

to 5, the amount of the penalty of Rs. 25,000 should proportionately be reduced. There is justification for this contention. But we cannot reduce the amount, as under s. 183 of the Sea Customs Act the amount has to be fixed by the concerned officer as he thinks fit. But as the basis of the order partially disappears, we give liberty to the appellant to apply to the customs authorities for giving him an option to redeem the confiscated goods on payment of a lesser amount, having regard to the changed circumstances.

In the result, the appeal is allowed in part and the order of the Collector of Central Excise is accordingly modified in terms of the finding given by us. As the parties succeeded and failed in part, they are directed to bear their own costs.

Appeal partly allowed.

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v.

THE STATE OF BOMBAY AND ANOTHER
(WITH CONNECTED APPEALS)

(B. P. SINHA, C. J., J. L. KAPUR,
P. B. GAJENDRAGADKAR, K. SUBBA RAO and
K. N. WANCHOO, JJ.)

Inams—Abolition of Personal Inams—Constitutional validity of Enactment—“Estate” “Right in an estate”, meaning of—Bombay Personal Inams Abolition Act, 1952 (Bom. 42 of 1953), ss. 4, 5, 7, 17—Bombay Land Revenue Code, 1879 (Bom. 5 of 1879), s. 3(5)—Constitution of India, Arts. 31, 31-A.

The appellants held personal inams which were governed by Bombay Acts Nos. II and VII of 1863 by virtue of which they held their lands on payment of land revenue which was less than the full assessment. After the coming into force of the Bombay Personal Inams Abolition Act, 1952, the appellants who were affected by it challenged the validity of the Act on the grounds, inter alia, (1) that the property which had been dealt with under the Act was not an estate inasmuch as what ss. 4 and 5 extinguished was the right of the inamdar to appropriate to himself the difference between the full assessment and

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the quit rent and this was not an estate within the meaning of Art. 31-A of the Constitution of India, and (2) that no compensation had been provided in the Act for taking away the property of the appellants.

Held: (1) that the right of the inamdar to appropriate to himself the difference between the full assessment and the quit rent was a right in respect of land revenue and was therefore a right in an estate by virtue of the definition in Art. 31-A(2)(b). Such a right also fell under s. 3(5) of the Bombay Land Revenue Code, 1879, and as such it was an estate under Art. 31-A. Accordingly, the Act when it extinguished or modified the rights of inamdars in inam estates was protected by Art. 31-A.

(2) that sub-s. (5) of s. 17 of the Act under which no compensation was to be paid for the loss to the inamdar of what he used to get because of the difference between the quit rent and the full assessment, was not invalid as Art. 31-A saved the Act from any attack under Art. 31 which was the only Article providing for compensation.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 155 to 160 of 1956.

Appeals from the judgments and orders of the Bombay High Court dated July 6, 1954, in Special Civil Applications Nos. 393, 395, 409 and 632 of 1954; July 19, 1954, in Special Civil Application No. 1205 of 1954; and July 30, 1954, in Special Civil Application No. 1309 of 1954.

Purshottam Trikamdus, V. M. Limaye, E. Udayaratnam and S. S. Shukla, for the appellants.

H. N. Sanyal, Additional Solicitor-General of India, N. P. Nathwani, K. L. Hathi and R. H. Dhebar, for the respondents.

1960. October 3. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO J.—These six appeals on a certificate granted by the Bombay High Court raise a common question as to the constitutionality of the Bombay Personal Inams Abolition Act, No. XLII of 1953, (hereinafter called the Act) and will be disposed of by this judgment. The appellants hold personal inams which are covered by Bombay Acts Nos. II and VII of 1863. The Act was attacked on a number of grounds in the High Court of which only two have

been urged before us, namely, (i) that the property which has been dealt with under the Act is not an estate and (ii) that no compensation has been provided in the Act for taking away the property of the appellants. The writ petitions were opposed by the State of Bombay and the main contention on its behalf was that the Act was protected under Art. 31-A of the Constitution.

Before we deal with the two points raised before us, we should like briefly to refer to the rights which holders of personal inams had by virtue of Bombay Acts Nos. II and VII of 1863. Act No. II extended to certain parts of the Presidency of Bombay and dealt with holders of lands in those parts who were holding lands wholly or partially exempt from the payment of government land-revenue. The Act provided for the cases of holders of such lands whose title to exemption had not till then been formally adjudicated. It laid down that if such holders of lands consented to submit to the terms and conditions prescribed in the Act in preference to being obliged to prove their title to the exemption enjoyed by them, the Provincial Government would be prepared to finally authorise and guarantee the continuance, in perpetuity, of the said land to the said holders, their heirs and assigns upon the said terms and subject to the said conditions. The main provision of the Act in this respect was that such holders of land would be entitled to keep their lands in perpetuity subject to payment of (i) a fixed annual payment as nazrana in commutation of all claims of the Crown in respect of succession and transfer which shall be calculated at the rate of one anna for each rupee of assessment and (ii) a quit-rent equal to one-fourth of the assessment. There were other provisions in the Act for those cases where the holders of such lands were not prepared to abide by the conditions of the Act and wanted their claims to be adjudicated; but we are not concerned with those provisions for present purposes. Thus the main right which the holders of lands got by Act II was that they held their lands on payment of one-fourth of the assessment instead of full

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assessment plus further one-sixteenth of the assessment; thus they paid in all five annas in the rupee of the full assessment and retained eleven annas in the rupee for themselves.

Act No. VII dealt with similar holders of lands in the remaining parts of the Presidency of Bombay, and made similar provisions with this difference that such holders of lands were to pay two annas for each rupee of the assessment as quit-rent under s. 6. Thus those who came under Act VII paid only two annas in the rupee of the assessment and retained fourteen annas in the rupee for themselves.

We now turn to the provisions of the Act. By s. 2(c) "inamdar" is defined as a holder of personal inam and includes any person lawfully holding under or through him. Section 2(d) defines an "inam village" or "inam land" while s. 2(e) defines "personal inam". Section 3 provides that the Act will not apply to certain inams including *devasthan* inams or inams held by religious or charitable institutions. The *Explanation* to the section lays down that by the term "inams held by religious or charitable institutions" will be meant *devasthan* or *dharmadaya* inams granted or recognized by the ruling authority for the time being for a religious or charitable institution and entered as such in the alienation register kept under s. 53 of the Bombay Land Revenue Code, 1879 (hereinafter called the Code), or in the records kept under the rules made under the Pensions Act, 1871. Thus so far as religious or charitable institutions were concerned those inams which they held from the very beginning as *devasthan* or *dharmadaya* inams and which were entered in the relevant records were out of the provisions of the Act. Section 4 extinguishes all personal inams and save as expressly provided by or under the provisions of the Act, all rights legally subsisting on the said date in respect of such personal inams were also extinguished subject to certain exceptions which are, however, not material now. Section 5 provides that all inam villages or inam lands are and shall be liable to the payment of land-revenue in accordance with the provisions of the Code or the

rules made thereunder and the provisions of the Code and the rules relating to unalienated lands shall apply to such lands. It further provides that an inamdar in respect of the inam land in his actual possession or in possession of a person holding from him other than an inferior holder (subject to an exception which we shall mention just now) would be primarily liable to the State Government for the payment of land-revenue due in respect of such land held by him and shall be entitled to all the rights and shall be liable to all obligations in respect of such land as an occupant under the Code or the rules made thereunder or any other law for the time being in force. Thus by s. 5 the holder of a personal inam became for all practical purposes an occupant under the Code liable to pay full land-revenue and the advantage that he had under Acts II and VII of 1863 of paying only a part of the land-revenue and retaining the rest for himself was taken away. The exception which we have referred to above was where the inferior holder holding inam land paid an amount equal to the annual assessment to the holder of the personal inam, such inferior holder would be liable to the State Government and would become an occupant of the land under the Code. Section 7 then vests certain lands like public roads, paths and lanes, the bridges, ditches, dikes and fences, the bed of the sea and harbours, creeks below high water mark and of rivers, streams, nallas, lakes, wells and tanks, and all canals, water-courses, all standing and flowing water, all unbuilt village sites, all waste lands and all uncultivated lands (excluding lands used for building or other non-agricultural purposes) in the State Government and extinguishes the rights of inamdar in them. Section 8 deals with right to trees and s. 9 with right to mines and mineral products. Section 10 provides for compensation for extinguishment of rights under s. 7 while s. 11 gives a right of appeal from the order of the Collector under s. 10. Sections 12 to 16 deal with procedural matters and s. 17 provides for payment of compensation for extinction or modification of an inamdar's right which may not be covered by s. 10. Sub-section (5)

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of s. 17 however says that "nothing in this section shall entitle any person to compensation on the ground that any inam village or inam land which was wholly or partially exempt from the payment of land revenue has been under the provisions of this Act made subject to the payment of full assessment in accordance with the provisions of the Code". Section 17-A provides for the issue of bonds while s. 18 provides for the application of the Bombay Tenancy and Agricultural Lands Act, 1948, to any inam village or inam land or the mutual rights and obligations of an inamdar and his tenants. Section 19 provides for making of rules and s. 20 deals with repeals and amendments.

It will be seen from this analysis of the Act that the main provisions are ss. 4, 5 and 7. So far as s. 7 is concerned, there is provision for compensation with respect to lands vested in the State by virtue of that section. But no compensation is provided for the rights extinguished by ss. 4 and 5. As we have seen already the main right of an inamdar was to hold his lands on payment of land revenue which was less than the full assessment and it is this right which has been abolished by ss. 4 and 5 and the inamdar will now have to pay the full assessment. No compensation has been provided for the loss which the inamdar suffers by having to pay the full assessment.

This brings us to the first contention. On behalf of the appellants it is urged that what ss. 4 and 5 extinguish is the right of the inamdar to appropriate to himself the difference between the full assessment and the quit-rent, and this is not an estate within the meaning of Art. 31-A of the Constitution. The relevant provisions in Art. 31-A for present purposes are these:—

"31-A (1)—Notwithstanding anything contained in art. 13, no law providing for—

- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- (b)
- (c)

(d)
(e)
shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by art. 14, art 19 or art. 31 ;

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(2) In this article—

(a) the expression ‘ estate ’ shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafi or other similar grant and in the States of Madras and Kerala any *janmam* right ;

(b) the expression ‘ rights ’ in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue ”.

It will be clear from the definition of the word “ estate ” in Art. 31-A(2)(a) that it specifically includes an “ inam ” within it. As such it would be in our opinion idle to contend that inams are not estates within the meaning of the expression “ estate ” for the purpose of Art. 31-A. The Act specifically deals with inams and would thus be obviously protected under Art. 31-A from any attack under Art. 14, Art. 19 or Art. 31. It is, however, urged that the right of the inamdar to appropriate to himself that part of full assessment which was left over after he had paid the quit-rent to the Government is not a right in an estate. This contention also has no force. Inams being estates, the right of the inamdar to retain part of the full assessment over and above the quit-rent payable to the Government arises because he holds the inam-estate. The right therefore can be nothing more than a right in an estate. Besides the definition of the expression “ rights ” in Art. 31-A(2)(b) makes the position clear beyond all doubt, for it provides that the rights in relation to an estate would include any rights or privileges in respect of land revenue.

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Even if it were possible to say that the right of the inamdar to appropriate to himself the difference between the full assessment and the quit-rent was not a right in an estate as such, it would become a right in an estate by virtue of this inclusive definition for the inamdar's right could only be a right or privilege in respect of land-revenue. Besides, it is clear that the right in question falls under s. 3(5) of the Code and as such also it is an estate under Art. 31-A. The contention of the appellants therefore that inams dealt with by the Act are not covered by the expression "estate" in Art. 31-A fails. Their further contention that their right to retain the difference between full assessment and quit-rent is not a right in an estate also fails. The Act therefore when it extinguishes or modifies the rights of inamdars in the inam estates is clearly protected by Art. 31-A.

The next contention is that the Act does not provide for compensation and is therefore *ultra vires* in view of Art. 31. We find, however, that the Act has provided for compensation under s. 10 so far as that part of inam lands which are vested in the State by s. 7 are concerned. Further s. 17 provides for compensation in a possible case where anything has been left out by s. 7 and the inamdar is entitled to compensation for it. It is true that by sub-s. (5) of s. 17 no compensation is to be paid for the loss to the inamdar of what he used to get because of the difference between the quit-rent and the full assessment. It is however clear that Art. 31-A saves the Act from any attack under Art. 31 which is the only Article providing for compensation. In this view of the matter the constitutionality of the Act cannot be assailed on the ground that it provides no compensation for extinction of certain rights.

There is no force in these appeals and they are hereby dismissed with costs. One set only of hearing costs.

Appeals dismissed.