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take the date of the application as the relevant point of time and on that date determine what are the debts in existence due by the debtor. If those debts are less than Rs. 15,000 he is a debtor within the Bombay Agricultural Debtors' Relief Act. If they are not, then he is not entitled to the protection of the Bombay Agricultural Debtors' Relief Act. In my opinion, therefore, the learned Judge below was right in the view that he took.

Application fails. Rule discharged with costs.

Rule discharged.

K. B. S.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Bhagwati.

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 Aug. 4

SAMBHAJI BALAJI SOLANKAR *v.* THE STATE OF BOMBAY.*

Bombay Land Revenue Code (Bom. V of 1879), s. 211—Order of Prant Officer sanctioning grant of occupancy rights in certain land—Issue of sanad pursuant to order—Power of Government to cancel sanad under its revisional power on ground of misrepresentation by grantee—Government ordering restoration of possession of land on ex parte inquiry—Application to quash order—Constitution of India, arts. 31 (1), 19 (f).

The powers of the Government under s. 211 of the Bombay Land Revenue Code, 1879, are very wide, and to the extent that an order is passed by any revenue officer, the Government can revise that order and set it aside. But when the order has resulted in a solemn agreement being entered into between the Government and the subject, it is not open to the Government under the section to set aside or cancel the agreement on the ground that it was obtained by the subject by misrepresentations. The proper course for the Government to follow in such a case is to file a suit for avoiding the contract, so that the question whether the contract was induced by misrepresentation may be judicially determined.

Government of Bombay v. Ahmedabad Sarangpur Mills Co. Ltd.⁽¹⁾; *Government of Bombay v. Mathurdas Laljibhai*⁽²⁾; *Province of Bombay v. Hormusji Manekji*⁽³⁾; and *Secretary of State v. Anant Nulkar*,⁽⁴⁾ referred to.

On July 4, 1951, certain pieces of land were granted on an impartible tenure to the petitioner and a sanad in Form F (1) was issued to him by the District Deputy Collector. Subsequently on an *ex parte* inquiry

* Civil Application No. 487 of 1952.

⁽¹⁾ (1943) 46 Bom. L. R. 413.

⁽²⁾ (1941) 44 Bom. L. R. 405.

⁽³⁾ (1947) 50 Bom. L. R. 524.

⁽⁴⁾ (1933) 36 Bom. L. R. 242.

the Government came to the conclusion that the petitioner was guilty of misrepresentation in obtaining the sanad. They, therefore, cancelled the sanad in exercise of their powers of revision under s. 211 of the Bombay Land Revenue Code and ordered the petitioner to restore possession of the land. The petitioner having applied to the High Court under Art. 226 of the Constitution of India for the issue of a writ;

Held, (i) that the Government had no power to set aside the sanad under their revisional powers under s. 211;

(ii) that assuming that it was open to Government to take action under s. 211, the action was taken in gross violation of the rules of natural justice;

(iii) that under the circumstances if the petitioner were to be deprived of his land it would be contrary to due process of law;

(iv) that, therefore, the order of the Government should be set aside.

Application under art. 226 of the Constitution of India for the issue of writs in the nature of mandamus, prohibition, *quo warranto* and *certiorari* or any of the appropriate writs:

Sambhaji (petitioner), a resident of Songaon in Baramati taluka, Poona district, was an agriculturist. In 1943, he was given Survey Nos. 167 and 168 of the village which were till then unoccupied Government waste lands for cultivation as a tenant from year to year. This yearly tenancy continued up to 1951, and on April 24, 1951, the petitioner executed a rent note for another year ending with March 1952. Prior to that the petitioner had applied that the lands should be given to him permanently as an occupant, and on April 18, 1951, the Prant Officer, Baramati Division, had granted the application and passed the following order on it:—

“In exercise of the powers vested in him under Rule 37 of Land Revenue Rules and read with s. 117 of the Land Revenue Code, the Prant Officer, Baramati Division, Poona, sanctions the grant of Government assessed waste lands bearing Sur. Nos. 167 and 168.....on payment of three times the assessment (i. e. on payment of Rs. 113-4-0) on new tenure in favour of Shri Sambhaji Balaji Solandkar of Songaon Taluka Baramati subject to the following conditions:

(1) That the grantee shall pay the occupancy price of Rs. 113-4-0 within a week.

(2) That the grantee shall pay agricultural assessment as shown above per annum plus L. F.

(3) That the grantee shall cultivate the lands in person.

(4) That the grantee shall produce food and fodder crops only.

(5) That the grantee shall permanently reside in the village in which the lands are situate.

(6) That the grantee shall hold the occupancy of the lands under G. R. G. subject to the new and impartible tenure and Agri-silvi bases.

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(7) That the grantee shall execute Sanad in form F (1).

(8) The breach of any condition shall be resulted in cancellation of the Sanad."

Accordingly the petitioner executed a sanad in Form F (1) which was accepted on behalf of the Government by the District Deputy Collector on July 4, 1951.

On November 17, 1951, the petitioner wrote a letter to the Secretary, Revenue Department, Bombay, requesting him not to take any action on an application alleged to have been made by one Thite that the lease of the lands should be given to him instead of the petitioner, without a full and impartial inquiry. This letter was wrongly construed as an application by the petitioner for grant of a lease, and the petitioner was informed by the Secretary, Revenue Department, on January 19, 1952, that his request for the grant of Survey Nos. 167 and 168 could not be granted as he was already in possession of land sufficient for the maintenance of his family.

On February 15, 1952, the Mamlatdar of Baramati issued a notice to the petitioner calling upon him to return the lands to him as the Government had resolved not to grant them to the petitioner.

On February 26, 1952, the petitioner made an application to the High Court under art. 226 of the Constitution of India for issue of an appropriate writ not to dispossess him of the lands and to recognise him as an occupant under the sanad contending that he was being deprived of the lands on an *ex-parte* decision taken by the Government and otherwise than by due process of law.

The application was heard.

K. R. Bengeri, for the petitioner.

H. M. Choksi, Government Pleader for the State.

CHAGLA C. J. The petitioner was given survey Nos. 167 and 168 which were formerly unoccupied Government Waste Lands for cultivation as a tenant from the year 1943 on an annual tenancy. He then applied for a sanad as an occupant. Rule 37 of the Bombay Land Revenue Code Rules provides that any unoccupied survey number not assigned for any special purpose, may, at the Collector's discretion, be granted for agricultural purposes to such person as the Collector deems fit, either upon payment of a price fixed by the Collector, or without charge, or may be put up to public auction and sold subject to his confirmation to the highest bidder, and sub-cl. (4) provides

that when the land is granted on impartible tenure an agreement in Form F (1), and, when it is also granted on inalienable tenure, an agreement in Form F (1), shall ordinarily be taken from the person intending to become the occupant. In this case the land was granted on impartible tenure to the petitioner and an agreement in Form F (1) was signed by the petitioner and this agreement was accepted on behalf of the Government by the District Deputy Collector. Therefore there was a complete and concluded contract between the Government and the petitioner which made the petitioner an occupant within the meaning of the Land Revenue Code, and the rights of the occupant are governed by s. 68 of the Land Revenue Code. Section 68 provides that "an occupant is entitled to the use and occupation of his land for the period, if any, to which his tenure is limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law, for the time being in force, and on the fulfilment of any other terms or conditions lawfully annexed to his tenure." It is not disputed by the State that the petitioner has paid land revenue as required by the terms of the sanad and that he has carried out the terms of the sanad.

Now, it appears that one Govindrao Pataloji Thite applied to the Mamlatdar that the lease of these lands should be given to him instead of the petitioner. Having heard of this the petitioner wrote a letter on November 18, 1951, to the Revenue Secretary, Revenue Department, stating that he had been given the sanad and no action should be taken without deciding the merits as to the application of Thite after a full and impartial inquiry. Somehow the Secretary to the Government of Bombay, Revenue Department, looked upon this letter as an application for a grant of a lease and the petitioner was informed on January 19, 1952, that his request for the grant of survey Nos. 167 and 168 could not be granted as he was already in possession of land sufficient for the maintenance of his family, and on February 15, 1952, the Mamlatdar issued a notice upon the petitioner to hand over to him possession of these survey Nos. 167 and 168, and it is this order which is being challenged by the petitioner, and the contention of the petitioner is that he is being deprived of his property otherwise than by due process of law.

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Now, in their affidavits the case made out by the State of Bombay is that the petitioner obtained the sanad on false representations and the false representations were, first, that he had spent a sum of Rs. 15,000 in making improvements upon the lands and according to the State of Bombay it was found that this was a gross overstatement. The second misrepresentation on which the State relies is that it was represented to the Government that the petitioner did not own any large area of agricultural land whereas in fact according to the State he owned 63 acres of agricultural land and he also cultivated 70 acres of land as a tenant of some other landlord, and the case of the State of Bombay is that this agreement would never have been entered into but for the misrepresentations made by the petitioner and the case of the State of Bombay further is that Government have revised the order made by the Deputy Collector under s. 211 of the Land Revenue Code. On this two questions arise. One is whether Government had power to set aside or cancel an agreement entered into between the Government and a subject. The powers of the Government under s. 211 are revisional and they are undoubtedly very wide powers. Power is given under this section to the State Government and any revenue officer to call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceeding of such officer. Therefore, to the extent that an order is passed by any revenue officer, that order can be revised by his superior and the order can be set aside. But the question is whether when an order has resulted in a solemn agreement being entered into between the Government and the subject it is open to the State Government under s. 211 to set aside or cancel that agreement. If nothing more had been done than the passing of an order by the Deputy Collector that an agreement should be entered into between the State Government and the Petitioner, undoubtedly such an order could have been revised under s. 211. But when pursuant to the order an agreement has been entered into and certain rights have been created in favour of the petitioner, the question is whether by its revisional powers the Government can set aside an agreement entered into under the circumstances which we have referred to.

The Government Pleader has drawn our attention to a judgment of a Divisional Bench reported in *Government of Bombay v. Ahmedabad Sarangpur Mills Co. Ltd.*⁽¹⁾ All that was held by Sir John Beaumont, Chief Justice, and Mr. Justice Rajadhyaksha in that case was that the Commissioner cannot under s. 211 cancel an agreement made by the Collector, not as a subordinate officer of the Commissioner, but as agent for the Secretary of State, and entered into by the Collector in that capacity with third parties. That was the only question that that Bench was considering, and the Government Pleader wants us to infer from that decision that if the agreement had been entered into by the Collector, not as an agent of the Secretary of State but as a subordinate officer of the Commissioner, then that agreement could have been set aside by the Commissioner under s. 211, and the Government Pleader argues that in this case the agreement entered into by the Deputy Collector was not as agent for the Secretary of State or the Union of India, but as a subordinate officer of the Collector or the Commissioner. Now, we do not read this judgment as a direct decision for the contention put forward by the Government Pleader. On the other hand, there is a direct decision on this point in *Government of Bombay v. Mathurdas Laljibhai*.⁽²⁾ It is true that it is a judgment of a single Judge, Mr. Justice Divatia, but Mr. Justice Divatia follows a judgment of a Division Bench which is an unreported case decided by Mr. Justice Wadia and Mr. Justice Sen in Letters Patent Appeal No. 40 of 1938; and what the Division Bench and Mr. Justice Divatia held was that s. 211 does not apply to documents embodying terms and conditions agreed to between the Government and the occupants. The learned Judge further held that it was not competent to Government to modify the terms of a sanad if it embodied certain terms and conditions agreed to between the Government and the occupant.

The Government Pleader has relied on two decisions of the Privy Council. One is in *Province of Bombay v. Hormusji Manekji*,⁽³⁾ In that case two agreements were entered into between the Government and the respondent before the Privy Council and the effect of the agreements was that the respondent was allowed to use the land for non-agricultural purposes on certain terms including a stipulated annual assessment at a concession rate. The respondent erected certain structures

⁽¹⁾ (1943) 46 Bom. L. R. 413.

⁽²⁾ (1941) 44 Bom. L. R. 405.

⁽³⁾ (1947) 50 Bom. L. R. 524.

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and the case of the Government was that this was in contra-vention of the agreements, and the Collector ordered him to pay a penalty and also enhanced assessment. An appeal to the Commissioner was rejected and then there was an appeal to the Governor in Council who passed an order directing that the non-agricultural assessment at the full standard rate should be levied on the entire holding of the respondent. The respondent then filed a suit alleging that the order of the Governor in Council was *ultra vires* and for a declaration that the Government of Bombay was not entitled to recover any assessment in excess of the amounts payable by him under the agreements. The Privy Council held that there had been material unauthorised alterations made by the respondent by demolition, reconstruction and extension of the land leased to him and therefore one of the agreements had become useless and unenforceable, and they held that the order of the Governor in Council did no more than recognise the true position of the agreements in law and was not *ultra vires* the Governor in Council acting under s. 211 of the Bombay Land Revenue Code, and they further held that the respondent being unable to rely on the agreements the whole basis of the suit had gone. Now what is relied upon by the Government Pleader is the observation of the Privy Council that the Governor in Council could have acted under s. 211 and treated the agreements as broken or cancelled. We do not look upon this decision *also* as a direct decision on the point that we are considering. The Privy Council has not held that it is open to the Government under s. 211 to cancel or forfeit a sanad given by the Government to the petitioner or to cancel an agreement entered into between the Government and the petitioner recognizing his rights as a occupant on certain terms and conditions. The real decision of the Privy Council is that the agreements had become unworkable by reason of the action of the respondent himself and all that the Government did was to recognise the true position as a result of what had happened, and it was only impliedly that the Government treated the agreements as broken or cancelled. Therefore we do not read that decision as overruling the judgment of Mr. Justice Divatia to which reference has been made.

The other decision of the Privy Council relied upon by the Government Pleader is an earlier decision in *Secretary of State v. Anant Nulkar*,⁽¹⁾. There the Government lands were

⁽¹⁾ (1933) 36 Bom. L. R. 242.

granted by the Collector to the respondent free of occupancy price and free from assessment. The Commissioner, acting under s. 211, made an order directing that the proper occupancy price should be recovered from the respondent, and on his failure to pay the same, the lands were forfeited to Government, and the Privy Council held that the order of the Commissioner was valid under s. 211 as the grantee failed to implement the Commissioner's order. In that case the forfeiture resulted by reason of the fact that the respondent failed to pay the occupancy price fixed by the Commissioner. In the present case the Government are not seeking to forfeit the sanad on the ground that the petitioner has failed to carry out any term of the sanad or any term as altered by the order of the Collector or the Commissioner. What the Government are purporting to do is to cancel the sanad on the ground that the sanad was got by the petitioner by misrepresentations. It seems to us that in a case like this, where Government want to set aside or avoid a contract entered into on the ground of misrepresentation, the proper procedure to follow is not to take action under s. 211 but to file a suit for avoiding the contract, so that the question whether the contract was entered into by misrepresentation or not should be judicially determined. Apart from that, in our opinion, assuming that it was open to Government to take action under s. 211, the action has been taken in gross violation of the rules of natural justice. The Government have made their own inquiry and have come to their own conclusion that the petitioner was guilty of misrepresentation; no notice was given to the petitioner to show cause; he has never been heard with regard to the allegations made against him, and on an *ex-parte* decision come to by the Government, the petitioner is sought to be deprived of the land which he has obtained under the sanad. As pointed out by Mr. Bengeri, although the misrepresentations are supposed to have been made to the Prant Officer who entered into the agreement, we have no affidavit before us of the Prant Officer setting out the representations which induced him to enter into the agreement with the petitioner. Taking all these circumstances into consideration, it is difficult to uphold the order passed by the Government. In our opinion, if the petitioner is deprived of his land, it would be contrary to due process of law.

We therefore quash the order passed by the Mamlatdar on February 15, 1952, and the order of the Revenue Secretary dated January 21, 1952. The State to pay the costs of the petition.

Rule absolute

M. W. P.

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