁾ dissented from.

Vishvanath v. Bachharam,⁽⁸⁾ referred to.

The plaintiff who claimed a certain land under a gift deed executed by her grandfather in 1943 was on the donor's death dispossessed of that land in 1945 by the defendant under an order of the Prant Officer which declared the gift to be void beyond the lifetime of the donor under s. 5 of the Bombay Hereditary Offices Act, 1874. The land was originally a *shet sanadi inam* but prior to 1912 the sanadi services were dispensed with by the Collector and full assessment was levied and the land was shown as *japti sanadi*. The plaintiff having sued to recover possession of the land from the defendant on the ground that after commutation of service and the levy of full assessment the land ceased to be a watan land subject to the provisions of the Watan Act, it was held by the High Court in second appeal that inasmuch as the plaintiff was not in a position to show under which of the rules, viz., rules framed under Act XI of 1852 or those framed under Bom. Act VII of 1863 the action was in fact taken by the Collector when he commuted the service and levied full assessment, it could not be said that an order was passed in the case by a competent authority which would change the character of the property as watan property, and, therefore, the alienation in favour of the plaintiff was void. In Letters Patent appeal:

Held, (i) that the old set of rules framed under Act XI of 1852 was not abrogated by the new set of rules framed under Bom. Act VII of 1863, and the continuance of the land which was originally watan land with the holder thereof on the commutation of service and levy of full assessment could be ordered both under the old as well as the new rules;

(ii) that the effect of the said continuance was the conversion of the original watan land into a ryotwari holding;

⁽¹⁾ (1910) 12 Bom. L. R. 577.

⁽²⁾ (1932) 35 Bom. L. R. 114.

⁽³⁾ (1912) 14 Bom. L. R. 797.

⁽⁴⁾ (1900) 24 Bom. 482.

⁽⁵⁾ (1890) 15 Bom. 13.

⁽⁶⁾ (1895) 20 Bom. 423, F. B.

⁽⁷⁾ S. A. No. 990 of 1945 decided by Bavdekar, J. on April 4, 1949 (Unrep.).

⁽⁸⁾ F. A. No. 23 of 1947 decided by Weston and Shah JJ. on September 1, 1949 (Unrep.).

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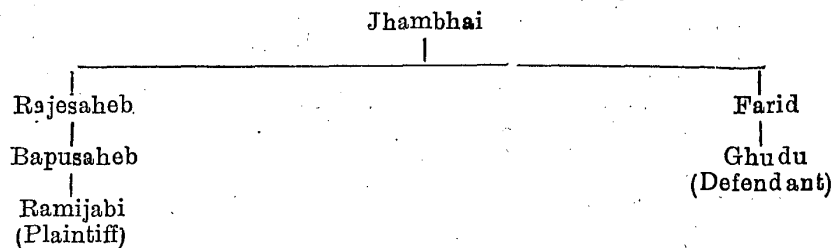
(iii) that the designation of the land thereafter as *japti sanadi* did not mean that the property had only temporarily ceased to bear the character of watan property;

(iv) that after the watan character of the property was lost, the provisions of the Watan Act became inapplicable to it, and thereafter the Prant Officer had no jurisdiction to pass the order under the Watan Act in reference to the property, and therefore there was no bar under s. 4 of the Bombay Revenue Jurisdiction Act, 1876, to the suit;

(v) that, therefore, the plaintiff was entitled to succeed.

LETTERS PATENT APPEAL from the decision of Bavdekar J. in Second Appeal No. 543 of 1947, preferred against the decision of S. B. Palekar, Assistant Judge at Belgaum, in appeal confirming the decree passed by N. S. Metrani, Civil Judge (Junior Division) at Athni.

The parties to the suit were related to each other as shown in the following genealogical tree:



Jhambhai had two sons Rajesaheb and Farid. Rajesaheb's son Bapusaheb had predeceased him in 1913, leaving him surviving a daughter named Ramijabi (plaintiff). Farid died before 1912 leaving behind him a son Ghudu (defendant).

On July 4, 1912, Rajesaheb and Ghudu effected a partition of family properties at which the property in suit, viz. two pieces of land situate at Saptasagar in Athni taluka of Belgaum district, fell to the share of Rajesaheb. Rajesaheb made vahiwat of the lands until he gifted them to the plaintiff on May 28, 1943, and put her in possession. Rajesaheb died on August 1, 1943.

One of the two lands was originally a shetsanadi inam but prior to 1912 the sanadi services were dispensed with and full assessment was levied upon it.

On November 24, 1943, the defendant applied to the Prant Officer N. D., Belgaum, to restore the land to him on the ground that it was *japti sanadi* and was, therefore, inalienable under the provisions of the Bombay Hereditary Offices Act, 1874. On August 28, 1945, the Prant Officer made an order in

favour of the defendant and two days later the defendant was put in possession of the land through the village officers.

On October 2, 1945, the plaintiff filed the present suit against the defendant to recover possession of the suit properties contending in respect of the watan land that it was converted into a ryotwari holding by the commutation of service and by levy of full assessment, and that, therefore, Rajesaheb had a right to gift it to her.

The trial Judge decreed the plaintiff's suit, and on appeal the decree was confirmed by the Assistant Judge.

The defendant appealed to the High Court. The appeal was heard by Bavdekar J. who allowed it by delivering the following judgment on December 12, 1949.

BAVDEKAR J. This is a second appeal arising from a suit filed by the respondent-plaintiff for recovery of possession of survey No. 51/1, situate in the village of Saptasagar in Athni taluka, and 2½ gunthas out of land, survey No. 157/2, situate in the same village. The suit lands and certain other lands appear originally to have formed part of the property of the family of one Jhambhai. There was a partition between Rajesaheb, the son of Jhambhai, and his nephew, Ghudu, the present defendant, in the year 1912. In that partition the suit land and some other property fell to the share of Rajesaheb. The plaintiff is the grand-daughter of Rajesaheb, and she claims under a gift deed executed by Rajesaheb on May 28, 1943. It appears from the evidence that, at the time of the gift deed, Rajesaheb put the plaintiff in possession of the property also, and the plaintiff has been in possession of the property ever since then. Rajesaheb died on August 1, 1943. On September 24, 1943, the defendant made an application to the Prant Officer, Belgaum, requesting him to restore to him one of the suit lands, namely, survey No. 51/1, on the ground that it was *japthi sanadi* land, and was, therefore, inalienable. The Prant Officer made an order in favour of the defendant, and directed the land in question to be restored to the defendant. The defendant was accordingly actually put in possession of the land on August 13, 1945. The plaintiff then filed the present suit on October 2, 1945, and it was for possession of both survey No. 51/1, and 2½ gunthas out of survey No. 157/2.

The principal defence of the defendant was that the suit land was *watan* land, and it could not to be alienated by Rajesaheb

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beyond the term of his life. The plaintiff countered this contention by saying that the lands were not *watan* lands, and, in any case, they ceased to be *watan* lands, when full assessment was levied upon them and services were dispensed with.

That the lands were originally *shet sanadi* lands, and, therefore, according to the ruling of this Court in *Vishnu v. Shankar*,⁽¹⁾ *watan* lands is not in dispute; but it is contended on behalf of the plaintiff that the lands ceased to be *watan* lands, when services were dispensed with and full assessment was levied upon them. Now, it does appear from the evidence that the services are no longer being taken and full assessment is being levied upon the lands; but the principal difficulty in regard to the plaintiff's case is as to who took that action and when it was taken. The plaintiff contends that the dispensing of the services and the levy of full assessment had the result of changing the character of the tenure, and in support of this contention, he relies upon the ruling in *Yellappa v. Marlingappa*,⁽²⁾ which was subsequently followed in *Vishnu v. Shankar*.⁽¹⁾ It appears, however, that the case of *Yellappa v. Marlingappa*⁽²⁾ was a case governed by the rules which will be found quoted in the report of that case, but those rules are no longer in force now, and the rules which are in force at the present moment will be found in Phadnis's *Watan Act, 1936*, 5th Edn., at page 248. One set of the rules or the other will apply in accordance with the period at which action was taken. It was all along contended on behalf of the defendant that the plaintiff who said that the lands had ceased to bear the character of *watan* lands had never proved that action was taken under the old rules. The learned appellate Judge came to the conclusion that it did not make any difference; but it is obvious that he went wrong there, because *watan* property has been defined in the *Watan Act*, as I had occasion to point out in an earlier judgment in *Ibrahim Nhanusaheb v. Abdul Rahiman*,⁽³⁾ as property not only held but acquired for providing remuneration for the performance of the duty appertaining to an hereditary office. It is true that the whole definition of *watan* property is "moveable or immoveable property, held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office", but the word 'or' makes it quite clear that property may be *watan* property,

⁽¹⁾ (1932) 35 Bom. L. R. 114.

⁽²⁾ (1910) 12 Bom. L. R. 577.

⁽³⁾ (1949) S. A. No. 990 of 1949, decided by Baydekar J., on April 4, 1949 (unrep.).

even though it is no longer held or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. Instances of this kind are not wanting; for example, paragana watandars' properties, which are no longer held or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office, are still *watan* properties, and so far as succession is concerned, they are governed by Act No. V of 1886. They are also governed of course by s. 5 of the Watan Act, because there is a specific provision in s. 5 (2), which says that s. 5 will continue to apply, notwithstanding a service commutation settlement, unless the terms of the settlement confer the right of alienating the *watan* without the sanction of the Provincial Government. It is not as if, therefore, the properties cease to be *watan* properties immediately services are dispensed with and full assessment is levied. The property may continue to be *watan* property, notwithstanding the fact that full assessment has been levied and services have been dispensed with. It is only when action is taken under the rules which are framed under one or the other of the Acts that property may cease to have the character of *watan* property, as was held in *Yellappa v. Marlingappa*. In that case, it was held that the property ceased to be *watan* property because of action taken under the rules which are mentioned therein. If at all, therefore, the *shetsanadi* lands cease to have the character of *watan* property, it must be because action is taken either under the rules quoted in the report in *Yellappa v. Marlingappa*, or under the rules which are quoted at page 248 of the 1936 edition of Phadnis's Watan Act; but the plaintiff is frankly unable to show under which of these rules action had been taken in the present case. If action has been shown to have been taken under the old rules, then, the ruling in *Yellappa's* case will apply. If, however, action has not been shown to have been taken under these rules, then, if at all, action must be shown to have been taken under the rules quoted at page 248 of Phadnis's Watan Act, 1936 edition, and there must be produced an order from a Collector which purports to be under the rules at page 248 of Phadnis's Watan Act. Inasmuch as the plaintiff is not in a position to say under which rules, as a matter of fact, action was taken, and he is not in a position to produce any order from the Collector showing that action was taken under the present rules, it is obvious that it cannot be said that an order has been passed by a competent authority which would change the character of the property as *watan* property.

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Mr. Madbhavi, who appears on behalf of the appellant, has drawn in this connection my attention to two documents, of which he now produces certified copies before me. The first is an extract from Taluka form No. 9 of the taluka of Saptasagar, in which there are details of the *shetsanadi inam* of the village. In the remarks column of that register there is an entry saying that there was a consideration of this matter in connection with the death of Jhambhai Avati. It was held that no officiators were required, and consequently an order was passed that until further orders there would be *japti* and full assessment should be levied. The details of this order have been taken up to the *inam jamin* patrak. Mr. Madbhavi says that inasmuch as this mention is to be found in the register of 1878-79, it must be taken that this order was passed under the old rules; but the form itself shows that it has got a column for making entries of changes in the names. That is column No. 14. It is obvious that the column has been maintained for making entries when after the form is prepared at the commencement, in this case in 1878-79, there are changes in the names and the entry in column 14 may, therefore, have been made at any time after 1878-79. It is obvious, therefore, that no inference could be drawn from the entry in column 14 of this form that the entry was made prior to 1878-79 or at any time when the order to which it relates could only be an order passed under the old rules. On the other hand, exh. 58, which is a document of village form No. 3 for the period 1908-1927 contains an entry dated December 6, 1921, which seems to suggest that full assessment was levied in the year 1911-12. There are entries in the remark column of that exhibit, which would again reiterate what has been mentioned before, that is, that the inam is under *japti* until further orders. This seems to suggest that, as a matter of fact, there have been never any final orders passed by any one with regard to levying of full assessment and dispensing of services. It is true that services have been dispensed with, but that is temporary. It is also true that full assessment has been levied, but that also appears to be temporary. That is the meaning of the word '*japti*.' In any case, whatever orders were passed were passed according to this exhibit in the year 1911-12. In that case, those orders could not be under the old rules which are referred to in *Yellappa v. Marlingappa*, and if that is so, in terms *Yellappa v. Marlingappa* has no application. The case has got to be determined under the present rules upon the construction of which *Yellappa v. Marlingappa* is no authority.

It appears to me, however, that it is not necessary to go into the question of the construction of the present rules, because there is no order forthcoming showing that action was taken by the competent authority in this case, the Collector, under the rules. In the second instance, rule 2 of the rules contemplates that where the Collector takes action under that rule on the ground that the services in respect of which the lands are held are no longer required, they may be continued under s. 15 of Bombay Act III of 1874 on condition of payment of a certain portion of the assessment thereof in commutation of services, and they are to continue to be held in accordance with the terms of the *sanad* which is issued in confirmation of the commutation settlement. It is not in dispute that there has, as a matter of fact, been no *sanad* issued, and consequently there is nothing to show what are the terms of the settlement under which, if any, the commutation has been effected.

It is true that the rules have got also another clause, namely, clause 4, under which the services in respect of which the lands are held are no longer required, the Collector may resume such lands, and the resumption may be by levy of full assessment. Whether the resumption includes eviction is a different matter; but there can be no dispute that the resumption may be effected by the levy of full assessment; but inasmuch as the rules themselves have two separate clauses, cl. 2 and cl. 4, and action may be taken under cl. 2 in the absence of any order saying under what clause action has been taken, it is impossible to say that action could not have been taken under cl. 2. All that has been alleged on behalf of the plaintiff is that by orders of some authority full assessment is levied and services have been dispensed with. That is exactly what happens when there is commutation of service which is permitted under r. 2 of the rules. Plaintiff's allegations, therefore, are consistent with action having been taken under r. 2, though, as a matter of fact, no *sanad* has been issued. In my opinion, the probabilities are that originally all *shetsanadi* lands were taken under *japti*, that is, under attachment pending the decision of what action was to be taken. Thereafter Government took the view that the lands were not *watan* lands, but this Court did not uphold that view. Government since then were in a quandary, and, as a matter of fact, no final action has ever been taken. But as I have said, in any case, the facts relied upon are consistent with commutation and in case there has merely been a commutation because of sub-s. (2) of s. 5, s. 5

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continues to apply, with the result that the lands cannot be alienated any more by any *watandar* beyond the term of his natural life. The facts are also consistent with no final action having been taken after attachment because contrary to the view of Government this Court took the view that *sanadi* lands are *watan* lands and Government hoped to persuade this Court to alter its view. In that case the lands continue to be *watan* lands.

The alienation by Rajesaheb in favour of the plaintiff was, therefore, void under s. 5 of the Watan Act. The appeal must be allowed, and the plaintiff's suit dismissed with costs throughout.

The plaintiff appealed under the Letters Patent.

G. R. Madbhavi, for the appellant.

V. N. Lokur, for the respondent.

VYAS J. This Letters Patent Appeal arises out of a suit No. 166 of 1945 which was filed by the plaintiff for recovery of possession of Survey No. 51/1 of the village Saptasagar in Athni Taluka and of 2½ gunthas of land out of Survey No. 157/2 of the same village, Mr. Justice Bavdekar having reversed in second appeal the decisions of the two Courts below and having ordered the dismissal of the plaintiff's suit with costs throughout.

The relevant pedigree is to be found at typed page 4 of the paper book. One Jhambhai had two sons Rajesaheb and Farid. Rajesaheb died on August 1, 1943. His son Bapusaheb had predeceased him in the year 1913. The present plaintiff Ramijabi is the daughter of Bapusaheb, in other words the grand-daughter of Rajesaheb. Farid's son is Ghudu who is the present defendant.

The suit lands, out of which Survey No. 51/1 was originally a *shetsanadi inam*, were at one time the joint family properties of Rajesaheb and Farid. At a partition which took place between them the suit lands fell to the share of Rajesaheb. On May 28, 1943, Rajesaheb executed a gift-deed of the present suit properties in favour of his grand-daughter, the present plaintiff. He died nearly two months later on August 1, 1943. On November 24, 1943, the present defendant Ghudusaheb, who is the son of Rajesaheb's brother Farid, applied to the revenue authorities to restore Survey No. 51/1 to him on the ground that it was *japti sanadi* land and therefore inalienable

under the provisions of the Bombay Hereditary Offices Act, 1874 (Bom. Act. No. III of 1874). On August 28, 1945, the Prant Officer ordered the land to be restored to the defendant. At that time the possession of the land, be it noted, was with the donee, namely, the present plaintiff, who had obtained it by virtue of the gift-deed passed in her favour by her grandfather Rajesaheb. The defendant got possession of the land in pursuance of the above mentioned order of the Prant Officer on August 30, 1945, and that led to the institution of the present suit on October 2, 1945, by the plaintiff. The plaintiff brought the suit contending that the land Survey No. 51/1, which was originally *shetsanadi inam* land, was converted into a *rayatwari* holding in course of time by the commutation of service and by the levy of full assessment, in other words by the withdrawal of the remuneration which at one time had attached to the performance of the service, the remuneration being the freedom from payment of assessment. It was contended by the plaintiff that after the service had ceased to be taken from the holder of the land and after the full assessment had started to be levied from the holder of the land, the original *watan* character of the land was lost and the land became a *rayatwari* holding, and that, after that, the provisions of Act III of 1874 had ceased to be applicable to this land. In other words, the contention of the plaintiff was that the land had become the private property of her grandfather after its conversion into a *rayatwari* holding and had been gifted to her by him and therefore she was entitled to recover back possession thereof from the defendant to whom the possession had been ordered to be given by the Prant Officer by his order dated August 28, 1945.

Both the trial Court and the lower appellate Court accepted the case of the plaintiff that by reason of the commutation of service and the levy of full assessment the original *watan* character of the property was lost and that the land had been converted into a *rayatwari* holding, in other words had become private property of Rajesaheb and had become the property of the plaintiff by virtue of the gift-deed executed by Rajesaheb in her favour. Accordingly the suit was decreed in favour of the plaintiff by the trial Court and that decree was confirmed in appeal by the learned Judge of the lower appellate Court.

The learned Judge of the lower appellate Court in his judgment pointed out that it was undisputed in this case that since long the performance of sanadi services had been dispensed with and the full assessment was levied in respect of the suit

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lands, and he came to the conclusion that the suit lands had become *rayatwari* lands by reason of the above mentioned facts, namely, (1) commutation of services and (2) levy of full assessment which meant the withdrawal of remuneration for services which were once being rendered. He relied on *Limbaji v. Rama*⁽¹⁾ in which it has been held that *shetsanadi inam* is *watan* property and that the remuneration which the holder of a *shetsanadi inam* receives from Government is the exemption from payment of a fraction of the assessment and the said feature of remuneration is an essential feature of the property being *watan* property. He referred to the two sets of rules, one framed under Act XI of 1852 and the other framed under the above mentioned Act and Act VII of 1863 and also referred to the cases of *Yellappa v. Marlingappa*⁽²⁾ and *Vishnu v. Shankar*⁽³⁾. He then pointed out that the former was a case in which the facts were governed by the old set of rules and the latter was a case in which the new rules were considered and then expressed his view in the following words:

"To my mind, however, it is really immaterial for the purposes of deciding the point in issue whether it is the old rules of 1865 or the new rules of 1908 apply. The result would be the same. In view of the fact that the services have been dispensed with and full assessment is levied on the lands, the only effect in law, according to the *ratio decidendi* in the two rulings would be to make the holders occupants and convert the holdings into ordinary *rayatwari* holdings."

That was the view which was taken in *Yellappa v. Marlingappa*⁽²⁾ where the rules that governed the case were the rules framed under Act XI of 1852, in other words the old set of rules, and it was also the view which was taken in *Vishnu v. Shankar*⁽³⁾ where the rules which were considered were both the sets of rules, namely, the set of rules which were framed under Act XI of 1852 and the set of rules which were framed under Act VII of 1863.

In second appeal Mr. Justice Bavdekar also referred to the two sets of rules just referred to and said that the learned Judge of the lower appellate Court was wrong when he observed that it did not make any difference whether the action which was taken, namely, the commutation of services and the withdrawal of remuneration, was taken under one or the other set of rules and went on to observe:—

"The property may continue to be *watan* property, notwithstanding the fact that full assessment has been levied and services have been dispensed with."

⁽¹⁾ (1898) P. J. 127.

⁽²⁾ (1910) 12 Bom. L. R. 577.

⁽³⁾ (1932) 35 Bom. L. R. 114.

and eventually concluded:—

“If action has been shown to have been taken under the old rules, then, the ruling in *Yellappa's* case will apply. If, however, action has not been shown to have been taken under these rules, then, if at all, action must be shown to have been taken under the rules quoted at page 248 of Phadnis's *Watan Act*, 1936 edition, and there must be produced an order from a Collector which purports to be under the rules at page 248 of Phadnis's *Watan Act*. Inasmuch as the plaintiff is not in a position to say under which rules, as a matter of fact, action was taken and he is not in a position to produce any order from the Collector showing that action was taken under the present rules, it is obvious that it cannot be said that an order has been passed by a competent authority which would change the character of the property as *watan* property.”

It is this conclusion which Mr. Madbhavi for the original plaintiff is challenging in this Letters Patent appeal before us.

Now, the point for our decision in this case is this: If the property which was originally *watan* property is continued with the holder thereof, but without the holder having to render services and with the full levy of assessment from him, what is the effect of such continuance on the nature of the property, i. e. whether the property still continues to be *watan* property or whether it is converted into a *rayatwari* holding in which the holder is invested with the rights of an ordinary occupant.

This question has come up before this Court on occasions more than one. In *Yellappa v. Marlingappa*⁽¹⁾ the case was one in which the plaintiff had brought a suit to obtain a declaration of his title to, and to recover possession of, certain lands. The lands in dispute were originally held by one Bashya, a registered *Shetsanadi*, who died on November 10, 1865. Under the rules regarding resumption &c. framed under Bombay Act XI of 1852, Sch. B, s. 10, the Government continued the lands to the family of Bashya on condition of their paying full survey assessment upon them. The order that was passed by the Collector in that case on February 28, 1866, was in the following words:—

“Your proposal is approved. But the *vahivat* of the lands should be with the heirs of the deceased. The assessment to be paid to make up the deficiency should be paid and the excess amount should be credited to Government.”

A new *Shetsanadi* (defendant No. 2 in that suit) was appointed by Government and he was remunerated from out of the extra

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assessment levied upon the lands in the hands of the heirs of the the proceeding *Shetsanadi*. The rules under which the above arrangements were made, which were rules framed under Act XI of 1852,—in the present judgment we may refer to them as 'the old set of rules'—provided as follows:—

"1. The Honourable the Governor in Council affirms the principle that the lands of a Shet sanadi are liable to be resumed and given to another if the holder misconducts himself. In reserving this right, however, the Governor in Council rules that it shall be exercised only in cases of extreme misconduct.

3. In ordinary cases of misconduct the dismissed *Shetsanadi* will be allowed to remain in possession of the land, but the lands will be subjected to full assessment and to a further payment, if necessary, to make up the remuneration of the person employed to perform service.

5. Whenever a *Shetsanadi* is discharged without fault because the service is no longer required the land will remain in his possession subject to the survey assessment and no further demand can be made."

It is to be noted that under the above mentioned rules the Government had no power to resume the lands except in cases of extreme misconduct. Where the misconduct committed by the holder of the lands was an ordinary misconduct, it was not competent to the Government to resume the lands, but what the Government could do was to allow the holder to remain in possession of the lands and subject the lands to full assessment and to a further payment, if necessary, in the circumstances of the case, to make up the remuneration of the person who might be appointed to perform the service. Where, however, there was no misconduct on the part of a *Shetsanadi* and where he was discharged without fault because the service was no longer required, it was not competent again to the Government to resume the lands, but the lands had to be allowed to remain in possession of the holder subject to the survey assessment and no further demand was to be made from the holder. It is to be remembered that it was in pursuance of the above mentioned r. 3 of the old set of rules that the Collector passed the order on February 28, 1866, saying:

"Your proposal is approved. But the *vahivat* of the lands should be with the heirs of the deceased. The assessment to be paid to make up the deficiency should be paid and the excess amount should be credited to Government."

On that order being passed, the lands in dispute went into possession of Yellava, the mother of Bashya, the original holder. On February 16, 1876, Yellava sold the lands to the plaintiff

and put him in possession. Defendant No. 2, the newly appointed *Shetsanadi*, instituted in 1883 certain proceedings in the Revenue Department, alleging that the lands should be taken from the plaintiff and given over to him. The revenue authorities decided the matter against defendant No. 2. In 1905 he again agitated the same question and this time he was successful. In those proceedings it was finally decided by the Commissioner on February 6, 1906, that the lands should be resumed from the plaintiff and made over to defendant No. 2. The plaintiff filed a suit on June 9, 1906, joining the Secretary of State for India as defendant No. 1 and the newly appointed *Shetsanadi* as defendant No. 2. The District Judge decreed the suit of the plaintiff observing in the course of his judgment as follows (12 Bom. L. R. at p. 579):—

“The heirs of the deceased had to pay full assessment to Government and had no further obligation of any sort. It need hardly be added that they were in no way concerned with the manner in which Government might deal with the assessment levied. They ceased to be *Shetsanadis* and no longer enjoyed the exemption which had been allowed to them while they were still *Shetsanadis*. From the date of the Collector's order they became ordinary occupants as defined in s. 3 (16) of the Land Revenue Code and it will hardly be suggested that, holding as they did in that capacity, their alienee would legally be subjected to the treatment meted out to him in this case.”

In other words, the learned District Judge came to the conclusion that in pursuance of the Collector's order dated February 28, 1866, the lands had ceased to be *watan* lands and the heir of the original holder had become an ordinary occupant as defined in s. 3, sub-s. (16), of the Bombay Land Revenue Code, and the provisions of the *Watan Act* had ceased to have any application. Defendant No. 2 went in appeal to the High Court and it was held by Mr. Justice Chandavarkar as follows (p. 580):—

“It has not been contended before us, nor does it appear to have been contended in the Court below by either of the defendants, that the order passed and the action taken by the Collector in consequence of those orders in 1865 were illegal. One of the rules then in force and having the force of law under Act XI of 1852 provided that, in case of the discharge of a *shetsanadi* without fault, but because his service was no longer required, his *shetsanadi* land, should be allowed to remain in his possession, subject to the survey assessment, and that no further demand could be made....The *shetsanadi* service required of *Bashya's* branch of the family was dispensed with upon the ground that there was no necessity for it; full survey assessment was imposed upon the land; and *Bashya's* heir was allowed to remain in possession, subject to the survey assessment. After that, no further demand could be

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made from the person let into possession on that condition. Both the order passed and the action taken under the rule had in law the effect of converting the land from a *shetsanadi watan* into a ryotwari holding and investing the holder of the land with the rights of an ordinary occupant, entitled to it so long as he paid the survey assessment."

In *Vishnu v. Shankar*⁽¹⁾ it was the contention of the appellant's advocate that the *shetsanadi* lands were no longer such, as the full assessment had been levied upon them and the services had been dispensed with and therefore they were no longer *watan* property, even supposing they were so originally. In the course of his judgment Mr. Justice Baker went on to point out (p. 116):—

"...Therefore, when full assessment on these lands is levied, the remuneration for the officiator goes, and the property is no longer assigned for remuneration for the performance of the duty appertaining to a hereditary office."

He went on to observe (p. 116):—

"...The powers of the Collector or rather of Government to deal with the *watan* under rules made under Act XI of 1852 or Bombay Acts Nos. II and VII of 1863.....are expressly reserved under s. 1 of the Hereditary Offices Act. There could be no doubt, therefore, as to the power of the Government to convert the lands into an ordinary ryotwari tenure by dispensing with the services and withdrawing the remuneration, and although it has been argued by the learned advocate for the respondent that a hereditary office may continue even when the services originally appertaining to it have ceased to be demanded, I do not think, in view of the ruling in *Yellappa v. Murlingappa*,⁽¹⁾ and the definition of *watan* in s. 4 of the *Watan Act*, that where not only the services have been dispensed with, but also the remuneration for those services has been withdrawn, any question of the property still remaining *watan* property can arise."

It is to be noted with particular emphasis that Mr. Justice Baker in that case had both the sets of rules before him, in other words the rules framed under Act XI of 1852 and also the rules under Acts II and VII of 1863. It is also to be remembered that a contention was raised before him also, as it is raised before us, that a hereditary office might continue even when the services originally appertaining to it had ceased to be performed. His attention was particularly invited to Bombay Act III of 1874, and, after a full consideration of both the sets of rules which were before him and the definition contained in s. 4 of Bombay Act III of 1874 and after an examination of the arguments which were advanced before him that an hereditary office might continue even when the services originally appertaining to it had ceased to be demanded and performed, he

⁽¹⁾ (1932) 35 Bom. L. R. 114.

came to the conclusion that where not only the services had been dispensed with, but also the remuneration for those services had been dispensed with, no question of the property still remaining watan property could arise.

With the above conclusion of Mr. Justice Baker, Mr. Justice Broomfield fully agreed. He also in a short concurring judgment said (p. 117):—

“...The effect of the rules is that lands which were originally watan may be converted into ordinary ryotwari lands by the levy of the full assessment. On the pleadings and the admitted facts in this case, I agree with my learned brother that it is permissible to assume that that has been done in this case, as it was held to have been done in *Yellappa v. Marlingappa*.”⁽¹⁾

Mr. Justice Broomfield also referred to both sets of rules when he said (p. 117):—

“These rules have been referred to in Phadnis’ Hereditary Offices Act, 4th Edition, at p. 277 and also in *Yellappa v. Marlingappa*.”⁽¹⁾

Presumably, the rules which were then to be found in the 4th edition of Phadnis’s Hereditary Offices Act at page 277 are now to be found at page 248 in the fifth edition of Phadnis’s Watan Act, published in 1936. The rules which were referred to in *Yellappa v. Marlingappa*⁽¹⁾ were of course the old set of rules. Naturally, therefore, Mr. Justice Broomfield also considered both the sets of rules and came to the conclusion that the land which was originally a *watan* land could be converted into ordinary ryotwari land by the levy of the full assessment and by the commutation of the service.

The ratio of the above mentioned two decisions in *Yellappa v. Marlingappa* and *Vishnu v. Shankar* is that if an action is taken either under one set of rules or the other, which has resulted in the continuance of the land, which was originally *watan* land, with the holder, but without the holder having to render services and with the levy of the full assessment on the land from the holder, the original *watan* character of the land is lost and the land is converted into ordinary *ryotwari* holding in which the holder is invested with the rights of an ordinary occupant under the Land Revenue Code.

In his judgment in second appeal Mr. Justice Bavdekar also referred to the two sets of rules and said that the applicability of a particular set of rules would depend on when the action was taken, i. e. when the commutation of service and the levy of full assessment had occurred. His actual observations are

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"One set of the rules or the other will apply in accordance with the period at which action was taken." Mr. Justice Bavdekar then went on to say:

"The property may continue to be *watan* property, notwithstanding the fact that full assessment has been levied and services have been dispensed with,"

and observed that,

"It is only when action is taken under the rules which are framed under one or the other of the Acts that property may cease to have the character of *watan* property..."

Then he went on to say that if action had been shown to have been taken under the old rules, then the ruling in *Yellappa v. Marlingappa* would apply. In his opinion, however, the plaintiff was not in a position to show under which rules, as a matter of fact, the action was taken, and was not in a position to produce any order from the Collector showing that the action was taken under the present rules. Therefore, Mr. Justice Bavdekar came to the conclusion that it could not be said that an order was passed in this case by a competent authority which would change the character of the property as *watan* property.

Now, it is true that in this case there are two sets of rules, as we have pointed out already in this judgment, namely, one set framed under Act XI of 1852 and the other set framed under Act VII of 1863. The difference between the two sets of rules does not mean that the first set of rules was abrogated by the second set of rules. In our opinion, there was no such abrogation, but the difference lies in this that whereas under the former, namely, the old set of rules, it was not competent to Government to order the resumption of land except in the case of extreme misconduct and all that the Government could do was to continue the land with the original holder thereof without taking any service from the holder but charging the full assessment from him, under the later rules which were framed under Act XI of 1852 and Act VII of 1863, it was competent to the Government to do any one of the three things which are mentioned at page 249 of Phadnis's *Watan Act*, 5th edition, 1936. If the Collector was at any time satisfied that the service, in respect of which lands were originally granted as *watan* lands, was no longer performed or that the performance of the service was no longer necessary, etc., the Collector may in his discretion direct either (1) the resumption of such lands, or (2) the continuance of the same, subject to such new conditions as he shall deem fit to impose, or (3) the resumption of a

portion of such lands and the continuance of the rest thereof, subject to such conditions as aforesaid. In other words, the Collector could do any one of the three things. He could either resume the lands, which were originally granted as *watan* lands, to Government, or he could continue the lands with the holder subject to such conditions as he may think fit to impose, e.g., he could continue the lands in possession of the original holder on payment of full assessment, as was done in our present case or he may resume a portion of the lands and allow the remaining portion to continue in the possession of the original holder subject to such conditions as he may deem fit to impose. The point to be noted with particular emphasis in this connection is that the old rule which provided for the continuance of the land with the original holder on the commutation of the service and on the levy of the full assessment from him was not abrogated by the new set of rules. Even under the new set of rules, if the Collector came to the conclusion that the performance of the service was no longer necessary or that the service was no longer performed, he could, amongst other things, continue the land with the original holder subject to such conditions as he might think fit to impose, and he might impose a condition of levying the full assessment, as he did in this case. If the Collector, however, does not wish to continue the land in possession of the original holder, which power he had even under the old rules but only in case of extreme misconduct on the part of the holder, he may resume the land wholly to Government or may resume it partially to Government and may allow the remaining portion of it to continue in possession of the holder. Therefore, the position which emerges from a consideration of both the sets of rules is that once there is taken an action, no matter whether that action is taken under the one set of rules or the other, of continuing the land in the possession of the original holder, without the holder having to render service and on his paying the full assessment, the effect of the said continuance is the conversion of the original *watan* land into a *ryotwari* holding. This is the *ratio* of the decisions in *Yellappa v. Marlingappa* and *Vishnu v. Shankar*.

It is clear from the judgment of Mr. Justice Bavdekar recorded by him in second appeal that he seems to have taken the view that as soon as the new set of rules was framed under Act XI of 1852 and Act VII of 1863 the former set of rules was abrogated. With respect, we are unable to agree with that view. Apart from the fact that there is nothing in the Act of 1863 and

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the new set of rules to suggest that the old set of rules was superseded or abrogated thereby, it is to be remembered that in *Vishnu v. Shankar*, although this Court had both the sets of rules before it, it was held that the decision in *Yellappa v. Marlingappa*, which was a case under the old set of rules, was good law, which would not have been the conclusion of this Court had it been of the view that the old set of rules was abrogated by the new set of rules. In our opinion, the old set of rules was not abrogated by the new set of rules and the continuance of the land, which was originally *watan* land, with the holder thereof on the commutation of service and on the levy of full assessment could be ordered both under the old rules as well as under the new rules, as we have seen that one of the courses which could be taken by the Collector under the new rules would be to order the continuance of the land on such conditions as are deemed fit by him.

Mr. Lokur for the respondent, while commenting on the decisions in *Yellappa v. Marlingappa* and *Vishnu v. Shankar*, has contended before us that those were cases in which only the old rules were considered and the new rules were not before the Court and that therefore, to the present case which is governed by the new rules, those decisions would not apply. The argument is also apparently based on the contention that the old set of rules had stood abrogated when the new set of rules was framed. In the first place, as we have just pointed out, there was no abrogation of the old rules by the framing of the new rules and, in the second place, it is not correct to say that in *Vishnu v. Shankar* what was before the Court was only the old set of rules. Mr. Justice Baker in his judgment in terms has referred to the fact that both the sets of rules were before him. To use his words (p. 116):—

“The powers of the Collector or rather of Government to deal with the *watan* under the rules made under Act XI of 1852 or Bombay Acts Nos. II and VII of 1863...are expressly reserved under s. 1 of the Hereditary Offices Act.”

It is, therefore, clear that not only the rules framed under Act XI of 1852 were before him, but also the rules framed under Acts II and VII of 1863 were before him. In other words both the sets of rules were before him in *Vishnu v. Shankar* and both the sets of rules were considered by him along with the definition of *watan* property contained in s. 4 of Bombay Act III of 1874. Mr. Justice Broomfield has also made it clear in his judgment that both the sets of rules were considered by him.

When he referred to the rules at p. 277 of Phadnis's Hereditary Offices Act, 4th edition, he obviously referred to the new set of rules which are now to be found in the fifth edition of the same book at p. 248, and of course to the older rules he referred to by saying that they were to be found in the case of *Yellappa v. Marlingappa*. It is not therefore correct to say that the decision in *Vishnu v. Shankar* would not apply to the facts of the present case because the new set of rules was not considered in that case.

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The next argument of Mr. Lokur, which is adopted from the judgment of Mr. Justice Bavdekar for the reasons stated by him, is that the property may continue to be *watan* property, notwithstanding the fact that full assessment has been levied and services have been dispensed with. Mr. Justice Bavdekar has referred to the definition of *watan* property which is to be found in s. 4 of Bombay Act III of 1874 in support of his view that the property may continue to be *watan* property, notwithstanding the fact that full assessment has been levied and services have been dispensed with. His observations on this point are:

"...*watan* property has been defined in the Watan Act, as I had occasion to point out in an earlier judgment in *Ibrahim Nanusaheb v. Abdul Rahiman*, as property not only held but acquired for providing remuneration for the performance of the duty appertaining to an hereditary office. It is true that the whole definition of *watan* property is 'movable or immovable property, held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office,' but the word 'or' makes it quite clear that property may be *watan* property even though it is no longer held or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office."

With great respect, we are unable to follow the reasoning contained in the above mentioned quotation from the learned Judge's judgment. When we consider the fact that *watan* property is property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office, it is difficult indeed to understand how the property can continue to retain the nature of *watan* property even after the cessation of the performance of the duty. Moreover, this very point had come up for consideration and this very argument was raised and examined in *Vishnu v. Shankar*. There also it was contended before the learned Judges that a hereditary office might continue even when the

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services originally appertaining to it had ceased to be demanded and their view was that "where not only the services have been dispensed with, but also the remuneration for those services has been withdrawn, any question of the property still remaining watan property" cannot arise. Mr. Justice Broomfield also in his concurring judgment in that case agreed with the above mentioned view of Mr. Justice Baker and said: "The effect of the rules is that lands which were originally watan may be converted into ordinary ryotwari lands by the levy of full assessment." It is therefore clear that Mr. Justice Baker and Mr. Justice Broomfield who carefully examined the definition of *watan* property as embodied in s. 4 of the Watan Act and who also considered the argument advanced before them that the property might continue to retain the character of *watan* property even after the services originally appertaining to the property had ceased to be performed, came to the conclusion that the property could not continue to remain as *watan* property after the services had ceased to be performed and after the full assessment had started to be levied from the original holder thereof. In these circumstances, Mr. Lokur's argument based on the judgment of Mr. Justice Bavdekar, namely, that the property may continue to be *watan* property, notwithstanding the fact that full assessment has been levied and services have been dispensed with, must be rejected.

Proceeding further, Mr. Lokur drew our attention to the fact that in exh. 5 which was attached to the plaint the property was mentioned as *japti inam* and he also referred us to exh. 6 in which too the property has been mentioned as *japti sanadi*. In our opinion, the expression '*japti sanadi*' only means that the *watan* character of the property was divested and lost by the discontinuance of service, and the withdrawal of remuneration which has attached to the performance of the service. After all, the two essential features of the *watan* property are: (1) the performance of service and (2) the grant of remuneration in that connection; and when both the features ceased to exist, namely, when the services had ceased to be performed by the original holder of these properties and when the remuneration which was granted to him was also withdrawn in so far as full assessment had started to be levied from him it is clear that the original character of the property as *watan* property was lost and the property was converted into *ryotwari* holding and that, in our opinion, was meant when the expression '*japti sanadi*' was used in exhs. 5 and 6. Mr. Lokur has

sought to argue that *japti sanadi* meant that the property had only temporarily ceased to bear the character of *watan* property. In support of this contention, Mr. Lokur has not been able to cite any authority before us, and that being so, we must put a reasonable construction, namely, that when the features which are invariably associated with *watan* property were withdrawn from this property by the commutation of the service and the levy of the full assessment from the holder, the property ceased to possess the character of *watan* property and acquired the character of *ryotwari* holding, and, in our opinion, in that loose sense the expression 'japti sanadi' was used in exhs. 5 and 6. Our attention was also invited by Mr. Lokur to exh. 58, which is a copy of the Inam Register, in which we find:

“सदर दुसरा हुकुम होईतो पर्यंत जप्ती भैत वारस मुलगा घुडु याचे नांवे दाखल करणें”.

From this a contention was made by Mr. Lokur that the continuance of the land with the original holder on conditions that the services were not to be performed and that the full assessment was to be paid by him was only ordered temporarily and that it did not amount to a permanent conversion of the land into *ryotwari* holding. This argument also failed to impress us. In the first place, merely the words “subject to further orders” are not, in our opinion, sufficient to show that the action which was taken by the Collector was intended to hold good only temporarily. Besides, if we turn to the rules, the old rules or the new rules, we do not find anything therein to show that a conversion of the original *watan* property into *ryotwari* holding can be ordered only for temporary purposes. That being so, the argument that the continuance of the land with the original holder on the above mentioned two conditions was ordered only temporarily must also be rejected.

The principal difficulty which Mr. Justice Bavdekar felt was that the plaintiff had not been able to produce any order passed by the Collector in pursuance of the new rules. But, in this connection, in the words of Mr. Justice Broomfield “on the admitted facts in this case it is permissible to assume that” the property which was originally *watan* property was converted into *ryotwari* land by the levy of full assessment and the commutation of service. It is true that the plaintiff has not been able to produce any order to that effect in black and white from the Collector. But the admitted facts of the case justify the inference that such an order must have been passed. Those

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facts are: (1) that for a long time the original holder continued in possession of this property without rendering the service for which the property was originally granted to him, and (2) that the said holder became subject to the levy of full assessment after the commutation of the service. It is impossible to conceive of a state of affairs in which the revenue authorities without any order from the Collector would have ventured to discontinue the taking of service from the original holder of the property and would have ventured to start levying full assessment from the holder. If we turn to rule 6 of the new rules which is to be found at page 250 of Phadnis's Watan Act. 5th edition, 1936, we find this:

"It shall be lawful for the Collector, whenever it may be necessary, in carrying out any of the provisions of No. 4 or 5 of these rules—(a) to summarily evict any person wrongfully in possession of any land,....."

If, in this particular case the original holder had been found to be in possession of this land even after ceasing to perform the services which were originally required to be performed by him and if the Collector had not intended to continue him in possession of this land as an ordinary occupant under the Land Revenue Code, we have no doubt that action would have been taken by the revenue authorities to evict him, since in that sense his possession would have been deemed to be wrongful. Under these circumstances, although the actual order of the Collector is not on the record to show that he had converted the original watan property into *ryotwari* land, there is no doubt that the circumstances strongly suggest that the continuance of the possession of the original holder and, after him, his grand-daughter in respect of the suit property must have been in pursuance of the direction of the Collector. It really would not matter at all, as the learned Judge of the lower appellate Court pointed out, whether the continuance was ordered by the Collector under the old rules or the new rules, since under the new rules also it could be ordered by the Collector. As we have pointed out above, it could be ordered as one of the three courses open to him under rule 4 of the new rules. Therefore, with great respect, we are not able to agree with Mr. Justice Bavdekar that as there has been no order of the Collector produced by the plaintiff, this is a case in which "it cannot be said that an order has been passed by a competent authority which would change the character of the property as *watan* property."

While on this point we may refer to the decision of this Court in *Vishvanath Appaji Patel v. Bacchharām Dattu Patil*⁽¹⁾ in which it was observed by Mr. Justice Shah who delivered the judgment of the division bench:

"Now, it is conceded before us that there is no evidence to support the observation made by the learned trial Judge, that the services were temporarily dispensed with by the Government. If, therefore, the Record of Rights show that the full assessment is being levied in respect of these lands, and that services are not required to be performed and they are described as Japti Sanadi Inam lands, meaning thereby that they were once Sanadi lands but in respect of which there has been a presumption by the Government, the conclusion must inevitably follow that these lands have ceased to be lands held on Sanadi tenure and are held in ordinary occupancy rights."

It is of course quite clear that neither the first set of rules nor the second set of rules was brought to the notice of the Court in that matter, but there is no doubt that the ratio of the decision was in consonance with either set of rules, namely, that where there has been a continuance of the land with the original holder without the holder having to perform services and where full assessment has been levied from him, the watan character of the property is lost and the land is converted into ryotwari holding under the Land Revenue Code.

Mr. Lokur has referred us to the case of *Shivram v. Mahadev*⁽²⁾ in which the facts were that in execution of a decree against the plaintiff's father, the land in dispute which was *patilki-watan* was sold at a Court-sale to the defendant in 1872. The defendant took possession and paid full assessment which was given to the officiator as his remuneration for service. The plaintiff's father died in 1905 and the plaintiff brought the suit in 1909 to recover possession of the land from the defendant. The lower Court held that the land had ceased to be *watan* on account of the levy of full assessment and that the suit was barred by limitation. It was held on second appeal that the land did not lose its *watan* character merely because the Collector levied full assessment or altered the mode of remuneration. It is quite clear that the facts of that case were totally different from the facts of the case before us here. In that case the services were continued to be performed and only the mode of remuneration was altered, whereas in the case before us one of the most important facts is that the services had

⁽¹⁾ (1949) F. A. No. 23 of 1947, decided by Weston and Shah JJ., on Sept. 1, 1949 (unrep.).

⁽²⁾ (1912) 14 Bom. L. R. 797.

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ceased to be performed by the original holder and the full assessment had started to be levied from him.

Mr. Lokur also relied on *Bhima v. Raghavendracharya*.⁽¹⁾ The facts in that case were that the plaintiff was the holder of certain *inam* lands which were exempted from payment of assessment in consideration of his rendering certain service to Government. In 1873 the lands were mortgaged to defendant, on condition that he was to enjoy the usufruct in lieu of interest. In the famine of 1876 the plaintiff left the village and as no service was rendered, Government appointed another person to perform the service and demanded payment of the full assessment from the defendant. The defendant paid the assessment and continued in possession. But Government did not forfeit the holding and the lands continued, as before, in the plaintiff's name in the *watan* register. It was held that, in the absence of a declaration of forfeiture of the holding, the steps which Government took to recover the assessment in lieu of service had not the effect of creating any change of title and that the plaintiff was, therefore, entitled to redeem. It is to be remembered, however, that that was a case of default on the part of the plaintiff. The plaintiff had left the village and so defaulted so far as the performance of the service was concerned. The present case, however, is the case of discharge of a *Shetsanadi* without fault. That being so, this decision also would not help Mr. Lokur.

Mr. Lokur next drew our attention to the case of *Appaji Bapuji v. Keshav Shamrav and Keshav Shamrav v. Appaji Bapuji*.⁽²⁾ It was a case in which one Rudro and his sons were members of an undivided family. In execution of certain money decrees passed against Rudro the lands in dispute were sold to various persons, from whom they were afterwards bought by the defendant. After Rudro's death, his sons and grandson filed a suit against the defendant to recover the lands alleging that the lands were service *watan* lands and inalienable and that the execution sales affected nothing except Rudro's life-interest in them and that on Rudro's death they (the sons and grandson) became entitled to the lands. They also contended that, even if the Court should find that the lands were not service *watan* lands, they were, at all events, ancestral property and that the plaintiff's interests therein were not affected by execution sales under decrees to which

⁽¹⁾ (1900) 24 Bom. 482, s. c. 2 Bom. L. R. 211.

⁽²⁾ (1890) 15 Bom. 13.

they were not parties. It was held in that case that the two fields, which had been the subject of a Gordon Settlement in 1864, had remained inalienable *watan* lands although the services in respect of them had been dispensed with. Mr. Lokur has relied on this authority to contend that the property may continue to be *watan* property notwithstanding the cessation of the performance of the service. He seems to forget, however, that that was a case under the Gordon Settlement of 1864 and what the Gordon Settlement was is found explained at page 23 of the reports. These are the observations of Chief Justice Sir Charles Sargent in that context:—

“What is termed a Gordon Settlement was an arrangement—entered into in 1864 by a Committee, of which Mr. Gordon, as Collector, was chairman, acting on behalf of Government with the *watandars* in the Southern Maratha Country, by which the Government relieved certain *watandars* in perpetuity from liability to perform the services attached to their offices in consideration of a ‘*judi*’ or quit-rent charged upon the *watan* lands.”

It is therefore clear that although in that case the services had ceased to be performed the *watan* character of the property was retained in consideration of a *judi* or quit-rent which was charged upon the *watan* lands. No such thing happened in the present case and therefore that decision also would not apply to this case.

The next case on which Mr. Lokur relied was the case of *Bhau v. Ramchandrarao*.⁽¹⁾ It was also a case under the Gordon Settlement and therefore precisely for the same reasons as stated above while commenting on *Appaji Bapuji v. Keshav Shamrav* and *Keshav Shamrav v. Appaji Bapuji*,⁽²⁾ this case also would be of no assistance to Mr. Lokur.

Mr. Lokur next drew our attention to the judgment of Mr. Justice Bavdekar in *Ibrahim Nhanusaheb v. Abdul Rahiman*.⁽³⁾ In that case a contention was advanced by Mr. Coyajee before the Court on behalf of the plaintiff that in the year 1911 the services which were required to be performed by the *sanadis* were dispensed with and the lands were allowed to remain in the possession of the then *sanadi* as *japti sanadi* in lieu of the services which were required to be performed. The plaintiff was also called upon to pay the full assessment of the land. Mr. Coyajee had argued in that case that the result of doing

⁽¹⁾ (1895) 20 Bom. 423, F. B.

⁽²⁾ (1890) 15 Bom. 13.

⁽³⁾ (1949) Second Appeal No. 990 of 1945 decided by Bavdekar J., on April 4, 1949 (Unrep.).

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this was that from the moment that action was taken the lands had ceased to be *watan* lands. In dealing with that argument of Mr. Coyajee, Mr. Justice Bavdekar observed:

"It is true that in the case of *Yellappa v. Marlingappa*, it was held that where the *Shet-sanadi* services required from the *Shetsanadi* family were dispensed with as there was no necessity for it, full survey assessment was imposed upon the land and the heir of the person with whom settlement was effected was allowed to remain in possession subject to the survey assessment, no further demand being permissible, the order passed and the action taken under the rule had in law the effect of converting the land from a *shetsanadi watan* into a *ryotwari* holding and investing the holder of the land with the rights of an ordinary occupant entitled to remain in possession so long as he paid the survey assessment. The case was, however, a case in which the resumption had been effected under the rules in force at the time. They were the rules framed under Act No. XI of 1852 and would be found printed in 12 Bom. L. R. 578."

Obviously Mr. Justice Bavdekar seems to have thought also that the old set of rules which were framed under Act XI of 1852 had stood abrogated when the new set of rules was framed. With that view, for the reasons which we have already mentioned, we are with respect not prepared to agree. Proceeding further with his judgment Mr. Justice Bavdekar said:

"...the difficulty in the way of Mr. Coyajee is that he cannot point to any rules under which the action of Government in 1911 could be said to have been taken. It appears that these rules which are printed at page 578 in the 12th volume of the Bom. L. R. were not in force in 1911."

With respect, we are unable to share Mr. Justice Bavdekar's view embodied in the above mentioned observations. As a matter of fact, the action taken by Government in this particular case could be said to have been taken even under the new rules, because as we have pointed out one of the courses of action which could be taken by the Collector under the new rules was to order the continuance of the land with the original holder, levying the full assessment from that person. It is not correct to say that the rules which are found printed at page 578 in *Yellappa v. Marlingappa* were not in force in the year 1911. We do not wish to repeat what we have stated above, namely, that the old set of rules was not abrogated by the new rules and it holds good even now in spite of the fact that the new set of rules was framed in 1908. Therefore reliance on this judgment of Mr. Justice Bavdekar in *Ibrahim Nhanusaheb's* case would not help the case of the respondent.

The last point which Mr. Lokur has sought to make before us is that the revenue authorities, namely, the Prant Officer,

having ordered the restoration of the suit property to the defendant, it is not competent to a civil Court to entertain the suit of the plaintiff. Although it does not appear from the judgment of Mr. Justice Bavdekar that this contention was advanced before him in second appeal, there is no doubt that such a contention was taken in the trial Court and also before the learned Judge of the lower appellate Court, and while dealing with that contention the lower appellate Court has said this:

"It is true that the Prant Officer has ordered resumption of one of the lands. That order, however, is clearly illegal and, therefore, void. The plaintiff can safely ignore it. It is not necessary to get it set aside. Since the order is illegal and void, it is not incumbent on the plaintiff to join the Province of Bombay as a party."

Obviously Mr. Lokur is seeking to rely on the provisions of s. 4 of the Bombay Revenue Jurisdiction Act, 1876, (Act X of 1876) when he is advancing this contention. Now, s. 4 of the Act lays down:

"Subject to the exceptions hereinafter appearing, no civil Court shall exercise jurisdiction as to any of the following matters:—

(a)...

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by the Provincial Government or any officer duly authorised in that behalf....."

Clearly these provisions cannot apply to the facts of the present case for the simple reason that the original *watan* character of the property was lost by the action taken, namely, the action of continuing the land with the original holder thereof without requiring the performance of service from the holder and subjecting the holder to the levy of full assessment. After the *watan* character of the property was lost, the provisions of the Watan Act became inapplicable to the property and, that being so the Prant Officer had no jurisdiction at all to pass the order under the Watan Act in reference to this property. Obviously therefore the order of the Prant Officer was void. That being so this particular contention is not available to Mr. Lokur.

In view of the above mentioned reasons, the Letters Patent appeal must be allowed, the second appeal will stand dismissed, the decrees of the lower appellate Court and the trial Court will be confirmed and the plaintiff's suit will be decreed with costs throughout.

Appeal allowed.

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